

## BOOK REVIEWS

ROB VAN GESTEL AND ANDREAS LIENHARD (EDS),  
*EVALUATING ACADEMIC LEGAL RESEARCH IN EUROPE. THE ADVANTAGE  
OF LAGGING BEHIND* (EDWARD ELGAR 2019)

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Some time ago, Anna Krisztian and I were writing an editorial for an issue of the European Journal of Legal Studies (EJLS). In one of the very first sentences, we wrote that the EJLS aspires 'to contribute to a scholarly communication of the highest academic standard'.<sup>1</sup> But it felt uncomfortable. Managing a multilingual journal makes one fully aware of the very different academic traditions authors come from. What 'high quality' means in the context of scholarly publications, and even a basic understanding of what an 'academic article' looks like, are neither clear-cut nor set in stone. In the end, that sentence gained a new addition - 'as we know it'.<sup>2</sup> What 'the highest academic standard' means to us, the authors of the editorial, might not be universal. And we did not want to suggest otherwise.

The lack of clarity when it comes to quality standards in academic legal research, especially in a transnational context, was exactly what prompted the authors of the book discussed here to commit themselves to this joint project. *Evaluating Academic Legal Research in Europe. The Advantage of Lagging Behind*, edited by Rob van Gestel and Andreas Lienhard,<sup>3</sup> undertakes the –

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<sup>1</sup> Olga Ceran and Anna Krisztian, 'From Inclusivity to Diversity: Lessons Learned from the EJLS' Peer Review Process' (2019) 11 European Journal of Legal Studies 1.

<sup>2</sup> Ibid.

<sup>3</sup> The eBook version is priced from £22/\$31 from Google Play, ebooks.com and other eBook vendors, while in print the book can be ordered from the Edward Elgar Publishing website.

not easy – task of providing information on what quality of academic legal research means throughout Europe: why and how academic legal research is currently evaluated, and what sorts of criteria, indicators and assessment methods are being applied. The authors pose a number of questions: what purposes does the research evaluation serve? Which methods are being used, and by what kinds of evaluators? What sorts of consequences are attached to the outcomes of the evaluations? To what extent are these methods, and their future, a topic of debate?

The discussion about law's nature and identity as an academic discipline has been ongoing for years. Law has been described as 'a discipline in crisis',<sup>4</sup> a 'science at the crossroads'<sup>5</sup> or 'the odd man out in the university'.<sup>6</sup> Scholars in Europe and elsewhere have been discussing whether – and how – legal scholarship could aspire to the status of a science, and what it would mean for its methods and quality standards,<sup>7</sup> taking into account law's 'distinctiveness' – whatever that may mean.<sup>8</sup> There has been a growing body of literature on the internationalization of legal education and scholarship, and the challenges posed by those processes.<sup>9</sup> To a great extent, those discussions build on what law schools and legal scholars produce; on their output in form of various publications, their evaluation, and the relation between evaluation and quality. Indeed, in many volumes touching upon the (future) nature of law as an academic discipline one can find contributions on publication

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<sup>4</sup> Jan M Smits, *The Mind and Method of the Legal Academic* (Edward Elgar Pub 2012) 1.

<sup>5</sup> Ibid 6.

<sup>6</sup> CJJM Stolker, *Rethinking the Law School Education, Research, Outreach and Governance* (Cambridge University Press 2014) 89.

<sup>7</sup> Rob van Gestel, Hans-W Micklitz and Edward L Rubin, *Rethinking Legal Scholarship: A Transatlantic Dialogue* (Cambridge University Press 2016).

<sup>8</sup> Smits (n 4); Stolker (n 6) 200–230.

<sup>9</sup> Jan Klabbers and MNS (Mortimer NS) Sellers (eds), *The Internationalization of Law and Legal Education* (Springer 2008); Christophe Jamin and William van Caenegem (eds), *The Internationalisation of Legal Education* (Springer International Publishing: Imprint: Springer 2016); Jan M Smits, 'European Legal Education, or: How to Prepare Students for Global Citizenship?' (Social Science Research Network 2010) SSRN Scholarly Paper ID 1719118 <<https://papers.ssrn.com/abstract=1719118>> accessed 20 April 2017.

fashions,<sup>10</sup> evaluation strategies,<sup>11</sup> or issues of management, accessibility and readership.<sup>12</sup>

While the issues of assessment practices in various contexts have been discussed before,<sup>13</sup> no legal scholar has attempted to address the question of what exactly the differences between different systems are, and what it means for legal scholarship more broadly. As such, this volume is, as the editors claim, the first book ever to attempt to analyse and compare quality criteria and research evaluation methods in the field of law in Europe. The authors do not attempt to take sides in the debate about the nature of law as an academic discipline, or to promote a certain view on quality management in academia.<sup>14</sup> Rather, based on the comparative overview of the legal and policy norms impacting the evaluation of academic legal research, they are tracing disagreements and potential convergence trends.<sup>15</sup>

The Introduction is engaging and does well at providing context for the debates. It constitutes a succinct but exhaustive overview of the literature on academic evaluation practices in general, the debates about the (dis)advantages of peer review and bibliometrics, and the relationship between methodological accountability and quality of research. Against this

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<sup>10</sup> Reza Dibadj, 'Transatlantic Publication Fashions: In Search of Quality and Methodology in Law Journal Articles' in Hans-W Micklitz, Edward L Rubin and Rob Van Gestel, *Rethinking Legal Scholarship: A Transatlantic Dialogue* (Cambridge University Press 2017) </core/books/rethinking-legal-scholarship/transatlantic-publication-fashions/0F58B7E37EAAE7BA0280E65B41CEF99F> accessed 9 July 2019.

<sup>11</sup> Rob van Gestel, 'Ranking, Peer Review, Bibliometrics and Alternative Ways to Improve the Quality of Doctrinal Legal Scholarship' in Hans-W Micklitz, Edward L Rubin and Rob Van Gestel, *Rethinking Legal Scholarship: A Transatlantic Dialogue* (Cambridge University Press 2017) </core/books/rethinking-legal-scholarship/ranking-peer-review-bibliometrics-and-alternative-ways-to-improve-the-quality-of-doctrinal-legal-scholarship/879D67992FBD1FE7E7D5753125B1DA8F> accessed 9 July 2019.

<sup>12</sup> Stolker (n 6) 231–262.

<sup>13</sup> See, for example: Thierry Tanquerel and Alexandre Flückiger, *L'Évaluation de La Recherche En Droit : Enjeux et Méthodes* (Bruylant 2015).

<sup>14</sup> Rob van Gestel and Andreas Lienhard, *Evaluating Academic Legal Research in Europe the Advantage of Lagging Behind* (Edward Elgar Pub 2019) 14.

<sup>15</sup> *Ibid* 15.

background, the editors draw attention to those features of legal scholarship that are often seen as ultimately distinctive in comparison to other disciplines (for example the variety of publications addressing multiple audiences, such as courts, legislators, practitioners, and other academics). By doing so, they motivate a separate discussion on the evaluation of academic legal research, as undertaken in this book.

The volume continues with a collection of individual reports on different academic contexts, including the United Kingdom, the Netherlands, Germany, Austria, Switzerland, Sweden, Finland, Italy, France, Spain, Slovenia, and the EU as a whole.<sup>16</sup> The chapters focus on four situations in which legal publications are evaluated: evaluations of law faculties and/or other research institutions; evaluations of legal research projects (ex-ante or ex-post); evaluations of (academic) legal publications by publishers; and evaluations of legal researchers in the context of tenure/promotion. Although specifically focusing on the evaluation of *publications*, the chapters generally provide the reader with much more information. For example, when standards for PhD dissertations are discussed, knowledge about the process of PhD examination committees' appointments or the internationalization of PhD programmes is also presented.<sup>17</sup> Additionally, every chapter includes a brief overview of institutional frameworks in which legal education and legal research function (e.g. whether there are private universities, and how this might reflect on the quality assessment), and sometimes even their historical context.<sup>18</sup> The value of this should not be underestimated, as it allows for a more insightful comparison of different quality management systems at the end of the book.

The chapters generally follow a uniform outline, although not all categories are relevant for all of the countries discussed to the same degree. They are primarily descriptive, as the main objective of this explorative study was 'to

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<sup>16</sup> The countries are listed in the order presented in the book.

<sup>17</sup> See, for example, the chapter on Italy that introduces a reader to an additional PhD certification in this country – 'Doctor Europaeus' – that requires satisfying certain conditions above the 'normal' PhD requirements.

<sup>18</sup> See, for example, the chapter on Slovenia where Janja Hojnik mentions the impact of the dissolution of the Former Socialist Yugoslav Republic on the – suddenly considerably smaller – legal academic community in Slovenia.

gather factual information instead of opinions'.<sup>19</sup> Discussing such a relative concept as quality in the context of national academic traditions cannot however fully escape some subjectivity, especially where there is little data and relatively little discussion. In light of this, some rapporteurs had to draw from anecdotal evidence and confidential interviews with colleagues,<sup>20</sup> or refer to their own opinions or intuitions.<sup>21</sup> This, however, does not undermine the main objective but rather adds additional layers to the description, emphasizing the lack of an institutionalized reflection on quality standards of legal research in given countries. Despite that, all contributions achieve a great depth of description. Although undoubtedly providing considerable academic strength, this may nevertheless be considered a weakness by some readers, as certain audiences may find it difficult to follow the detailed descriptions of, for example, bibliometric evaluations.

The chapter on the assessment of academic legal research in the EU context is a welcome and significant addition to the discussion. While most other chapters do not discuss it explicitly,<sup>22</sup> there is no doubt that research evaluation practices on the European level influence the strategic behaviour of researchers, and therefore also affect national evaluation frameworks. What gets highlighted in this context is that the European Research Council puts a lot of emphasis on methodological rigour of funded projects, which – with law being assimilated with other disciplines – constitutes a challenge for legal scholars. Further, legal scholars should be aware of the tension between the requirement of 'scientific excellence', by many understood as clarity of a research problem and methodological rigour, and the search for novel and ground-breaking research, as well as the discrepancies in geographical and institutional allocation of grants – with researchers from institutions perceived as of high quality receiving more funding.

While this tension is true for all scientific fields, the lack of methodological uniformity within the legal field poses additional challenges and could potentially reinforce this effect. What is not discussed in the book, but which may perhaps gain importance in the future, is the indirect evaluation of

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<sup>19</sup> Van Gestel and Lienhard (n 14) 15.

<sup>20</sup> See, for example, the chapter on Germany: *Ibid* 89.

<sup>21</sup> See, for example, the chapter on Spain: *Ibid* 302.

<sup>22</sup> The chapter on Sweden is, for instance, an exception.

research institutions at the EU level. For example, this happens already in relation to the Erasmus Mundus Joint Master Degrees or Doctorates,<sup>23</sup> where consortiums of law schools and/or legal faculties also have to compete with other institutions, including those of other academic fields.<sup>24</sup>

The last chapter of the book, 'Conclusion and discussion', is divided into two parts. The Conclusion serves as a very good summary of the chapters' main points, juxtaposing the rich information on the different countries together. The Discussion offers deeper insight into evaluation of legal academic research in Europe, resulting from the comparison of national policies and practices. Following the same outline as the individual chapters, the editors offer some food for thought regarding the future of the evaluation of legal scholarship. While the efforts undertaken in this book were envisaged as explorative, the authors do not shy away from posing bold questions regarding what measuring research quality means for law as a discipline, and legal education, on a more fundamental level. What do our evaluation choices mean for academic values such as integrity and freedom of research? Do legal scholars perform better if they are constantly evaluated? Should all areas of legal scholarship be evaluated the same way? Would it be better if European law schools competed on a transnational level according to harmonized assessment standards? Should European legal journals have a uniform format for academic articles, and is it even feasible?

These questions all build upon the underlying idea of the book: law's 'advantage of lagging behind'.<sup>25</sup> While other disciplines struggle with their

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<sup>23</sup> The main objective of the EMJMD programme is to attract, select, and fund excellence, understood i.a. in terms of academic quality of the participating organisations. See: 'Erasmus+ Programme Guide 2019' (the European Commission 2019) 295 <[https://ec.europa.eu/programmes/erasmus-plus/resources/documents/erasmus-programme-guide-2019\\_en](https://ec.europa.eu/programmes/erasmus-plus/resources/documents/erasmus-programme-guide-2019_en)> accessed 7 March 2019.

<sup>24</sup> And indeed – similarly to research projects – law degrees are relatively few compared to other disciplines. See, for example: the European Master In Law And Economics; the Law, Science and Technology Joint Doctorate; or the European Joint Doctorate in Law and Development (in which participating institutions come also from outside of Europe).

<sup>25</sup> This is not the first time when Rob van Gestel talks about 'the advantage of lagging behind'. See, for example: Van Gestel, Micklitz and Rubin (n 7) 355; Tanquerel and Flückiger (n 13) 32, 48–53.

increasingly complex evaluation practices, quality standards and evaluation benchmarks in law are – still – often implicit. As such, on their quest to establish more transparent quality indicators, legal scholars can learn from the mistakes made elsewhere, especially in humanities and other social sciences. Law, as a discipline lagging behind, still has the advantage of addressing the questions posed above in a proactive manner. Therefore, the authors of this volume believe that there should be a strong internal drive within the discipline to respond to current challenges.<sup>26</sup> Otherwise, law will continue to be looked upon by other disciplines with suspicion, and risks that "foreign" quality standards will be imposed upon it.

The book, keeping in mind its explorative nature, is certainly successful in making its case. What it does outstandingly well is the presentation of the interdependency of many evaluation situations, and the interactions between national and transnational levels. With different quality indicators employed by different evaluators (universities, publishers, funding bodies, governments – not only on the national level), it demonstrates why and how legal academics have to make strategic decisions regarding their career and publication choices. None of the elements of these systems functions in a vacuum, and in an increasingly transnational academic world mutual trade-offs are a must. On the other hand, this can be frustrating and difficult to navigate, and does not necessarily contribute to the quality of research outputs. This both explains and justifies the book's main argument that the current state of affairs calls for a revision.

The book follows previous research projects on the evaluation of legal research undertaken in the Netherlands and Switzerland. The rich expertise of the editors when it comes to issues of legal education, legal publishing and evaluation of legal research is clearly shown both in the Introduction and in the concluding chapter.<sup>27</sup> They should also be commended for their selection

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<sup>26</sup> Van Gestel and Lienhard (n 14) 12.

<sup>27</sup> Van Gestel, Micklitz and Rubin (n 7); Rob Van Gestel, Karin Byland and Andreas Lienhard, 'Evaluation of Legal Research: Comparison of the Outcomes of a Swiss and Dutch National Survey' (2018) 23 *Tilburg Law Review*; Rob Van Gestel, *Sense and Non-Sense of a European Ranking of Law Schools and Law Journals* (2015); Rob Van Gestel and Jan Vranken, *Assessing Legal Research: Sense and Nonsense of Peer Review versus Bibliometrics and the Need for a European Approach* (2011); Martin Schmied, Karin Byland and Andreas Lienhard, 'Procedures and Criteria for Evaluating

of countries and national rapporteurs, and their clear explanation of methodological choices in this regard.<sup>28</sup> It is especially praiseworthy that they attempted to include both "new" and "old" EU countries, as well as non-EU countries, and to strike a balance between Northern and Southern countries. However, although the book claims to have reached a balanced representation of jurisdictions, with the exception of Slovenia, Central and Eastern Europe still seems to be underrepresented in the analysis. In that context, one could also wonder to what extent Austria can still be said to be a "new" EU Member State, especially as Finland and Sweden – that also acceded to the EU in 1995 – are not being described this way.

While Central and Eastern Europe can be expected to share some common features and/or problems with other European countries, there are certain elements that make the region different. Importantly, one must take into account its common historical heritage and related structural problems of the higher education sector,<sup>29</sup> such as the selection of young academics 'based on their ability to understand and obey the informal omertà of the system, rather than on scientific merits'.<sup>30</sup> The strong distrust in public experts, often seen as a common feature of post-socialist countries where funding of research was for years subordinated to political decisions rather than dependant on any

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Academic Legal Publications: Results of a Survey in Switzerland' (2018) 27 Research Evaluation 335; Andreas Lienhard and others, 'L'evaluation de La Recherche En Droit En Suisse' in Thierry Tanquerel and Alexandre Flückiger (eds), *L'évaluation de la recherche en droit : enjeux et méthodes* (Bruylant 2015).

<sup>28</sup> Following the order of presentation in the book, individual chapters were written by: Daithi Mac Sithigh (the United Kingdom), Rob van Gestel and Marnix Snel (the Netherlands), Kai Purnhagen and Niels Petersen (Germany), Elisabeth Maier (Austria), Andreas Leinhard, Karin Byland and Martin Schmied (Switzerland), Antonina Bakardjieva Engelbrekt (Sweden), Pia Letto-Vanamo (Finland), Ginevra Peruginelli (Italy), Delphine Costa (France), Albert Ruda (Spain), Janja Hojnik (Slovenia), and Marnex Snel (the EU level).

<sup>29</sup> Antal Szerletics and Lidia Rodak, 'Introduction: Legal Education in Europe. Challenges and Prospects' (2017) 7 Challenges and Prospects (December 13, 2017). Oñati Socio-Legal Series 1584.

<sup>30</sup> Ibid 1585.



evaluation of performance,<sup>31</sup> had significant influence on how evaluation practices were designed and have been perceived in those countries.<sup>32</sup>

Additionally, there are certain editorial issues that need to be highlighted. While some of them are very minor and do not influence the reception of the content (e.g. on page 16, there is a mention of 10 countries selected, while in reality there are 11 discussed in the book), one is more significant. The editors say that while designing the study, they opted for a questionnaire for which they developed a standard format, allegedly presented to a reader in Appendix 1.<sup>33</sup> Unfortunately, there is no Appendix in the book, nor in the e-book version. Naturally, the structure of individual chapters suggests the format. However, having direct access to the questionnaire could be of use to other scholars wishing to build on the work presented in this study and progress the debate further. Furthermore, it would contribute to better methodological consistency across this field of study.<sup>34</sup>

This book, while providing some answers, poses even more questions – and this is indeed its greatest strength. The reader unfamiliar with the subject will find in the book a helpful introduction to the many problems it attempts to address, while the more informed reader will appreciate the degree of detail of the individual chapters, and the depth of the comparison undertaken by the editors. Without any doubt, as the authors themselves promise, this book will serve as a food for thought to a broad range of audiences: policy makers in higher education, university and/or faculty management, evaluation experts, research foundation and funding bodies, and legal publishers. Overall, I consider this book to make a valuable contribution to the discussion about the future of legal scholarship, both in Europe and beyond. Taking into account the relative lack of literature on quality standards for

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<sup>31</sup> Julita Jabłeczka and Benedetto Lepori, 'Between Historical Heritage and Policy Learning: The Reform of Public Research Funding Systems in Poland, 1989–2007' (2009) 36 *Science and Public Policy* 697, 700–701; Emanuel Kulczycki, 'Assessing Publications through a Bibliometric Indicator: The Case of Comprehensive Evaluation of Scientific Units in Poland' (2017) 26 *Research Evaluation* 41, 41.

<sup>32</sup> See, for example: Kulczycki (n 31); Barbara Good and others, 'Counting Quality? The Czech Performance-Based Research Funding System' (2015) 24 *Research Evaluation* 91.

<sup>33</sup> Van Gestel and Lienhard (n 14) 16.

<sup>34</sup> The Appendix was, however, shared with the author of this review upon request.

academic legal research in Europe, this volume opens new debates that will hopefully be taken up in the coming years.