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## LAW AND ECONOMICS IN GREECE

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### Abstract

In Greece there is no established discipline of law and economics yet, if by this we mean a coherent body of work and a group of scholars dedicated to its promotion. There are only some recent and hesitant attempts by some scholars to introduce law and economics to Greek legal bibliography and a number of dispersed studies. However, the substantial body of work of an eminent social scientist and the first samples of writing by young scholars, combined with the first informal courses at a graduate level and the first references to law and economics in textbooks, bear promise of a brighter future.

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### 1. Introduction

Economic analysis of law (EAL) is at a nascent level in Greece. It is virtually unknown to the great majority of lawyers and economists (including academics), who think of it as something as exotic and elusive as sociology of law (which is established as a course in the three public law schools of Athens, Thessaloniki and Komotini). For some lawyers, economic analysis of law (the term 'law and economics' is not employed) is similar to economic law, an all-encompassing term for the sum of commercial, banking, company, and so on, laws. For economists, EAL is equally vague, perhaps something they hear about in a conference, although most of them are familiar with the Coase theorem and theories of regulation. There is definitely no Greek EAL, if by this we mean a coherent body of work and a relevant group of scholars dedicated to its promotion.

However, there is a small number of scholars who have, over the last few years, begun to publish articles (mainly introductory ones) presenting the new theory to Greek lawyers and economists. Most of them have studied law in the United States and have become familiar with the movement-turned-discipline there. A great number of Greek legal scholars have conducted their doctoral research in Germany and even those who have written their theses in Greece

have used mostly German bibliography. This is largely the result of the heavy influence of German law on Greek law (especially civil law). As a result, the Greek scholars with a doctorate from a common law country (especially from the United States) are very few in number. This is the basic reason for the embryonic status of law and economics in Greece.

## **2. Research in Law and Economics**

Many papers have been published from 1960 to the early 1980s studying the relationship between law and economics and emphasizing the need for a broader collaboration. These papers were often overly theoretical, without potential application to actual legal problems and with no discussion of the developments in the Anglo-Saxon legal world. The discussion revolved around the work of Weber, Stammler and Marx, with some references to the 'socialization' of the economy after World War II (particularly the excellent papers by Mantzoufas, 1960; Karakantas, 1973; Rokas, 1980, all three professors of civil law in economic departments, Loukopoulos, 1962, as well as Liakopoulos, 1982, for a typical Marxist, critical-legal approach). Another extensively discussed problem was state intervention in the economy and the ensuing constitutional issues from the antinomies created in a mixed economic system (see Manitakis, 1975; Stathopoulos, 1981; Gemtos, 1990b). Finally, a number of legal scholars have treated purely economic problems with the intention of informing their colleagues of parallel developments in another social science (see in particular the brief discussion of the Laffer curve by Rodios, 1986, and the excellent survey by Gavrielidou, 1990, of the economic literature on taxation and the work of four scholars: Milton Friedman, Nicholas Kaldor, Firmin Oules and Maurice Allais).

The scholar who first introduced EAL to the Greek legal world is the former Rector of the University of Athens, Prof. Petros Gemtos. Gemtos (a specialist in the philosophy and methodology of science and a holder of two doctorates, one in law and another in economics from the University of Tübingen) is also the central figure of Greek EAL. Prof. Gemtos was not only the first Greek EAL scholar, but made original contributions, presented almost simultaneously with the expansion of EAL in the USA in the early 1970s.

In his first and seminal EAL paper (Gemtos, 1976) on the legal problems created by hyperinflation (in constitutional, tax and contract law), he not only studied a legal problem using the tools of economics, but he extensively discussed the usefulness of positive economics to the analysis and solution of legal problems (see p. 833 for some insightful remarks and also pp. 836-846). This paper was an exemplary application of his research program (formulated and expounded as early as 1974, see Gemtos, 1974) for the association of legal science with positive social science. In a second endeavor to treat legal

problems under an economic prism, Gemtos (1990b) dealt with consumer protection legislation as a necessary restraint of economic freedom. He also briefly criticized the proliferation of products liability legislation as leading to inefficient results that can harm consumers.

In a series of publications (see Gemtos, 1988, 1990a, 1991, 1998 and Gemtos, 1995 for a definitive treatment of the issues discussed in the previous articles), he elaborated extensively on the relations between law and economics, and especially between legal reasoning and economic methodology, not only critically presenting the literature see especially Gemtos (1998), but also offering considerable original insights.

Gemtos's theoretical and methodological views on the interdisciplinary cooperation between law and economics are applied to his major contribution to EAL. In an article on the 'property rights' theory he critically introduces the older institutional theories of economics and the new institutional theory of property rights (in his view, the most successful attempt to incorporate institutional analysis in economics). By supplying neoclassical economics with the necessary concept of transaction costs that replaces the unrealistic assumption of perfect information, new institutional economics lend a more realistic nature to economic analysis and facilitate its use by lawyers and other social scientists who have to work with complex actual situations.

Gemtos identifies himself clearly with the neo-institutional school, but with some reservations rooted in the relevant discourse taking place in Germany. He places the theory of property rights at the central stage of his EAL, giving 'property rights' a broader meaning than the one they have in both economics and law. He uses the word 'praxeological rights' to include the 'right to damage someone or something' (which of course might produce the obligation for restitution), the opposite 'right to defend oneself from the damage', and so on. Every good is accompanied by a bundle of praxeological rights, not restricted to the well-known rights recognized by property law (Gemtos, 1988, pp. 1201-1202).

Prof. Gemtos remains the leader in the field, not only because of his writings, but also because of his active support for the institutionalization of EAL at the University of Athens. In 1995 he published the first textbook on law and economics in Greek. It consists of two volumes (the second one is forthcoming) and its purpose is twofold: to introduce basic economic concepts (including macroeconomics) to lawyers and law-students and to present EAL (and the contemporary economic analysis of institutions in the broad sense) to the Greek legal world see also Gemtos (1998).

Besides Gemtos, and at the same time with him, a number of scholars specializing in economic or commercial law and with graduate studies mainly in the USA, published introductory EAL articles. The first of these articles was a general treatment of the relation between law and economics by a commercial

law scholar, Ioannis Rokas (1980), who completed his graduate studies in Germany (Berlin) and now teaches at the Athens University of Economics and Business. Rokas, like Gemtos, draws heavily upon German bibliography for the relations between economy and law and briefly discusses the new 'field' of EAL. Although his intention was not to present EAL as a separate discipline or school, his target was the lack of communication between law and economics. These two disciplines are related internally to such an unusual degree that it creates problems to both lawyers and economists who deal mainly with the same object. Rokas calls for a 'standing interdisciplinary contact', citing a number of examples where the convergence of law and economics is inevitable. Rokas defends the 'old' law and economics with clarity and zeal.

This lack of communication between lawyers and economists is bridged temporarily by the first and only attempt in Greek legal scholarship (after Gemtos, 1976, but also see Delivanis, 1954, for an early treatment of a legal issue by an economist) of Phanes Christophorou (1986), a lawyer with the European Commission (LL.M. from Harvard), to use economic analysis in treating a legal issue, that is antitrust law (what else!). His interpretation of Greek antitrust law is informed by an extensive critical discussion of the economic literature (*ibid.*, pp. 898-909) with the purpose of influencing the implementation of the law (pp. 900, 906-907) (Similarly, see the brief discussion of the economics of crime by Calliope Spinellis, 1992, a criminal law professor with a doctorate from the University of Chicago).

Michalis Tsibris (1989) was the first to present an up-to-date introduction to EAL. His paper consists of a fair presentation and discussion of the leading theories and basic concepts and discusses various examples from torts and property law (with an extensive reference to the Coase theorem). Tsibris has many reservations concerning the use of efficiency as a criterion and the compatibility of the two discourses, and although he is outright negative to the normative EAL, he is decisively positive toward the use of economic analysis by lawyers. Tsibris (a commercial law scholar) holds an LL.M. degree from Harvard, where the influence of Frank Michelman on his thinking has proven greater than that of Steven Shavell, as this article reveals.

A similar introductory paper has been written by another American-educated scholar, Thanos Papaioannou (LL.M. and doctorate on labor law from the University of Pennsylvania). This article is the most typical of the attitude of Greek legal scholars (especially the ones specializing in 'economic' law), who are receptive to the use of economics by lawyers, but at the same time quite suspicious of both the unintended and the intended effects of the application of economic theories to what they perceive as the coherent logical construct of Greek law. The title of the article is telling and, starting from the first introductory paragraph, Papaioannou (1991) informs the reader that EAL is a movement parallel and congenial to the wave of the reappraisal

of free-market ideas by economists and the dominance of New Right ideas in the USA, personified by President Reagan and the judges he appointed to the federal courts. However, Papaioannou is generally favorable to EAL, especially when applied to contract law, commercial law or torts. Notwithstanding, he is critical of the economics of crime and especially of any attempt to attack individual rights on economic grounds.

In the same vein with the three aforementioned articles, we should consider the work of Prof. Phaedon Kozyris (1991). Kozyris, then professor at Ohio State University School of Law (with graduate studies at Chicago and Cornell and a doctorate from Pennsylvania) is now Professor of International Law at the University of Thessaloniki. This article is a critical evaluation of the prevalent schools of legal philosophy in the United States, including a presentation of EAL of the 'free-market Chicago School', as he mentions several times in the text. He emphasizes the political elements in the law and economics discourse, discussing very briefly (and with a faultfinding mind) some EAL proposals. In spite of his hesitation, he acknowledges the usefulness of economic analysis as a 'tool and method for the revision of the law'. In a more recent paper, Kozyris (1996) takes a more positive stand towards EAL (pp. 58-68, and especially pp. 73-74), characterizing it as 'innovative and fruitful'.

The last and most recently published article is also the most friendly towards EAL, not surprisingly, since the author, Nicholas Georgakopoulos (a Professor at the University of Connecticut Law School with graduate studies and a doctorate from Harvard) is a well-known legal scholar in the USA with significant work on EAL. Georgakopoulos wrote his article because of the 'minimal' impact of EAL in Greece. He deplores the reception of critical legal theory by Greek constitutional scholars and holds that, if it is generalized, it can destroy Greek legal scholarship as long as it is not offset by a parallel dissemination of EAL that will reinforce the scientific character of legal science. Georgakopoulos emphasizes the success of EAL in the USA and its pragmatic character, urging for the incorporation of EAL in law school curricula.

Georgakopoulos is also the translator of Richard Posner's *Cardozo: A Study in Reputation*, in Greek (Posner, 1997). Given the scarcity of translations of foreign legal works in Greek (particularly from the Anglo-Saxon world), this translation is important not only for the introduction of the Greek legal world to the mechanisms of common law by two famous American judges, but also for the introduction to EAL and Richard Posner's recent work. Georgakopoulos (1997a, 1997b) in two extensive notes accompanying the lively translation, extensively discusses relevant philosophical and doctrinal issues but also the development of Posner's legal theory in the direction of a singular 'liberal' pragmatism.

The original contributions to EAL are analogous to its influence on Greek legal scholarship. With the exception of the work by Gemtos (see above), the original work is meager. There are only two young scholars specializing in

EAL: Panagiotis Evangelopoulos, an economist (holding a doctorate degree from the University of Athens, under the supervision of Prof. Gemtos) who is working in the field of property rights theory; and Aristides Hatzis, a lawyer, who is studying the economics of contract law at the University of Chicago, under the supervision of Judge Richard Posner. However, their approaches are disparate.

Evangelopoulos is an economist with an interest in political philosophy. His principal work (1997) is in no way an application of property rights theory towards the study of Greek property law (or any particular property law for that matter), but rather a philosophical examination of the institution of property. Evangelopoulos constructs a theory of property rights that is more in tune with neoclassical theory and influenced by the libertarian theories of justice (Nozick and Buchanan) and free-market economics (Austrian but Chicago school as well) to a greater degree than the majority of works in this tradition.

This becomes clear in a piece that is a statement of his philosophical position and his methodological stance (Evangelopoulos, 1996) as well as in an insightful recent article, where he develops the argument that all kinds of rights (even basic human rights) are subsumed under the hyper-set of property rights. Property rights are mainly allocated by majority rule via state intervention and by independent individuals via market mechanism. If the former is dominant, then the political process has the upper hand; if the latter is dominant, then a spontaneous order emerges. Property rights must be determined mainly by the market and away from state intervention, since the former combines rationality and liberty, while the latter inefficiency and coercion (Evangelopoulos, 1998). On the other hand, Hatzis (the author of this survey) is, perhaps, the only adherent of EAL in the narrow sense. The basic goal of his thesis (1998b) is the construction of an economic theory of Greek contract law, which will help in evaluating the existing legal rules in terms of efficiency, in creating legal rules that are more consistent with the objectives of contract law and consequently in solving a number of allegedly 'unresolved' problems of Greek contract law theory. The comparative study (in Greek and American contract law) of contract formation, unconscionability, commercial impracticability and liquidated damages under the prism of EAL leads to some useful conclusions, not only towards the efficient solution of the aforementioned much-discussed problems, but also towards the problem of the existence of an inherent economic logic in civil law, similar to that of common law (see Hatzis, 1997, for a summary of his thesis and also Hatzis, 1997c, on the comparative efficiency of civil and common law).

Hatzis' contribution to Greek bibliography is of a more introductory nature. In an article published in 1991, he presents the life and work of Ronald Coase, with a detailed critical presentation of the Coase theorem. He did the same in Hatzis (1998a) for the work of Mancur Olson. In a lengthy paper, Hatzis (1996) introduces the 'rational choice' revolution and the new schools that use

neoclassical microeconomic methodological tools for the study of political science, sociology and legal theory. He examines the various consequentialist libertarian philosophical approaches to society and institutions, and explores the relation that each of them maintains to the particular elements of rational choice theory (see also Hatzis 1993, 1999a and 1999b for similar introductory papers and surveys in English).

Another young scholar whose work is relevant is Aspasia Tsaoussis-Hatzis (1999a), a sociologist of law whose work on the economic consequences of divorce draws heavily on the theories of Nobel laureate Prof. Gary Becker (who is also the supervisor of her thesis (1999b) at the University of Chicago Law School) on the economics of the family.

### 3. Education

The discussion thus far has shown that Greek EAL is a newly-emergent field, still taking hesitant infantile steps. There is a small number of scholars who work in the field (or who at least have an interest in the field), largely due to the nature of 'technical doctrinalism' that characterizes Greek legal theory and the absence of institutionalization. It is extremely difficult to expect a change of attitude on the part of the great majority of Greek lawyers (even scholars) who are both formalists and positivists. Nevertheless, some recent developments, such as the founding of the School of Judges in Thessaloniki (that emphasizes the study of social science), as well as the increasing specialization and the tendency for the continuation of legal studies at the graduate level displayed by Greek lawyers, are promising signs for the future.

Starting from the academic year 1995-1996, Nikolaos Intzessiloglou (Professor of Sociology of Law at the University of Thessaloniki and the Greek coordinator of the Erasmus Programme in Law and Economics) has dedicated the second year of the graduate course of Sociology of Law to EAL. In collaboration with Aristides Hatzis, he introduced the basic concepts of EAL with a parallel discussion of philosophical, epistemological and methodological issues. The readings consisted mainly of Cento Veljanovski's *The Economics of Law: An Introductory Text* (London, IEA, 1990) and also included a number of introductory articles in English, French and Greek, and notes prepared by Hatzis (1997a). The first courses of EAL in Greece were very successful, mainly because they were addressed to graduate students (all of them being lawyers or judges) with a manifested interest in jurisprudence (most of them had sociology of law as their major). After the completion of the course, many graduate students showed a particular interest in continuing their studies in EAL.

Prof. Intzessiloglou, as the founder and editor of *Aissymnetes* (an interdisciplinary law journal) has promoted the discussion on EAL, dedicating

the sixth volume of the journal to this discussion (see Evangelopoulos, 1996; Hatzis, 1996; Reynolds, 1996). This symposium includes an article by the Professor of the University of Macedonia Vaios Lazos (1996) on the economics of crime. Lazos, an economist who is not at all influenced by EAL or the work of Gary Becker, comes to essentially similar conclusions.

#### 4. Prospects

The prospects for EAL in Greece are more than favorable. In the following years, the first special chairs for EAL are expected to be established by the Universities of Athens and Thessaloniki. There is already a number of graduate students with a great interest in the field and the number of publications is steadily growing.

But the most significant development is the use of economic analysis by mainstream legal scholars. In 1991, Prof. Panagiotis Papanikolaou, a contract law scholar at the University of Athens, published a remarkable monograph on freedom of contracts, using the findings of EAL in his discussion (Magoulas and Jost, 1985, preceded him but they are professors in Germany). His book (together with all the aforementioned work) managed to familiarize the Greek legal world with EAL. As a result, in recent textbooks by some of the most prominent civil and commercial law professors at the University of Athens, there were many references to EAL (see for example Michales Stathopoulos, *General Law of Obligations*, 2nd edn, Athens-Komotini, Ant. N. Sakkoulas, 1993, pp. 11-13, Leonidas Georgakopoulos, *Handbook of Commercial Law*, vol. 1.1, 2nd edn, Athens, P. Sakkoulas, 1995 and Apostolos Georgiades, *General Principles of Civil Law*, Athens-Komotini, Ant. N. Sakkoulas, 2nd edn, 1997, pp. 67-68, all in Greek). This is more important than it appears. Greek legal scholars are hostile to almost any interdisciplinary or philosophical treatment of private law. These scholars present (particularly in textbooks, not treatises) EAL, and EAL alone, as a very interesting (but also dangerous if misused) theory of adjudication and interpretation.

The much-needed next step for economic analysis of law in Greece is its full institutionalization and its extensive use for the analysis of legal problems. However, such a prospect seems quite remote today.

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