

0320

LAW AND ECONOMICS IN FINLAND

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Abstract

This chapter gives an overview of law and economics in Finland and seeks an explanation for why law and economics arrived late in Finland and then spread only slowly. In Finland as in the other Nordic countries, legal formalism was superseded by Scandinavian realism and by the 'analytical' legal research influenced by this realist school as long ago as the 1940s and 1950s.

In addition, scholars who in a country as small as Finland are few in number, have had to devote all their efforts to Finnish issues and changes in the Finnish legal system. European economic integration, however, has been the main reason for the awakening of interest in law and economics in Finland.

JEL classification: K00

Keywords: Law and Economics, Finland, Legal Realism

1. Background

Until the middle of the 1990s legal research in the field of law and economics was sporadic in Finland. In economics the situation has been better, though it has been a field in which only a few scholars have been interested. Since 1994, however, the gradually increasing volume of research has been produced mainly by legal scholars and it is this body of work on which this essay will concentrate. It is based largely on the study by Timonen (1998).

There are several interlinked reasons why law and economics arrived late in Finland and then spread only slowly.

(1) Jurisprudence in Finland has traditionally been influenced by developments in the other Nordic countries and in Germany. Thus awareness of law and economics, yet alone active interest in it, did not spread very quickly.

(2) Law and economics is intimately connected with the Anglo-American common law system and so this way of thinking as well as its application seem somewhat alien in a statute-based legal system. In the Finnish tradition the written law and *travaux préparatoires* carry much greater weight than case law and so research has focussed on the interpretation of current statutory law. This being the case, it has been possible only to a very limited extent to evaluate the

central question in the common law system: what would be the best (most efficient) way on a general level to form legal rules.

(3) In the USA law and economics is seen as part of a continuum covering various trends critical of legal doctrinalism. This is a point emphasized in particular by Mercurio and Medema (1997). In Finland, as in the other Nordic countries, legal formalism was superseded by Scandinavian realism and by the 'analytical' legal research influenced by this realist school as long ago as the 1940s and 1950s (see Stray Ryssdal, 1995, pp. 29-57). A very considerable part of the pressures for change that Posner (1987) has shown lay behind law and economics, were dealt with then.

(4) Throughout the 1990s Finnish researchers have been wrestling with the new legislation and the new questions arising from the EEA agreement and full EU membership. At the same time the exceptionally severe depression in the domestic Finnish market and the problems that it caused have given rise to a debate about reforming or dismantling the Nordic welfare state and this debate has inevitably raised important legal issues. In other words, scholars, who in any case in a country as small as Finland are few in number, have had to devote all their efforts to Finnish issues and changes in the Finnish legal system. They simply have not had the time and energy to take up new ideas such as law and economics until they had got a grip on the changes taking place in the Finnish legal environment and understood their significance. European economic integration, however, has forced Finnish scholars to seek out a new analytical apparatus. As Timonen (1997) stresses, this has been the main reason for the awakening of interest in law and economics in Finland.

2. Law and Economics research in Finland

The law and economics approach was first presented in Finland in an article published in 1980 (see Oker-Blom, 1980). It did not, however, arouse much interest and the whole theme was forgotten in Finland for nearly a decade and a half, although Timo Rapakko did publish the doctoral thesis he had done in the USA (Stanford) in Finland (Rapakko, 1987). It might be helpful to point out here that in Finland doctoral theses have been relatively rare and highly appreciated. In many subjects they have been written not by young academics embarking on a career, but by mature scholars in mid-career. Almost without exception doctoral theses are published. Considerable efforts are now being made to increase the number of PhDs and to reduce the number of years spent on doctoral research.

Law and economics research can be said to have got under way in Finland in 1994. The first economics-based doctoral theses in the field were published in 1994 and 1995 (see Högholm, 1994 and Sundgren, 1995). The first law-

based doctoral theses were published in 1997 (see Timonen, 1997 and Määttä, 1997). So far interdisciplinary discussion and research cooperation has been meagre.

Otherwise, presentations of the subject for Finnish readers and reports on research in progress can be found in scholarly articles. In 1995 and 1996 several works were published that presented the approach, see especially Kanniainen, Määttä and Heimonen (1995). Mostly they describe the mainstream of law and economics research and explain the basic economic terminology. The first Finnish textbook on law and economics, Kanniainen and Määttä (1996) is also a collection of articles, in which each writer treats the subject from his or her own perspective, the team of writers including experts in economics as well as law.

From a comparative perspective it is interesting that work on the law and economics approach in legal studies has begun by using two modes of analysis that lie outside the mainstream. In Timonen (1997) the questions posed belong to the branches of law dealing with market behaviour (company, securities and competition law). The writer questions the suitability of Chicago law and economics thinking, rooted as it is in neoclassical economics, as a point of departure for the study of statute-based law and proposes in its place an approach based on neo-institutional economics. Making use of this, the work gives a general evaluation of the relationship between markets and regulation and of the significance of the efficiency argument in legal analysis. Määttä (1997) applies regulation theory to evaluate environmental taxes and their efficiency and to examine the development of environmental politics. Of the trends current within law and economics he has relied most on public choice thinking.

The first studies that clearly emphasize efficiency arguments and thus best represent the law and economics approach have yet to see the light of day in Finland and it is not yet possible to present any overall evaluation. The approach is, however, spreading rapidly and it can be expected that it will establish its place as a rightful recognised part of law studies in Finland before the end of the century.

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