

EDITORIAL

Methodology and more...

Bald de Vries

I was struck by an article in the English newspaper *The Telegraph* (2012) some time ago. In the article a judge from the Supreme Court (formerly the House of Lords) complained that most legal practitioners had studied law prior to entering the legal profession. At first sight this complaint strikes us as bizarre. What else would you study to enter the legal profession? However, the complaint strikes a chord when we consider the conventions about English legal practice. One of these is that a law degree is not a prerequisite to enter the legal profession. What is required is any bachelor degree and the passing of an entrance exam, for which aspiring lawyers can take courses. Lord Sumption, the judge, complained that as most young lawyers studied law rather than history or mathematics for example, they are 'coming into the profession with much less in the way of general culture than their predecessors'.

Is the complaint one of tradition, a plea to hold on to the traditional image of the lawyer, presented by scholars such as Kronman (1998) in his *The Lost Lawyer*, as a lawyer-statesman, possessing virtue and practical wisdom? Perhaps Lord Sumption seems to belong, from within English legal practice, to this tradition as much as lawyers in the Netherlands do, such as the President of the Dutch *Hoge Raad*, President Corstens (2011). But there is another more novel way of looking at the complaint: it can be seen as illustrative for a wider cause of concern about the study of law (by students and scholars) as being too monodisciplinary and too much embedded in practice. The focus on positive law lies at the heart of the current debate about methodology, legal scholarship and legal education. The concern reoccurs in different ways in three of the four scholarly contributions in this volume of *Law and Method*.

Both Foqué and Hage focus on legal education, while Vranken looks at the exciting times to come in legal research. The fourth contribution, by Del Mar, addresses the methodological problem of fact and value.

Foqué stresses the importance of theory in the civil law tradition to avoid the reduction of methodology to practical skills. Theory is concerned with both observation and interpretation on the one hand, and conceptualisation and logical systematisation on the other. The study of law must strengthen such a methodological perspective in each of the traditional disciplines, according to Foqué. It allows students to solve methodological dilemmas in independent research (the master thesis) and to reflect upon the time-honoured balance in law between legal certainty, justice and efficiency.

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Hage takes a strong position against the focus on positive law in the legal curriculum in the bachelor phase. He suggests that positive law in the curriculum should serve the purpose of legal reasoning rather than sole knowledge of positive law. It allows the study of the fundamental question that underpins the study of law: which norms should be enforced by collective means? In Hage's view, answering this question demands the study of legal facts as well as the results of different sciences. To circumvent the need to transform the degree into a multidisciplinary curriculum, Hage advocates the introduction of scientific method, teaching students to understand and evaluate the outcome of scientific results.

Vranken takes issue with the critique against legal-dogmatic research. Legal-dogmatic research is still dominant in legal scholarship but it is no longer undisputed. Indeed, Vranken points to developments and innovations in legal research into six new directions, moving away from the legal-dogmatic approach. He encourages this development and considers it an enrichment of legal scholarship. This is not to say that it excludes dogmatic research as less relevant. Rather, Vranken urges for dialogue and cooperation between the different directions and legal-dogmatic research and to allow for critical approaches in order to assure the same quality standards in all types of legal research.

Del Mar offers a new take on the persistent problem of how facts and values are related in law by placing that discussion in the context of relational jurisprudence. He argues against seeing the separation between facts and values as a metaphysical truth. Instead, Del Mar considers legal concepts as combining factual and evaluative dimensions. He illustrates this with the idea of vulnerability, which can be seen as a factual-evaluative device that calls for a combination of normative and empirical methods. Law, then, can be understood as a means to manage vulnerability in a variety of different relational contexts.

The debate about the study of law, by students and scholars, suggests that there is more at stake than methodology alone. The debate also reveals answers to the fundamental question: what is law? And in its wake: what makes a good lawyer, both as scholar and practitioner? Knowledge of 'the law' is necessary but not enough. As much as Lord Sumption complained about the lack of 'general culture', the debate shows that the study of law necessarily involves a broader intellectual context from which law can and, perhaps, must be studied and understood. Contributions in this issue seek to identify the contours or characteristics of this context.

References

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