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Evaluation of research at Juridisk Institut at Copenhagen Business School

1. Introduction

By letter of 26th September 2006 from dean Jens Aaris Thisted we were appointed to evaluate the legal research which are carried on at the law institute at CBS.

The basis for the evaluation is the institute's self evaluation dated 20th December 2006 with several attachments, several books and articles written by members of the scientific staff provided to us and a site visit 7th and 8th February 2007. During this visit, dean Thisted informed us of the structure of CBS and the basic idea of the evaluation, we had talks with the leader of the institute Steen Treumer and we met eight other members of the scientific staff on different levels of positions with whom we discussed various issues. We also had the opportunity to discuss evaluation issues during a dinner with dean Thisted and vice dean Jan Mouritsen. The site visit was concluded by a short presentation for the scientific staff of our preliminary findings.

The evaluation is restricted to research; thus, education issues are not included. However, some issues bordering to education issues were nevertheless discussed, such as the relationship between textbooks for students and scientific writing, the fact that research is organised on institute level whereas education is organised outside the institute and the PhD education program. Some of these issues are reflected in the following.

2. A positive general impression

We want to make clear at the outset that we generally have found a lot of positive aspects concerning legal research at the institute. The output in terms of the number of books and articles is rather impressive and the quality is quite high. The institute has a strong profile on several areas and we are in particular impressed by the way in which European law is integrated into the various subjects.

Further, the efforts during the last year or so to expand on external financing and on international publication has provided significant results earlier than what could have been anticipated. The institute has succeeded in obtaining research grants from various domestic research councils etc. and have very recently been granted a significant amount from the EU (in collaboration with other universities). Also the efforts to expand on international publication have had a very significant effect: From 2005 to 2006 the number of articles

published in English increased from 23 to 42 (although nine of the 42 articles were written by one retired professor).

These efforts deserve merit and certainly points in the right direction. One should, however, not underestimate some problems that may follow. We will come back to the publication issue in another context later. As far as externally financed projects are concerned, it is important to be aware of the overhead costs which such projects generally imply. They are often higher than the grantor is prepared to cover. Of course, it is also important, in particular in cases where the money comes from private sources, to secure that the institute and the researcher(s) in question retain their scientific independence during the project.

We are impressed by the institute's organisation and its leader, Steen Treumer. He appears to take his appointment very seriously. He has been successful in implementing various strategic decisions (such as the internationalisation of publications). He has an open approach and seems to be well respected by the staff.

Our comments in the following should be read in the context of this overall positive impression of the research activities at the institute. It should also be mentioned that most of the issues which we discuss in the following under a critical perspective are not limited to the law institute at CBS. On the contrary, they are well known also at other law faculties and institutes in the Nordic countries.

3. Business law

The CBS Law Institute produces research relating to "business law" or "commercial law" (erhvervsjura). It is unclear whether this notion refers to a special area of law or characterizes a certain legal method, or both. Whereas the concept earlier may have referred also to a special method, there now seems to be a tendency towards not including in this notion any special legal method and instead only using the concept of business law as a description of the fields of law covered by the institute's research. Some members of the staff, however, seem to be uncertain in this respect.

To our opinion, the books and articles we have examined do not differ from other Danish legal research with respect to methodology. Some research is made on the basis of law and economics, but not all. Some research is made with a comparative perspective, but not all. The institute can hardly claim to be the only place in Denmark that applies law and economic theory and/or comparative law. We have not been able to identify any particular business law method at the institute - even though we acknowledge and appreciate that the institute is relatively strong in relation to law and economics and comparative law.

We would like to recommend the institute to discuss and clarify to young researchers whether a special legal method is used at the institute and, if so, whether such a method is preferred to be used by all researchers. Our prediction is that such a discussion will lead to the conclusion that no special method is preferred.

As to the fields of law covered by the institute's research, there seem to be no problems in practice. The researchers are free to choose to do research within the areas they find interesting and this has led to research within areas relevant to business and the education at CBS. There is a theoretical risk that the researchers will develop interests in areas not relevant for business law. *It could, maybe, be worth while to discuss to what extent researchers are*

free (and should be free) to choose topics for research which are not business law in any reasonable sense.

The institute is, to our opinion, too small to be able to cover high quality research on all topics related to business law. An apparent “gap” is the lack of research in company law. Should the institute apply a policy of not doing research in company law (being content with providing good lecturing to the students within this area) and allocate resources to areas where the institute has a potential of becoming leading (c.f. in employment law, intellectual property law or public procurement law)? Or should the institute promote new research to cover gaps, such as company law? *We recommend the institute to discuss whether it is better to develop top quality research within limited areas of business law or to provide good enough research covering most areas of business law.* However, we tend to think that company law is such an important part of business law – with important interplay with for instance contract law, credit law and tax law – that strong arguments would be needed to keep it outside the research portfolio of the institute.

We find it somewhat surprising that credit law is not within the realm of the institute, but instead located outside the institute in a special centre. Also this could be discussed in relation to what fields of law that should be covered by the institute’s research. *In the long run we recommend that centre of credit law is merged with the institute. In the short run, we would like to recommend the institute to establish close connections with the centre for credit law in order to create an inspiring flow of information and interaction between the researchers of the centre and the institute.*

In this context, we draw the attention to the fact that the self evaluation does not discuss substantial challenges for research, for instance such as those resulting from globalisation. Of course, many of the ongoing and completed projects originate from such challenges but *the institute may want to discuss a more comprehensive strategy in this respect.*

4. Interdisciplinary research

CBS provides an extraordinarily good basis for interdisciplinary research. In the near future it is likely that such research will be very attractive for external funding and that it will provide interesting results. We believe that CBS has a future chance to use interdisciplinary cooperation as a forceful competitive advantage.

Our impression is that there are barriers to establish interdisciplinary cooperation. Law researchers and researchers in business appear to have mutual hesitations towards each other. There is some cooperation between the economists and the lawyers, which we find very important and promising. We see a potential for many more areas of cooperation, such as credit law and accounting (c.f. with respect to comfort letters), corporate restructuring, corporate governance, competition, tax law and accounting, marketing etc.

We recommend the institute and CBS to develop means of encouraging interdisciplinary cooperation. Apparently, the present method of extra salaries is not a well functioning tool for creating such incentives. The researchers claim that there are too many factors and too little economic gains for the extra-salary-possibility to be attractive.

5. Cooperation

Notwithstanding the cooperation with other Danish academic institutions concerning the PhD program – which we certainly appreciate – there seems to be little cooperation in research

between the institute and other law institutes and faculties in Denmark. Considering in particular the limited scientific staff at the institute, *we recommend that initiatives are taken in order to establish such cross-institutional cooperation.* In particular, we believe that a closer cooperation with the law faculty at the University of Copenhagen is worth considering.

6. Scientific publication

CBS has communicated a strong wish to increase the number of international publications. The purpose is to attract more funding and to raise CBS's international standing. As already indicated, we are impressed by how successfully this strategy has been communicated and implemented. All researchers are fully aware of the strategy and all of them have during the last year published articles in English. The increase in international publication is astonishing and praiseworthy.

Internationalisation is problematic for law since most of it is closely tied to national aspects and partly only relevant for national readers. In this respect, law differs from most other sciences, not least economics. It is our impression that CBS centrally, the institute and the research staff all share the same awareness of this problem and all agree that it is necessary to create a balance between national and international publications. *We would like to recommend the institute to continuously discuss the balance between national and international publication.*

It should be pointed out that not all articles published in English or other foreign languages qualify as research. According to the self evaluation, not only the number but also the quality of the internationally published articles has increased and this development should be encouraged. As pointed out in the self evaluation, most law periodicals do not have peer review systems and there is no clear hierarchy indicating which are the most prestigious. In addition, high quality periodicals may publish very different kinds of contributions – from in-depth analysis of a great scientific value to short outlines of recent development. Thus, the quality of the research cannot be evaluated by only looking at where the articles are published. This, in turn, creates additional problems if – as we understand is contemplated in Denmark – the granting of funds from the state will be based (partly) on prestigious scientific publication.

We have no satisfactory solution to these problems (which are currently discussed also in other Nordic countries). An authoritative list of publications may be helpful as a point of departure but it does not solve the problem that different kinds of articles may be published in the same periodical. Furthermore, such lists tend to reflect where the staff members have published until now and not where publication could be possible and even preferable.¹ The staff members should be kept aware of this issue and encouraged to publish in periodicals which are considered prestigious within their field of law. For further consideration, we propose that each member of the staff in their yearly report ranks their articles and comment on their scientific value.

¹ A list of periodicals presented to us by the institute seems to be based on the first-mentioned approach, which in some respects makes it both too wide and too narrow. For instance, Advokaten probably does not typically publish research articles. The same applies to Cahiers de droit fiscal international to the extent it publishes national reports. However, general reports published here (very seldom by Scandinavians) would normally qualify as research. On the other hand, there are lots of prestigious periodicals which are not on the list and, therefore, such a list should not discourage researchers from publishing in them if they think that to be the right thing to do.

We find the institute's efforts to participate in international research groups very successful. We see a risk that such efforts are not sufficiently encouraged. *We would like to recommend the institute to establish clear incentives in order to promote future increasing participation in international research networks.*

7. Different forms of legal literature

Traditionally, legal scholars in Scandinavia to a large extent write books which are meant as combined textbooks for students, research literature and handbooks for practitioners. This tradition seems to be applied also at the institute.

In our view, this tradition is about to be challenged. First, it is increasingly difficult to write combined textbooks for students and handbooks for practitioners. The number of questions and issues which a practitioner would expect to find discussed in a handbook is expanding rapidly in most legal areas; in addition, practitioners are often more interested in solutions than legal methodology. Second, legal research is expanding rapidly and is most often discussing issues in a depth and detail which go far beyond what can be included into the curriculum. A textbook for students should highlight the basic issues, problems and legal techniques in order to convey to the students the best possible understanding of the issues; the solutions are of a lesser significance. A textbook can have no ambition of being comprehensive.

This means, in turn, that writing a textbook normally does not imply legal research to any significant extent. However, the textbook writer should be fully familiar with the research literature in the field of law in question and the text should be based on the insights of this research. In order not to be misunderstood, we want to underline that a textbook written along these lines should not be a mere descriptive outline of the rules in that field of law. On the contrary, the text should be problem oriented, it should discuss cases and preferably encompass comparative and international material.

An approach along these lines may open up more space for the scientific legal writing. In the traditional format, much of the available space must be used for rather elementary issues and there may therefore be insufficient space for the scientific writing (or alternatively, the text becomes much too long for student purposes).

We also anticipate and recommend that scientific legal writing in the future to a larger extent will be published as articles rather than monographs. Such a development is in good harmony with our views on textbooks for students and scientific writing above.

We recommend the institute to develop policies for book publications and articles and to make better distinctions between texts for students, practitioners and fellow researchers.

8. The doctoral thesis

Denmark has retained the dr. juris-degree after the introduction of the PhD. Traditionally in Denmark, a doctor's degree has been considered necessary to become a professor, even if there are several exceptions in practice.

The self evaluation raises the question of the future of the doctor's degree and during our talks with staff members we learnt that this is a widely discussed topic. Writing a doctor's degree does not fit well with the effort to publish in international periodicals because the subject for

the doctorate does not always lend itself to writing in English and the doctoral thesis traditionally is written as a monograph. However, it is worth noting that the regulations for the doctor's degree do not require a monograph; it is possible to pool a number of articles on related subjects and these may very well be written in English.

In our opinion the present situation is unfortunate because young scholars, who want to qualify for a professorship, receive contradicting signals as to what is most appropriate to do – embark on the doctor's degree trail or on writing articles. This issue is considered in a broader context in the following section.

It should be noted that neither Norway nor Sweden has two academic degrees.² *We recommend that the institute together with the law faculties and institutions in Denmark discuss the future of the doctor's degree in law.*

9. The unclear basis for qualifying for positions at the institute

During our talks with the younger members of the staff we got an impression that the requirements for obtaining a lectureship or a professorship are not as clear as they ideally should be. As far as professorships are concerned, this mainly has to do with the questions related to doctor's degree which was discussed in the previous section.

As far as lectureships are concerned, the problem is mainly that not only scientific qualifications are taken into account but also such things as the person's ability to attract external funding and experience in research leadership. Though we acknowledge the reasons of taking such qualifications into considerations, *we find the present lack of clarity unfortunate.* The risk that different levels in the assessment procedure may have different opinions on the relative weight of the relevant criteria - for instance the assessment committee being more conservative than the board of the institution - adds to the lack of clarity. *It should be clarified which is the required level as far as qualifications are concerned.*

10. The social environment

From our interviews we have the general impression that the researchers are content and happy with their jobs. Many refer to the good possibilities of discussing problems relating to research with interested colleagues whenever they are asked to participate in such discussions. Nobody has complained about being lonely in his or her research. This is of course very valuable and *we recommend the institute to discuss how this atmosphere could be preserved and developed.*

Although nobody complained about being unfairly criticized by colleagues, many acknowledged that it was very rare to praise each other and that the main focus in feedback was of negative character. *We would like to recommend the institute to develop means of recognizing the staffs' achievements and to make them known to the whole institute and also to encourage that congratulations and praise are exchanged regularly.*

It is a very positive development that several books recently have been written by a team of researchers at the institute. *We recommend that this continue and that the collaboration between authors increase.*

² Sweden has retained the *juris doktor* degree. Norway, admittedly, introduced the PhD some years ago; however, this is mostly a renaming of the old doctor *juris* degree.

From our interviews we have understood that the researchers are often not in the office. On a normal afternoon it is very likely that less than fifty percent of the researchers are present. Since we believe that inspiring research environments are crucial for future high qualitative performance and that such inspiring environments are dependent on every day informal meetings, we would like to *strongly recommend the institute to initiate a discussion on how to achieve higher presence at the office*. As expressed to us by many persons, we agree that it is not advisable to introduce mandatory presence. There are, however, other means of increasing the feeling of collegiality and mutual responsibility for creating an inspiring environment at the institute. One very simple effort is arranging brief and regular institute seminars, for instance at lunch time, where members of the staff present a topical issue from their field of law.

11. Research groups

We understand that the question of establishing research groups within the institute has been discussed but so far without a positive conclusion. *We think that the discussion on this issue should continue*. Research groups may be important not only as a vehicle to attract external funding – which we understand has been the basic idea until now – but also as a means to consolidate and develop a positive social and research environment within the institute. Such groups should, at least in the beginning, not be too formalised and it should probably not be required that every person belong to one such group. Considering the limited number of staff, the number of research groups should be kept relatively low.

We also want to point out that research groups may be cross-institutional. A research group may for instance consist of members of the staff at the institute and colleagues from the University of Copenhagen.

12. Gender equality

It is clear from statistics that women are in minority at the institute (at junior and senior levels). It is striking and unsatisfactory that the (few) persons involved in improving gender equality are all women. It is furthermore somewhat puzzling that there seems to be little awareness of the problem. We were informed during our interviews that the strategy to improve gender equality is to “employ and promote the best, irrespective of gender” which appears naïve seen in the light of the last two decades of gender equality debate. *We recommend the institute to improve its awareness in relation to gender equality*. In this connection, we draw the attention to the fact the institute has experts on gender equality in employment relations within its own staff.

13. Extra work

Academic lawyers traditionally have extra sources of income of different kind, typically by writing legal opinions, participating in law committees or in arbitration. The institute lacks an express policy on its employees' extra source of income. Such a policy is needed in order for the institute to ascertain that extra work does not interfere with the duties of the employees. Furthermore, such a policy is important in a situation where the outside world may put into question the extra work carried out by the institute's employees. The state, the press and other institutions will likely become increasingly interested in how universities manage their

resources and a clear policy on extra work will help to protect the institute and the employees against unfounded critique. A policy for extra work is being increasingly common at universities.

Summary – our recommendations

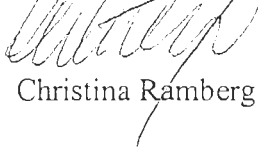
In summary we find that the institute is well organised and has a large scientific production of high quality. We have not identified any major problems although a number of matters could be improved.

We recommend

- the institute to discuss and clarify to young researcher whether a special legal method is used at the institute and, if so, whether such a method is preferred to be used by all researchers,
- the institute to discuss to what extent researchers are free (and should be free) to choose topics for research,
- the institute to discuss whether it is better to develop top quality research within limited areas of business law or to provide good enough research covering all business law,
- the institute to establish close connections with the centre for credit law in order to create an inspiring flow of information between the researchers of the centre and the institute,
- the institute to discuss a more comprehensive strategy in relation to future challenges,
- the institute and CBS to develop means of encouraging interdisciplinary cooperation,
- the institute to take initiatives in order to establish cross-institutional cooperation with the law faculty at the Copenhagen University,
- the institute to continuously discuss the balance between national and international publication,
- the institute to establish clear incentives in order to promote future increasing participation in international research networks,
- the institute to develop policies for book publications and articles and to make better distinctions between texts for students, practitioners and fellow researchers,
- that the institute together with the law faculties and institutions in Denmark discuss the future of the doctor's degree in law,
- to clarify which qualifications that are required to become a lecturer,
- the institute to discuss how the helpful atmosphere between researchers could be preserved,

- the institute to develop means of recognizing the staffs' achievements and to make them known to the whole institute and also to encourage that congratulations and praise are exchanged regularly,
- that the collaboration between authors increase,
- the institute to initiate a discussion on how to achieve higher presence at the office,
- that the discussions on how to establish research groups within the institute continue,
- the institute to improve its awareness in relation to gender equality
- the institute to develop a policy for its employees' extra source of income.

Göteborg, March 2007



Christina Ramberg

Oslo, 7 March 2007



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