0370
LAW AND ECONOMICS IN QUEBEC

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Abstract

Although law and economics has had a definitive impact on legal studies in the United States and English-speaking Canada, and continues to make inroads in Europe, the Province of Quebec remains insulated. Not only is institutional recognition of the discipline absent, its practitioners are also few and isolated. In this short chapter, I try to offer an up-to-date picture of the field within Quebec's law schools as well as some hypotheses that could explain the current state of affairs.
JEL classification: K00
Keywords: Canada, Quebec, Research, Education, Teaching, French

1. Introduction

Writing on the status of law and economics in Quebec has proven to be a worthy challenge. Although the movement has had a definitive impact on legal studies in the United States and English-speaking Canada, and continues to make inroads in Europe, the Province of Quebec remains insulated. Not only is institutional recognition of the discipline absent, its practitioners are also few and isolated. In this short review, I will try to offer an up-to-date picture of the field within Quebec's law schools as well as some hypotheses that could explain the current state of affairs. We will see that language alone cannot fully account for the lack of interest in the field. Finally, I will try and provide some hope for the future by pointing to the possibility of a wider recognition of the field and to the uniqueness of Quebec's legal system as a potentially rich source for comparative studies.

2. Law and Economics Education and Research in Law Schools and Economics Departments

In the introduction to the second edition of their Law and Economics, Cooter and Ulen (1996, p. 2) list ten criteria by which one can measure the impact of

economics on law. None of the six Quebec law schools (Laval, McGill, Montreal, Sherbrooke, UQAM, to which I add the civil law section of the University of Ottawa) pass all these tests. There are no Economics PhD programmes in the faculty of any law school. There is no joint degree program (PhD econ./LL.B.). There are evidently no journals devoted to the field and Quebec law journals only exceptionally publish law and economics articles. The few articles that were published, are cited only rarely by other Quebec legal scholars, despite their quality. Not only is the field often ignored, but only four law schools out of six have an Economic Analysis of Law course on their curriculum (McGill and UQAM being the exceptions), and only two of them (Montreal and Laval) have been offering the course on a yearly basis since it was added to the curriculum. Finally, there is no professional organization in Quebec equivalent to the Canadian Law and Economics Association (CLEA), in spite of the fact that in most fields there are French-speaking organizations in Quebec duplicating the corresponding Canadian organizations.

Contrary to lawyers, Quebec economists fully consider themselves to be part of an international profession. Economics has developed into a truly international field, with a common language and a shared hierarchy of schools and departments. Quebec economists are not, contrary to civil lawyers, insulated from foreign influences: they study abroad, candidates for teaching positions come from all over the world and faculty members engage actively in economic research whose quality they expect to be measured by world standards. Hence, economics departments should provide more opportunities for studies in law and economics. However, the fact remains that, as is the case with legal scholars, most economists do not seem to have expressed any special interest in studying Quebec law, except perhaps with regard to some special legislation such as the introduction of the provincial no-fault automobile insurance bill.

Two notable exceptions must be mentioned here. Reuven Brenner, who holds the Repap Chair at McGill's Faculty of Management, and Jean-Luc Migué of the Ecole Nationale d'Administration Publique (ENAP) are two scholars of international stature whose involvement in law and economics must be pointed out. Although not strictly associated with the law and economics movement, Prof. Brenner has made a distinctive use of law and economics tools throughout his oeuvre to explain why people innovate or gamble on new ideas. Prof. Migué's involvement with law and economics has been more explicit and more accessible, as he has written in both French and English. His most important contribution must be his studies on the economics of language and the economics of federalism.

Reasons as to why so few scholars have made distinctive contributions to the field are not readily forthcoming. As is the case with Prof. Brenner, it might be that the economic papers discussing legal issues are not written in French but in English, and that they could be found in the appropriate section of the

encyclopedia. Even with that caveat in mind, one would be hard pressed to find more than twenty articles published by Quebec scholars in economics reviews. So there is a real puzzle with regard to the lack of involvement in law and economics by Quebec scholars, be they legal scholars or economists.

Common prejudiced views advanced as explanations for this puzzle simply do not resist a comparative perspective. For example, the language differential or the presence of a civil code cannot be part of the explanation: most Quebec economists publish in English, and the language barrier has not prevented German and Dutch jurists from applying the economic model to their own civil code.

A more plausible hypothesis would focus on the lack of competition between Quebec universities. Not only is the system completely public with no private university in operation, but studies are heavily subsidized, with the lowest tuition fees in all of North America, and teachers fully unionized. Because civil law schools are so few in number, and because full employment security is provided after a five year probation period, there is very little movement between the faculties and hence an utter lack of competition. Professors' appointment fees are exclusively based on experience rather than on performance and there is consequently a relative uniformity of treatment among faculty members. Chairs are exceedingly rare. Incentives to innovate by researching new fields of study are mostly indirect.

As in any other field, publications remain paramount for prestige and promotions. However, in law schools, the criteria of international publications is not retained, perhaps because of the civil character of the profession. The pressure to perform at the international level remains low. As long as this will be the case, incentives to innovate and excel will be likely to be lower in Quebec than elsewhere. Because competition leads to a discovery process, its absence often explains a lack of entrepreneurship. For the moment, the few steps on the academic ladder can be easily climbed by producing commentaries on case law or legislative notes affecting one's field; there is nothing to gain from ventures in new studies far from the comforts of one's home turf.

3. Future Prospects

Nevertheless, there may be some hope. The expansion of law and economics into public law and international law, and especially the economics of federalism, is bound to influence Quebec jurists working in those fields. Contrary to private law, and despite the language barrier, public law in Quebec is traversed by Canadian and American influences. Moreover, funding cuts, declining admission prospects and a relatively high unemployment rate have forced law schools to require a doctoral degree as a condition of employment. Aspiring professors are now more likely to have received training in the US and

hence to have been exposed to law and economics. Finally, since there will be growing uncertainty regarding employment security, it is likely that those new and highly mobile professors will have to distinguish themselves in order to keep a high profile; the law and economics field continues to offer enormous possibilities in this regard.

Much as law and economics might catch on and attract new practitioners in Quebec, this is still a far cry from becoming a standard part of the curriculum in law schools. One essential step in that direction is the first general introduction to law and economics in French (in addition to the brief survey of core private law subjects by Bertrand Lemennicier in his Économie du Droit, Paris, Cujas, 1991), currently being written by Prof. Ejan Mackaay and the undersigned. Prof. Mackaay, who teaches at the Faculté de Droit de l'Université de Montréal, must be considered as one of the pioneers of the field and the leading figure of law and economics in Quebec. His writings in French, English and Dutch can all be praised for their clarity and soundness.

The book is aimed at the civilian legal community, both in Quebec and elsewhere in the French-speaking world. The publication of this book should help to establish law and economics as an integral part of the legal curriculum in those countries. Beyond this upcoming introductory work, however, the prospects for the development of French language literature on the subject are dim. Economists already publish in English, and new professors at law schools are more likely than their seniors to write in English, not only because they have often been trained in that language, but especially because they want to keep their job options open beyond provincial and national boundaries.

This does not mean that there is no hope for the study of Quebec private law institutions. The recent growth of a distinct comparative law and economics field could spur interest in the unique civil law system of Quebec, and with good reason. First of all, there is an official English version of all legislative texts, as well as of some court decisions and textbooks. Moreover, and contrary to the French system, Quebec's private law has borrowed its civil procedure styles of judicial reasoning from British common law and has developed a large body of case law. Finally, Quebec having been more influenced by the European model of the welfare state than by the American one, it provides a stark contrast to the latter, a useful beginning for any comparative study.

4. Conclusion

All is not gloomy about the state of the field in Quebec. As the following bibliography will show, there are scholars of great quality in Quebec, and the new generation of professors will be better trained and more outward looking than their predecessors. The development of a body of convincing comparative

and constitutional law and economics studies may be just what is needed to help Quebec jurists overcome their initial reservations about the field. We may yet be heading for a new quiet revolution.

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