

## Criteria for the evaluation of scientific achievements in private law

### Preamble

1. The assessment of the quality of works of legal scholarship in the field of private law is a familiar exercise for every private law scholar. Such assessment can be based upon a large and reliable body of recognized criteria. These criteria are often implicitly acknowledged; at the same time, they are based on intensive academic discussion about the meaning and correctness of legal arguments in all fields of private law research. In every day academic work such criteria are regularly applied, for instance in the assessment of theses, or in the context of filling vacant positions in law faculties; they are thus part of a common body of experience among legal academics.
2. This paper formulates criteria for the assessment of scholarly achievements from the perspective of private law. That does not exclude the criteria outlined in this paper from being used as a contribution to discussions outside the context of private law scholarship. The *Zivilrechtslehrervereinigung* (Association of Professors of Private Law for the German-language countries) makes no claim, however, about the applicability of the contents of this paper beyond the scope of private law.

### Principles for the formulation of quality criteria and their application

3. The principal criterion for the assessment of scholarly achievements is their scholarly quality. Beyond this very general statement, it is not possible to produce a uniform evaluation scheme against which all forms of private law scholarship can be assessed. This paper, accordingly, does not formulate such a uniform – or schematically applicable – assessment standard but rather names individual assessment elements. The weighting of these elements in individual cases can and must depend upon the subject matter of the work, the methodology and the objectives pursued, and also on the specific genre of that work. The differences with respect to methodology also include the distinction between individual and group-based research.
4. Private law research has always been subject to decentralized quality control through a system of mutual observation and assessment. This mutual quality control reaches far beyond the institutionalized evaluation of academic achievements in the process of

deciding about doctoral or post-doctoral theses, about appointments and promotions, or about the quality of legal research projects. It also finds expression in the academic discourse in general. This ongoing mutual and decentralized scientific assessment has proven to be particularly efficient. It is preferable to any attempt to develop centralized criteria aiming at a uniform system.

5. The subject of the scholarly discourse and the academic assessment must, in the first place, be the individual work of scholarship. The assessment of individual works of scholarship and an overall view of a person's academic activities can form the basis for an assessment of his or her achievements as a scholar.
6. In the formulation of assessment elements care must be taken to distinguish between primary assessment elements, which in themselves contribute to the quality of academic performance, and secondary assessment elements, which do not in themselves indicate academic quality, but which can be used as indicia for the existence of primary assessment elements.

### **Primary assessment elements for determining the quality of academic achievements**

7. The quality of works of legal scholarship will be determined by the degree of creativity on which they are based. The creative quality depends, above all, on the extent to which the contents of a work of legal scholarship can be regarded as original and innovative. Academic work is original, if it manages to formulate legal ideas which have been independently produced, and which are both creative and persuasive, as far as reasoning and result are concerned. An academic work is innovative if it contains new ideas which stimulate the legal discourse or advance the state of the law. This implies that with respect to the development of the law neither originality nor innovation represents an end in itself. Legal ideas must be measured by the criteria of legal accuracy, e.g. by relating in a meaningful way to the development of the law in general, of a specific legal area, or of a legal problem.
8. Another essential element of any scholarly achievement is an independent critical approach. This entails that the views of others are not accepted without examination, even if, where such views are adopted, that examination is not fully displayed before the reader. The criterion of an independent critical approach also determines with regard to textbooks or commentaries, i.e. literary genres which are primarily targeted at their

readers' information requirements, whether we are dealing with an academic achievement or with a mere compilation. Like originality and innovation, however, criticism is not an end in itself; it has to be measured against the criteria characterizing the scholarship in general.

9. The most important medium for legal scholars is language. The mode of expression – whether a text is easily comprehensible, clearly drafted, or perhaps even elegant - increases the persuasive power of a legal argument, but also usually reveals the depth of intellectual penetration of a problem. It is therefore a sign of academic quality.
10. Necessary, though not in itself conclusive, conditions for the quality of academic work are the observance of the rules of good academic practice and compliance with the rules of legal methodology. For contemporary legal subjects this includes a focus on legal doctrine without, however, being limited to that. Beyond this obvious minimum the quality of a work of legal scholarship can also be enhanced through the depth of methodical reflection and the transparency of such reflection. In any case the suitability of the chosen method for the specific piece of work at hand is a feature of the quality assessment. Recently, it has sometimes been suggested that every academic work must expressly explain the methodology upon which it is based. This cannot be accepted, at least not as a rigid rule. The legal methodology is often self-explanatory and is something that the relevant audience can be presumed to be familiar with.
11. Law ultimately aims at being applied. In the assessment of scholarly legal work account has to be taken of whether this has been adequately borne in mind. In particular, the quality of legal scholarship is increased by recognizing, describing and then solving a practical legal problem in a satisfactory manner. In this context, the difficulty and complexity of the legal problem must be taken into consideration.
12. Closely connected to this is how well the work has been received. To what extent has it stimulated academic debate or has prevailed within such debate as being correct or persuasive? Since the development of the law is also based upon an ongoing dialogue between scholarship and legal practice, the notion of reception includes the influence of a piece of academic work on the development of legal practice. Also the influence upon the discourse in other legal systems or disciplines may be an indication of particular effectiveness and productivity, even though this can differ from subject to subject.

13. Legal rules always have to be considered within a systematic context. The quality of a particular scholarly work – and of a scholar's œuvre in general – is influenced also by the extent to which this characteristic property of the law is kept in mind in analysing law and legal development as a whole, including extra-legal circumstances. Also the systematic and systematizing penetration of legal problems, e.g. within the framework of a commentary or textbook, can – depending on the degree of independence and originality displayed – therefore constitute a significant scholarly achievement. In the assessment of a scholar's œuvre at large it must also be considered to what extent his or her work is characterized by the meaningful development of focus areas and guiding principles, or the establishment of sensible connections between different themes and ideas.
14. The ability to distinguish between what is self-evident, and therefore does not require justification, and what is disputed or unknown, and therefore needs to be explained, is an essential prerequisite of high quality academic work. An author's ability to omit what is superfluous is also a sign of the quality of his or her work.
15. The productivity of a scholar is less important than the quality of his work. Yet, where the quality is identical or very similar, it does indicate differences in ability between different scholars and should therefore duly be considered in an overall assessment.

### **Secondary elements for the assessment of the quality of scientific work**

16. The place of publication can be an indication of scholarly quality. Neither the place of publication nor the fact that acceptance for publication occurs as a result of a peer-review process will, however, in itself conclusively demonstrate above-average academic quality. The same applies to so-called impact-factor calculations. Seemingly rational calculations on an impact-factor basis have to be rejected because they cannot adequately reflect academic achievement.
17. Interdisciplinarity is a method. The use of a method such as this is no conclusive indicator of the scientific quality of a work. In the same way, mono-disciplinary work cannot be considered to be, a priori, of superior or inferior quality. An interdisciplinary approach is justified or even required, when the underlying research topic or aim is of such a nature - for example in the field of legal policy – that it appears to be meaningful or even necessary. An interdisciplinary approach may then pose higher demands on the academics involved or lead to new insights. Under these circumstances, interdisciplinarity may be

taken into account when assessing academic quality, provided the appropriate standard is met. However, it must not be overlooked that recourse to extra-legal methods is not a scientifically neutral exercise. The extent to which extra-legal methods may be, or have to be, used in the interpretation of the law, is itself a subject of academic controversy. Moreover, the consideration of extra-legal insights and objectives will often influence the concrete legal results, e.g. by emphasizing the regulatory function of the law in the case of insights from economics or the social sciences. Any uncritical and global assessment of interdisciplinary research as superior is, in the field of research into private law, inappropriate.

18. The same applies to internationality. Internationality may impact upon the quality of academic research as a result of the amount of the sources taken into consideration, the higher demands upon the scholars involved, or the range of addressees targeted by such research. The degree of fruitful and thus quality-enhancing internationality depends upon the underlying research question. To the extent that the object of research is international, due to its nature or due to the sources involved, any limitation to a national horizon will be inappropriate. Similarly, the appreciation of a scholar's work beyond a purely national horizon may be indicative of its academic quality, whilst the reverse conclusion cannot readily be drawn.
19. Whether a problem is addressed by means of individual research or group research is also a question of the appropriate methodological approach. Again, neither approach, by itself, reveals anything about the academic quality of the resulting research. It must be measured against its suitability for addressing the specific problem or research objective.
20. Academic prizes and awards are no more than a secondary evaluation element, and sometimes not even that. The specific appreciation of the academic, and of his or her work, must always remain central.
21. The amount of external funding raised by an academic is not a criterion for evaluating the quality of his or her work. It is indicative, primarily, of certain activities. In private law scholarship, the acquisition of such funding is not usually a prerequisite for good research. The position may be different if external funding has been raised for individual projects in a highly competitive process which draws upon critical expert opinions. Even then, however, it is not the amount of funding but the quality of the project and – even more so – its results that are of relevance.