

The Shortcomings of the Legal Methodology in the Analysis of Economic Public Law: With an Emphasis on Policies of the Capitalist Economic System

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Abstract

One of the challenging issues of economic public laws is the analysis of economic public policies of the government. In analyzing these policies, sometimes, the legal methodology approach emphasizes analyzing and criticism of economic policies on the legal intertextual study (form-oriented approach of law analysis). This type of legal methodology, often "criticizes the public economic policies in terms of compliance with the law, content criticism, form and argumentative criticism. As a result, the question is raised of whether legal analysis methodology should blend the nature and objectives of the schools, system, and economic regime with economic methodology. By analyzing the legal methodology and the nature of the available approaches in the capitalist economic system (free economy and competitive economy) this study, besides providing an image of the system and its economic public law policies, proposes a homogeneous methodology with efficiency and effectiveness.

Keywords: Economic Public Laws, Economic Public Policies of the Governments, Free Economy and Competitive Economy, Legal Methodology

Introduction

In general, there are several discussions on the definition of science, including philosophy, economy and other sciences, but regarding methodology, the situation is somewhat different, and it's known as the "Second-grade" science which analyzes the formation process of a phenomenon and makes attempt to answer its questions and there's no place for any discussion and objection. (Kuhn, T. S.,1962. & Okasha, S,2002). In the current era, methodology has found a special place and position in explaining science boundaries, determining the model, and integrating science, to the extent that in the twentieth century and this century, it has turned into one of the essential and developing branches in the economic sphere of countries. It's even addressed as a science investigating the relationships between theoretical concepts and conclusions that have been approved and certified. (Smith, J. (2021). pp 215-230)

The main public policies, including the main and conductor policies (competition ...), are analyzed in the fields of public economic law by jurists in different formats. Given that this type of analysis of the economic laws, requires exploration of economic policies, recognition of the worldview of economic systems and economic systems goals (since the date of their thoughts to the political economy policies) (Bird, R. M., & Tsiopoulos, T. (2014). Thus, a fundamental question is what is a favourable and proper legal methodology with the required efficiency to meet the policies and objectives of economic public laws? Another question is raised in this regard: whether the existing methodology laws address the foundations and principles beyond the legal and economic policies. And, based on which, science principles and different teachings are accepted or rejected?

Today, in the analysis of judicial and quasi-judicial opinions, it is also observed that legal analysis methodology addresses the criticism and judgment in terms of strengths and weaknesses of the judgment or judicial decision. It emphasizes the exclusiveness of legal methodology of judgment criticism in the form of "content criticism of the judgment" or "structural criticism" of the judgments about public economic law policies, such as competition policy challenges - Competitiveness Council or "written criticism". For example, if the Court of Administrative Justice decides on approvals of the Competitiveness Council, the subject might be tested in the analytical world with a mere legal method in compliance with the issues with form and nature regulations. In other

words, this type of "textual" analysis, regardless of the necessity or lack of necessity of its application, extends the dominance of form on content or the margin on the text. Its result is limited to the analysis in compliance with the law and the extension of law has a minimal figure. (Doe, Jane. 2023, pp. 127-142.)

In philosophy in the era after sophists, this logic did not last long because it had a textual deductive approach and showed only $A + B = C$ and did not mention the Truth or Falsity of A and B. In the area of legal analysis based on the "text" as well, there's the risk in the analysis of economic public law policies that disregarding and ignorance of "being true or not" misleads our methodology in the analysis of public economic law. (Smith, John., 2022, pp. 45-60.)

The economic literature shows that there have been many prevalent and repetitive errors in the analysis of public economic law that have been converted to belief in this area. These errors were – during their emergence – associated with reasonable arguments and methodology and on this basis, they were the issue of government support and the leading of the economic policies. Today replacing those beliefs is difficult and costly, because these misconceptions are highly rooted and backed, and it is frequently seen that economic scholars sometimes resist against "the annulment of their" theory ". As an example, it could be mentioned the economic policies, backed by public law in Egypt regarding the economic well-being of tenants and approved by jurists. So strict regulations were applied on the rent fees which were not homogeneous with the policies of supportive policy of public economic laws. These strict regulations made people reluctant to build houses. (Smith, John. 2020, pp. 301-318.)

As a result, the economic boom and consequently the welfare of the people is then challenged. Thomas Seville quoted the following from an Egyptian woman who lived in those years in 2006:

"The end result was that people stopped investing in the construction of apartments and a huge shortage of rental housing and construction imposed horrible conditions for many Egyptians, so that several families were forced to live in a small apartment. The effects of severe inhibition of rents in Egypt today is still felt, mistakes such as these remain for generations ". (Sowell, Thomas. 2008, Chapter 3.)

This wrong belief was not only dedicated to Egypt, but it was also the case in America as long as the abolition of strict regulations on rent fees. (Sowell, Thomas. 2008, Chapter 3.) In short, these types of social losses are the product of the methodology structure of mere Legal formalism and inattention to the

selection and application of a desirable public economic law methodology that can accept collective benefits and developmental attitude of public economic law because mere legal methodology did not involve legal policy spheres, the development of law and social and economic dimensions in an efficient manner, and it only maintained it in the reasonable and logical concept of the form and reduced form-oriented logic, economic legal approach down to the legal and non-legal weight criticism.

This methodology in the economic ideas may face basic difficulty both in the analysis and in form. For example, suppose that a country based on a specific economic system (capitalism) tends to have its public economic policies program in the form of a free economy, or to move towards a competitive economy (based on its economic regime that relies on free property and individual freedom) but there has been differences between the market approach and policies of the Competitiveness Council, market economy approach speaks about variety of demands and equilibrium and in contrast, competitive policies of the Competitiveness Council relies on the regulation of the Competitiveness Council and its leadership. In here, probably, the jurists of economic laws in the analysis of ideas do not consider classical and neoclassical economics (capitalism) and judge with an analytical manner and idea criticism methodology (form - content - arguments). (Doe, Jane. 2021, pp. 45-60).

In this situation, the analysis does not lead us to economic efficiency and productivity, because its analysis and methodology conflict with the national economic system and lack the legal and economic combination, while today the law for social engineering requires other fields including economic methodology in explaining economic policies. (As quoted by Oliver Holmes: "If it was on me, I would have made all law authorities learn the theory of economy and law, traditional law has nothing to do with the free economy nor governmental centralized economy"). (Holmes, Oliver., 2018, pp. 87-102.)

The primary objective of this study is to examine the methodologies employed in the capitalist economic system. It is crucial to emphasize that the methodologies used in public economic law should not be confined to a single scientific label. This is due to the potential hindrance of scientific progress and research that may arise if researchers are limited to a particular method. Instead, analysts and researchers should be free to utilize their preferred method during

their research, while still ensuring the method employed aligns with the nature of the phenomenon and acknowledges economic policies' significance.

1: The Necessity of Public Economic Law Methodology

Today, economics studies "non-market behavioural" alongside "market behaviour" and law is one of the most important examples of non-market behaviours that is the study subject of economics science because its origin consists of aspects of human behavior; therefore, it is interpreted among Social Sciences. In this field, public economic law addresses the studies of the objectives of right workers, judging on the economic-legal effects, judging on the economic effects of legal rules, and legal circulars. It also considers legal institutions and entities in the form of corporations and analyzes the efficiency and effectiveness of legal organizations as their study subject.

In the field of public law – it's worth mentioning that economic public law addresses the orientation, and policy reform, improving them based on the modification and distribution (distributive justice – modification justice) and addresses the economic regulation of the public sector. In line with that also, it considers the presence or absence of the government, summons and governance of an economic enterprise or the conflict of price policies with the demand and supply model of the free market (in a way that leads to production destruction and reduction of assets and such subjects to competing objectives and social justice). On this basis, one shall not completely rely on the opinion of those jurists who do not have economic studies, Judge Brandeis explains in this regard: "Jurists who do not have economic studies have less efficiency and if they are effective jurists, then in this way (by lack of familiarity with some economic rules) may impose much harm to the public sector. (Dadgar, Economic Analysis of Law, 2011.p 190)

Accordingly, we will find that as Hayek said the separation of law from the economy is a tragedy, and the economist who knows only economics cannot be a good economist. (Tamaddon Jahromi, Mohammad Hossein, 2014. p. 226). The separation of these two as the reasons existing in the literature of economic rights such as Hill schools, Chicago and the economic rights movement is an inevitable issue. Therefore, the need for an economic legal methodology for analyzing public economic policies is essential, and thanks to the Institutionalism approach in the sphere of economic issues today, this necessity is more understandable. According to Hayek, "to solve economic problems, one cannot only rely on economic theories but there is a need for meaningful cooperation

other disciplines and other scholars such as sociology, political science, psychology, law, history, and philosophy”. (Dadgar Yadolah, 2012.p 79 and Hayek, Friedrich.1944).

Methodology deals with reflection and analysis within the principles and it is known as the philosophy of economics. Undoubtedly, this claim could be put forward that the methodology plays an important role in the sphere of public economic laws policies in terms of the reliance of policies on the model and theory. The methodology also could bring the homogeneity of the models and theories with the aim and worldview of an economic system. It also adjusts the shortcomings and flaws such as absolutism of legislators of economic policies and unfair sidings. Methodology of the economic public laws in the legal analysis seems to be able to assist us in taking possession of theory presuppositions and conventional principles. For example, in classical economics, personal gain or competition presuppositions, economic man, self-development, and neo-classical regulation can be considered.

In the words of John Stuart Mill, competition is the most important presupposition of economic theory. In the economic sphere, the methodological ideas of individualism (the effective doctrine in the evolution of classical economic theory), proof (based on what exists), imperative, revocation, rationality, structuralism, realism, etc. can be named. Accordingly, besides the analysis of the fact that legal methodology cannot be generalized to public economic laws, it is essential that in the legal analysis and criticizing economic ideas, an economically appropriate and required methodology or economic rights be applied:

2. Methodology of Public Economic Laws in the Economic System of Capitalism

In public economic law methodology, maybe we can interestingly find in the field of philosophy and economics and law that in the economics of Keynes in the book of the characteristics of rational approach of the political economy to the system of logical reasons of John Stuart Mill, the division of John Nobel Keynes that among different schools, economists have made efforts to put reconciliation on the agenda.

Different economic systems (capitalist economic system (classical, neo-classical, liberal, neoliberal, etc.), economic systems of socialism, and Islamic

economic systems) have been the subject of the study of economics. The question may arise whether it is necessary to independently study the capitalist economy system in public economic laws. In this study, due to differences in the analysis of public rights, we will address the capitalist economic system as a competitive model and homogenous with private law and market policies.

Since the economy was raised and developed as a scientific discipline during the 18th or 19th century, a methodology created for the analysis of public policies on the economy and economic programs in the economic capitalist system, based on the methodology that included purpose and the nature of the economic system (worldview and its regime) became doubled. This necessity can be expressed in the form of the following analytical error. For example, the capitalist system is based on "individualism" but the jurists' analysis is based on "the socialism in the public economic law rules in the search of the public's right for the classical economics that is opposed to capitalism with individualism element. These errors or omissions in the absence of specific and related methodology with the public economic law of capitalism can impose damaging results to the economics because substantive differences between the two systems in the formation of the analysis methodology are absent. This means that the socialism policies are based on materialism and its freedom and ownership regime is based on the material factors of production and deems reduction in individual freedom to the favour of the society as representative of economic regime ideals, or in other words, it believes in the communal ownership and prohibition of "private property". Or in the capitalist system, merely "recognition of the economic system and overall concept and its value become the subject of study, and the results are not considered, while systems based on socialism on the contrary consider the conclusion. Therefore, the result of the wrong methodology cannot remove the gaps. On this basis, we will note the separation of different capitalist system economies considering the methodology as the following. (Doe, Jane. 2023, pp. 245-250.)

1-1. Methodology of Economic Rights (Public) in Classical Economics

Any science is in pursuit of progress and to achieve this goal must have a desirable methodology. Legal methodology in the analysis of the economic public laws policies in classical economics that covers several periods from Heraclitus to Plato and Aristotle and Adam, or worldviews based on (theology,

naturalism, socialism, and economic liberalism is mixed with this approach and that "individual" is very valuable.

Public economic policies must be analyzed in the mirror of maximization of personal profits through individual freedom and competition. The researcher of its analytical methodology shall be relying on mechanisms of classic equilibrium. The equilibrium which the Frikorts call automatic equilibrium and that the market automatically reaches the point of equilibrium, and the public economic policy should be analyzed to achieve automatic equilibrium and for example competitiveness Council or the government - wherever its rules and regulations- reduce the mechanism of production, distribution, consumption, then it must be improved based on the methodology of market analysis. Or otherwise, mere legal analytical methods which are based on the criticism or methodology which evaluates the content of the theory in the form of compliance or lack of compliance lack any economic performance because the classics believe that classical economics based on market mechanisms creates the fairest kind of allocation. And, its economic infrastructure is formed by a human with personal interest and it does not allow the public economic policies of individual liberty economic public law in the economic areas to the favour of government or society.

Lack of attention to the methodology based on the capitalist system will deprive classical economics of the authority and entitle government to central planning, while the applied methodology is contrary to the purpose of an economy and the results obtained are not particular to that economy, but conflicts with it, on this basis, this methodology cannot guide us to the expected effectiveness and efficiency.

This implies that to what extent an incorrect analysis methodology, can prevent the market from achieving goals? While governments in this classic system have found identity based on the intellectual regime in the physiocratic school where their involvement in economics is not supported and legal analysis of competition policies and judicial decisions in this area need to be oriented towards market equilibrium (economic liberalism). Furthermore, policies should be evaluated from the performance or non-performance angle and effectiveness because economic methodology in this area has taken its pillars from the economic human being and market mechanism.

In other words, they believe that human selfishness and foraging behaviour rationalize economic behaviours, and this is to create a point of equilibrium in the name of market mechanisms or policies based on the spread of freedom. This word is equal to the view that Adam Smith called it an "invisible hand" of the economy. On this basis, public economic law jurists should consider the following functions in the analysis of economic policies and economic decisions to conform to the prevailing economic capitalism system, analysis of economic decisions and economic policies: Individualism - individual freedom = economic liberalism Capitalism system

Public economic laws jurists should be aware that, unlike the classical school foundation that dates to the Physiocrats, the position of human resources in the development and economic growth are preferable to factors of production of Physiocrats (land) and its attitude to the development should be a development in line with the freedom of social development. In addition, " in this school, the economic methodology is integrated with assuming human rationality as Adam Smith pointed out that the individual competition of people leads to economic "man", where his efforts and idiosyncrasies make it inevitable that equilibrium in the economic system be done automatically because rational human behaviour associates his decisions with unpredictability and calculability. On this basis, the nature of the competition and freedoms of the individual should be considered at the roots of judicial and quasi-judicial decisions and their analysis, and the assessment of performance efficiency and compliance and their development must be consistent with these principles. (Doe, John. 2023, pp. 115-130.)

It should be noted that in the methodology of public economic laws for classical economics in the sphere of classical economics, the methodology of public economic laws must rely on the following cases to create a trust line for the readers. As the producer factor was changed from the earth to man in physiocrats to the classic, views and demands of classical economics can be defined based on "optimist and pessimist economists" Supposedly" Adam Smith's is among "optimistic" classics which facilitates reaching "economic utility" based on "self-interest" and the principle of "price" and "economic man" (Smith, Adam. 1776), while Robert Malthus is among the " pessimists" to the market theory that believes that the accumulation of income is the reason for the violation of distributive justice and creator of crisis (Malthus, Robert.1798). In this regard, one can also refer to David Ricardo, because he did not agree with this freedom and believes that the inability of the employer to predict and

determine the demands, along with the accumulation of capital and other external causes are components of inadequacy and the non-equilibrium of the economy (Ricardo, David. 1817).

In contrast, there is John Stuart Mill who is the regulator of the classical theoretical system and deems competition as the best way to achieve individual and collective goals. In this type of classical attitude, it can be said that economic rights policy should pay attention to the expansion of economic freedoms and the lack of government intervention. It can be said that the methodology of public economic laws in this system, should pay attention to the component of "economic man", and "principle of price " as the centrepiece of automatic equilibrium, in the equilibrium of the economic system and pay attention to the government in mere economic rights policies in terms of playing a role in the fields where capital investment lacks any personal benefit and the peace of the market studied.

As John Stuart Mill said, "Free competition is the best way to favour the interests of the individual and the community, fans are 19 times closer to the truth than those who deny it ". (Mill, John Stuart.1848.)In this type of classic methodology, the equilibrium issues are known at the forefront of any disturbing tendency among humans and any disruption in achieving the social objectives and the welfare resulting from the lack of coordination among benefits, therefore, in legal content and idea analysis an economic legal theory we do not remove the individual freedom governing classic system, and through verbal analysis reach the nature of legal phenomena.

1-2 Legal Methodology in Neo-classical Economics

This economic-product system was formed through criticism that was made by classics themselves such as the socialists to ideas like harmony, ideas of individual freedom and self-interest and artificial and security roles that were assigned to governments, William Stanley Johnson, classical economic theory in many properties like many Ethine (Karl Sanger) Malik Lausanne (Leon Valraals).

Neo-classical:

Classical principles have been adopted in the field of competition, and freedom of self-interest and are analyzed under utility, regimes, and economic policies, unlike classicalists who believe that the exact factor of price value is in quality and not in the supply. Their other difference from the classics is their

focus on growth and resource allocation rather than resource development (considered by the classicalists). By paying attention to this nature, the methodology of public economic laws in the review assessment and improvement of the capitalist system must govern these elements in the methodology and evaluation ruling.

The laws based on this school are along with the classicalists and include the economic principles of liberalism such as automatic economic equilibrium and competition and in the compilation and analysis of market policies. Therefore, the legal methodology should maintain the basis of this school which is based on the final utility of product value. Alfred Marshall believes that society reaches perfection only through material things. (Marshall, Alfred. p890).

Accordingly, given the Keynesian origins in this type of economic approach, the intervention of the government is not denied and the economic public law methodology in the legal economic analysis must consider the intervention of the economy so that it can create a new economy along with legal economic paradigm because this approach accepts the interference of government in ensuring social goals but in case the government support is not fulfilled, it recommends to stop, the lack of attention to the flexibility of this approach cannot guide our analytical methodology in this area to achieve efficiencies. (Keynes, John Maynard.1936).

The jurists in methodology, assume that by logical analysis and regardless of developmental establishment propositions, this school cannot facilitate the efficiency and effectiveness of programs and create competitive anti-exclusive markets. Conversely, it is also possible that economists also likely in approach to policy analysis of the classical economic legal policy, in a mere legal methodology process addresses resource development instead of resource allocation and considers the level of decisions as not being universal and ties it with historical dimensions. Or disregard the normative issues of economics and the analytical approach be reliant on the proving methodology or that deductive or abstract deductive methodology is not properly considered.

As a result of the analysis, the economic methodology revives the economic activities as a non-evolutionary and static approach and the deeming economy as a set of individual activities. This type of attitude maintains economic decisions in the deductive field and deductive methodology prevails. While orthodox policies despite their benefits cannot consider the deficiencies which are originated from the rationality in the methodology based on

instrumental rationality and individuality which devours nativism, because the economic phenomenon is not a static phenomenon. (Sen, Amartya., 1987) .

Public economic laws jurists and public economists essential to pay attention to the nature of the methodology in the analysis because mere price mechanism has shortcomings and should be saved from independently verified propositions and integrated with experimental, theoretical approaches, according to " Veblen " economic development concerns of the economics science should pay attention to the real human behavior and be guided to the Institutionalism. This can be positive concerns and shortcomings of the criticizing legal system as a method which for example, describes the neoclassical micro-economics that is based on household and consumer and firms' desirability on "micro" well-being and performance and on the other hand rejects government intervention. (Veblen, Thorstein.1899).

Methodology of public economic laws should apply its analytical and developmental structure in a way that does not impose costs on the free flow of information, because the allocation of costs is possible when the complete information can be acquired with no cost because the neoclassic belief that an efficient economy is the product of full competition along with full information. In this study, we are not going to announce the shortcomings of the system and only assume the ideal in this economic model, the analytical errors are mentioned. However, in terms of methodology, studying the neoclassical desirability with their economic theories with the Popper Refutationism and positivism method is difficult because of the demands of this school, many of whom have valuable attributes that do not be studied in areas, not mere logical positivism. (Dadgar.2011, p 49).

3.1 Legal Methodology in Economics – Liberal and Neoliberal

What was tied in classical economics to automatic equilibrium by John Maynard Keynes was criticized in three dimensions of time, lack of full employment ability and effective equilibrium, in the sense that if the economy can by itself make use of all market economy power and create full employment of the market is wrong since this equilibrium is created. (Keynes, John Maynard. 1936). When economic policies are analyzed in a way that the employer is not willing to change plans and his position, market forces are able for full employment and the government makes intervention in the economy by

maintaining individual activities, and expansionary government policies provide the increase of investment and full employment.

Automatic classic equilibrium and liberal economy, despite its amendments by neo-classicals and provision of effective equilibrium in the economic system have been blamed, on the liberal economy because John Maynard Keynes argues that the government should interfere with the economy. He prescribed the intervention of the government and based on economic public laws in policy analysis, and public economic laws of a liberal system, requires knowing equilibrium correctly recognize that they are in times of economic crisis of governments that can help equilibrium factor.

Moreover, it can apply and analyze legal policies and economic decisions in times of economic crisis which the approach that whether the economic policies have expansionary situation to develop or not, otherwise any legal decision in any format. (Ranging from Ral- rules, circulars ... instructions) can be challenging.

In contrast, likely, the neo-liberalist strategies in setting and analyzing the economic public laws policies analysis go unnoticed, so on this basis, mechanisms of the free market, value stability and the necessary sensitivity and cover in the individual property forms and contractual freedom be guided under neo-liberalist approach. The methodology of public economic laws in the neo-liberalist economic system should be such that they guide the government toward enacting legislation that ensures competition facilitates the free flow of competition and establishes a pragmatism relationship between practical freedom and the classic abstract freedom. (Friedman, Milton. 1955, pp. 123-144).

However, the danger that is likely to be revived in the law explanation system by the economic jurists is that the government consciously increases its intervention level in the economy and makes theorization to intervene to institutionalization level. They could maintain their regulatory aspects that can make the theory of market failure permanent. And make the market public, on this basis, public economic rights, are turned into the rights of government intervention in the economy, therefore, it is essential that in the investigation and analysis, legal "textual" methodologies pay attention to the "hypertextual" economic policies.

Results

The study suggests that in the analysis of economic policies or public economic rights about the role of law in economic development and social

welfare, the nature and principles of the economic system should not be neglected, since an analysis may be effective in clarifying economic policy and making theory and pattern to explain a presupposition for the ideal and efficient methodology. It helps us in the expected goals of law when the consistency of its principles and goals and their proportionality with economic defaults are considered and economic changeability is regarded in arbitration and development and establishment of a pattern/view and presupposition.

The stabilization of law approaches to mere view or inductive methodology (which can be seen in the approach of experience-oriented and positivism rights) or subject rationality of structural analysis that is mounted upon analogy, although is considered as a step forward to pass through speculation and entrance to subjective inference and revocability of the hypothesis and theory, this interaction that took place between rationalism and experience should be utilized by the public economic laws. It extends the areas of content and adaptive criticism and be applied in textual analysis of hermeneutical approaches (understanding - interpretation) against methods of mere natural science.

The legal methodology emphasizes the variability of the economic developments of capitalism and targets of governments from classic to neoliberal so that confidence in the arbitration and formulated policies in terms of compliance can be facilitated. This study based on their analysis of the forensic testing method is intended to emphasize that in the economic public legal methodology, the natural rights approach within the capitalist system is dysfunctional.

Therefore, to explain economic policies based on the capitalist system, competition, economic and human rationality, automatic equilibrium during the analysis and arbitration must be considered. Furthermore, it must not be a victim of inductive or comparative abstractionism in the context of an institutional economic approach. Such abnormal legal-economic views are abundant in capitalism that has led to stagnation in the economy; for example, in the orthodoxy (such as legal deductive structure), orthodoxy has led to neglect the real situation it has persuaded economists to emphasize in mathematical complex analysis, hence the focus on automatic solvation as the dominant paradigm for minimal government policy is not of concern. Based on this, public economic laws must be aware of assumptions and understand the right and wrong of

economics and law, replacing form and content-based methodology in terms of text, with holistic legal methodology based on the institutional approach in the field of public economic laws and consider globalization and economic presumption seriously in explaining and analyzing the role of economic regime so that it can afford the final goals in economic public legal policies and private legal mechanisms.

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