

# Foreign influences on administrative research in Finland – A historical survey

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## THE 19th CENTURY

Administrative research in the field of legal science began rather late. Political or social science became even later a subject of study and research. The social scientists, however, focused their attention at first on constitutional rather than governmental matters. Even the historians did not usually pay much attention to administrative matters; the king and the central government were considered to be much more interesting subjects. The only exception are studies on the history of cities, usually commissioned and paid for by the city councils. These histories based on documents may give useful information on the functioning of local government in former times. But as they usually concern only one municipality and thus lack comparative elements, they are of only limited value for the knowledge of government in general.

If we look at the research activities in the field of public administration in the beginning or the middle of the 19th century, we will find very little of interest. One important reason for this lack is that there were no chairs at the university for administrative law or history of government.

Only in the middle of the 19th century was a chair for "cameral and administrative justice" founded in the law faculty. The holder of this chair rather than the professor of international and constitutional law was supposed to give courses in administrative law. But very few academic dissertations were published in this field.

The books and papers published in administrative law tend to focus mainly on the historical aspects of government (J.J. Nordström, J.W. Rosenborg, Leo Mechelin). Thus they give very little background information as to the actual functioning of government. The authors failed to analyse legal features typical of government, nor was jurisprudence dealt with.

There is only one example from this period of a manual concerning public law: the three vol-

umes of Johan Gabriel von *Bonsdorff's* "Stor-Furstendömet Finlands kameral-lagfarenhet" (1833, 1112 pages). The author had a doctorate in philosophy as well as in law. He worked as an accountant at the Senate, i.e. the central government of the Grand Duchy of Finland. The book contains a systematic survey of all existing taxes and other fees to the State. But there is no attempt to analyse the subject.

The most brilliant scholar of this period, Professor J.J. *Nordström*, published an academic dissertation on the subject of local government: "Skildring af municipal-författningen i Finland" (1832). The small book contains mostly historical material.

Professor *Hermanson's* published lectures on Finnish administrative law (1898) lack an analytical approach; they give only an account of the present and earlier statutory situation. As there was no science in the true meaning of the word, there is no point in looking for foreign scientific influences.

## THE LAST YEARS OF THE 19th AND THE BEGINNING OF THE 20th CENTURY

The first real scholars in the field of Finnish administrative law published their doctoral theses in the last years of the 19th or at the beginning of the 20th century. However, the themes chosen by the authors, — finance and tax law (Willgren, 1899, Paasikivi 1901) or social administration (Ståhlberg, 1893, Talas, 1905, see also Rosenborg, 1858), — remain however outside the central part of administrative law. A.W. *Boisman* is the only example of a Finnish scholar's publishing a study on a central theme: the dividing line between public and private law (1915). This study, however, shows no originality and refers mainly to German sources. *Boisman's* doctoral thesis on the legal control of government (1908) is more original, but was not accepted by the faculty in spite of certain merits.

The scholarly books of this period all contain a lot of historical notes (accounts of old Swedish laws). In looking for scholarly sources, the authors were mainly Germany oriented.

The Finnish administrative system being very close to that of Sweden (from which Finland was separated only in 1809), it would have been natural that the foreign influences should come from this country. But in Sweden administrative law remained underdeveloped during most of the 19th century.

We can take as an example the doctoral thesis of K.J. *Ståhlberg* on vagrancy («Irtolaisuus»), published in 1893. Its high quality inspired the authorities to create for him a chair of administrative law in 1908, the first of its kind in Scandinavia. Administrative law was interpreted largely as including financial and tax law.

*Ståhlberg's* thesis is a volume of 207 pages written in Finnish. The first 20 pages concern the (Swedish) history of vagrancy law. The following pages contain an analysis of the Finnish vagrancy decree of 1852. The analysis is based mainly on works preparatory to the decree. The foreign references concern mainly recent treaties on Swedish constitutional law. The third, more theoretically oriented chapter on the use of public force refers to a great number of German scholarly books on administrative law. The author was well versed in the German literature, as all the important names figure in the footnotes. Several references to French treaties appear in the third chapter on the notion of vagrancy; even Dutch, Spanish and Italian books are mentioned in this context.

The reason for the author's not including more references to Swedish (or other Scandinavian) literature was without any doubt the fact that there was so little of it. Such names as *Ryding*, *Linde*, *Hammarskjöld*, *Blomberg*, and *Aschehoug* still appear in the footnotes.

Russian law is treated only briefly, as it had no relevance to Finland. Remarkably enough, the only source mentioned is *Engelmann's* "Das Staatsrecht des Kaiserthums Rußland", i.e. a book published in German in Germany.

Another scholar of the period, *Onni Talas*, was very German oriented. This appears not only in his scholarly works but also in his comparative surveys on foreign law in the fields of local government and poor relief published in governmental papers.

*Karl Willgren* taught administrative and financial law at the university for a long period. His book published in 1925 in Swedish on general

administrative law ("Förvaltningsrättens allmänna läror") is clearly inspired by the great German professors of this period: *F. Fleiner*, *Otto Mayer*, *J. Hatschek* and *R.H. Herrnritt*. But he also mentions the Swedes *H. Blomberg* and *C.A. Reuterskiöld*. *Reuterskiöld* had published several volumes on administrative law; his systematical approach was quite original and he had only a few followers in Sweden. No Finnish scholar can be regarded as having been influenced by his ideas.

## THE INTER-WAR PERIOD. ADMINISTRATIVE LAW

Very few successors to the old generation of scholars appeared in the years after World War I. The next holder of the chair of administrative law was *T. Tarjanne*, appointed in 1935. He had begun to study the law of procedure, but switched later to administrative and tax law. The subject of his main monography in administrative law was the discontinuance of public service relationships. *Tarjanne* was killed in the war and his successor was to be *V. Merikoski*, who during his long term (1941—70) as professor of administrative law published a great number of books and articles in this field.

Professor *Merikoski* spent some years in his youth in France and Germany. He was the first more internationally oriented Finnish scholar in this field. He founded the Finnish national section of the International Institute of Administrative Sciences and even published books and papers in foreign languages, such as a French version (in 1958) of his treaty on the discretionary powers of government.

*Merikoski's* doctoral thesis on the freedom of association (1935) is based on an extensive international bibliography. It is obvious that he was well informed on administrative law in Scandinavia as well as on the European continent. *Kelsen* (Austria), *Hauriou* and *Duguit* (France), and *Hatschek* and *Fleiner* (Germany), are often mentioned. In this book as well as in his other scholarly works, he shows a good command of international legal theory and scholarship.

In Sweden *Nils Herlitz* and *Halvar Sundberg* were active publishing books on administrative law. In Denmark *Poul Andersen* was the best known scholar in this field. These authors all figure among the sources of *Merikoski* as do the Americans *Ernst Freund* and *Roscoe Pound*, the Germans *Forsthoff* and *Jellinek*, the French de

Laubadère and the Belgians Puget and Maleville. But it is hard to find some kind of special relationship to any school of administrative law science.

The Danish scholar Poul Andersen and the Norwegian Ragnar Knoph introduced in Denmark and Norway French legal thinking with so much success that certain French theories became a part of the national law. The same can be said about the Norwegian Torstein Eckhoff regarding American law. In Finland there are no comparable examples.

## SOCIAL SCIENCE

Social science was introduced much later than public and administrative law as a subject of study and research at the universities. The first professor in Helsinki was K.R. Brotherus, appointed professor in 1924. He showed no interest in administrative science.

The chair of political science at Åbo Akademi (the private Swedish university of Turku-Åbo) initially included "local government science", which motivated its holder (Sven Lindman, appointed in 1942) to do some minor studies in this field.

## THE POST-WAR PERIOD

Professor Merikoski continued as the only full professor of administrative law (another chair was oriented towards finance and tax law) in Finland. He was succeeded by Toivo Holopainen, and later by Kaarlo Tuori. The parallel Swedish-speaking chair of public law (S.R. Björkstén, W.A. Palme, Edward Andersson) attracted scholars with their main interest in other fields than administrative law.

With the creation of a new law faculty in Turku, a chair of administrative law was founded (Olavi Rytkölä, later Olli Mäenpää). The faculties of political science at Åbo Akademi (Tore Modeen, Allan Rosas) and of the University of Tampere (Jaakko Uotila, Seppo Laakso) created chairs of public (administrative) law which acquired their first holders in the 1960's. Two more chairs of administrative law were founded in Helsinki in the 1970's (Eero Viikonen, later Olli Mäenpää; Tore Modeen). The University of Lapland has a chair of public law as have the University of Vasa and the Finnish Helsinki School of Economics. The number of adjunct professors has also increased.

A new category, senior assistant, was created to attract young scholars to the university. Only very few such posts are reserved for administrative lawyers.

The general situation has thus changed radically. Administrative law is being studied and taught today in several places and by a considerable number of professors. Did this spread result in different schools of administrative law? Is the foreign influence more noticeable with some scholars than with others?

There are definitely no clear-cut different schools of administrative law in Finland. The individual scholar's relation to foreign law varies from case to case.

In every doctoral thesis published in this field, numerous references to foreign sources are to be found. The same is true for the monographies and even for many papers published in law journals. There references must be judged according to different criteria. In many cases the author only wishes to prove his familiarity with foreign sources and thus does not go more deeply into the opinions and theories expressed in these sources. But it also happens that the author of a scholarly book finds inspiration in a foreign source; in some cases he more or less depends on it for his study.

As to books on Finnish administrative law presented in connection with academic appointments, it is regarded necessary that they treat the domestic situation. More detailed comparisons between Finnish and foreign systems are to be found only in rare cases. For this reason comparative legal studies in the exact meaning of the word do not exist in this field, nor in more specialized presentations of foreign law. Comparative legal science is studied only to a very limited extent. Publications in this field tend to be focused mainly on themes other than administrative law.

A consequence of this is that most scholarly works published in recent decades rely mainly on Finnish sources. Foreign scholarly works are still observed in connection with the "general theories". There are certainly influences coming from abroad. Science is always internationally oriented and new theories tend to spread over the frontiers without always being recognized as "foreign".

In my studies on administrative law, I have relied heavily not only on Scandinavian but also on German and French sources. I have tried to apply the German theory of "Selbstverwaltung" and the French on "Décentralisation administra-

tive", including that of "öffentliche Anstalt" and "Etablissement public", to Finnish administrative law. With some satisfaction I have been able to note that my efforts have not been entirely unsuccessful.

### ADMINISTRATIVE SCIENCES

At a comparatively early stage, the School of Social Sciences, later to be the University of Tampere, founded a chair for the study of local government. The first holders of this chair had a legal background and did not contribute in a more important way to the development of this subject. Professor Kauko *Sipponen*, the first holder of the chair of public administration, appointed in 1967, also had a legal background but still managed to produce papers and manuals on his subject.

Not before the 1970's, however, did the science of public administration begin to develop either as a part of political or social science, or as an independent subject. In Helsinki, one of the chairs in political science has been oriented towards administrative science (Ilkka *Heiskanen*, appointed in 1977). In Tampere (Erkki *Pystynen*, 1972; Juha *Vartola*, 1980; Pertti *Ahonen*, 1989, mainly public finance) as well as in Turku (Åbo Akademi) (Kristen *Ståhlberg*, 1980) there exist chairs in this field. In other universities the subject is taken care of by professors in the social

sciences or related subjects. Today there is a great variety, everything aiming at the study of administrative sciences. Professors in social welfare or economics often contribute to administrative sciences as well.

It is obvious that this subject is very much internationally oriented, even if internal Finnish affairs are the center of attention of many scholars. Governmental planning in Finland is thus the subject of several books written by Kristen *Ståhlberg*. The structure of central government was the subject of Juha *Vartola's* thesis in 1979. Most books in this field are written in Finnish or Swedish and thus do not reach an international audience. The theoretical parts of studies are mostly based on Anglo-American publications, but with the progress of Finnish thinking in the field, more and more domestic sources will be observed.

### ADMINISTRATIVE LAW AND SCIENCES

A last observation in this context would concern the relationship between the two areas: administrative law and administrative sciences. The contacts between these two areas of study and learning are lacking in many respects. In regard to this, Finns should learn from their colleagues in France and Germany who are more open-minded as to the different aspects of public administration sciences.