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Sense and non-sense of a European ranking of law schools and law journals

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Rankings of law schools and law journals are part of a trend towards more emphasis in academia on transparency and accountability with regard to the quality of research and education. Globalisation increases the need to compare law schools and law journals across borders, but this raises complicated questions due to differences in language, education systems, publishing style and so on. In this contribution, it is argued that ranking of law schools and law reviews runs the risk of driving us away from quality based on substance towards proceduralisation and quality assessment based on proxies favoured by managers of law schools, funding bodies and government agencies, instead of by the forum of legal scholars.

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> Ranking is thus a low-cost, low-benefit method of evaluation – cheap, but crude. This makes it suitable primarily for unimportant decisions – decisions where the cost of a mistake is slight, so that there is little benefit to increasing the information content.[1]

1. RANKING: POPULARITY CONTEST OR SERIOUS BUSINESS?

Today we not only rank universities, academic journals and professors but also athletes, writers and even entire economies.[2] Not every ranking should be taken seriously, though. Around the year 2000,[3] several countries tried to rank the 'greatest men in history'.[4] In The Netherlands, for instance, people could vote via telephone and SMS text messages during a live television broadcast on 15 November 2004 to elect

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1. R Posner 'Law school rankings' (2006) 81 Ind L J 13 at 13.

2. See the World Bank Doing Business Reports, available at http://www.doingbusiness.org/rankings (accessed 17 March 2014).

3. M Hart *The 100: A Ranking of the Most Influential People in History* (New York: Citadel Press, 2000).

4. The BBC, for instance, organised the 100 greatest Britons in 2002 and in Germany the ZDF organised 'Unsere Besten' according to a similar concept. Similar initiatives can be found in a host of other countries.

the greatest Dutchman from a list of over 200 people, including well-known names such as Desiderius Erasmus, Vincent van Gogh and Johan Cruijff.

Interestingly enough, neither Erasmus nor Van Gogh came out first, but Pim Fortuyn, an unorthodox right-wing politician with anti-Islam/Muslim ideas, who was shot by a political activist on 6 May 2002, shortly before the elections. In a representative opinion poll held on the same day as the TV show, however, another political leader came out first – Willem van Oranje ('William the Silent', Prince of Orange), founding father of the Dutch state.[5] This historical figure has absolutely nothing in common with Fortuyn, apart from the fact that he was also shot by an activist but 'slightly earlier', namely in 1584.[6]

The example not only tells us that rankings can serve very different purposes, but also that the indicators, methodology and timing of rankings are crucial for their outcomes. In order to be able to compare the 'greatness' of Erasmus with the talents of Johan Cruijff, criteria such as 'genius, heritage, courage and compassion' were applied, suggesting that a 'tertium comparationes' was missing.[7] In terms of methodology, voting required action from the public, whereas in the opinion poll, people were contacted and only had to share their opinion. It is likely that people supporting Fortuyn were more motivated to cast their vote than the adherents of Van Oranje, especially since the TV show came amid racial and religious tensions.[8] Moreover, the opinion poll was based on a representative sample of the population, whereas protest voters were probably over-represented in the TV show.

Unlike this frivolous example, rankings of law schools and law journals are serious business. They guide students, faculty[9] and employers in making choices with regard to where to study, who to hire and how to appreciate the teaching and research output of scholars.[10] The prestige of a law school will, for example, influence the quality and number of students it attracts, in turn determining the school's revenues that can be used, among other purposes, to appoint better professors, thereby increasing the potential to attract research funding, and so on. In short, people's lives and jobs are at stake here.

2. THE RESEARCH QUESTION

Much has been written by US scholars regarding the ranking of American law schools and law journals. More recently, a debate has started about ranking in the humanities

5. See http://en.wikipedia.org/wiki/William_the_Silent (accessed 17 March 2014).

6. See http://news.bbc.co.uk/2/hi/europe/4015173.stm (accessed 17 March 2014).

7. Comparative lawyers use the term 'tertium comparationis' to point to the fact that legal systems that one wants to compare need to be comparative by a third unit apart from the two legal comparanda. This third unit is supposed to be the common denominator. AE Örücü 'Methodology of comparative law' in J Smits (ed) *Elgar Encyclopedia of Comparative Law* (Cheltenham: Edward Elgar, 2nd edn, 2012) p 561.

8. Film-maker Theo van Gogh was killed by a Muslim extremist less than 2 weeks before the television show was broadcast.

9. See eg http://www.ratemyprofessors.com/index.jsp and www.myedu.com/sign-up/ (formerly known as 'pick-a-prof') (both accessed 17 March 2014).

10. This partly explains the criticism levelled at popular websites such as http://www.ratemyprofessors.com, which are closer to a popularity contest than a serious evaluation of professors' performance in terms of teaching qualities. See http://sites.bio.indiana.edu/~bender/resources/Assessment/fractalevals10.pdf (accessed 17 March 2014).

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in Europe, where there appears to be progress in finding consensus on the way to move forward.[11] It is interesting, though, that there is still very little debate on ranking in Europe, while globalisation is also affecting European legal research and education, increasing the potential for competition between law schools across countries.[12] This raises the following research questions: Is there a need to come up with a European ranking of law schools or law journals, and what might the debate in the humanities teach us in this respect about the sense and non-sense of academic rankings?[13]

In order to answer the research questions, some important differences between the US and Europe with regard to ranking need to be explained first. Next, the backdrop against which ranking of academic performance has become popular will be discussed. The focus will then shift to an important issue that precedes rankings; namely, what do we mean by quality and who determines it? This is followed by an overview of the most important arguments in favour and against ranking of law schools and law journals. Subsequently, the debate in the humanities regarding quality assessment in the field of research is examined in search of lessons to be learned. Conclusions are presented in the final section.

3. THE US VERSUS EUROPE

In the US, ranking of law schools has become very influential because, in most states, becoming a lawyer requires an American Bar Association (ABA) accredited law school diploma. The ABA has a profoundly harmonising influence on the substantive content of the law school curriculum, paving the way for organisations, such as US News (see hereafter), to introduce rankings as alternatives to market-based competition and specialisation between law schools. Rankings amplify differences between law schools in a situation in which the supply side (the substantive content of the curriculum) is heavily regulated.

In Europe, ranking of law schools might seem an unlikely prospect since law as a discipline is a function of different jurisdictions, languages and legal cultures. Even for EU law there is as yet no unified, transnational, community of legal scholars.[14] Moreover, there is no European equivalent of the ABA, fixing standards for the law school curriculum across EU Member States. On the other hand, European law schools are experiencing a digital revolution, accelerating large-scale information exchange across borders. In addition, there is increasing staff and student mobility,[15]

11. See http://www.theguardian.com/education/2011/jun/27/journals-index-angers-european-academics (accessed 17 March 2014).

12. See the special issue on globalisation and legal education: N Chiesa, A de Luca and B Maheandiranthe (eds) 'Following the call of the wild: the promises and perils of transnationalizing legal education' (2009) 10 German L J 629–1168.

13. See the report by the Cohen Committee, *Sustainable Humanities* (Amsterdam: Amsterdam University Press, 2008) p 41, explaining that in the humanities there is an 'inadequate range of tools for objectively defining and differentiating quality'.

14. See B de Witte 'European Union law: a unified 'academic discipline'?' (2008) EUI Working Papers RSCAS no 34, available at http://cadmus.eui.eu/dspace/handle/1814/10028 (accessed 17 March 2014).

15. See H Morris 'University ranking shows boom in global student mobility' *International Herald Tribune*, 11 September 2012, referring to data gathered by QS, World University Ranking: http://www.topuniversities.com/university-rankings/world-university-rankings/new-look-rankings-show-unstoppable-rise-student-mobili (accessed 17 March 2014).

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in particular of PhD students, who move from one EU Member State to another.[16] In the absence of formal rankings,[17] these 'intellectual nomads' will need to compare and 'rank' European law schools by themselves.

For law journals, the situation is similar.[18] In the US, law reviews publish articles in English, they are for the largest part still student-edited, and their style and format (eg footnote culture) are fairly uniform, which makes ranking easier. That is why there are several law journal rankings, with the most influential and comprehensive one undoubtedly being the Washington & Lee (W&L) ranking.[19]

European law journals display a far greater variety in terms of language, quality assessment (peer-reviewed, student-edited, editorial review etc), style and format than US journals.[20] This is most probably why a uniform cross-country ranking of European law journals does not exist yet. This has given rise to the current anomaly that US rankings determine the rating of European law journals.[21]

A good example is the European Journal of International Law (EJIL), which is one of the highest-ranked foreign law journals on the W&L ranking.[22] An editor of the EJIL noticed, however, that the impact factor of the EJIL depends almost exclusively on the number of citations of EJIL articles in American law journals.[23]

16. No particular figures seem to be available for legal scholars. For the general trend in all fields of research, see Idea Consult 'Study on mobility patterns and career paths of EU researchers', Final report (Brussels, June 2010), available at http://ec.europa.eu/euraxess/pdf/research_policies/MORE_final_report_final_version.pdf (accessed 17 March 2014).

17. Technically it is possible to generate a European law schools ranking from the QS world ranking, but the credibility of this ranking would be seriously affected by the limited data set and reliance on reputational surveys. It is also possible to use this ranking to rank schools by citation counts on Scopus, but that would also offer a very limited perspective of law school quality. See http://www.topuniversities.com/university-rankings/university-subject-rankings/2013/law-and-legal-studies (accessed 17 March 2014).

18. One could come to an informal ranking for European law journals by using Google Scholar Metrics. See http://scholar.google.com/citations?view_op=top_venues (accessed 17 March 2014). Google Scholar Metrics is a recent initiative, which currently only covers articles published between 2008 and 2012. The metrics are based on citations from all articles that were indexed in Google Scholar in July 2013. It excludes all sorts of citations that would be relevant for law, such as books and dissertations but also court opinions and so on.

19. See http://lawlib.wlu.edu/LJ/ (accessed 17 March 2014).

20. This does not imply that US student-edited journals necessarily publish lower-quality papers than European peer-reviewed journals. Some of the top law journals in the US are student-edited, although some have also introduced (un)official peer review practices for certain types of articles (eg empirical legal research). For a typical example, see http://www.professorbainbridge.com/professorbainbridgecom/2011/08/chicago-law-review-chutzpah.html (accessed 17 March 2014).

21. More generally, it is not always clear why a journal should receive a certain ranking. It can be the number of prescriptions, in which case general interest journals in bigger jurisdictions will always have an advantage over specialist journals in smaller jurisdictions; it can be done on the basis of the rejection rate, which tells little about what is rejected and why; or it can be the number of downloads or citations, which may also have different reasons than quality alone, such as accessibility. The German Law Journal, for instance, became – over a period of 10 years – the world's leading online peer-reviewed law journal in terms of the numbers of citations. See http://germanlawjournal.com/index.php?pageID=1 (accessed 17 March 2014).

22. See http://lawlib.wlu.edu/LJ/index.aspx (accessed 17 March 2014).

23. J Weiler 'Impact factor – the food is bad and what's more there is not enough of it' (2012) 23 (3) Eur J Int'l L 607.

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It is therefore logical that this journal scores considerably lower than its American counterparts, for the same reason that the number of citations of EJIL articles in European journals will be much higher than in US law journals. Foreign citations are not taken into account, however, since there is no recognised citation database of law journals in Europe.

4. GOVERNING BY NUMBERS?

Performance measurement in academia has developed rapidly since the 1970s.[24] Today there are several worldwide rankings of universities, such as the 'Shanghai ranking',[25] the QS World University Ranking,[26] the Times Higher Education World University Ranking[27] and the Leiden Ranking.[28] There exists increasing dissatisfaction with these 'global league tables',[29] however, because they compare entire universities, ignoring the fact that they are multiform and complex organisations. Rankings are the result of aggregated scores and reflect a strong bias in favour of large research universities and the natural sciences.[30] Such reservations have given rise to a growing specialisation and diversity of rankings.

Law schools and law journals are currently ranked as separate categories,[31] but their reputations are intertwined. The quality of a law school depends, for example, on the status of the journals in which faculty members publish. Particularly in the US, where law schools host their own flagship journals and student-editors often seem to be biased towards papers written by faculty members and authors with strong reputations, journal quality and law school prestige are intertwined.[32] It is no coincidence that there is a strong correlation between the top US law schools and the leading journals.[33]

24. J Koelman and R Venniker 'Public funding of academic research: the Research Assessment Exercise of the UK' in E Canton et al *Higher Education Reform: Getting the Incentives Right* (The Hague: Sdu Uitgevers, 2001).
25. See http://www.shanghairanking.com (accessed 17 March 2014).
26. See http://www.topuniversities.com/university-rankings/world-university-rankings (accessed 17 March 2014).
27. See http://www.timeshighereducation.co.uk/world-university-rankings (accessed 17 March 2014).
28. See http://www.leidenranking.com (accessed 17 March 2014).
29. For an interesting comparison of the quite different outcomes of Times and Sunday Times University League Tables 2014 (one of the UK rankings) and the Times Higher Education (THE) World University Rankings 2013–2014 on UK law schools, see Matthias Siems' legal blog of 6 October 2013, available at http://siemslegal.blogspot.nl/2013/10/the-discrepancy-between-uk-and-global.html (accessed 17 March 2014).
30. Expert Group on Assessment of University-Based Research 'Assessing Europe's university-based research' (Brussels: Directorate-General for Research, 2010) at 9–10.
31. Even the products of individual legal scholars are getting ranked now. For an interesting example of ranking of individual legal researchers, see F Shapiro and M Pearse 'The most-cited law review articles of all time' (2012) 110 Mich L Rev 1483.
32. N Saunders 'Student-edited law reviews: reflections and responses of an inmate' (2000) 49 Duke L J 1663 at 1666 with reference to other sources.
33. A Brophy 'The emerging importance of law review rankings for law school rankings, 2003–2007' (2007) 78 U Colo L Rev 35.

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Nevertheless, even in the US where the use of bibliometrics, such as citation scores, appears to be more popular than peer review – which seems to be the developing standard in many European countries[34] – there is much debate about whether rankings based on metrics signal 'quality'. This has to do with the fact that bibliometric indicators can never capture all the different aspects of scholarly quality.[35]

First, rankings always focus on quantifiable parameters. There are, however, many features of legal scholarship and education that are difficult to quantify, such as: 'originality', 'creativity'[36] or 'serendipity'.[37] If what is not measurable does not count, this inevitably leads to the minimisation of valuable non-measurable performance.[38] Secondly, performance measurement may lead research centres and teaching units to privatise profits (eg funding) and communise costs (eg research and teaching infrastructure), affecting the 'esprit de corps'.[39] Although the discipline of psychological economics has shown that scholars usually value their professional autonomy more than a high salary,[40] performance ranking may shift their attention from intrinsically motivated curiosity and passion towards an extrinsic motivation to 'score', especially if this is encouraged by career management programmes.

Academic performance measurement generally leads to a growth in measurable output but seldom results in a higher quality of the research or direct reallocation of funds to the best performers.[41] This has to do with cushioning effects, including the strategic behaviour of scholars trying to 'beat the system' and management professionals operating as a 'heat shield' between university boards and academic staff.[42] On the one hand, this might lead to a response that this means that there is no problem because extreme consequences of ranking will be mitigated by the scholarly community. On the other hand, why burden scholars with rankings and performance management if it will not lead to better legal scholarship or teaching?

34. What is confusing, however, is that the concept of peer review is used in many different ways. Some reserve the use of the term for the process of subjecting an author's scholarly research to the scrutiny of independent experts in the same field, before a paper is published in a journal. Others see scrutiny by a publisher or an editorial board also as peer review, or include in the definition the refereeing of research proposals for funding.

35. See F van Vught and F Ziegele (eds) 'U-Multirank: design and testing the feasibility of a multidimensional global university ranking' (Consortium for Higher Education and Research Performance Assessment, June 2011) at 37.

36. See M Siems 'Legal originality' (2008) 28 (1) Oxford J Legal Stud 147.

37. RM Robert *Serendipity: Accidental Discoveries in Science* (New York: Wiley, 1989).

38. See J Smits *The Mind and Method of the Legal Academic* (Cheltenham: Edward Elgar, 2012) p 130.

39. Numerous examples can be found in: M Thornton *Privatising the Public University: The Case of Law* (New York: Routledge, 2012); D Bok *Universities in the Market Place: The Commercialization of Higher Education* (Princeton, NJ: Princeton University Press, 2004); C Lorenz (ed) *If You're So Smart, Why Aren't You Rich? Universiteit, markt en management* (Amsterdam: Boom, 2008).

40. M Osterloh and B Frey 'Research governance in academia: are there alternatives to academic rankings?' (2009) CESIFO Working Paper no 2797, at 19–20.

41. The quality of legal research is, for example, probably much strongly determined by the selection and training of young legal scholars than by the monitoring of their output, which of course does not mean that it cannot be meaningful to do this monitoring for other purposes.

42. M Pen *Prestatiemeting van wetenschappelijk onderzoek* (Utrecht: Lemma, 2009) pp 206–207.

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5. A DEBATE ON QUALITY AND PURPOSE IS WHAT SHOULD PRECEDE RANKING

If rankings are to tell us something about the quality of law schools and law reviews, the question is, what do we mean by quality? If quality represents a standard of something as measured against other things of a similar kind to serve a certain purpose, difficult questions arise, including: What is the purpose of law schools and law reviews, and to what extent are they sufficiently *similar* across countries? Is it possible to compare elite law schools in the US with million-dollar research budgets,[43] comfortable staff–student ratios and high exposure in the media, with much lower-tiered ones in the same country or across the Atlantic? An EUA report on global rankings states:

> Because global rankings focus on research intensity, other aspects of higher education, such as teaching and learning, community engagement, and third mission and innovation are ignored. In addition, universities are complex organisations with strengths and weaknesses across various departments and activities. An aggregate score is unable to reflect this.[44]

The data on which existing global rankings rely is gathered by international bibliometric databases,[45] which concentrate on research in journals in English. Teaching data are provided by higher education institutes (HEIs) themselves.[46] This makes information on education relatively easy to manipulate. Moreover, there is even less consensus on what determines the quality of legal education than there is on indicators regarding the quality of research.

In the US, some argue that law schools have become too much of a playground for law professors' esoteric research hobbies instead of being a breeding ground for the training of successful practitioners.[47] In contrast, both in the US and Europe others claim that legal education needs to move away from being a service to legal practice by developing a more interdisciplinary,[48] comparative and cosmopolitan perspective on law and law making.[49] How can we ever define quality if there are such fundamentally different views on the purpose of legal education?[50]

43. See eg http://vpf-web.harvard.edu/annualfinancial/ (accessed 17 March 2014).
44. European University Association 'Global university rankings and their impact', report (Brussels: European University Association, 2011) at 20.
45. Eg Thomson-Reuters Web of Science and Elsevier Scopus.
46. European University Association, above n 44, at 15.
47. See eg B Newton 'Preaching what they don't practice: why law faculties' preoccupation with impractical scholarship and devaluation of practical competencies obstruct reform in the legal academy' (2010) 62 S C L Rev 105.
48. R Collier 'We're all socio-legal now?' Legal education, scholarship and the 'global knowledge economy' – reflections on the UK experience' (2004) 26 Sydney L Rev 503; TJ Berard 'The relevance of the social sciences for legal education' (2009) 19 (1/2) Legal Educ Rev 189; T Hutchinson and K Burns 'Kylie, the impact of 'empirical facts' on legal scholarship and legal research training' (2009) 43(2) Law Teacher 153.
49. J Smits 'European legal education, or: How to prepare students for global citizenship?' (2011) 45 Law Teacher 163; T Ulen 'The impending train wreck in current legal education: how we might teach law as the scientific study of social governance' (2009) 6 U St Thomas L J 302.
50. For an intelligent attempt to integrate different views: L Ribstein 'Practicing theory: legal education for the twenty-first century' (2011) 96 Iowa L Rev 1649.

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Something similar applies to scholarly legal research. Here, 'doctrinalists' and 'multidisciplinarians' appear to be fighting in different camps over the true nature of law as a discipline. In both the US and Europe, there are strong adherents of more focus on sociolegal and empirical research methods, theory-building, counter-intuitive and testable hypotheses, and a much stronger separation of positive and normative enquiry.[51] However, in lower-tiered US law schools and in many European countries, the doctrinal tradition towards legal research is still dominant.[52] This must have consequences for the appreciation of legal research methods, because different types of legal research (doctrinal, empirical, comparative) cannot be assessed against the same standards. As far as substance is concerned, general indicators, such as originality, profundity and thoroughness, leave so much room for interpretation that they will probably be applied differently by different experts. Metrics-based indicators, such as citation scores, may look more unequivocal but they have their own problems (see hereafter). This could explain why expert rankings often do not correlate with performance measurement on the basis of impact factors.[53]

What we need in order to fuel a serious debate on quality of both legal education and scholarship is more information with regard to what legal scholars themselves consider important for the quality of teaching and research, also from a more substantive perspective. How important do we find the presentation skills of law professors and their perceived ability to inspire (or amuse?) students, compared to their capacity to bring cutting-edge research into the lecture theatre? What is the value of persuasive academic legal teaching and writing skills, compared to methodological rigour and counter-intuitiveness?[54] How do legal scholars themselves feel that the quality of their performance should be assessed (eg peer review or metrics) and why? Few legal scholars seem to be happy with the growing influence of rankings and performance indicators, yet there appears to be little enthusiasm for organised action to try to regain control.

6. LAW SCHOOL RANKINGS

Statements such as 'the world would be better off without law school rankings' are probably pointless.[55] Even without formal rankings, there would be informal ones. It is just as odd, though, to argue that rankings are here to stay and that we simply have to live with their imperfections, because rankings are a relatively recent phenomenon, and if they have perverse effects we should try to remedy their flaws or look for alternatives.

51. S Bartie 'The lingering core of legal scholarship' (2010) 30 Legal Stud 345 at 367.
52. However, the nature of doctrinal-legal research is also changing. R van Gestel and H Micklitz 'Revitalising doctrinal legal research in Europe: what about methodology?' in U Neergaard, R Nielsen and L Roseberry (eds) *European Legal Method* (Copenhagen: DJOF, 2011) pp 25–75 (also available at http://cadmus.eui.eu/handle/1814/16825, accessed 17 March 2014).
53. Expert Group on Assessment of University-Based Research, above n 30, at 43.
54. See R Spitzer *Saving the Constitution from Lawyers* (Cambridge: Cambridge University Press, 2008) pp 22–23.
55. DA Thomas 'The law school rankings are harmful deceptions: a response to those who praise the rankings and suggestions for a better approach to evaluating law schools' (2003) 40(2) Hous L Rev 419 at 456; S Van Alstyne 'Ranking the law schools: the reality of illusion?' (1982) 7(3) Am Bar Found'n Res J 649 at 679.

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Four factors are important in the ranking of law schools: what is their *purpose*, who is the *audience*, what *methodology* is being used and who is *responsible* for their reliability?[56] If the purpose of a law school ranking is to inform students about the job opportunities of their graduates, the audience to be addressed consists of graduates who may apply for a law school programme, and the methodology should not be faculty perception of the quality of law libraries or student–staff ratios, because that would make the ranking 'unfit for purpose'. The same would probably apply to a ranking of research quality on the basis of a survey among judges.[57] That would give rise to a mismatch between methods and purpose. Finally, the question of who takes responsibility for the reliability of law school rankings is important because if they are methodologically or otherwise flawed, this can have major consequences for the careers of many people.[58] All this notwithstanding, some general points regarding advantages and disadvantages of law school rankings can be made.

6.1 Arguments in favour of law school rankings

Rankings of law schools can, first of all, serve transparency, forcing law schools to share important information about such matters as staff–student ratios, student grades, research output and reputation, dropout rates and average time to complete the programme, library facilities and so on. Without rankings, this type of information would not be disclosed.

Closely linked to transparency is accountability. Rankings can make law schools more accountable since they have to explain to the outside world the 'value for money' they offer as HEIs.[59] Accountability also implies that if the organisation that carries out the ranking does its job properly, law schools will not get away with showing off their strengths while hiding weaknesses, because they are being compared on a number of indicators they cannot choose for themselves, according to a methodology that they do not control and by an independent agent they do not own.

Transparency and accountability also presuppose competition. As long as competition benefits the production of public goods, such as high-quality education and research, rankings may have value for end-users such as students, who want to coordinate their actions in order to select the best possible law faculty for themselves, but also for employers who compete for students.[60] In order to secure the best students, the greatest amount of external funding and the highest reputation, law schools need to become more efficient in scoring on the indicators that rankings employ.

56. A Ciolli and J Garber 'How to rank law school rankings?' (2009) 7(2) Dartmouth L J 132 at 146.
57. B Newton 'Law review scholarship in the eyes of the twenty-first century Supreme Court Justices: an empirical analysis' (2012) 4 Drexel L Rev 399.
58. In the US, many students were misled by law school rankings and made expensive choices to go to study law at certain schools, so that many of them now have severe debts, which will be hard to repay. See inter alia B Tamanaha *Failing Law Schools* (Chicago: University of Chicago Press, 2012).
59. M Berger 'Why the US News & World Report law school rankings are both useful and important' (2001) 51 J Legal Educ 487 at 498.
60. R Korobkin 'Harnessing the positive power of rankings: a response to Posner and Sunstein' (2006) 81 Ind L J 35 at 45.

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Perhaps such competition could just as well be organised by the market for higher education itself if law schools were completely free to compete with each other to attract the best (or the most) students or faculty. However, as long as the market for law schools is imperfect due to regulations that limit competition (eg restrictions set by the Bar or by public regulators regarding law school diplomas), rankings can stimulate competition.

6.2 Arguments against law school rankings

Perhaps the most important argument against law school ranking is that it unduly simplifies the reality. It is this counter-argument that Posner uses when he writes:

> Ranking is a method of evaluation. It has the advantage of extreme simplicity and the disadvantage of revealing very little, because the ranking doesn't disclose the distance between the ranks. In fact, rank ordering exaggerates quality differences because of its association with winning; normally what matters in a contest is who came in first, not how much better the winner was than the losers.[61]

Rankings are often somewhat misleading, and this will be even more so when the methodology on which they are based is unclear to the users, so that they cannot understand their limitations. As already observed, the indicators on which rankings are based are often distant proxies to quality, such as the perceived reputation of staff members, average student admission scores or even the availability of library space. The availability of quantitative data sometimes even appears to have precedence over their relevance and reliability.[62] Besides, there remains a lack of the empirical data that is needed to be able to compare law schools across countries. As a consequence, there is a huge bias towards regional rankings, the most prominent example being the US, where several law school rankings coexist, with US News & World Report being the most well-known example.

Most national rankings use bibliometric databases concerning research performance, while in the field of law these are not well developed and reliable, especially in Europe. As far as data on education are concerned (eg admission test scores, student grades, dropout rates etc), if available at all, this information is usually based on systems of self-reporting, which can easily be manipulated, as is borne out by practice.[63] By far the most serious problem with respect to law school rankings, however, has to do with the aggregation of findings. One can rank law schools on the basis of faculty reputation, student scores, job placement, SSRN downloads and so on, but it remains highly questionable whether these criteria can be meaningfully amalgamated into one overarching quality judgment.[64]

61. Posner, above n 1, at 13.
62. For an overview of the problems with the ranking of universities in general, see van Vught and Ziegele, above n 35, at 27–34.
63. J Murray 'Do US law schools that report false or misleading employment statistics violate consumer protection laws?' (2012) 15(3) J Consumer & Com L 97. See also NR Kuncel, M Credé and LL Thomas 'The validity of self-reported grade point averages, class ranks, and test scores: a meta-analysis and review of the literature' (2005) 75(1) Rev Educ Res 63.
64. B Leiter 'How to rank law schools' (2006) 81 Ind L J 47 at 51.

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Last but not least, empirical studies show that there is no (strong) correlation between teaching evaluations and scholarly production.[65] Taking the average of both scores would therefore do injustice to the actual performance on both indicators, leaving aside the fact that there can be major fluctuations in performance between the different departments of a single law school. This is probably an important reason why the European Commission has issued a study to develop a 'Multirank tool', which should enable users to compare the performance of institutions across different teaching and research activities,[66] creating multidimensional performance profiles instead of aggregated scores.[67] Unfortunately, though, it is unlikely that this tool will be able to overcome the methodological difficulties of existing rankings.[68]

6.3 Conclusion

Although law school rankings are gaining popularity, even in Europe,[69] most experts denounce the lack of reliable cross-country data, the problem of finding suitable quality indicators, flawed ranking methodologies, the problematic aggregation of assessment outcomes, strategic behaviour to climb in the rankings without investing in primary processes (teaching and research), and the reduction of diversity, creativity and institutional autonomy.

For the time being, an all-encompassing European law school ranking does not seem to be viable or desirable. What purpose should such a ranking serve? Perhaps a European ranking of international LLM programmes could be helpful for students who want to study abroad, but to my knowledge there is no empirical evidence that students actually decide where to study on the basis of rankings.[70] Besides, a comparison between law schools in Europe and the US would probably not be useful, because there are too many fundamental differences between them, such as the fact that US law schools offer postgraduate education, whereas in most countries in Europe, law schools offer both LLB and LLM courses. In terms of research, PhDs in law and research masters are increasingly popular, whereas in the US, SJDs or MPhils still seem to be far less popular. Moreover, the substance of what is taught in law schools and even the method of teaching vary significantly.

Apart from all the methodological problems, there is a growing anxiety about the application of a business-like competition model to law schools.[71] It is therefore

65. B Barton 'Is there a correlation between law professor publication counts, law review citations counts, and teaching evaluations? An empirical study' (2008) 5(3) J Empirical Legal Stud 619.

66. Teaching and learning, research, knowledge transfer, international orientation and regional engagement.

67. Instead, the U-Multirank tool uses sunburst charts and field charts. See Van Vugth and Ziegele, above n 35, at 18–19.

68. See House of Lords 'The modernisation of higher education in Europe' (London, March 2012) at 24–25.

69. For an overview, see http://www.llm-guide.com/law-school-rankings (accessed 17 March 2014).

70. It seems more likely that student choices will be influenced by a number of issues, including customer service from the administration, tuition fees, the availability of scholarships, discussions on blogs, location, language and so on.

71. M Thornton 'The law school, the market and the new knowledge economy' (2009) 10(7) German L J 641.

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remarkable that so little attention is paid to possible alternatives to ranking, such as a more careful selection and socialisation of legal scholars – the human capital of law schools – standardised information on education programmes for students, and benchmarking between research centres with a strong international focus.

7. RANKING OF LAW JOURNALS

Rankings of law journals are the most popular in the US, but they are increasingly attracting attention in other countries, including the UK,[72] Australia[73] and Israel.[74] One of the drivers behind this trend is the rise of specialised journals targeting a group of readers and authors who transcend the host countries. The success of online publication portals, such as SSRN and open access journals, probably contributes to the need for international benchmarks.

Ranking of law journals can be done for different reasons, ranging from providing standardised information to authors with respect to where to submit their papers (what are the 'best' journals) to helping research foundations to decide which legal scholars to sponsor (the ones writing in high-ranked journals). In most cases, however, the underlying rationale is to enhance a 'status competition' on the basis of the reputation of the authors,[75] the rejection rate of journals or their impact factors.[76]

From a methodological perspective, most rankings are expert-based, metrics-based or a combination of both. In case of expert-based rankings, a committee usually scores existing journals; for example, with an A, B or C. In Belgium this was done in 2004, but the outcome was so fiercely disputed that the ranking has not been implemented. Something similar applies to the ranking by the Australian Research Council, established in 2010, which had already been abandoned by 2011 because it was deployed inappropriately in certain areas.[77]

Expert-based rankings are time-consuming and rather subjective, since an assessment of the quality of a journal presupposes reading the contributions to the journals and deciding on the basis of majority voting. This offers an advantage for general law journals, since specialised journals can only be assessed by specialists, who will normally be under-represented in expert committees setting up a journal ranking. With metric-based rankings *this* problem does not exist, but the impact factors used in these

72. See http://siemslegal.blogspot.nl/2012/10/uk-law-journal-ranking-rae-2008-data.html (accessed 17 March 2014).

73. See http://research.unsw.edu.au/excellence-research-australia-era-outlet-ranking (accessed 17 March 2014); I Ramsay and GP Stapledon 'A citation analysis of Australian law journals' (1997) 21 Melb U L Rev 676; D Warren 'Australian law journals: an analysis of citation patterns' (1996) 27 Austl Acad & Res Libr 261.

74. R Perry 'Ranking Hebrew law reviews: theoretical foundations and a preliminary empirical study' (2004) 1 Haifa L Rev 401.

75. T George and C Guthrie 'An empirical evaluation of specialized law reviews' (1999) 26 Fla St U L Rev 813 at 813; R Jarvis and P Coleman 'Ranking law reviews: an empirical analysis based on author prominence' (1997) 39 Ariz L Rev 15; R Jarvis and P Coleman 'Ranking law reviews by author prominence – ten years later' (2007) 99(3) Law Libr J 573.

76. For an overview, see R Korobkin 'Ranking journals: some thoughts on theory and methodology' (1998–1999) 26 Fla St U L Rev 851.

77. See http://www.theaustralian.com.au/higher-education/end-of-an-era-journal-rankings-dropped/story-e6frgcjx-1226065864847 (accessed 17 March 2014). One example was that research managers immediately started to set targets for publication in A and A* journals.

rankings often tell us little about the actual quality of individual publications or the quality of the editing and review process. A high impact score certainly does not guarantee that the most innovative publications will be published in that journal. It may even work the other way around, in the sense that it makes journal editors or peer reviewers overcautious with respect to publishing controversial pieces that challenge mainstream thinking.

Combinations of expert-based and metrics-based rankings are rare.[78] In the UK, Campbell, Goodacre and Little tried to come up with one by looking at where publications submitted to the Research Assessment Exercise (RAE) 2001 have been published (which journals), but this method also has flaws. Thus, a journal that is very selective in what it publishes may receive a low score in the RAE. The Harvard and Yale Law Reviews, for example, did not receive a single score in the UK RAE 2001.[79]

7.1 Possible advantages of law journal rankings[80]

If law journal rankings are based on quality-sensitive and sound assessment methods, the competition they facilitate may improve the quality of legal writing because the best journals will receive the highest rank, which will probably lead to more submissions, enabling the editors to make a stricter selection of publishable papers.

Well-designed rankings also provide law reviews with a tool for self-evaluation. If a law review drops on the ranking scale, this could indicate flaws in the editorial policy, the review process or the selection of research topics and the way in which these are valued by the reader. Conversely, a rise on the ranking scale may correspond with a more positive appreciation of the journal's quality.

User-friendly rankings may also serve the stakeholders of a journal, such as readers (a high ranking can be an indicator that the journal is worth reading), librarians (eg acquisition of journals), funding bodies and faculty managers (eg publications in high-ranked journals may be rewarded).

7.2 Possible disadvantages of law journal rankings

Journal rankings contain value judgements with respect to the place of a journal in a ranking scheme. In doing so, they generate dominant views – usually not by disputes about content but through counting exercises. Even when journals are assessed by an expert committee or a user survey, it is impossible for experts to have profound knowledge about the quality of the content of more than just a couple of journals over a limited period. Moreover, how can members of assessment panels be selected 'objectively', and how should their differences of opinion be reconciled?[81]

78. For an example, see http://siemslegal.blogspot.co.uk/2011/03/world-law-journal-ranking-2011.html (accessed 17 March 2014).

79. K Campbell, A Goodacre and G Little 'Ranking of United Kingdom law journals: an analysis of the Research Assessment Exercise 2001. Submissions and results' (2006) 33 J L Soc'y 335.

80. An elaborate list of advantages can be found in R Perry 'The relative value of American law reviews: a critical appraisal of ranking methods' (2006) 11(1) Va J L & Tech 1 at 4–6.

81. J Svantesson 'International ranking of law journals – can it be done and at what cost?' (2009) 29(4) Legal Stud 678 at 685.

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In the case of journal rankings relying on citation scores, one has to realise that a citation is at best a distant proxy for quality. First of all, the number of citations that a *journal* receives in other journals tells us nothing about the number of citations of the *articles* in that same journal. Secondly, if one counts journal citations, more weight probably needs to be accorded to citations in prestigious journals. This can lead to circular reasoning, because it presupposes that a ranking of journals already exists.[82] Even if one takes the number of citations of articles of different journals into account, Korobkin has argued that there are at least ten different scenarios in which a citation has nothing to do with quality.[83] Other metrics-based rankings using rejection rates and numbers of downloads have similar problems.

Especially in the case of a European or international journal ranking, there is a problem of incommensurability. How should one, for instance, compare the quality of a journals in a language other than English from a small jurisdiction, such as The Netherlands, with a big impact on the national level with a highly specialised English-language journal serving a global audience but with relatively few readers? The answer is that this is impossible because the journals serve different purposes.

7.3 Conclusion

Law review rankings can be helpful transparency-enhancing tools for certain groups of users. A ranking may, for instance, provide guidelines for starting researchers, showing in which journals to publish in order to build up an academic CV.

A European ranking would require a cross-border classification of journals. If one is unable to do this on the basis of a comparison of the substantive content of different journals, the only alternative is to rely on quantitative indicators, such as citation scores, h-indexes and rejection rates. This can be done, but it presupposes an international database containing relevant and reliable bibliometric data. Such a database does not yet exist. Even if it were to exist, however, scoring journals against performance indicators must not be confused with a professional judgment about journal content. That would require an assessment by peers, which would be extremely difficult for a European ranking.

The risk in a European classification of law journals is that only articles published in English-language journals end up on the list that qualifies as relevant from a scholarly perspective. This would be a mistake because of the wide range of law journals, written in a multitude of languages for different audiences (both scholars and practitioners) in Europe. From an academic perspective, this diversity should be cherished because it stimulates innovation and reflects cultural differences between jurisdictions.

A European ranking only makes sense if we bear in mind the limited value it can have in promoting research quality. That is why it should not be used as a standalone tool to monitor and evaluate research performance. In particular, with respect to decisions concerning tenure or promotion, it is important that peers actually read and analyse what a scholar has written. For these types of decisions a sliding-scale of research assessment might be considered, starting with self-evaluation by a scholar explaining what his or her publications have added to the body of knowledge, followed by an internal review by a faculty committee and an independent second opinion by experts in the field.

82. Ibid, at 683.
83. Korobkin, above n 76, at 866.

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Finally, European law journals might consider alternative measures to guarantee the quality of their publications. At present, most journals do not explain the criteria they use to assess submissions. To what extent do editorial boards require that publications articulate a well-formulated research question, what is expected in terms of the use of sources,[84] what is required in the case of comparative research with regard to the explanation of the choice of jurisdictions and methodology, and so on? Not every journal must operate according to the same standards, but we may expect editorial boards to explain to the outside world what sort of quality they demand from authors.

8. DOING NOTHING IS NOT AN OPTION

Law as a discipline cannot afford to do nothing because then, sooner or later, others will impose their rankings and quality management systems. Moreover, there is nothing against thinking about ways for law schools and law journals to evaluate the quality of what they produce. On the contrary, a fundamental debate about the quality of legal scholarship is more important now than ever before, because law appears to be a 'discipline in transition' that can no longer simply rely on its historical authority.[85]

In the field of publishing, law blogs, e-books and open-access law journals have mushroomed, and digitisation is also used to increase the quality of scholarly legal publications, and the number of draft research papers that are put online in order to get feedback before publishing is mind boggling. At the same time, digitisation blurs the boundaries between scholarly try-outs and end products, making monitoring and evaluation even more complicated than it already is. Digitisation goes hand in hand with a call for greater transparency, quality control and quantification of scholarly output.

Law trails behind other disciplines in the sense that until recently not much attention was paid to the accountability of law schools and legal scholars. Today, however, student evaluations of teaching, peer review and even the use of metrics-based assessment systems are definitely on the rise. One has to realise, though, that experts in bibliometrics are generally quite cautious in their claims regarding the significance of citations, impact factors and other performance indicators. Policy makers, on the other hand, tend to entertain more simplistic ideas as to how metrics can be used to measure scholarly performance.[86] It is therefore crucial for the scholarly legal community itself to develop more solid monitoring and evaluation schemes that do not oversimplify the complexity of legal research and education. For the measurement of research performance, in particular, we may learn from the humanities, where scholars are confronted with problems such as dealing with multiple languages and research cultures, and different types of publications (essays, journal articles, working papers and books).

84. In the case of empirical-legal research, how will the data be double-checked?

85. See R van Gestel and HW Micklitz 'Why methodology matters' Eur L Rev, forthcoming (2014). See http://onlinelibrary.wiley.com/doi/10.1111/eulj.12049/abstract (accessed 17 March 2014). In Europe for a long period throughout history, law as a discipline was a role model for other sciences. See R van Caenegem *Judges, Legislators and Professors, Chapters in European Legal History* (Cambridge: Cambridge University Press, 1987).

86. See Tamanaha, above n 58, p 71 and further. See also Lorenz, above n 39.

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9. WHAT CAN BE LEARNED FROM THE HUMANITIES?

In 2000, the Standing Committee for the Humanities of the European Science Foundation concluded that the then existing Arts and Humanities Citation Index[87] did not qualify as an adequate research evaluation instrument.[88] The index proved to be heavily biased towards the English-speaking world and media other than journals, such as monographs, were not taken into account. Therefore the committee recommended that the index should not be used by policy makers in Europe. Instead, it was considered opportune to try to establish a European Reference Index in the Humanities (ERIH), even if that could only be an additional tool for research evaluation and could not be a suitable tool to assess the quality of education in the humanities. The reference index was developed to present research achievements systematically to the rest of the world. It was a unique project, because in the context of a world increasingly dominated by publications in English, it sought to highlight a vast range of world-class research published by humanities researchers in different European languages. Unfortunately, though, the development of the index has not been without its own problems.

The initial reference index categorised journals in the humanities using a three point scale: (A) high-ranking international publications with a very strong reputation among researchers from different countries, regularly cited all over the world; (B) standard international publications with a good reputation among researchers in different countries; and (C) research journals with an important local/regional significance in Europe, occasionally cited outside the country.[89] The list was compiled by groups of experts and the ERIH website stresses that the list of journals was not intended as a ranking exercise. Nonetheless, the ERIH list has generated considerable controversy among publishers and editors who have argued that, despite the original intention, the outcome would probably be a hierarchy of journals encouraging academics to focus primarily on category A titles. As a result, in 2009 the editorial boards of over fifty journals refused to cooperate further. In a joint manifesto, they wrote:

> Great research may be published anywhere and in any language. Truly ground-breaking work may be more likely to appear from marginal, dissident or unexpected sources, rather than from a well-established and entrenched mainstream. Our journals are various, heterogeneous and distinct. Some are aimed at a broad, general and international readership, others are more specialized in their content and implied audience. Their scope and readership say nothing about the quality of their intellectual content.[90]

In response, ESF member organisations began to discuss how to carry the work forward. The idea arose to see how the ERIH lists could be linked to existing and

87. With regard to the index, see http://thomsonreuters.com/arts-humanities-citation-index/ (accessed 17 March 2014).

88. Council for the Humanities and the Social Sciences Council 'Judging research on its merits. An advisory report by the Council for the Humanities and the Social Sciences Council' (Amsterdam: Royal Academy of Arts and Sciences, 2005) at 17, available at https://www.knaw.nl/shared/resources/actueel/publicaties/pdf/20051029.pdf (accessed 17 March 2014).

89. See http://pf.ujep.cz/user_files/ERIH_zakladni%20informace.pdf (accessed 17 March 2014).

90. H Cook et al 'Journals under threat: a joint response from history of science, technology and medicine editors' (2009) 53(1) Med Hist 1 at 1.

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proposed national databases; this would take advantage of work done in national contexts. Another initiative was to find out how to include books (monographs and edited volumes) in the process of quality management. Case study research in the meantime has shown that in the fields of German literature, English literature and the history of art, most commonly applied indicators do not measure the relevant quality criteria for humanities research, and that only about 50% of the relevant aspects of the quality criteria can be measured using indicators.[91] That is why quality assessments should not rely exclusively on performance indicators but also on peer review, whereas it is crucial to involve the scholarly community in the Member States in the discussion about and conceptualisation of quality in order to avoid unnecessary resistance.

In some Member States, this challenge has been taken on board. The Dutch Royal Academy of Sciences, for example, published a report, 'Quality indicators for research in the humanities', in which it set out a system of quality indicators for research focusing on two broad criteria, scientific quality and societal relevance, using indicators in three broad categories: (1) scholarly/societal output; (2) scholary/societal use; and (3) scholarly/societal recognition. The assessment is supposed to be completed by an *ex post* peer review as a double check in the evaluation process.[92]

The attractiveness of this research assessment system resides in the fact that scientific and societal relevance can in principle carry equal weight. In addition, there is a clear distinction between assessment criteria, such as scholarly recognition or societal use, and quality indicators such as scholarly prizes and projects in collaboration with civil-society actors. The scholarly community itself retains the possibility of adding new indicators in the category other evidence of certain types of quality, including discipline-specific or context-specific indicators (eg mission-related indicators). At the same time, this possibility to introduce new indicators is disciplined by oversight of an external peer review committee.[93]

In this system, metrics and peer review serve as countervailing forces. In conjunction with the fact that different national academies of humanities, arts and sciences are now developing their own national classifications of journals and publishers,[94] which might form the basis for a European list, one can understand why this bottom-up approach is probably more fruitful than a top-down approach that is imposed upon the discipline by relative outsiders. Last but not least, the attempts undertaken in the humanities to provide guidelines on how to assess the societal relevance of scholarly research could be a source of inspiration for other disciplines,[95] including law, because they show that it is possible to take into account the practical value of scholarly research.

91. M Ochsner, S Hug and H-D Daniel 'Indicators for research quality for evaluation of humanities research: opportunities and limitations' (2012) 1 Bibliometrie – Praxis und Forschung at 4.4–4.5.

92. For an overview, see https://www.knaw.nl/shared/resources/actueel/publicaties/pdf/20111024.pdf (accessed 17 March 2014).

93. See Royal Academy of Sciences 'Quality indicators for research in the humanities' (Amsterdam, 2011), available at http://www.knaw.nl/shared/resources/actueel/publicaties/pdf/20111024.pdf (accessed 17 March 2014).

94. D Hicks and J Wang 'Towards a bibliometric database for the social sciences and humanities – a European scoping project' (School of Public Policy, Georgia Institute of Technology, 2009).

95. See the ERiC project, which stands for Evaluating Research in Context: http://www.rathenau.nl/uploads/tx_tferathenau/ERiC_guide.pdf (accessed 17 March 2014).

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10. PARALLELS AND DIFFERENCES BETWEEN LAW AND HUMANITIES

An obvious parallel between law and the humanities is the resistance against the introduction of rankings and other assessment systems that all too often disregard diversity. Especially regarding publication culture, there are major overlaps between both disciplines, such as the importance of books and other domain-specific publications (eg case notes for law) and the fact that languages other than English are still very important for the vitality of the discipline. In addition, peer review, citation scores and other forms of quality assessment are in their infancy in both disciplines.

Although there are certainly more English-language law journals and legal book series today than a few decades ago, it would be going much too far to disregard non-English legal publications. On the other hand, peer review in legal publishing seems to be on the rise, although US law journals in particular are being slow to make the transition.[96] Even in Europe, though, there is no consensus as to the appropriateness of different kinds of peer review, how to select peer reviewers, what criteria reviewers should adopt to assess the quality of scholarly legal publications, and whether it is useful to combine peer review with other forms of quality control, such as citation scores.[97] The ongoing debate regarding the scientific status of law and the methodology of legal research indicates that the discipline is divided over the relationship between theoretical and societal relevance.[98]

With regard to societal relevance, another difference between law and the humanities resides in the fact that for legal scholars it is not unusual to view themselves as actors in the process of law reform, rather than as mere observers who 'just' try to explain why the law develops as it does. This has major consequences for the assessment of the quality of both research and education. After all, what does it actually mean to be trained to 'think like a lawyer'?[99] Should law students be trained first and foremost to become practitioners or, rather, does an academic education imply that theory and methodology should be of central concern? If legal scholarship should not primarily be seen as a service to legal practice, how do we balance scientific and societal relevance, and what is the best way to translate both elements to legal education? Is the current law school curriculum not overly focused on the role model of judges and advocates, and because of this does it not neglect the skills, methods and ethics that are required in other jobs, such as in-house corporate counselling, mediation and legal consultancy?

A matter that has received little attention so far is the extent to which the way we train law students today will affect the quality of legal scholarship tomorrow. After all, not every law student ends up in practice. Some will stay in academia, to become

96. A recent survey among 1325 law professors, 338 student-editors, 215 attorneys and 156 judges in the US shows that all of these groups agree on the fact that important reforms are desperately needed for law reviews. Surprisingly, the vast majority agreed that the introduction of some type of blind peer review would increase the quality of the papers being published and diminish the current biases in the selection process. R Wise et al 'Do law reviews need reform? A survey of law professors, student-editors, attorneys and judges' (2013) 59 Loy L Rev 1.

97. N McCormack 'Peer review and legal publishing: what law librarians need to know about open, single-blind, and double-blind reviewing' (2009) 101:1 Law Libr J 59.

98. M Van Hoecke (ed) *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Oxford: Hart Publishing, 2011).

99. See E Mertz *The Language of Law School: Learning to Think Like a Lawyer* (Oxford: Oxford University Press, 2007).

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teachers and researchers. What does thinking like a lawyer mean for them? This point has been raised by Robert Spitzer, who claims that 'in no other academic field of inquiry, whether the natural sciences, the social sciences, or the humanities, is the value of truth-seeking subordinated to the kind of values that are the foundation of legal training: to win an argument, to put the interests of the client/employer above those of the truth, or to maintain confidentiality regardless of its consequences.'[100] According to Spitzer, the focus in law schools on teaching students 'the art of persuasion', in combination with a lack of attention to training in research ethics and methodology, makes for legal scholars who, rather than collecting information that dictates conclusions, seek information in support of preconceived conclusions.[101] The fact that many law journals do not have a solid peer review system to filter out 'advocacy scholarship', according to Spitzer, contributes to this practice.

Even if Spitzer is exaggerating, there is reason for concern. Most legal researchers are not used to explaining their methodology. At a time when there is increasing international competition over limited research funds, with non-lawyers being involved in the assessment of grant applications and governments requiring more accountability from universities regarding the quality of research and education, law as a discipline will manage to remain isolated from the influences of rankings and other transparency tools.

11. CONCLUSION: HOW TO MOVE FORWARD?

Ranking appeals to the competitive ethos that has entered universities since the 1980s on the upsurge of a neo-liberal belief in more private responsibility for public goods. This has led to more emphasis on competition between universities and to public steering on output indicators in order to increase 'productivity'. Law schools and law journals cannot be run like a chocolate factory, for which making profit is the number one aim, without losing important scientific values, such as academic freedom, openness, genuine curiosity and a willingness to help each other in the quest for knowledge.

Although the European Commission seems to be pushing a European ranking of universities,[102] a European ranking of law schools is probably not a desirable idea because of the diversity of student and faculty populations (eg some schools being focused on the local market while others compete on the national level or even introduce 'global law' LLB and LLM programmes), curricula (eg doctrinal-legal courses versus programmes more akin to the liberal arts), and the way in which they are being financed (public and private law schools) and organised (in faculties, colleges and departments). In addition, experience with law school rankings in the US has shown that ranking has had important pernicious effects. Law school rankings give rise to increases in tuition fees, burdening students from modest social backgrounds for the sake of subsidising the education of their more privileged peers, who usually already have higher grades when entering law school.[103] These sorts of

100. Spitzer, above n 54, p 23.
101. Ibid, pp 24–25.
102. See http://www.scienceguide.nl/201306/multirank-milestone-reached.aspx (accessed 17 March 2014).
103. See B Tamanaha *Failing Law Schools* (Chicago: University of Chicago Press, 2012). See also http://lawprofessors.typepad.com/legal_skills/2013/03/the-pernicious-influence-of-the-us-news-law-school-rankings.html (accessed 17 March 2014).

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perverse effects have to do with the weight given in the rankings to the reputation of the school as judged by peers from other faculties. They also cause law schools to invest large sums of money on marketing strategies that do not directly improve the quality of research and education.[104]

As far as a European ranking of law journals is concerned, the message is more nuanced. On the one hand, such a ranking could serve as a counterweight to the current dominance of US law review rankings, in which European journals can only become 'the best of the rest' because US rankings usually do not count citations of publications in European journals, simply because there is no uniform bibliometric database for European law journals. On the other hand, even if there were such a database, a ranking of law journals on the basis of citation scores, h-indexes, rejection rates and so on, should not be confused with a judgement concerning the substantive quality of the publications in the various journals, on whatever ranking.

Does this mean that we do not need a European debate? The answer is no. European scholars might feel that there is no real problem yet, but this is likely to change given that in most other social sciences rankings have become increasingly important, whether we like it or not. Globalisation is likely to speed up this process, and if European law schools and law journals do nothing there is a good chance that others will impose their quality management systems upon us. Moreover, exchange of students and faculty and cross-national cooperation in legal research requires transparency regarding the quality of what European legal scholars do. We will first need to make clear what we understand by 'quality'. If we do not, there is a serious risk that substantive aspects of quality, such as originality in teaching and research, methodological rigour and validity, respect for ethical values,[105] thoroughness and profundity, theoretical and societal relevance and so on will lose ground to procedural issues that are more easy to quantify, such as citations, student grades and grants.

This paper has shown that rankings should not be used to replace a debate on substantive quality, as this touches upon the very foundations of academic freedom. More research is required with respect to what the scholarly legal community in Europe itself perceives as high-quality teaching and research, and what it considers to be the best ways to safeguard such quality. The experience in the humanities tells us that it could be worthwhile to think about more integrated concepts of quality management that include the societal relevance of education and research. For law, that would point towards methods that are capable of grasping the relevance that law school training has for legal practice and, for example, also the importance of different types of scholarly legal publications for judicial law making, legislation and executive decision making. Examples are job placements, courts citing scholarly legal publications, legislators hiring legal scholars to provide advice on drafting issues or on the evaluation of legislation, and invitations from administrative agencies for legal scholars to attend expert meetings.

Law schools and law journals have the relative advantage of lagging behind in terms of the introduction of rankings. This implies that we can learn from the mistakes that others made before us. The biggest pitfall could very well be that in other disciplines managers have taken too much power in forcing academics into a straitjacket, which makes their performance quantifiable and comparable to others. The

104. J Crittenden 'Building better ranking' (2013) 22(5) Nat'l Jurist 24–27. See http://www.nxtbook.com/nxtbooks/cypress/nationaljurist0213/#/22 (accessed 17 March 2014).
105. Think of issues such as using a (PhD) student work in one's own publications without reference, plagiarism or selling out to sponsors of contract research.

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ongoing debate in the humanities teaches us that a bottom-up approach to quality assessment is crucial. It is better for the scholarly legal community to take the initiative, instead of waiting for outside forces to impose their standards upon us. The tendency towards more integrated quality management systems in the humanities tells us that it should be possible to balance scientific and societal relevance in law, and combine peer review with bibliometrics with support from the scholarly communities at the national level.

Deans of leading law schools in Europe could, for example, take the initiative to investigate how the scholarly community in their country feels about different ways to ensure the quality of law schools and law journals. They might start with an enquiry into how different law faculties, research centres, law journals and publishers across Europe currently try to evaluate the quality of scholarly legal research in order to collect and discuss best practices. In certain European countries, this process has already started.[106] What is desperately needed, however, is more coordinated action.

106. In Switzerland, for example, where the Conference of the Swiss Universities (CRUS) has started a project 'Research evaluation in law'. See http://www.rechtswissenschaft.unibe.ch/unibe/rw_neu/content/e1984/e373454/e373467/e386328/e386329/files386330/Lienhard_Amschwand_HerrmannLeGes2013_2_ger.pdf (accessed 17 March 2014). In The Netherlands, the deans of the joint law schools have established a committee on classification of law journals, chaired by the dean of Maastricht law school. See E Du Perron 'De kwalificatie van rechtswetenschappelijke tijdschrift, in G van Dijck et al (eds) *Cirkels: een terugblik op een vooruitziende blik* (Deventer: Kluwer, 2013) pp 191–199.

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