



Economic Analysis of Reasonable Person

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ABSTRACT

Conventional economic analysis is a new approach in law and its most important goal is to choose the appropriate measures to achieve economic efficiency. This approach seeks to establish a compensation system based on a criterion that minimizes costs arising from damage. The economic analysis with two conventional approaches of "normative" and "positive" examines principles of responsibility according to the reasonable person and extermination of their capability to achieve economic efficiency. Positive approach examines the effects of the current criteria of actions of reasonable person in the society, and uses people's reactions as economic stimulus in the study, without trying to modify the existing criteria. But normative approach finds it necessary to modify the existing criteria of reasonable person in the society, to achieve economic efficiency. This view prescribes change of criterion to the extent that leads to increased welfare or Kaldor-Hicks efficiency. In this article, we have tried to examine reasonable person from an economic perspective as much as possible. And ultimately economic efficiency, as the purpose and criteria of the reasonable person is considered from the perspective of the two approaches.

Keywords: Reasonable person, Normative economic analysis, Positive economic analysis, Economic efficiency, civil liability

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INTRODUCTION

Economy has an important and fundamental role in all aspects of human life in the twentieth and twenty-first century. Since the late twentieth century, the economic concepts are used in legal studies and legal rules turned to means to meet the objectives of economic policy. Wrong and right received an economic face. Reasonable person is a legal concept and it is no exception. Although the conventional economic analysis is criticized from the perspective of ethics and idealism but it should not be considered completely devoid of value. In the conventional economic analysis, they rely on the principle of logic and rationality of the economy as a key factor in response of people to economic or non-economic incentives. The method to manage these reactions, is derived from the economic analysts, so that by relying on these principles they can predict permissive behaviors, to finally achieve the goal of preventing risk. (Parisi and et al, 2003)

From the perspective of economic analysis, the goal of reasonable person should be to maximize the welfare. Regarding reasonable person a measure is recommended that minimizes costs and maximizes profits. Economic approach makes it possible to provide the tools and methods for predicting the behavior of individuals against economic stimulus (Hanson and et al, 2009). Economic Analysis created changes in attitudes regarding reasonable person. In fact, most countries that advanced their economic have attempted to change criteria of reasonable person based on economic fundamentals. Hence, they raised the slogan that the

conventional criteria should be changed to ensure economic performance and support for economic purposes. Our country is also among the developing countries that seek to reform the economic system (Bentham, 1780). So, economists argue that reasonable person criteria directly and indirectly affect economic variables. Therefore, the reasonable person criteria without regard to the reform of the economic system and lack of using economic instruments leads to the failure of these reforms.

In the economic approach, reasonable person is studied by positive and normative aspects and cost-benefit. So, we need a new approach to the concept of reasonable person. And so, while explaining concepts of reasonable person and error from an economic perspective, we do an economic analysis of reasonable person, and finally reasonable person is examined by two positive and normative aspects.

1. Concepts

The following cases can be expressed. Since the concept of reasonable person in terms of economy, is different from the legal and customary meanings, it is necessary to define the concepts in economy terms. In the following section these cases are expressed.

1.1 The concept of error from an economic perspective

Compensation of harmed person is the most important duty of the legislator and error is an integral part of system of compensation. Therefore, a comprehensive definition of errors originating from daily needs and conditions for the rights of the

aggrieved community is necessary. Generally, the person who causes loss is offender when they cause harm to others by their irrational and unusual actions. Harming others occurs when a person does not apply the measures and precautions that a reasonable person uses to prevent damage. Now the question arises that what is the nature of these cautious from an economic perspective?

Economic Analysis knows caution as conventional when it is logical, this caution is reasonable when it is cost-effective from an economic perspective. This affordable caution will only be achieved if cost of taking the precautions are not higher than the potential damage that may occur in lack of taking these precautions. (Renee and et al, 1999) For example, doing an action that has a profit of one hundred units and has a loss of eighty units, withdrawal of that action to prevent damage is illogical from an economic perspective and doing that action is reasonable due to the profit that it has. But in the opposite case, and the action that has a profit of one eighty units and has a loss of a hundred units, that action is harmful and unconventional. And leaving it in order to prevent losses is reasonable. (Bishop, 2004)

In economic analysis, economic logic, is the criteria for knowing wrong from right. In fact, if the loss causing person can take precautions to prevent damage but fails to do so, his action would be unconventional and wrong, provided that the cost of precautions is less than loss. Similarly, if the loss causing person can use precautions that cost more than the damage but does not do it, his action is not carelessness and in line with economic logic. (Masoudpour and et al, 2013) Accordingly, we find that error and negligence has the potential to meet the economic efficiency, if the perpetrators of loss encouraged the damaged person to adopt precautionary measures that are cost-effective. So, on the one hand, perpetrator of loss ensures that they are solely responsible for damages caused by their actions, when they are negligent in taking precautions, on the other hand the damaged person become aware of the damage cause upon them, and encourages them to take affordable precautions to avoid the risk (Kaplow and et al, 200).

1.2 The concept of reasonable person from an economic perspective

In economic analysis, reasonable person has an economic flavor. Many writers, including Koter and Yoln tried to provide a new concept of the reasonable person according economic analysis. They believe that economic rationality should replace the general and vague concept of reasonable person rationality. From the perspective of economic analysis, reasonable person is a person that economic logic is his criteria for his decisions and actions. Such person does not only consider his interests, and before any action, puts himself in the shoes of beneficiary and the victim of the act, and assuming that the loss and profit will be for himself he evaluates and then takes action. But an unreasonable person prefers is own interest to others, even if his interest is lower than the loss he causes on others. (Coleman, 1988)

Many followers of Economic Analysis, believes that personal characteristics of loss causing person and the victim, must be considered in determining the actual amount of the benefit and harm of the parties, Saul knows this as the highest goal of the School of Law. But some other authors, including Posner and Lends knows a combination of subjectivity and economic rationality, as an unacceptable and non-realizable goal. They believe that assessment of the real value of benefits and costs

personally, requires a lot of money and time. This process, in addition to being incompatible with economic efficiency, causes many serious problems for legal system. As a result, no choice but to assess the benefits and costs according to economic criteria of reasonable person. (Shavell, 1987)

2. The way a reasonable person act and chooses

Reasonable person in economic perspective, is different from the commonplace meaning. The most important manifestation of this difference, is the way of choosing and acting of the individual (Posner, 1992). This means that a how a reasonable person acts in a position of responsibility, that is a conventional way of acting and also, he makes a choice that from an economic perspective is considered reasonable. These cases are examined.

2.1. Reasonable person in maximizing profits and minimizing costs

It is said that the economic analysis of law has two approaches to legal rules; One approach is to express the effects of legal rules and standards of behavior and socioeconomic relations, it is known as the positive approach. One approach is also about norms and musts which is called the normative approach. Legal rules have a significant impact on behavior of humans the distribution of wealth in society. Positive approach deals with these impacts. Normative approach of economic analysis also defines some musts for society and set legal rules to achieve the goals. (Horwitz, 1980)

In economic analysis, individuals, consider the effects of legal rules on how to behave and act and regulate their behavior accordingly. For example, if the behavior or action includes civil liability, people adjust their behavior with regard to the responsibility and the degree of acceptance of that behavior and try to avoid these costs. Conversely, when the rules have good impacts for a behavior people are trying to take advantage of these impacts. For example, they consider norms of behavior in their actions to escape civil liability arising from their actions. Most discussion of economic analysis to analyze and predict the behavior of individuals against legal stimulants and ways to achieve a reasonable assumption. The assumption that owe the micro-economic issues. According to this hypothesis by evaluating the effects and the results of each task and gains and losses that follow, and select the action with the highest earnings and lowest cost.

2.2. How a reasonable person chooses and decides

Economists in the legal analysis emphasize that parties in their decisions rely on the pattern of behavior and reasonable behavior and behave accordingly. Accordingly, certain people have perforations and by considering the limitations they seek to maximize interests that are caused by these preferences. In this definition of behavior, the reasonable person pays attention to possible conditions of the behavior. In fact, individuals do not make a choice between the conditions and the results, but in most cases the gains and losses are not certain and is accompanied by a factor of probability. To clarify this pattern of behavior it is assumed that people act for resources and profits and the intend to maximize their wealth. Thus, regarding any action with respect to their position and profits and losses resulting from the action, they make their decision on the action

about whether to do it or leave it. Here it is assumed that the parties to achieve the maximum benefit, evaluate the costs and choose the best way. For example, as we said if civil liability is a cost for a specific action, people consider the benefits and costs of the action and then decided to take action or leave it. Accordingly, the behavior of people will be predictable. And based on predictable effects of legal rules on the behavior of individuals a measure can be designed to achieve specific goals.

In the knowledge economy "to maximize desirable" that is the main element of reasonable behavior of people indicates that to maximize the efficiency of material that is usually changeable to money, but in the law the desirable can be different and immaterial: In some cases, the motivation of individuals is to achieve the spiritual values in exchange for sacrificing financial and economic desirables. Or they seek goodness and benefit for everyone. So, in law, relying on maximizing desirables, does not make human behavior predictable.

3. Economic analysis of the reasonable person

As we have seen, economic analysis, looks at rules and legal and social approaches and issues with objective (positive) and normative approaches. Reasonable person who is of legal concepts is assessed by positive and normative approaches. This separation is achieved by distinction in attitude between Chicago and Yale School of Economics.

Chicago school by the end of 1960, sees the social issues and legal rules in terms of positive approach. And it is seeking to find effects of legal rules on economic activists, and considers objective school as the most efficient way to predict human behavior. In contrast, the Yale School looks at legal rules with normative approach. And it considers the rules of economics as a tool for change in the way of the legal rules, and it believes that the legislator with the help of economy rules predicts what should be applied in society.

3-1. Positive Analysis

Lawyers such as economists use positive and normative approach to the analysis for social issues and legal rules. Positive approach analyzes and evaluates the status quo and examines the law and customs of the community. This view that in fact is explaining and describing the situation in society, is called positive approach. Positive approach began with Chicago school activities and with the publication of "economic analysis of law" by Richard A. Posner in 1970 reached its peak. Posner believes positive approach is less distorted and exploited, and it is preferable to the normative perspective. Positive approach merely expresses the effective stimulus on individuals and social institutions. This view guides society towards alternative and perhaps better rules, rules with Kaldor-Hicks efficiency.

In positive view of Economic Analysis for reasonable person, two major questions arise: First, what effect does the criteria used to distinguish reasonable person in the community have? Second, does the criteria used, have the ability to bring economic viability? In other words, does it reduce the social costs arising from the loss or damage? Now one of the most important debates about how to use reasonable person criteria, is written in countries with a legal system. Because in the courts of common law countries, judges are free in their decisions and are not adhere to the rules and regulations and they can define

reasonable person as a measure of performance because in common law countries, inefficiency means fairness. But the countries with law adhere to the principle of legality, does not allow courts to do such thing. But this does not mean that economic analysis written in the legal system does not work. In fact, in these countries the legislator can use economic analysis to assess the behavior of reasonable person, costs and resources. He can also include performance in the context of reasonable person while making the criteria. Positive analysis should predict behavior based on those forecasts suggest measures necessary to society. Applying this act, requires some costs, positive analysis must assess these costs and help society in a better allocation of resources to achieve economic efficiency. In other words, the performance is included as a social objective by the legislator in the reasonable person's criteria. And the judge must give a high social value in legal cases. (Garoupa and et al, 2010)

2.3. Normative analysis

The normative economic analysis starts with Yale School in the early 1970s. This school believes that legal rules must be changed in order to overcome existing shortcomings. These reforms must continue so that we can achieve what is good for society. Economists with normative views examine what is appropriate. For example, driving at the speed limit is useful for the safety of drivers, passengers and third parties to avoid or reduce damage it. This, it must be supported by the legislator.

Economic analysis of the normative approach to reasonable person seeks to answer two basic questions: first, whether performance should be the only goal of reasonable person? In other words, reasonable person should care only for his goal, regardless of other goals such as justice, fairness and economic efficiency ethics? Secondly, if his sole purpose is the economic efficiency, how much are the criteria and rules of reasonable person allowed to change?

Since the purpose of the normative approach is assessing the desirability or non-desirability of behavior, rules and policies based on their results, normative approach can be called results-oriented approach. In other words, the positive approach states and predicts the various effects of actions of the reasonable person to prevent loss and damage. But that does not mean to say that this measure should be enacted and implemented, but also normative approach defines if the implementation of this measure is useful or not? The normative approach uses factors affecting the welfare of the community to justify their analysis and evaluation. Therefore, factors that affect the desirability of people can also affect the welfare. There are two fundamental concepts in normative analysis: First, performance, something that economists are seeking in the economic framework of legal rules, without explaining the meaning of effectiveness Technically and customary. Second, regulations and social welfare criteria should be defined to achieve a clear understanding of effectiveness. For example, if a measure is economically efficient and useful it cannot be concluded that this measure is efficient in all terms and it leads to a welfare of society.

Normative analysis requires a value judgment about what is economically good and efficient and the rules and norms and legal institutions should be based on what basis to achieve economic efficiency. But despite this need, the concept of efficiency in the economic analysis of law is ambiguous. In

customary meaning, efficiency is to maximize something, in other words, to maximize well-being or wealth for individuals.

In economic terms the efficiency is to maximize public efficiency. But can the rules and criteria related to specific individuals, which results in increased performance for some, be also useful for the entire community? Everyone in the community is looking to increase wealth and prosperity, while the efficiency must lead to collective welfare and efficiency of the entire community, not a particular group of its members. In economic analysis, Pareto and Kaldor-Hicks criterion can be used for community welfare. Pareto criteria shows improvement or change of the status of specific individuals or groups aggravate the situation of other people. The Kaldor-Hicks criterion is the opposite, and the change causes profit for others and the loss is less than profit. Criteria for the economic efficiency of the reasonable person decreases the welfare of some people compared to other criteria. But Pareto criteria here faces criticism. That prevents the change of criteria for reasonable person. And here economists suggest Kaldor-Hicks. It explained that although the reasonable person economic criteria make the condition worse for some people compared to the former criteria, but the profits obtained from the criteria could compensate the damage and the benefit is more than the harm.

Finally, the normative approach based on economic analysis, considers the economic efficiency and maximizing wealth and prosperity as the only purpose so that rules and criteria must be changed to the extent that the maximum efficiency and wealth are obtained.

3-3. Cost-benefit analysis

Economists, have defined the cost-benefit analysis as: The way to make a decision is by comparing the costs and the profit of that work. Cost-benefit analysis is a means for measurements in microeconomics that allows for reasonable person criteria to assess exact amount of profits and losses resulting from the action or leaving it the costs and benefits of adopting or not adopting precautionary measures to prevent loss of the action.

Cost-benefit firstly measures the profits from the action, then compares it with the costs and damages that it brings, and finds if that action is beneficiary or harmful. (Thomas, 1999)

Cost-benefit analysis in reasonable person criteria is faced with a lot of conflicts opposition. For example moralists who say that moral values cannot be measured by monetary and fiscal measures, a price cannot be put on them. What tools and measures must be used to avoid or reduce the risk of damage, depends on policies and resources available on the community. There are usually two approaches in terms of policy making in communities. The first opinion is that some lawyers believe that policies should be prioritized based on the interests of society. Thus, the more important benefits are in the higher priorities, and need more support, a set of interests that society must support are classified and policies are set accordingly. (Alwani, 2000)

Second, the cost-benefit analysis is a framework to measure policies. In this analysis, a policy that its benefits greater than the cost for the community, is selected. Price is the unfavorable result that arises or a favorable result that is stopped from happening. Also, profits is the undesirable results or adverse result that is prevented from happening. (Babaei, 2007)

4. Review of Economic Analysis of positive and normative approach for reasonable person

As we have seen, the efficiency and maximizing wealth is raised in both positive and normative approach for reasonable person. But this criteria in each of these approaches, is different. Thus, it is appropriate that the economic analysis of these approaches, is examined.

1-4. Review of Economic Analysis

In positive approach, what is considered is the effectiveness of the rules and norm and their impact on relationships of people and their performance. In fact, positive approach without a claim that the goal of reasonable person must be to maximize economic efficiency and wealth, determines efficiency of reasonable person according to economic analysis. And states ways to increase this performance with lower cost and increasing public wealth.

Thus, economic Analysis of positive approach, considers political, social, moral and ideological goals along with economic efficiency and states economic performance according to the rules and criteria without seeking a change in the criteria or criterion of reasonable person. Therefore, Analysis of positive approach is rarely criticized. And the main criticism is to economic analysis of normative criteria which sets some musts for reasonable person and seeks to change the existing criteria based on economic criteria. In fact, the only goal of a reasonable person in normative analysis is economic efficiency and maximum prosperity and wealth. Without any attention to other objectives and principles of reasonable person, including justice, human values, fairness and ethics. (Dadgar, 2010)

2.4. Criticism of economic analysis in normative approach

In normative analysis, economic performance is only value and a must. There has been three general theories regarding musts in the normative standard economic analysis: Utilitarianism (Gregory, 2010), Wealth Maximization (Ogus, 2006) and Social Welfare (Cooter and et al, 1988).

1-2-4. Utilitarianism: the school of utilitarianism knows the increase of pleasure and happiness and utility as the main goal. While pleasure and utility is personal and may vary from person to person. According to this theory, reasonable person should aim to provide the most good for the most people (Zamir, 2010). There have been some objections on this theory. The most important criticism on this theory is about its normative aspect as a goal. In other words, utilitarianism is morally decadent; According to this view the utility is to draw pleasure and benefits based on individual preferences and the value of the utility should not be judged and the goal should be to maximize the joy and utility of society. As you can see in this theory the type and nature of pleasure is not important and the only aim is to increase and maximize it. So, if people take great pleasure from hurting others, and the pleasure is higher than the harm caused on victims, given that the objective is to increase pleasure, and approval of the action increases total pleasure, therefore this action is desirable. According to this theory to increase the welfare of the whole society we can ignore fewer rights. The results of this theory contrary to morality, humanity and justice and lead to irrational and unacceptable result. (Epstein, 1990)

2-2-4. Wealth maximization:

Another theory considered in normative economic analysis, is maximization of wealth, Posner played a decisive role in the growth and formation of this theory. He considers wealth maximization as an important goal. In his opinion wealth maximization is desirable for all people of society. Posner and his colleagues believe that this objective is fully consistent with justice, since the maximum wealth can please all members of society, it is quite consistent with libertarian principles. Theory of wealth maximization indicate normative approach of Kaldor-Hicks efficiency. Posner has never claimed that wealth maximization against other goals such as justice and fairness should be the main goal and only goal. He merely justifies the preferences of this goal compared to utilitarianism and believes that the theory of wealth maximization is consistent with principles of liberalism and it is followed by consent of the people. Despite this, there have been serious criticism of this theory and it is not safe even as a positive analysis. The first is because the relationship between the maximum wealth and social justice and other policy objectives are not clear. And secondly, because justifications for superiority of Wealth maximization compared to utilitarianism are poorly evaluated, there are doubts about wealth as a goal.

In fact, to wealth maximization cannot be considered as favorable; Because wealth itself is not worth anything, and people need wealth to seek other desirable things. So, wealth maximization as a goal is an unacceptable mistake.

Social welfare: the last theory that has logical and adorned appearance, and Capello and Saul are its leaders, is the social welfare that should be the goal of all norms and rules of law. The concept of social welfare includes all the optimal preferences of the population. In fact, well-being, does not only include material well-being and it includes all the aspects and intellectual trends, such as helping others that that is moral and immaterial value. Therefore, economic analysis of the normative approach, does not only aims increase wealth and economic performance, but involves everything that is good in people's life and included all fields of law and social relations, including family relations and fundamental rights. Based on this theory goals such as justice and fairness are also the concept of social welfare, and should not be independently targeted but should be considered along with other elements of well-being. So often there is not a conflict between justice and social welfare: Whatever follows the realization of social welfare, is a fair rule. But according to this view when justice is at odds with elements of social welfare, justice should be set aside; Because it is assumed that justice decreases the happiness and welfare of society. Corrective justice and Retributive justice solely focuses on how people act, (like the element of error) but does not consider the effects of rules and criteria on welfare and people's desired life.

There has been serious objections to this theory. Including the fact that only in the case of a decision in favor of all the people of the community and the welfare of all members of society there will not be a problem to apply this theory. But in most cases, policies and regulations in the interests of some people cause harm to others, therefore it should be determined based on the model of social welfare which harm or benefit is preferred. In spite of what this theory claims there is no single model of social welfare. Obviously, to select and determine the criteria for social welfare we cannot rely on the concept of social welfare and we need the help of other theories and approaches. In response to this criticism Saul and Capello stated that welfare is considered by utilitarianism where the sum of individual preferences and the desire of every single person in the society forms the welfare. Acceptance school of social welfare and

promoting it as a goal is a return to theory of utilitarianism. As we have seen, theory of utilitarianism is contrary to religious and moral teachings and was followed by criticism.

Another criticism of the theory of economic analysis in all orientations and its normative criteria is that the role of the distribution of wealth in society is not considered and total wealth of the whole society as the main goal. However, every rule and criteria has a major impact on the distribution of wealth and the criteria and objectives must be formed according to the distributional effect.

Conclusion

The claim that the provision of economic efficiency must be the only goal of reasonable person, does not have an acceptable justification and leads to undesirable results. Efforts to make efficiency as an only goal was not accepted by scholars and jurists and there has been much criticism about it. It is interesting that most of the criticisms were made by economic analysts. But it should be noted that the efficiency of the economy as one goal for reasonable person was considered and gained much popularity. It is better to finish talking about whether reasonable person should be based on economic efficiency, or on other principles such as justice and fairness, and admit that there is no single opinion about it. The reasonable person can incorporate both criteria. So that his goal can be economic efficiency besides justice. These two approaches are not necessarily mutually antagonistic and in most cases the two are synchronized.

But this does not mean that justice and economic efficiency never conflict with each other. When these two conflicts with each other, economic analysis should provide the solution of economic efficiency and outcomes of other solutions, to help decision makers with respect to other dos and beliefs of the community. This way a lot of debates of the status of economic performance compared with other must-dos based on justice, ethics and beliefs can be terminated. Based on this view, many economic analysts do not have a positive view of the economic analysis and normative approach to reasonable person. They believe that in economic analysis of reasonable person no one should claim about good and bad and musts, but without value judgments, efficient and non-efficient measures must be showed and effects must be predicted and assessed. Generally, we can say all economic analysis of reasonable person are based on normative approach. In fact, in the positive analysis, reasonable person is analyzed and examined on the basis of its economic performance and its impact on wealth, without claiming about the good or bad. However, in the positive analysis of reasonable person about criterion of efficiency, there is no unity, despite uncertainties in the economic performance criteria and differences in human preferences and desires, imposition of economic efficiency and increased wealth, the positive economic analysis has been less criticized. So, given that the purpose of the economic analysis with normative approach should be purely economic efficiency, it is an unfavorable economic criterion. But in economic analysis of positive approach, because economic efficiency is a goal alongside other objectives such as equity, it has been less criticized and may be useful. Economic analysis of positive approach by determining and evaluating the economic efficiency of a reasonable person can be very helpful to determine the impacts of the criteria and even critics have less doubts about its usefulness.

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