ГОСУДАРСТВО И ПРАВО В СОВРЕМЕННОМ МИРЕ: ПРОБЛЕМЫ ТЕОРИИ И ИСТОРИИ

QUALITY IN JURISPRUDENCE

Ole HASSELBALCH, professor (em.) at the Aarhus University (the Kingdom of Denmark), doctor of law
Nordre Ringgade 1, 8000 Aarhus C
E-mail: ole.hasselbalch@mail.dk

In the article the author formulates the main tasks of the legal science. He describes and enumerates various aspects of the scientific activities in the sphere of jurisprudence. The author asks the questions of what the law is and who is personally responsible for the legal researching. Composing the answers to his own questions, the author underlines, that the unified approach to the understanding of law how it is and to the methods, forms, ways and facilities, used while undertaking legal exploring and studies, should be refused. Besides this the author makes a statement, that the objectivity of the legal science and its being in a great social demand are directly depended upon the common people's participation in the law making process. The author makes a true conclusion, that law, as a social phenomenon and public regulator, is completely and fundamentally based on traditions, habits, customs, culture and tenor of social life, which is law creator. The Scandinavian countries are shown by the author as an above said example, providing the active participation of the common inhabitants in the law making procedures there. The author expresses his own viewpoint, concerning the realization of the conception, aimed at the democratic, social and legal state maintaining procedure. In the article it is shown, that it can be fulfilled only through the rational, reasonably self – sufficing and conscientious law making. Further on the author displays the arguments, providing the existence of the mutual dependence between the appropriately effected law making and the properly ensured state and social interactivity promotion. The article also presents the correlation between the different and various criteria, implemented for the public law research and for the private law studies. Then the author makes a reader pay attention to the necessity to elaborate a real rank and a succession of the undertaken legal scientific research ventures in the sphere of law, in order to learn a human being first and only then to study a society but not on the contrary. At the same time it is very important to determine a subject, an object, the matter, the tasks, the goals, the facilities, a method and a way of scientific analytic research in learning law. It is also mentioned, that it is of a vital importance how to correlate and to consider the difference between the status and the development of legal theory on one hand and the legal practice on the other hand. The author is sure, that nowadays the convergence of the democratic and the autocratic methods, facilities, forms and ways of state governing should become one of the most substantial matters of the scientific research in the field of law. The author is persisting on his proposal of the obligatory usage of the potential of the other, contiguous to the legal one, adjacent sciences in order to obtain the most magnificent effect on the way to understanding law. At the very end of the article, while installing his inferences, the author describes his recommendations, targeted at the perfection of the scientific legal research activity quality, at the professional legal application level heightening and at the provision of the scholars' and of the legal practitioners' choice of the most optimal ways of approbation the results of the scientific research ventures, obtained by them. Particularly the author suggests promulgating these results done in the concrete determined forms, such as: through incorporating them into the process of teaching at the legal high schools, by a thorough selection of the informational resources for scientific analysis, by elaborating the criteria of the scientific research activities' quality estimation and by combining the usage of the normative and functional approach to understanding the destination and the role of law.

Keywords: quality, jurisprudence, science, scholar, law, functional, approach, studies, experience, task, society, manifestation, concept, model, knowledge, source, substance matter, evaluation, criteria, result, independence, creativity, terminology, references, presentation.

КАЧЕСТВО В ЮРИСПРУДЕНЦИИ

ХАССЕЛЬБАЛЬК Оле, заслуженный профессор Орхусского университета, доктор права
Королевство Дания, г. Орхус
E-mail: ole.hasselbalch@mail.dk

В статье сформулированы задачи науки, описаны и перечислены аспекты научной деятельности в сфере юриспруденции. Отвечая на вопросы о том, чем является право, и кто те лица, которые его изучают, автор констатирует, что унифицированный подход к пониманию права и способам, а также формам его изучения невозможен. Утверждается, что объективность востребованности юридической науки напрямую зависит от участия народа в правотворчестве. В основе права как социального явления и общественного регулятора лежат традиции, привычки, культура, социальный уклад общества, создающего право. В качестве примера приведены Скандинавские страны, в правотворчестве которых активное участие принимает их население. Автор излагает свою точку зрения относительно реализации кон-

цепции строительства правового демократического и социального государства посредством рационального, добросовестного и разумно достаточного правотворчества. Приводятся аргументы в пользу существования взаимозависимости качественного правотворчества и обеспечения надлежащего взаимодействия государства и общества. Рассматривается соотношение критериев научного изучения публичных правовых и исследования частноправовых явлений. Указывается на необходимость выстраивать последовательность осуществления научно-исследовательских работ в этой сфере в направлении от личности к обществу, а не наоборот, и точно определить предмет, задачи, цели, а также метод и средства научного аналитического подхода к изучению права. Обращается внимание на важность учета соотношения состояния и развития теории права, с одной стороны, и правоприменительной практики — с другой. Автор убежден, что в настоящее время объектом научных исследований в правовой сфере должна стать конвергенция демократических и автократических методов, средств и форм государственного управления. Следует использовать потенциал других, смежных с правовой, наук для достижения наибольшего эффекта в изучении права. Автор формулирует свои рекомендации, предназначенные для улучшения качества научно-изыскательской деятельности в правовой области, повышения уровня профессионализма в правоприменении, а также содействия выбору учеными и практикующими юристами наиболее оптимальных способов апробации полученных ими в ходе научно-исследовательских работ результатов. В частности, предлагаются конкретные формы обнародования этих результатов, внедрения их в учебный процесс в профильных учебных заведениях, тщательный отбор источников информации для анализа, выработка критериев оценки качества исследовательской деятельности, а также сочетание нормативного и функционального подходов к предназначению и роли права.

Ключевые слова: качество, юриспруденция, наука, исследователь, право, функциональный, подход, учения, опыт, задача, общество, проявление, концепция, модель, знания, источник, сущность, оценивание, критерии, результат, независимость, творчество, терминология, ссылки, представление.

DOI: 10.12737/article_58ec9f58421241.74820842

How do you assess quality of research performed by legal scholars?

I will try to give an answer to this question on basis of personal experience mainly from Scandinavian universities but also from commitments in other countries.

However, real science never gives definite solutions. Accordingly, I should say that all approaches to the issue are acceptable. Therefore, I could not claim to have a final formula.

1. The Task of Legal Research — the Idea behind our Society

For my part, I would take the starting point in a question:

Who are we as legal scholars and what is our task?

The role a legal scholar is supposed to play necessarily reflects the kind of society in which he or she works and which he serves. Surely, our focus is per definition “law”. But “law” means the overall norms — legal, religious, habitual etc., and not least the idea (ideology) — which form the basis of the functioning of our society. In other words the mortar which keeps the individual members of our society together — or rather: the control center which keeps the delicate machinery of a human society with all its wheels, axles, bits and pieces running smoothly. Therefore, our work is closely connected to the idea behind the running of this machinery, and this idea sets the agenda according to which we are supposed to perform our work.

Such an idea might manifest itself in a defined religion or a political ideology, but it might also manifest only an unwritten tradition unidentified in its role as the vital steering mechanism that prevents a collapse — or at least severe clashes between individuals.

Since long the European — including Russian — culture has been built upon Christianity. Over the last

centuries, modern democracies have developed on the basis of this religion and the idea of democracy grown in ancient Greece and — in some countries — even in ancient national traditions rooted in the social memory too, all molded together in the storm of the French Revolution and similar national events.

This gives us the first hint as to what we are supposed to do:

According to the European concept of how society should work there is not — and should not be — a comprehensive and ever-lasting religious or political formula according to which human societies shall always abide. In contrast, we believe that we should evaluate and deal with earthly phenomena after a concrete investigation of their nature. Moreover, as far as political decision-making is concerned, we hold that the individual citizens should evaluate the results of such an investigation within the framework of a political system which allows everyone to participate and give his opinion on and version of facts before the final decision in the matter.

The European concept as just described is in strong contrast to a pure totalitarian concept of how societies should run. Communism, Maoism and Nazism represented such a rigid totalitarian concept and it still forms the core of fundamentalist Islam. Here the idea is that it is in fact possible to work out — or maybe based on Nature’s laws, moral or a god to detect — an *ideal* formula as to how man shall behave. Therefore, in such societies there is no need at all for exchange of opinions and information on facts found. Nor is there a need for individuals’ participation in the political decision-making process since the correct formula to act by is already there — worked out by the elite of that society or even by one person only (“der Führer”, the Prophet or whoever he might be). The role

(mission) of the elite of such a society is therefore to rule others according to this formula.

Only few societies in this world fit into one of the other of these two models in their pure form. Nevertheless, as ideals they form the platform on which we are supposed to work it. Therefore it is important to identify their characteristics. So let us elaborate a bit on what I just said:

The two approaches have completely opposite starting points:

The genuine democratic model puts the individual citizen — and his integrity — in the center. Thus, according to this model, the individual may be entrusted not only to take care of himself, but also to participate in exercising the power of society. The individual is considered capable of performing this role — and he is considered sufficiently responsible not to abuse his power and possibilities in a way which seriously infringes the fellow citizens.

Accordingly, in such a society there is no need for laws on what the individual should do or not do, nor for rules as to which opinions an individual should hold. Therefore, the legislator only needs to put up a rudimentary framework of basic rules to play by in order to prevent violent conflicts among individuals. Within this framework, individuals may live and do as they please. “The private sphere” is wide and the integrity of the individual is a highly prized good.

Thus the genuine democratic concept is *liberal* — understood in the Scandinavian way, meaning that in principle no demands are put upon the individual beyond what is necessary in order to make society work. As for the *rest* of human life, it is left to the individual to decide for himself — in which context he could take guidance from custom and practice, from religious norms or from the ideas of the political party which he finds most attractive.

Moreover — and this is important to scholars — the democratic model put *emperi* in the center: it does not accept speculation as a valid basis for political decision-making, instead of facts established by the methods, which according to human experience are the best to produce verifiable knowledge. Accordingly, the idea is that there should be an ever-lasting search for new knowledge and that this search should be supported and protected by the State. Finally, the democratic model is pragmatic — tolerant in the sense that it does also accept *other* views and assessments. Consequently, a scholar in such a society must always accept that he will never be able to find nor to establish a final truth.

The genuine democratic model is in sharp contrast to the rigid totalitarian concept of how a society should work and of the role of the individual. According to this model, the starting point is that not all humans are equally clever and responsible. Thus, according to the totalitarian concept, it is necessary to adapt society according to experiences and goals of the elite formulated in the given ideology/religion. Moreover, since the given

ideal has no valid alternatives, it is justifiable to use any appropriate means to enforce the ideal upon society. In a totalitarian state, the needs of (the ideal) society always prevail even at the expense of its individual members. If a conflict between the two occurs, the interests of for the individual citizen should therefore give way. Likewise, the interests for the people or the nation must give way to over-national arrangements and institutions, which represent this ideal.

Consequently, it could be said that the rigid totalitarian model represents *elitism*, *intolerance* and *static thinking* since it pretends to represent the only and maybe even ever-lasting truth far beyond the understanding of and criticism from the common man.

So one key characteristic of the totalitarian model is that decision-making is *not* necessarily based upon *emperies* but on speculation.

Another key characteristic is the lack of willingness to accept that there *might* be other solutions than the general accepted ones. In contrast: in the eyes of its worshippers, the given totalitarian model is according to “history”, “ethics/morals” or “justice” per definition the *only* valid one.

A third characteristic is the idea that at the end of the day anything is permissible — deceit, manipulation, lies, violence, even murder — as long as it serves the purpose of creating or preserving the per definition “ideal” society.

Finally, the rigid totalitarian model normally offers an over-all solution as to how man should live his life: the private sphere of the individual is dramatically reduced — it might even totally disappear — and is substituted by comprehensive norms and legal rules on how citizens should behave and think privately and publicly at every aspect at any moment of his life.

Consequently, in a totalitarian society there is no room for freedom of speech for the individual. Nor is there any freedom for research ranging beyond the accepted borders. Because what would be the use of such freedom?

The totalitarian features sketched above lead to another characteristic phenomenon in rigidly totalitarian societies: usually worshippers of the given totalitarian model spend lots of time trying to make their theory and the actual reality fit together, and scholars are of course expected to participate in this effort. For example, in order to overcome discrepancies in this context, such worshippers might even rewrite history to fit their purpose or construe a mythology which could motivate acceptance of their ideal. It is also a characteristic that for pedagogical reasons such a mythology is usually anchored in forceful hero or scoundrel-roles. — For the Nazis, the “Jews” and “Bolshevism”, for the Communists “Fascism”, for the Islamic fundamentalists the “unbelievers”. Moreover, the definitions of such negative concepts are kept open to the interpretation of the elite. Totalitarian leaders will also expect their subjects/inferiors to support such hero/scoundrel-roles and accompanying slogans directly and indirectly on all possible occasions.

To sum up: the rigidly totalitarian models materialize as political ideologies or religions which leave no room for the individual or a scholar to have an opinion different from the “official” one, or from the “truth” handed over from an authority or a person in authority. Because a totalitarian society is governed not by the citizens, but by the elite, which has monopolized the right to decide what is right. The only legal and acceptable opinion in such countries is one and for all formulated by the given ideology or religion. There is no tolerance of differing opinions, and information that does not fit into the overall concept is suppressed.

Totalitarian societies will therefore face problems in the course of time. This is due to the fact that sooner or later reality and theory will not fit together in the ever-changing world. Moreover, totalitarian societies will never be able to reach the same level of materialistic and spiritual satisfaction for its inhabitants as a free society. Instead, totalitarian societies will tend to suffer from abuse by the privileged class, mutual mistrust among citizens, lack of goods and — eventually — end up in destruction.

2. Our Starting Point

As already said: I believe that only very few societies in the real world may be considered as totally totalitarian or totally democratic. I even see that some countries which market themselves as democratic models have serious problems in meeting the democratic ideal sketched above. However, on basis of the ideal we may conclude that legal research should *not* be preconditioned as to which results are the “right” ones, whether such restrictions are based upon religion, political idea, commercial considerations or even personal bias by the scholar himself or others of which he is dependent (for example his mentor).

So let us conclude:

Research — and under this legal research — in the modern, industrialized countries means finding the facts and gaining new knowledge. *Legal* research means gaining this knowledge in particular within the field of law whether it is dogmatic law, sociology of law, history of law or whatever we have due cause to define as related to law.

However, no effort of this kind could stay alone without presentation to others of the results. Thus legal research also encompasses the task of presenting the knowledge acquired to others in deference of the requirements in documentation, systematic approach etc. which make the results intelligible and credible so that they could be useful and even form the foundation of further research by others.

3. What forms Quality in Legal Research?

Now then on this basis: what forms quality in legal research in our part of the world — what are the criteria for evaluating such research?

3.1. Types of Written Works

The results of research are normally published in writing — on paper or electronically. In this respect, you should notice that there are different kinds of written works:

— One kind is what we might call “popular” information in books or articles aimed at a specific audience or the public as a whole suited the concrete purpose. The presentation as well as the depth of such works are aimed at the audience in question and they do not and cannot present in depth investigation of the subject matter.

— Another kind is textbooks aimed at law-students. Such books are broad, pedagogical presentations written according to the teaching institution’s opinion of what the students should learn and which presentation, systematic etc. is the most suited in the learning process.

— Yet another kind is “handbooks” (reference works) within broad areas of law or monographies and articles covering particular subjects aimed at the practicing lawyers. Such works should be extensive as to the details, and systematics should serve as an easy entrance to the relevant parts or at least secure logic and be exhaustive in the field of law covered. As examples could be mentioned commentaries on specific Acts of Parliament article by article or huge reference works on fields of law (labour law, law on associations, constitutional law etc.) including or at least leading to all important sources within the field.

— Finally, we have presentations of genuine research — books or articles — aimed at clarifying or verifying specific problems on the level of qualified legal research. Such works are adjusted according to the needs of the individual project and represent oftentimes a high level of abstraction and theoretical contemplation.

In Scandinavia only few works fit unequivocally into one of these groups since the commercial market for legal literature is limited and scholars so few that it is necessary to merge two or more of the above-mentioned approaches in the same work. However, this should not conceal the fact that not everything in printing but only works and part of works meeting the criteria of genuine research count as research.

3.2. Occasions of Formal Evaluation

Now then: on which occasions does a formal evaluation of the quality of legal research take place?

It takes place in connection with

- 1) Filling of posts (jobs) in universities and similar institutions,
- 2) When a scholar is evaluated for qualifying for a Ph.D. or Doctor’s degree or,
- 3) When an editor assesses whether a manuscript is suitable to be issued as a result of legal research (based upon peer reviews and opinions of consultants of the editor).

In broad terms university posts and scientific degrees are allocated according to a distinction as to

- 1) Whether the person in question has proved that he or she masters the *technique of performing qualified legal research* or
- 2) In case of filling in a professorate (chair) or conferring a doctor’s degree (in some countries even a Ph.D.) whether

he has performed a work which is a *considerable progress for science*.

In case it is a job application, the formal evaluation of the assessment board would in my country normally be structured as follows:

- What does the applicant apply for (the job advert),
- the formal/legal requirements which should be met by the applicant,
- the persons performing the evaluation (the evaluation board),
- the applicant's factual background related to the post (the relevant part of his CV),
- the applicant's production (books, articles, contributions to databases etc.) — and if more than one author is involved a declaration of who made what.
- For senior posts: does he/she have managerial capability?
- For posts including teaching: what are his/her qualifications to teach?
- A conclusion containing the opinion and maybe recommendation of the evaluation board.

3.3. What to look for

3.3.1. Job applications

In applications for senior posts, it is of importance to have additional monographies to the Ph.D., because such a thesis might reflect help given by the author's tutor. Moreover, it is important to notice that textbooks written for students do not count for more than they are i.e. illustrations of the author's ability to present his substance in a *pedagogical* way.

Often applicants add students' evaluations to the application. However, such evaluations should not be taken too seriously since students might not know what they need most and often even value entertainment higher than learning.

Another element which often boosts job applications, is presentation of the applicant's wide cooperation with others — groups, networks etc. — participation in conferences, seminars etc. However, in this respect it is important to remember that contacts and activities of this kind come easy and might be of little relevance as evidence of the participant's ability to perform high-quality research.

Finally, even if references to the applicant's contacts with the press, quotations in the media, popularity among journalists and participation in the public debate are often made in applications it should always be remembered that such kind of qualification is not a proof of his skills as a scholar.

3.3.2. Quality Evaluation in Itself

But what do you look for when evaluating whether an article or a book contributes to our knowledge to a degree which qualifies as high-quality research?

I myself usually start by reading the table of contents and/or the abstract in order to find out what it is all about. After that, I check the register for references to relevant literature in order to see whether the author has taken into account the most important previous works within my

field of knowledge. If not I might suspect that the quality of what he performs is not what it should be. Next, I scan the full text from one end to the other in order to have an impression of his presentation — language, level of documentation and logic in handling the subject matter. Finally, I close-read the full text.

When it comes to the final evaluation, the first two key questions are:

- has the author performed the (relevant) task, which he took upon him — even if this is possibly not the same as the task I might have liked him to undertake?
- Has he enriched the substance by giving us a knowledge we did not have before?

As for a third question namely the quality-evaluation itself, under way in the reading process I have in mind some criteria which I use to distinguish genuine research from other written products:

3.4. Key-Parameters

3.4.1. Does the Subject Matter of the Author's Efforts represent a Relevant Choice of Subject?

The choice of subject matter should of course be based upon a reasonable priority of the author's prospects for success or failure. Moreover: is the subject matter a new one or not, is it broad or narrow and is it easy or difficult to handle? Is it suited for a deep study at all?

In addition, is it timely and is it possibly even a key subject so that research performed within the field could form the basis of other studies? How is it related to the needs of society — or in other words: what is the practical value of a study? Is it a stepping-stone for future studies by the same author?

If the answer to these questions are all or partly a yes, it is a plus-value. The same goes if choice of subject in itself shows independence, originality or creativity.

On the formal level, of course, the subject should be properly bounded and the research questions should be clear. Moreover, have the necessary questions been put? Could the questions asked possibly have been put in a different way so that the answers might have led to other results? In any case, the questions asked should be precise and questions of different nature kept apart from each other.

3.4.2. The Author's Overview of the Subject Matters involved and his functional approach

Also the author's insight into the overall structure of the field where his research has taken place counts. Does he know exactly where he is?

A frequent problem in this context is that many authors make their stating point in the positive rules — for example the text of the Statutes involved. Or they stick to the traditional concepts or terminology. However, different Statutes might deal with the same legal problem, and the formal wording in a Statute might only partially reflect what is actually in the law. Moreover, existing concepts and legal terminology might not still be useful and could even form constricting ties to the mind when you approach new issues. Therefore, in most cases, the starting point of

an investigation of a legal problem should *not* be the formal rule, which applies, nor should it be traditional concepts, but rather the *functional* problem, meaning the practical situation regulated by law and not law itself or the way in which lawyers traditionally defined the situation.

The reason why many authors resort to deal with the most conspicuous issue first (or even only) might be that the pure amount of positive rules will often blur the overview and consume attention to such a degree that it is no easy to take a step back and ask: what is this all about? Moreover, a major part of the relevant literature does not use the functional approach at all.

3.4.3. The Depth

As for the depth of the work, in my country practitioners — attorneys, judges etc. — have written a considerable part of the legal literature. Their background make them give priority to the immediate information-value of what they write rather than to in-depth analysis. Even scholars might be tempted to go astray due to this model of writing. Thus, some scholars just slide on the surface and enumerate this and that even if they like to present their work as being genuine research. However, that kind of performance is in fact not research.

Therefore: does the work exhaust the problems involved in the subject matter; how close is the author to the relevant sources; has he taken the necessary time for his analysis? This of course implies that the author should not have ignored already existing knowledge, and that his solely repeating of second hand knowledge cannot substitute depth.

3.4.4. The Sources

Next question is what the work is based upon: is the author's search for sources serious and is his use of sources loyal to what he found?

In all, the work should not be based upon only what the author found by accident, on the sources which are easiest to read or on what it has been easiest for him to find.

In dogmatic works (works pretending to state what is valid law in court) of course the relevant Acts of Parliament should naturally be taken into account and the same goes for relevant case law. However, endless, empty quotations of such things are of little interest and the same goes for quotations of rulings — or part of rulings — of no interest to the analysis.

Moreover, all relevant literature should be taken into account in such contexts — but not more than what is relevant. Thus, the length of the list of literature in itself is no criteria for the quality of the work performed, and neither is useless quotations of works of others in order to show everything the author has gone through. Normally, it is also imperative that the author uses the most updated works (or latest editions).

Finally, in many cases, it is important to describe and document the reality upon which the formal rules apply (interviews, statistics etc.).

Of course all sources should be referred to in a way so that others are able to find them.

In all cases, it is imperative that relevant, already known sources are found and that all sources are evaluated in the author's context. In this context, if the author rejects what has hitherto been accepted, he must argue why and not just look the other way.

It could be a mighty job for a reader to check that all sources have been taken into consideration. Therefore, to convince the reader that all relevant sources are found and exhausted, the author should always explain how he collected his material and where and on which grounds he drew his boundaries in this context. Anyway, if the author's list of literature seems sufficient within one's own field of expertise, he is likely to have found also what is relevant in other fields. However, in case it is impossible to check the author's sources, one should ask oneself: what is his relation to the sources and what time and which preconditions had he to deal with them?

As for the sources found: is the documentation of sources and additional arguments sufficient to support his conclusions? Thus many works contain statements of this and that without necessary documentation of law and facts related to the issue.

A couple of additional questions arise in the context: has the material used been easy or difficult to find? To which degree has the author mastered to exploit what he found, and has he an imaginative approach to this process? Finally, if material in foreign languages is used, does the author master those languages to the necessary degree?

3.4.5. The Handling of the Material

The author should of course handle his material in an objective/unbiased way and be decent/loyal in his record of the sources. This means that his documentation should be true and accurate. Thus, misunderstandings should be avoided and direct distortion is unacceptable. As an example: when the author refers to other writers, in principle the record should be acceptable for themselves — meaning they could accept it as their own. Moreover, court-rulings should not be interpreted beyond their borders.

Therefore, the author should read key-sources twice — the last time for re-evaluation in the backlight of the progress made during the study.

Moreover, it is self-evident that facts should be separated from statements of the author's own (or others) opinion.

Another problem: how did the author handle the problems which showed up underway — has he for example for practical reasons left out relevant questions? Does he argue stringently without leaving out necessary steps in the argumentation, and has he sufficiently argued his possible deviations from traditionally accepted jurisprudence in the field? Does he base himself upon empiricism and not on fiction? Do his subjective evaluations seem to be rational? Does he keep necessary distance to the subject of his research?

Of course, the author should prove capable of building on what he finds underway and not stay within the template for the work made when he started. Sticking

to points of view, which prove untenable according to findings during the work, is for example unacceptable and keeping within defined boundaries just because it would be unpopular with somebody or leave them out because they are politically incorrect.

3.4.6. The Presentation

Finally, the work should be presented to the readers in an appropriate way.

First of all the systematic structure should be adequate so that everything relevant is taken into account in a way and order which makes it as easy as possible to follow the presentation of the substance. Systematics in itself is of immense importance to the reader's possibility to understand — not to mention for later use of the work. Moreover it helps the writer to see the context and logic within the field of his study. Therefore the structure should be presented in such a way that there are no logical defects or gaps. In this respect, it should also be taken into account whether there is already an accepted and still sufficient systematic approach for dealing with the substance matter. In all cases, the author should argue his choice of structure.

This implies that the structure should be clear and easy to overview so that it is easy to see and find the individual elements of the work. In particular headings should be apt and well suited to cover the substance of the individual parts. Moreover, in substance, each individual problem dealt with should be easy to identify and distinguish from other problems, and the presentation of problems should follow a logical line. Thus, a common thread should guide the reader — meaning that there should also be coherence between the author's presentation of his issue, his presentation of sources, his analysis and discussion and finally his conclusion (which is not the same as a summary). Of course, a sufficient register should be made of literature, case law, databases etc.

Many works are insufficient as far as structure is concerned. The reason might be that the authors become exhausted and just want to finish their work. Therefore they

do not reevaluate what they have found and restructure their presentation accordingly. Or it might be that the author is so closely linked to his results and own way of thinking and seeing, so that he does not appreciate that others who are not just as close to his subject do not just as easily understand what he is saying.

Another problem is that authors often tend to keep in the final edition a lot of stuff which was only relevant to clear their own thoughts underway. Such things might blur the reader's impression of what it is all about and distort his possibility to follow or even find the common thread. Therefore, authors should not leave in his work everything he has been through — or he should at least put things which are on the sideline in footnotes or *petit*.

Moreover, the linguistic presentation and the way of arguing is important. Thus the presentations should be linguistically precise, well covering the author's way of seeing things and apt to introduce his readers to the substance. So is the work as it stands convincing according to its own premises? Are the concepts used clear to the reader and the phrasing precise? Here again there is no reason to leave already accepted concepts and phrases unless it is of importance to show the (new) results of the author.

Even more, what is *new* in the work should be presented in its broader context — maybe in a historic context and maybe with references to foreign law. — Not to confuse with long references to or summaries of foreign law of no value to the understanding but made just to impress the readers.

Finally, the author should make necessary documentation *underway* — normally in footnotes — so that the reader is at every stage able to trace and check the sources used.

3.4.7. Additional

Finally, some additional things are of interest:

What was the personal basis of the author to perform his task? Is he new in the field and has he particular access for example to sources?

What was his strategy for doing the job? Was the work well planned and the plan executed?