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Methodology in (Doctoral) Legal Research

Janne E Nijman - Departing PhD Dean

What is legal research? What do we do when we study law? To some extent, these important questions are of all time. In the 17th Century, mathematics provided a model for legal research. Hugo de Groot, for example, set out to apply the mathematical method in his magnum opus *De iure belli ac pacis* (1625) to conform to what he considered to be the (desired) scientific standards of his time. And yet, in the more recent past there has been little reflection on methodology in legal research. The generally accepted research method was the so-called doctrinal or legal-dogmatic method (*juridisch dogmatische methode*).

Over the past 10-15 years, however, this 'internal' perspective was the subject of heated debate (for instance in legal journals such as *Ars Aequi* and *NJB*) and was gradually forced to give up territory. A number of reasons come to mind. Firstly, research funding institutions like NWO expect applicants to explain in clear terms to non-lawyers which method they will use for their research. The confrontation with other disciplines has spurred the methodology debate and stimulated legal research from an 'external' perspective. Second, related to the issue of funding is the attention paid to methodology in Research Evaluations (*Onderzoeksvisitaties*) and Reaccreditation (*heraccreditatie*) of Research Masters. In its 2009 Research Evaluation report (KNAW/NWO/VNSU), for example, the Committee pointed out that among the ten developments at the core of the transition of legal research was the move from 'implicit traditions towards methodology. There now is much more focus on methodological questions in general and on accounting for the research methods used.' Methodology and methodological accountability are among the criteria by which research, research programmes, and research institutes are assessed. The Committee considers this to be a desirable development – 'Netherlands legal scholarship has now become a true "science of the law"' – which strengthens the legal discipline. Third, this development is stimulated further by the process of internationalisation, which means inter alia the push to publish in internationally ranked journals. These journals review the submitted articles on methodology and

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methodological accountability. Fourth and adjacent to these external *stimuli* is the impact of, for example, the *Critical legal studies* movement on legal scholarship. It has challenged mainstream legal scholarship to question what law and legal scholarship is about, what the politics is of law or of a piece of legal scholarship. With its theoretical orientation and emphasis on methodology it has encouraged a shift away from traditional doctrinal research towards research applying external perspectives on law, that is, inter- and multidisciplinary research (drawing on eg economics, history, psychology, political philosophy, empirical sociological research, or moral philosophy).

This transition has impacted doctoral legal research significantly. On a more personal note, when I started my PhD in 1997, my dear and highly esteemed supervisor did not pay much attention to methodology - perfectly in tune with the times. When I brought it up and suggested that the methodology of the Cambridge School, developed by inter alia Quentin Skinner for his work on the history of political ideas, would be an appropriate method for my project it was kindly received. When I visited Benedict Kingsbury (New York University) to check whether this was at all a good idea, he encouraged me and commented 'that's a lonely business in The Netherlands.' We have come a long way. The transition in our discipline is clearly visible in the area of doctoral legal research. (HEB Tijssen, *De juridische dissertatie onder de loep. De verantwoording van methodologische keuzes in juridische dissertaties*, 2009).

Today, PhD candidates are confronted with methodological questions right from the start. At our Faculty, each PhD Research and Supervision Plan (OBP), written within the first three months, has to set out the research question and indicate the methodology that will be used to answer it. To determine the matching method is not always an easy task, whether in doctoral or other legal research. Like all (policy) measures of recent years, the attention given to the quality of the OBP aims to make the PhD process as conducive to quality and learning-curve efficiency as possible. This is an objective our Faculty must pursue, now that part of the changes in our discipline require PhDs to finish their research within a period of four years, while meeting quality standards regarding content as well as methodology. PhD education is designed with the same purpose in mind. The Course *Legal Methods* aims to assist PhDs in their methodological quest.

However, some confusion and concern persist. Within our Faculty, we find different views on methodology in doctoral legal research and legal research in general, as well as on how to respond to the methodological requirements in the year 2014. The discipline's transition touches upon all our work. Hence, it calls for a discussion. There is moreover a need among supervisors and advisors to be updated on the course on *Legal Methods*.

This is why I am very happy that a faculty-wide seminar on 'Methodology in Legal Research', jointly organised by ARILS, the Office of the PhD Deans, and the Scientific Committee of the Amsterdam Law School, will take place on November 13, 2014.

You have all received the invitation and programme. Please register at arils-fdr@uva.nl

After seven years, I will leave the PhD dean's office. In a year that shows an all-time *up* (over 20 (!) *PhD* defences) and *down* (no intake of *1st geldstroom* PhD candidates due to financial restructuring). The nett situation is a rapidly dropping number of PhD candidates within our intellectual community, something I think we all regret tremendously. In the coming years we will have to be creative in finding resources to keep PhD candidates coming in, they are an indispensable part of any research community.

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