

Introduction of Finlands Papers

Law is a fact.
Karl Olivecrona¹

With a great pleasure, we give to the hands of the reader a very original journal – a result of the cooperation of some scholars from Brazil and Finland. It is a legal-philosophical collective work.

The title of the journal is general: “Contemporary problems of philosophy of law in Latin America and Scandinavia” (in practice, “Latin America” equals “Brazil” and “Scandinavia”, “Finland”).

The idea behind the project was simply: we, legal scholars, philosophers or social scientists in Latin America and Northern Europe, are interested in similar problems, such as e.g. concept of law, legal interpretation, theory of meaning, law and morality, ethical pluralism, axiology, philosophical foundations of legal dogmatics, constitutional concepts of sovereignty or democracy, empirical studies in law, law and culture, multiculturalism, legal pluralism, cultural pluralism, social and economic rights, economic analysis of law, globalisation, economic or social crises, moral foundations of economy, welfare state, etc. Due to the same research interests on the general level, we can compare our analyses and points of view on the more concrete level then.

Of course, the Nordic region is a special case. The Scandinavian (Nordic) welfare model of organisation of economy and society is peculiar, as it is based on two ideas: 1. a high taxation, 2. a welfare system. Both are accepted by Nordic societies – and some values like equality must be the background for that. Is it not the case? This had and has to have a great impact on many academic disciplines like law, economy or social philosophy.

¹ *Karl Olivecrona* (1897-1980) was a Swedish lawyer and philosopher of law. He is one of the most important representatives of Scandinavian legal realism (the Uppsala school). His famous book was titled *Law as fact*.

In fact, the journal is a very interdisciplinary challenge, since among the authors, one can find out legal philosophers, constitutionalists, or even a philosopher or an economist. That is how contemporary legal philosophy looks: we use many tools coming from other disciplines, that are related to law and which scholars are interested in general science of law, as well. When we talk about legal philosophy, we mean by that also legal theory, as it is difficult and unreasonable to differ one from another.

There are five topics in the journal: 1. philosophy of law, 2. constitutional law, 3. political philosophy, 4. contemporary economic policy, and 5. political economy.

On the Finnish part, what we have are five contributions. In the field of philosophy of law, two contributions. In the field of constitutional law, one. In the joint field of political philosophy and contemporary economic policy, also one, as well as one in political economy.

On the Brazilian part, what we have tree contributions, in law, politics and economy.

1. Legal philosophy/theory:

Seppo Sajama tries to answer the question: “Does the use theory of meaning entail legal realism?”. His answer is that both theories are similar and compatible: you cannot take one and leave another.

Matti Ilmari Niemi’s paper titled “The influence of jurisprudential theories on legal dogmatics in Finland in the area of civil law” is, in fact, about the Nordic legal culture(s), with a special attention paid to ownership rights.

2. Constitutional law:

Hannele Isola-Miettinen’s paper is titled “Cultural rationality in legislation” and concerns cultural aspects, such as languages taken into consideration by a legislator in Europe (especially the European Union).

3. Political philosophy and contemporary economic policy (the two problems in one long contribution):

Dawid Bunikowski focuses on “The Nordic welfare model, law, and the financial crisis”. He describes the development of the Nordic Welfare State, its ideas, values, and challenges, as well as the impact on Finnish legal way of thinking.

4. Political economy:

Timo Tammi’s paper is on “The Scandinavian welfare model and the role of civic capital: past experience and future challenges”. Tammi considers how such values as trust, morality and fairness helped the Nordic countries gain economic growth and finance the Welfare State.

Some notes about authors are necessary to present them here.

Seppo Sajama is professor of philosophy in Law School at the University of Eastern Finland. He is partly-retired. He worked also at the University of Turku, and is still docent professor there. He is a philosopher interested in legal methodology

and legal philosophy. Sajama published a lot about phenomenology, logic, philosophy of science abroad. Born in Finland.

Matti Ilmari Niemi is professor of property law in Law School at the University of Eastern Finland. He is a legal philosopher, too. He was professor at the University of Lapland and the Lappeenranta University of Technology before. He cooperates with these universities. He wrote many contributions on legal theory and civil law in Finland. Born in Finland.

Hannele Isola-Miettinen is a philosopher of law. She is completing her PhD in Law School at the University of Eastern Finland. She is interested in empirical-legal studies, constitutional law and normative theory of law. She is also senior advisor in National Audit Office in the Finnish Parliament. Before, she worked at the University of Tampere. Born in Finland.

Dawid Bunikowski is postdoctoral researcher in Law School at the University of Eastern Finland. A philosopher of law. He is also adjunct professor in Torun School of Banking, Faculty of Finance and Management (Poland), and distinguished academic associate in Cardiff University Centre for Law and Religion (UK, Wales). He lives in Finland. Born in Poland.

Timo Tammi is senior researcher in Business School at the University of Eastern Finland. He is an economist. He is interested in issues, such as trust and regulation in the Scandinavian Welfare State, as well as in philosophical, moral or cultural foundations of the Scandinavian welfare economies and Nordic Welfare State. Born in Finland.

What is important in the Finnish papers on philosophy of law? What we see, by having a look at the Finnish papers, there are three dominating problems:

1. Scandinavian legal realism and analytical philosophy;
2. The Nordic (Scandinavian) Welfare State (Model);
3. Cultural aspects taken in account in legislation.

The first group concerns problems of how lawyers think in Scandinavia and, widely, in the Nordic countries. What is their philosophical background? It seems the so called Scandinavian legal realism indeed. This analytical background is still so influential. Very practical and flexible approach to legal interpretation in the Nordic countries nowadays is a result of the critique of conceptualist legal dogmatics made by Scandinavian legal realism. Like Fred Schauer, we ask: "Do Nordic lawyers think? If so, how?" (paraphrase).

The second group relates to the Welfare State. The ideas of equality and justice, egalitarianism, fighting poverty, reducing inequalities, appreciating equal opportunities for all citizens, as well as values of trust or fairness are still important here. The idea of the Welfare State is to help the weaker. But why the Nordic countries are so rich? Maybe some moral values like honesty or modesty are behind it. And is the Welfare state able to survive all economic crises? Is the Welfare State changing anyway? This is the question.

The third group is much more about new problems coming from “unity in diversity” in the European Union and in the nation states. Legislator must take into account many cultural aspects nowadays such as languages, religions, different systems of values. By the way, it seems that nowadays legal philosophy or theory takes a lot from other sciences like anthropology or cultural studies. But how to live in multiculturalism and cultural pluralism? What is the future of the multicultural and diverse Europe? Camp or paradise?

The Finnish legal philosophy problems are a little different than the Brazilian ones, as we both have different cultures, traditions, languages, philosophies, legal, political, economic and social problems, and climate even is so different. To compare the two points of view, it is a fascinating, hilarious and a little mad story. We think we have managed to do it. It is not an easy project anyway. However, it is possible to do it. And our project as, very probably, the first in the world in this field, sheds the light on the differences and similarities between legal philosophy in Latin America represented here by Brazilian science and the Nordic countries represented by Finnish science. In this sense, without doubts, it is an original project.

One thing must be made clear. When we talk about Scandinavia, we traditionally think of three countries: Sweden, Denmark, Norway (very similar languages). The Nordic countries are wider: Scandinavia plus Finland and Iceland, with their autonomous territories like Greenland or the Faroe Islands. Of course, all the countries are historically, culturally, economically and politically interrelated and cooperate in the Nordic Council nowadays. Anyway, all are very pragmatic nations, and even in legal philosophy metaphysics is not welcome cordially. Scholars from Scandinavian legal realism (the Uppsala school) did not even want to hear about the concept of rights, as according to them, all the concepts like “rights” are empty! On the other hand, the Nordic countries are the Welfare States – so social-economic rights are incredibly significant and some Welfare concepts/ideas work in practice well. But problems of multicultural society, indigenous rights, migration are coming in the North.

This journal is like the North-South cooperation, and looks like that. To some extent, it is a result of a meeting in Belo Horizonte during the IVR 2013 congress. We had met there. After that, it occurred to us that it would be good to do something together. That was a real story.

In Europe, many of us think only in terms of the legal concepts or the philosophical foundations of the European legal culture only (common law in the UK, civil law at the continent), but we should be also open for other narratives, legal doctrines, legal philosophies and theories. Many are so proud of being Europeans, but blind as a bat.

In Brazil, and widely, in Latin America, one might be struck by many influences of the European legal culture (e.g. Roman law is a common treasure for all us!). But there is also something very specific in Brazil: own legal doctrine, own legal traditions and academic customs. Many Europeans are ignoramuses in this context, as the language is a barrier. Many Brazilians do not know too much on European North. It is necessary to change this state.

We can break the barrier, using a universal language of communication, i.e. English nowadays, in the time of globalisation. Translations are also still the case. We believe that this work is a great contribution here, starting with changing our minds.

Hope this discussion that is being put on the table now will bring many good scientific emotions, more knowledge about (and understanding of) different legal cultures, and will give plenty of inspirations for many.

The great Roman poet Horace wrote: “*Sapere aude*”, but we also know another Latin sentence: “*Festina lente*”. There is a room and time for such a cooperation between different cultures and traditions. Brazil and Finland are both good examples. This is a book that will remain such an example. “*Non omnis moriar*”, roared Horace as well. Let us follow it.