

06

EPISTEMIC STUDY

OF LAW AND ECONOMICS, A SOCIAL VISION IN CONTEXT

ESTUDIO EPISTÉMICO DEL DERECHO Y LA ECONOMÍA, UNA VISIÓN SOCIAL EN CONTEXTO

Sonia Velázquez-Hernández¹

E-mail: sonia@fphg.fgr.gob.cu

ORCID: <https://orcid.org/0009-0001-5523-6331>

Dalia Beatriz Quintana-Velázquez²

E-mail: betty670829@gmail.com

ORCID: <https://orcid.org/0000-0003-3540-354X>

¹ Fiscalía Provincial. Holguín. Cuba.

² Universidad de Ciencias Médicas de La Habana. La Habana. Cuba.

Suggested Citation (APA, Seventh Edition)

Velázquez-Hernández, S., & Quintana-Velázquez, D. B. (2024). Epistemic study of law and economics, a social vision in context. *Revista Transdisciplinaria de Estudios Sociales y Tecnológicos*, 4(2), 51-58.

Fecha de presentación: enero, 2024

Fecha de aceptación: marzo, 2024

Fecha de publicación: mayo, 2024

ABSTRACT

Nowadays, studies that relate such important sciences as Law and Economics proliferate. In this research, emphasis is placed on the main definitions, their importance and their relationship from different points of view. There are criteria that emphasize the need for jurists to include in their training economic preparation that is transversal to all subjects, regardless of the specific economic ones they receive, to achieve with greater efficiency and effectiveness in exercising their functions in the society. This aspect is a demand made not only by those in the justice sector, but also by society in general. For the reasons stated above, the objective is to carry out a theoretical and descriptive analysis that shows the different paradigms and conceptions of the theories of justice and economics, as well as their relationship. To do this, a qualitative, descriptive, inductive and deductive approach is used. That contemplates the analysis of the influences that the legal, socioeconomic, political and cultural context itself has on people and processes.

Keywords:

Law, economics, economic preparation.

RESUMEN

Hoy en día proliferan los estudios que relacionan ciencias tan importantes como lo son el Derecho y la Economía, en la presente investigación se hace énfasis en las principales definiciones, su importancia y su relación desde distintos puntos de vista. Existen criterios que enfatizan la necesidad de que en los juristas dentro de su formación esté incluida la preparación económica que sea transversal a todas las materias, independientemente de las específicas de corte económico que se reciben, para lograr con mayor eficiencia y eficacia ejercer sus funciones en la sociedad. Este aspecto es una demanda que no solo hacen los del sector de la justicia, sino también la sociedad en sentido general. Por las razones antes expuestas, se plantea como objetivo, realizar un análisis teórico y descriptivo que muestre los distintos paradigmas y concepciones de las teorías de la justicia y la economía, así como, su relación. Para ello se utiliza un enfoque cualitativo, descriptivo, desde lo inductivo y deductivo. Que contemple el análisis de las influencias que el propio contexto jurídico, socioeconómico, político y cultural realiza sobre las personas y los procesos.

Palabras clave:

Derecho, economía, preparación económica.

INTRODUCTION

The study carried out seen in context highlights the international crisis that frames the XXI century, which makes evident the existence of a growing uncertainty in society that even becomes increasingly uncontrollable and unpredictable. In the midst of this global scenario, studies of this nature proliferate, based on the need for legal knowledge in the close relationship with the economy with the social demand for greater sustainable development and order in the best sense of the word and especially in search of solutions to the ills that burden humanity. Therefore, in the socioeconomic, legal and cultural context, there is an urgent demand for an environment of search, deepening and analysis of the knowledge systems necessary to provide solutions to the existing problems that affect integral development.

In this sense, different authors (Romero, 2010; De León and Ballestas, 2017; Mora 2022; Carnelutti, 2023) make mention of core aspects to understand law and economics as core aspects in integral development. They also delve into the law of demand, opportunity costs and the market as essential principles to study the relationship between these sciences. For their part Romero (2010); and De León & Ballestas (2017), delve deeper into what refers to the Economic Analysis of Law (ELA), and regarding an approach to its definition Romero (2010), assumes that, this branch of scientific analysis involves the application of the analytical tools of the science of economics to legal phenomena.

Along the same line of thought, Romero (2010) states that economics studies the phenomena of production, distribution and consumption of goods and services obtained on the basis of scarce resources. Its object of study lies in human behavior, which affects the methodology and limits of this economic science and that, for its part, legal phenomena can be analyzed from the approach of economics. However, Mora (2022), makes an analysis from the educational perspective of law, especially in the Latin American context. Therefore, it is possible to note the diversity of criteria regarding the subject that concerns us, as well as, the multiplicity of value judgments that from the theoretical point of view is contributed by the authors Romero (2010); Posner (2013); Ballestas (2017); Polo (2019); De León & Mora (2022); Carnelutti (2023).

Therefore, for the sake of the integral development of society, it becomes increasingly necessary to deepen the theoretical analysis of categories that make this development possible, as well as, of all the sciences that make this an important pillar. As a contribution and in this sense, the purpose of the article is to make a theoretical and descriptive analysis that shows the different paradigms and conceptions of the theories of justice and economics, as well as their relationship.

METHODOLOGY

The research was focused on the search of books, articles, monographs from several databases such as SciELO, Redalyc among others, which allowed the identification of updated research of the last years. Also, an exhaustive description of the positions of authors researching the subject, their conceptions and definitions in this regard and their most significant contributions was carried out. This allowed the use of the legal documentary review and the theoretical methods analysis-synthesis and induction-deduction. These allowed the conceptual analysis of each of the sciences described, from the investigative logic and create some bases to carry out effective actions that respond to the essence of its content and its legal, economic and social dimension.

DEVELOPMENT

In relation to Law, authors such as De León & Ballestas (2017), refer that it is a set of rules that regulate human conduct, based on the laws created by the Congress of the Republic, and which are the main tool of the discipline. However, argue De León & Ballestas (2017), laws alone are not imperative, if so, there would be no need for the judicial branch. So, who enforces the laws, here is the first analysis according to De León & Ballestas (2017), a jurist would automatically answer that the judges, since in effect they are the ones who apply it, who analyze the conduct and confront it with the norm.

For his part, distinguishing the notes of Mora (2022), he refers that from the educational point of view legal science, throughout its history, has remained intact in its pedagogical process, without taking into account the current educational needs, so this traditional education is questioned and alternatives are proposed to carry out a legal education hand in hand with the needs of today's society.

In this same line of thought, Mora (2022), emphasizes that a characteristic that has distinguished jurists throughout time is that they constitute a relevant part of the professionals who have occupied positions of power in society; their decisions have had a direct impact on the public policies of the countries. This is one of the central reasons why the training of jurists should also be interdisciplinary, covering social areas in their training that allow them to understand the dynamics of society and be able to influence the resolution of the problems faced by society and not only focus on drafting constitutions, laws or codes. In other words, he emphasizes in his idea the importance of encompassing other social areas and it is here where economics plays its role.

From Polo's (2019) perspective, law is not an intrinsically bourgeois device, in short. For law can also be (and in fact has been) a set of foreign guidelines introduced into the interior of the self-regulated market through successful

strikes or through a legislative body emanating from a parliament eventually occupied by a majority of working class representatives; we would be talking about parliamentary, legislative and legal (democratic, in short) coercions imposed on the free and autonomous functioning of the institutional mechanism of the market. Or, in other words, we would be talking about victories of law over capital that would translate into the dignification of the material and cultural existence of the popular classes.

From this point of view Rivero (2015), refers that the Law must be considered the main guiding tool of the different options available to economic agents, from proscribing them, or subjecting them to insurmountable limits, to encouraging them and protecting them with its formal protective coverage. Whether with alternatives of restriction or encouragement, it is hardly possible to point out an economic decision that is not mediated by multiple legal rules, whether we look at the operations of private subjects (consumers and companies). In Rivero's opinion (2015), such a multitude of rules, and many principles to be respected, show us the interest and importance of law for economics. Political and legal institutions are preconditions of the economic system, which depends on them.

In his analysis Romero (2010), pointed out, a common gap in economics: not considering the costs of contracting and management. These consume resources and institutions are a response to the attempt to minimize them. In fact, companies are institutions that reduce costs through the diversion of activity in the market. By extension, any institutional structure responds to the presence of a certain level of transaction costs. On the other hand, it is more relevant to speak of the right to the use of goods, rather than of these, because the correct determination of property rights by rules determines economic decisions and, therefore, the final social outcome.

From the perspective of the authors De León & Ballestas (2017), they reason in principle that the economy as a distributor of limited goods will always need the law in order not to remain in chaos, and that therefore, there is no question that development is not merely economic, but on the contrary, it must be integral, i.e. economic and social. In relation to the previous idea, Carnelutti (2023), recognizes that it is of social knowledge that for the human being needs are unlimited in spite of the limited goods, therefore property is before being a legal phenomenon, an economic phenomenon. Similarly, Carnelutti (2023), argues that such limitation of goods, makes the human being have in himself the desire to snatch, to take away, the desire to invade the domain, and the boundaries between the assets of one person and another are violated.

From Aguilera's position (2008, as cited in Mora, 2022), the jurist must exchange ideas and knowledge with the sociologist, the philosopher, the political scientist, the

economist, so that with this exchange of ideas he can manage to identify an integral, broad and deep dimension of law. Therefore, Romero (2010) infers that the relationship between economics and law seems to be fruitful, as has been proven by the path followed by the Economic Analysis of Law for half a century. Of course, this relationship goes beyond this perspective, being relevant the other approaches that are made from economists and jurists, reciprocally and respectively.

In this sense, Romero (2010), considers that attention should be paid to two ideas, among others of the Economic Analysis of Law: first, it is relevant to law that if transaction costs exist, efforts should be made to seek the economic optimum with efficiency, through the development and implementation of legal rules that tend towards that goal. And second, if it is accepted, which is voluntary, that legal institutions have an economic rationale, which consists in lowering transaction costs, the law that regulates property, contracts, civil, administrative and criminal liabilities, must be well structured. However, for Posner (2013), common law, when viewed from an economic point of view, has three parts: *"Property law, which deals with the creation and definition of property rights, which are rights to the exclusive use of valuable resources. The law of contracts, which deals with the facilitation of the voluntary movement of property rights to those who value them most; and the law of quasi-contracts, which deals with the protection of property rights, including the right of personal integrity"* (p. 67)

In this same line of thought, Posner (2013), in chapter VII of his aforementioned book, where he analyzes the aspect of criminal law, for example, argues that the model for analyzing the behavior of the offender would indicate that a person commits a crime because the expected benefits of it exceed the expected costs.

For his part, Zaldívar (2023), from criminal law argues the importance of greater legal knowledge from the new laws established in Cuba, and that for this, constitutional changes must be taken into account from all sides, and it is here where, in the opinion of this research, the economic changes that demand greater economic legal culture stand out. In this way, the author Zaldívar (2023), adds, even when the principle of presumption of innocence has constitutional rank and is declared in the current criminal legislation, its effectiveness is affected by practices coming from the operating custom in the Cuban jurisdictional environment. And he emphasizes that the legal culture is shown as a fundamental element for the judge's work of weighing, and taking into consideration the presumption of innocence as a touchstone of the process, without which it is impossible to achieve a fair decision.

From the position of Mora (2022), interdisciplinarity is necessary to have a complete legal education, although the

legal professional must master the legal science, he must also know of subjects that can complement his training and that imply applying them in the resolution of the daily problems that the science of law requires. These disciplines, such as economics, psychology, sociology, political science, etc., would provide the jurist with much more knowledge and skills. would give the jurist many more tools in his professional performance. This point of view reveals the imperative need of an economic preparation linked to law in its economic expression. Based on what has been exposed so far by the different authors (Mora 2022; Romero, 2010; Posner, 2013; De León and Ballestas, 2017; Canelutti, 2023) in their contributions and analysis.

From the analyses carried out, the logic led in the present research to assume that economic preparation in the legal sector is of vital necessity from its conceptions and the demand that today society creates, regarding the constant and evolving changes in the different rubles of the economy, which makes that the law must be transformed to be in tune with that economic development. This idea is based on the same relationship that emanates from them, on the one hand the economy in its constant evolution and on the other hand the rules and regulations that it needs for a better ordering and fulfillment of obligations of the parties in the processes, as well as a legal system that puts in order the rights and obligations of mankind towards a given activity.

In relation to the previous idea, it should not be lost from the value prism that the need for a comprehensive preparation has been developing for some time, but in the field of law as a result of the economic changes that societies suffer, has imposed other views from the legal point of view that responds and is in correspondence with the new from the functioning of the economy. Therefore, this relationship of ordering and functioning must be complemented as a whole, even when they are different sciences, with different objects of study.

In this same line of thought Rabell (2016), refers to the fact that it was demonstrated that the economic and technical concepts of regressivity, proportionality and progressivity do not fully coincide in the field of Public Law and for this purpose he makes a comparative study that allows him to reach specific conclusions, for example Rabell (2016), describes in the case of Mexico, in the field of jurisprudence, proportionality has been defined as the characteristic by which individuals contribute according to their contributive capacity, having to contribute an adequate part of their income, profits, yields or the manifestation of taxed wealth. These taxes should be such that people with higher incomes are taxed in a qualitatively higher way than those with medium and low incomes, and there should be congruence and taxpaying capacity of the taxpayers.

Consequently, Rabell (2016), argues that Argentina's Constitution reproduces the same principles as in the Mexican case, i.e., that contributions should be equitable and proportional. However, its jurisprudence is closer to the economic concepts by stating that the contributive capacity will be in proportion to the capital, income and consumption, being reasonable to require that those who have more income or greater wealth pay more.

This same author Rabell (2016), later reaffirms that in strictly economic terms, equity, measured by reason of the vertical principle, occurs when the rate is progressive and more is paid in proportion to the payment versus the wealth of individuals. In any case, it is a task for the Law, from the Constitutional and Fiscal sphere, to clearly define which tax principle should operate in practice. Whether a criterion of efficiency or equity should prevail and thus give congruence to the entire tax system.

From the position of Garcia (2011), the paradigms of good faith and rationality, collected in the current legislations, are models that serve the practitioner of Law and Economics to identify human actions directed by *synderesis*. They also serve as a common thread to find in the legal-economic studies of the Spanish scholastics the origins of a vision of exchange.

Therefore, Polo (2019), argues from his views concerning the subject, that all social and legal advances must be understood as conquests of freedom obtained against the liberated logic of the market system. These democratizing advances, which build new spaces of civil dignity and material freedom (new spaces of citizenship, in short), are substantiated and concretized through "interruptions" or "suspensions" of the free logic of the markets.

In relation to this topic, the category property stands out at different moments of the research, when referring to the relationship between Law and Economy. In this sense, Gheri (2020), in his paper, proposes a theoretical-conceptual contraposition based on the argumentative comparison. This contraposition is introduced under the protection of the theory of Law and Economics, with a special recourse to the approach proposed by the Economic Analysis of Law.

In relation to the previous idea, Gheri (2020), assumes that in the first place, there is a concept of property that responds to the idea of objective law, based on Roman law, Thomism, the glossators and the post-glossators. Likewise, there is another that responds to the idea of subjective right that also has the difficulties that we have pointed out regarding the dualistic or monistic division of subjective rights; either it is a real right or it is a personal right or, in fact, all rights are real rights. Similarly, Gheri (2020), argues that everyday life is a laboratory of law. It is necessary to open our eyes, recognize reality and

understand that the sources of law are not created hierarchically but competitively, and that there is no normative pyramid.

Regarding the last variable contributed by Gherzi (2020), it is assumed that he does not analyze the property category from the economic context, but limits his analysis to the merely juridical. However, in the opinion of this research, property seen from the social economic relations that occur in a given society, for its full realization, must be analyzed as a whole with arguments from the legal sciences. That is to say, from its different edges.

From the point of view and analysis of the necessary integral preparation demanded by society, an aspect that becomes evident to the extent that the existing problems are analyzed and described, seen from the perspectives in the implementation of Law and Economics in the aspects that unite them and make them work together. In this sense, it is assumed in the research that the preparation process, where the professional conditions are created and developed for a more effective and competitive performance. In the same vein, it is argued that it provides the ideal legal-normative framework to design and implement proposals that, from a scientific perspective, offer answers to their preparation.

In relation to the previous idea, the criterion that economic training encompasses the knowledge of economic processes, contributing to the formation of an economic culture of the cadres and their reserves, the creation of analytical capacity, as well as keeping updated in the international economic situation and the country's own, is provided. And that the legal preparation for its part aims to provide them with knowledge and a culture of respect for the Constitution, laws and other legal norms, which contribute to raising labor and social discipline and compliance with ethical principles.

In this way García (2019), in his profound contribution refers, if it is intended that the economy of a country is stable and with a promising future it must have laws that mitigate the insecurity of those who make an economic system to be in a continuous dynamism, since the productivity of an economic system of a nation depends largely on the level of effectiveness of its legal system.

What in the opinion of the author Garcia (2019), the Economy, from a material point of view is the support of social relations, an existing interactive interaction is observed, where economic relations generate legal norms, the law acts regulating and adapting the needs, which during that space and time are required or considered adequate, all this attending to the reality of the time and constantly proposing the creation or modification of the legal framework that allows a process of permanent improvement and correction.

Therefore, Garcia (2019), is of the opinion that economics and law should be analyzed together, since a large part of the legal acts find their source and explanation in the economic field. Laws then are an indispensable requirement to build a successful market economy, therefore economic actors should at all times operate within the pre-established legal framework that ensures the orderly capture of profits or if necessary fight to change the legal framework adapting it to the needs of the times in question. The evolution of economic law or the economic theory of law must go hand in hand with our legal and economic systems, seeking to satisfy the individual needs of mankind.

A reflection from the business point of view as an institution that develops the productive systems and the economic gear of a given society, as the epicenter where both economic and legal laws are put into effect in the different organizational areas. According to Pino & Torralbas (2024), organizations make efforts and improvement actions towards the achievement of competitiveness, adopting already validated theoretical schemes, oriented towards functional and organizational restructuring, implementing strategies in the management of material resources and human talent. Pino & Torralbas (2024), contemplate the need for the integration of knowledge from the different sciences, which converge in the operation of the company based on resilience as a key point for success, making it more efficient and effective.

In turn, the authors Pino & Torralbas (2024), state that when companies promote organizational resilience, emphasis is placed on the analysis of any risk variable for the organization, since the detection of threats, opportunities and resilience to external events, both economic and social, strengthens the human potential in contexts of adversity and therefore the organization.

It should be noted that the topic of business resilience in this research calls for its analysis based on the criteria of Pino & Torralbas (2024), when they refer that it is crucial and necessary in an environment characterized by constant changes and economic uncertainty. Elements that cannot be left aside in the present study, due to their influence on the legal-economic relationship given in the business system and since this is the labor context where it is put into practice.

It can be noted that there is, and it was possible to verify in the documentary review, a whole intention to work on the subject from the different sciences, with significant contributions regarding its relationship and importance and the need to deepen in its implementation. Each one with its specificities, but with the same objective, to make law and economics more efficient for a greater integral development of society.

CONCLUSIONS

The epistemic study carried out reflects that from the descriptive analysis carried out, it can be confirmed that there is a proliferation of studies on the subject, based on the growing demand of citizens to obtain more knowledge of the law governing the economic system in which they live, starting from the uncertainty in which the current economic development is framed, caused by the international crisis that society is experiencing. It is understood that the economy studies the social relations that govern the development of a given society and the law rules, regulates the behavior in that society.

The new times call for reflections and actions that contribute to new economic legal practices focused on learning and satisfying the needs demanded by society in the search for order from this point of view, which has repercussions on the other social sphere for a coexistence in development, peace and prosperity, based on its culture. However, there are still unresolved problems from the point of view of their relationship.

The presence of Law as a system that conditions the economic fact through the satisfaction of needs does not mean in any way that Economics depends on Law, since both are independent sciences that relate to each other. However, Economics does not depend systematically or structurally on Law, it is a science that is closely related to it.

The study offers an analysis of the categories: law, economy, economic preparation, from an integral and transversal approach, based on their social interrelation. For its part, the economy is integrated by concepts that lead to the satisfaction of man's needs, individual needs that lead us to determine what is just and what is unjust according to his perception and which is tried to be solved through law, helped at all times by ethics and philosophy.

The economic categories are the language of economics and allow its understanding for its implementation, however, it must be kept in mind that economics alone does not pretend, nor is it capable of satisfying the needs of man nor establish the necessary order, so, to fulfill this perspective, it must resort to law to implement rules that regulate human coexistence and guarantee individual rights collectively.

Therefore, the idea that the presence of Law as a system that conditions the economic fact through the satisfaction of needs does not mean in any way that Economics depends on Law, since both are independent sciences that relate to each other, must remain charitable. However, Economics does not depend systematically or structurally on Law, it is a science closely related to it, but with different functions, and its own laws for its study and implementation.

REFERENCES

- Carnelutti, F. (2023). *¿Cómo nace el derecho?* Editorial Temis.
- De León Vargas, G., & Ballestas León, D. M. (2017). Derecho y economía: Fórmula para la superación de la pobreza extrema y la construcción de paz en Colombia. *Revista Jurídica Mario Alario D'Filippo*, 9(18), 41-54. <https://revistas.unicartagena.edu.co/index.php/marioalariodfilippo/article/view/2053>
- García Muñoz, J. A. (2011). *Derecho y Economía según Tomás de Aquino*. (Tesis en opción a Doctor en Ciencias). Universidad de Navarra.
- García Beltrán, D. E. (2019). Vínculo entre la economía y el derecho. <https://es.linkedin.com/pulse/v%C3%ADnculo-entre-la-econom%C3%ADa-y-el-derecho-da-vid-enrique-garc%C3%ADa-beltr%C3%A1n>
- Gherzi Silva, E. A. (2020). Derecho & Economía: Reflexiones en torno al concepto Derechos de Propiedad. *Revista de la Facultad de Jurisprudencia*, 7, 110-129. <https://www.redalyc.org/articulo.oa?id=600263428010>
- Mora Amezcua, H. M. (2022). Reflexiones en torno a la enseñanza del derecho en un contexto latinoamericano. *Revista Educación*, 31(60), 299-314. <http://www.scielo.org.pe/pdf/educ/v31n60/2304-4322-educ-31-60-299.pdf>
- Pino Sera, Y., & Torralbas Blazquez, A. de L. (2024). Resiliencia en la gestión empresarial. Una revisión teórica. *Revista Transdisciplinaria De Estudios Sociales Y Tecnológicos*, 4(1), 31-39. <https://doi.org/10.58594/rtest.v4i1.102>
- Posner, R. (2013). *El análisis económico del derecho*. Fondo de Cultura Económica.
- Polo Blanco, J. (2019). Capitalismo, derecho y libertad nunca fueron exactamente la misma cosa. Reflexiones en torno a una cuestión moderna y contemporánea. *Revista humanidades*, 9(1). <http://www.redalyc.org/articulo.oa?id=498061642008>
- Rabell García, E. (2016). Derecho o Economía en la Equidad Fiscal. *Revista de Derecho Público*, 85, 61-82. <https://revistaderechopublico.uchile.cl/index.php/RDPU/article/view/44960>
- Rivero Ortega, R. (2015). *Derecho Administrativo Económico*. Marcial Pons.
- Romero Pérez, J. E. (2010). Reflexión en torno al tema de Derecho y Economía. Su encuadre en la corriente institucional y neoinstitucional. *Revista de Ciencias Jurídicas*, 122, 131-170. <https://revistas.ucr.ac.cr/index.php/juridicas/article/view/13579>

Zaldívar Oduardo, R. E. (2023). Papel del abogado en la defensa del principio constitucional de presunción de inocencia en Cuba. *Revista Transdisciplinaria De Estudios Sociales Y Tecnológicos*, 3(1), 61–73. <https://doi.org/10.58594/rtest.v3i1.64>