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Conflicts and Commonalities in Judicial Evaluation

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Abstract

This article explores the proper role of judicial evaluation in relation to the various branches of government and a range of disciplines. Judicial evaluation is a practical, interpretive sphere of inquiry, based on dialogue and collaboration. It must respect important shared values, based on human rights and dignity, responsible approaches to research, and the conservation of resources. After outlining two contrasting approaches, from the European Commission and from Sweden, the article considers the roles of politics and knowledge or science (broadly defined) in judicial evaluation. Then nine values are enunciated, based on the common heritage of courts, government and scientific research. In the practice of judicial evaluation, meaningful data must be collected, reported clearly and interpreted transparently in dialogue with stakeholders. Conclusions should be consistent with the shared values, derived from honest arguments and communicated effectively. Researchers should be impartial, treat participants with equal dignity and respect their rights to privacy. Judicial evaluation must be useful in improving the administration of justice, without wasting time or resources of the courts or researchers.

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Key words

Judicial evaluation; performance studies; dialogue; values

Resumen

Este artículo analiza el papel correcto de la evaluación judicial en relación con los distintos poderes del Estado y una amplia gama de disciplinas. La evaluación judicial es un ámbito de investigación práctico e interpretativo, basado en el diálogo y la colaboración. Debe respetar importantes valores compartidos, basados en los derechos humanos y la dignidad, realizar un acercamiento responsable a la investigación y la conservación de recursos. Tras esbozar dos enfoques opuestos, de la Comisión Europea y de Suecia, el artículo considera el rol de la política y el conocimiento o la ciencia (en sentido amplio) en la evaluación judicial. A continuación se enuncian nueve valores, basados en el patrimonio común de los tribunales, el gobierno y la investigación científica. En la práctica de la evaluación judicial, se deben recopilar los datos significativos, informar de ellos claramente e interpretarlos de forma transparente en diálogo con las partes interesadas. Las conclusiones deben ser coherentes con los valores compartidos, derivados de argumentos honestos y comunicados de manera efectiva. Los investigadores deben ser imparciales, tratar a los participantes con la misma dignidad y respetar sus derechos a la privacidad. La evaluación judicial debe ser útil para mejorar la administración de justicia, sin hacer perder tiempo ni recursos a los tribunales o investigadores.

Palabras clave

Evaluación judicial; estudios de rendimiento; diálogo; valores

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1. Prologue

Judges, courts and judiciaries are experiencing a variety of judicial evaluation programs. New methods, based on systematic modes of inquiry, sometimes including the methods of the economic or social sciences, have been tested and adopted. These inquiries may produce positive findings regarding compliance with quality standards, while others may be critical. Current debates deal with both the role of judicial evaluation within the broader framework of governance and the administration of justice, and the values and methodologies that are to be applied in judicial evaluation. This article is an attempt to clarify the relationship between knowledge, power and values in judicial evaluation. By taking a sufficiently comprehensive view, we hope to derive some practical guidance for judicial evaluation research from the analysis. This prologue introduces two divergent examples of judicial evaluation and aims to provide some empirical background to the argument and analysis that follows.

In March 2013 the European Commission launched the 'EU Justice Scoreboard'.[1] It comprises indicators of length of judicial proceedings, capacity of the justice system to deal with the caseload, as well as other indicators of the courts' technological (ICT) development, of availability of alternative dispute resolution and training programmes for judges, of the number of judges and lawyers, as well as the citizens' perception of judicial independence. Twenty-four bar charts rank each country from best to worst, fastest to slowest, and make other broad comparisons. Even the simple binary data, such as whether a particular sort of training is available to judges, is expressed as bar charts.

The rationale, declared in the subtitle, is 'to promote effective justice [to enable] economic growth'. The Commission considered that 'before formulating country specific recommendations … there is a need for a systematic overview of justice systems in all member states', and such effort must be based on objective, reliable and comparable data (European Commission 2013 p. 2).Such statements clearly introduce the role and values of scientific inquiry into judicial evaluation.

However, the systematic rankings of EU judiciaries in each of the 24 dimensions considered by the report, and the very appellation of 'Scoreboard' reveals the underlying idea that ranks and scores are the analytical tools required for the systematic overview needed by the Commission and by judicial reform. No doubt such data are good for shaming or bragging, but generally give very little insight into *why* one court or one country does better, or worse, than another.

The Scoreboard makes a massive use of statistical data collected by the Commission for the Efficiency of Justice of the Council of Europe (CEPEJ), in its bi-annual judicial evaluation cycles started in 2008. The long term goal of this data collection is 'defining a set of key quantitative and qualitative data to be regularly collected and equally processed in all member states, bringing out shared indicators of the quality and efficiency of court activities in the member states of the Council of Europe and highlighting organisational reforms, practices and innovations, which enable improvement of the service provided to court users' (CEPEJ 2012, p. 7). However, without any insight into the causes of success or failure, there is no basis for developing reforms or improvements, so CEPEJ complements this data collection with other studies[2].

As a rule, the data provided by CEPEJ have already been collected by Member states for their own institutional purposes, and are therefore based on different operational definitions. Even the definition of "judge" or "case filing" can vary in the different jurisdictions. For this reason each table is supported by lengthy explanatory notes. CEPEJ also emphasises that the comparison of quantitative

[1]

[2] These works are based on case studies analysis, search and test of good practices, reform guidelines in areas like judicial time management, quality of justice, enforcement and mediation.

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figures from fundamentally different judiciaries 'should be approached with great caution by the experts writing the report and by the readers consulting it and, above all, by those who are interpreting and analysing the information it contains' (CEPEJ 2012, p. 9).

When CEPEJ data are presented by the Commission in its 'Scoreboard', the entire body of knowledge that qualifies the numbers provided in the tables disappears, as well as any caution about the comparability of the data provided. The Scoreboard is then promoted as 'a comparative tool which covers all Member States' (CEPEJ 2012, p. 3). The objectified rank becomes the only relevant information. This repudiates the very *raison d'être* of the CEPEJ study, which is 'to give an overview of the situation of the European judicial systems, not to rank the best judicial systems in Europe, which would be scientifically inaccurate and would not be a useful tool for the public policies of justice.' (CEPEJ 2012, p.9)

Another approach, developed by the Göteborg court of appeal and adopted in a growing number of Swedish courts (Hagsgård 2008), offers a useful contrast (see also Hagsgård's (2014) contribution in this collection). It is not based on multipurpose data collection, on problematic comparisons, or on rankings, but on annual joint inquiries about the functioning of the court, conducted by the court personnel (staff and judges) and with the growing involvement of stakeholders. The inquiry aims to map out shortcomings, to identify and implement improvement measures, and to evaluate the results reached. It is not just focussed on efficiency–faster processing times or reduced procedural bottlenecks–but also on other values such as fairness (treatment of parties and witnesses) and quality of judgements. The first steps identify what is working well and what needs to improve in court functioning and in the delivery of services. This is done through anonymous interviews carried out by selected and trained court personnel with their colleagues. Results are reported to court leaders, and discussed in small groups to collect further data and proposals about how to improve the functioning of the courts. Such proposals are presented to the court leader who has the power to decide on their priority and implementation. However, the court leader generally follows the suggestions made by the groups who have identified shortcomings and solutions. Court personnel (judges and staff) are then involved in the implementation, and in the evaluation of the results achieved. The process, called internal dialogue, is inspired by organisational learning (Argyris and Schön 1978), community of practices (Wenger and Snyder 2000) and, to some extent, to total quality management. It does not provide objective (or objectified) data, but a view–shared within the court–of how the court is performing in different areas. The internal dialogue cycle takes one year and can be reiterated and also enhanced by "external dialogue" with stakeholders. In this case, court personnel organise meetings with lawyers and prosecutors to understand what is working well, what needs to be improved and what steps can be taken to improve existing conditions. Then interviews, focused on the same issues, are carried out by court personnel with defendants, plaintiffs and witnesses after court hearings. The information collected and proposed solutions are discussed within the court. As with the external dialogue, the court leader draws on solutions identified in the dialogue to decide priorities and measures to be implemented. In both cases (external and internal) the evaluation is context specific and tightly coupled with potential solutions to the problems identified.

2. Introduction

Judicial evaluation works at the boundaries between the various branches of government. The executive and the parliamentary powers have an interest in the good functioning of the judiciary, as do the citizens themselves. However, these diverse institutional forces can promote or hinder collaboration in judicial evaluation. Centrifugal forces push against any form of collaboration between institutional players; centripetal forces encourage various forms of cooperation

among the diverse players involved in judicial evaluation. These forces derive from the traditional separation of powers that are intended to balance or even, at times, oppose each other and which are also branches of the one government with common goals and interests[3].

In recent decades, judicial evaluation has increasingly used statistical, social and economic methods to address issues of concern to a range of these institutional players. Having moved out of a strictly legal framework, this can lead to disputes over appropriate methods, criteria and values, while holding out the hope of improved collaboration and a broader view. This article looks for common values underlying science and politics in an attempt to overcome conflicts and optimise collaboration.

'Politics' refers to all the activities by which government projects legitimate power. Most fundamentally, it can be defined as 'the authoritative allocation of values' (Easton 1981). The term 'science' is also used here in a broad sense, to cover any systematic mode of inquiry. It is generally accepted that many sciences–sociology, palaeontology, history, ecology–draw on narrative, qualitative and other methods and are not limited to quantitative or experimental ones.[4] It also encompasses a broad range of ways of knowing and deciding, including practice and prudence (which will be further discussed below).

Judicial evaluation should draw on a suitable range of research methods, while appreciating their purposes, applicability and underlying principles. We consider exemplary instances of systematic inquiry in this field, such as the Swedish dialogue model, as well as cases which abuse their pretentions to objective science. The latter cases, such as the European Commission's 'Justice Scoreboard', discussed in the prologue, neglect the limitations of the data's reliability or validity, clearly stated by the data collection agency.

Despite instances of abuse, scientific or systematic methods are required and largely accepted in judicial evaluation, as demonstrated by the articles presented in this collection. Therefore, in addition to the institutional branches of government, judicial evaluation also involves actors from research institutions and traditions: social scientists, academics and other research personnel. They are expected to contribute by carrying out judicial evaluation based upon rigorous research grounded in fundamental legal and political, as well as scientific, principles. Those principles should express the important values underlying the social order.

This analysis begins by identifying judicial evaluation as a meeting of power and knowledge, represented by the various players involved in government, the judiciary and research. It then moves to find common values that apply across these various scientific, legal and political fields. Our argument is that the identification of such commonalities is the first condition of successful and rigorous judicial evaluation practice.

We have distinguished between a broad conception of science, as a systematic means of inquiry, and politics, comprising the techniques of power and government. There are, however, significant overlaps between these apparently distinct fields. Law offers a clear example of a discipline which is both a way of knowing and a technique of power. As an academic tradition (known as 'legal science' in civil law countries), law is a set of precepts and methods for dealing with evidence and reasoning to conclusions. Laws are also mechanisms for enforcing or limiting power, and so they have regulatory as well as heuristic power (Foucault

[3] We have explored such dynamics in Contini and Mohr (2007, 2008).

[4] This use of the term “science” is accepted in a growing number of countries as demonstrated by the Social Sciences and Humanities Research Council of Canada, or by the research programmes on Socio-economic sciences and humanities of the European Union.

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1969, 1991).[5] This overlap between power and knowledge, most apparent in law, is the defining essence of a 'discipline' in both senses: a way of knowing and a technique of power. There are systematic ways of knowing in the political sciences as in the physical or in the other social sciences. Conversely, scientific knowledge has a degree of authority, both within its own institutions and in society at large, where it lends legitimacy to particular arguments and decisions. To put it more simply: knowledge is power. Like any power, it can be abused. The honest and ethical application of research requires a firm base in appropriate values.

Judicial evaluation, as a form of inquiry at the crossroads of power and knowledge, must apply judicial performance criteria based on values appropriate to this milieu. There have been many attempts to specify suitable criteria for judicial evaluation (see for instance NCSC 1995, 2005, Shetreet 2012). The present authors have previously considered the institutional foundations of key criteria, noting that the three branches of government have distinct, but compatible, value orientations (Contini and Mohr 2007). Hence, accountability and independence need not be opposed to each other, but 'an inclusive approach to accountability may reinforce the very values that are thought to be threatened by it', such as independence (Contini and Mohr 2008, p. 52). We went on to propose a role for the public, as in the case of a 'Court Watch' group restricting conflicts of interest among the Dutch judiciary (Ng 2005, p. 313), or the role of survey data and reasoned public debate in improving the comprehensibility of judicial decisions in Denmark (Wittrup and Sørensen 2003). Values and practices of democracy and popular sovereignty were shown to act as a circuit breaker and lead to better judicial evaluation. In this article we introduce values appropriate to research itself, which adds a fourth, self-reflexive, dimension to this inquiry.

As we pointed out in those earlier works, respect for the core values of various branches of government need not impede a collaborative approach to improved court and judicial performance. Our aim here is to find practical guidance for judicial evaluation in the traditions underlying law, as a regulatory regime and as a systematic mode of inquiry, and in the heritage it shares with other branches of government and research: politics and science, in brief. These explorations are the focus of the next two sections, where we deal with the relations of knowledge and power, first in the institutions of government and then in the disciplines of law and of science. We then distill those common foundations into a number of guiding values which, we propose, could be shared among all the institutions with a stake in judicial evaluation.

Those values range from ones that are particularly important for the production of knowledge, through some that are generally (but not exclusively) associated with law, to those underlying popular sovereignty and good government. Hence, we deal with the importance of the proper representation and interpretation of facts, effective communication and argument, and impartiality. These values are fundamental to the practice and study of law, as well as to scientific inquiry more broadly. Researchers, like judges, are to argue clearly from evidence and interpretation to offer proposals for improved judicial performance that can be widely accepted. In addition, law prizes equity, fairness and human dignity, which must also be respected by government, and which also find a place in the principles of research ethics. To this end, evaluators are to treat the subjects of their research, whether judges, lawyers or parties, as collaborators in a common endeavour. We also discern a common interest in optimising the use of scarce resources, an economic or ecological value which promotes efficiency in advancing the other values. Timely resolution of cases can then be seen as a criterion for good court performance that is not an end in itself, but is one which derives from opposing waste and a respect for human dignity and the right to a fair trial. The

[5] There are also informal regulatory regimes, independent of government, which are not relevant to the present discussion of the judiciary in the context of government and the courts.

fourth section elaborates those values and clarifies their foundations before moving, in conclusion, to indicate some of the ways these values can improve the practice of judicial evaluation.

3. Power

The reflections in this article on the nature of judicial evaluation encompass both its intellectual parameters and its place in civil society. Since we aim to suggest practical improvements for judicial evaluation practice, this approach includes an appreciation of its potential to improve the quality of the administration of justice.

Judicial evaluation research often becomes aware of incompatible demands or disagreements between managers and judges, or judges and the media or politicians. Researchers may even be drawn into the debate, or have to defend particular methodologies, conclusions or criticisms. In this milieu, it is crucial to reflect carefully and critically about the values underlying evaluations and the criteria they apply. Those values must respect the social and legal role of the judiciary, while meeting the expectations and values of the executive and legislative branches of government, and of the public.

Political values themselves are notoriously divisive; between left and right, traditional and progressive. In addition, the institutional separation of powers is itself potentially divisive. Even if judges, public sector managers and politicians all go to make up branches of the one government, they have such different roles and traditions that conflict may ensue. If managers are exclusively focussed on efficiency, judges on legality, and politicians on their perceptions of the will of the people, then each may have their own guiding values that are seen as incompatible with the others. Judicial evaluation must face the challenge of the diverse institutional positions of the stakeholders and their constituencies, and their perceived interests and values. In rising to this challenge, it can contribute to the important intellectual and political exchanges between the judicial and the executive and parliamentary powers.[6] In such a role, it may be seen as a mediator, a catalyst, a facilitator or even a representative of a fourth power: the pursuit of knowledge, or 'science' in its broadest sense. As a mediator, 'speaking truth to power', it can aspire to cut through conflicts and zero sum games between the institutional state powers, or to unveil the empirical or theoretical weakness in particular debates. In any of these roles it is vital that judicial evaluation appreciates the values and ways of knowing appropriate to each of the powers or traditions it works with. There may be concerns that science and research may bring yet another point of view to a crowded, and not always peaceful, space. So it is all the more important to understand the positions of each of the protagonists, including the researchers'.

Researchers in judicial evaluation may not be, or may not appear to be, neutral and detached from their object of study. They may have structural or personal positions that align them with or against particular institutional interests. Economists brought in by the executive branch may have little background in matters of legal deliberation and so miss key issues required of judicial evaluation. There is a converse danger that those engaged by the judiciary, directly through courts or through representative bodies, may become judicial apologists. Researchers coming from outside the judicial system may hold particular political views or adopt approaches which are not those of the judiciary. There is a danger that they may become, or be perceived to be, critics for the sake of criticism. Even if neutrality can be difficult or impossible to reach in many judicial evaluation exercises, researchers need to respect epistemological values proper to their own forms of

[6] There are limited forms of judicial evaluation which are associated with one or another branch of government: for example, judicial review and legal appeals (judiciary) or fiscal accountability measures (executive). Here we are discussing independent judicial evaluation which, as discussed below, uses various research methods to assess judicial performance more generally.

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inquiry, which include impartiality, as well as appreciating the political and legal values underlying the judiciary's place in a democracy.

To find ways through these diverse approaches, it is important to choose appropriate terms and values. For all the differences in traditions, interests, values and ways of knowing, there are also deep sources of commonality. Careful choice of concepts and language well can lead to those sources, and avoid dead-ends at the borders of the different powers or disciplines.

The common sources of judicial and executive power, and of law and science, are historical, or even archeological, in Foucault's (1969) and Agamben's terms. The *archè*, an underlying concept or leading idea (often based in practice), has been called a 'wellspring' (*punto di insorgenza*) from which various traditions may diverge, later to become rigidified and cut off (Agamben 2008, p. 84-89). The different approaches–law, management or politics–branch out into various disciplines, in the full meaning Foucault (1969, p. 170ff, 1991, p. 102) gave that term. They are means of organising a social order, which carry with them a set of administrative practices and ways of knowing. We speak of judicial or executive power; we could as well speak of their distinctive ways of knowing in 'legal science' or '(public sector) management (studies)'. These different bases of power and knowledge must be appreciated and analysed in their own terms to find the commonalities required to build judicial evaluation exercises informed by and respectful of the different disciplines.

In trying to strip away some of the rigidification that has been built up around these disciplines, to reach a common source, it must be recognised that discovering a common ancestor is no guarantee of a happy family. To stretch this metaphor, it might be suggested, in Darwinian terms, that the various disciplines have diverged by adapting to their different institutional environments or niches. However, although their narrow interests may be in conflict, it is possible to seek commonalities in shared values, principles and epistemological frameworks. This article tries to find certain minimum agreed conditions as a foundation for collaborative work between judges, managers, politicians and researchers. These minimum conditions are seen as a seedbed to cultivate judicial evaluation addressed to practical improvement, and inspired by ethics and good government. It is only by recognising a common need for ethics and good government that judicial evaluation can fulfil its potential for practical improvement.

Keeping in mind that such common goals may be based on widely held views of good government, we return in section 5 of this article to seek a group of shared values that can be applied in evaluating judges and justice systems, and that can be respected by researchers and other participants, including judges and lawyers, public sector managers and court staff, as well as the public and their political representatives.

4. Knowledge

The discipline of law shares certain epistemological traditions with other institutions. Judging and public administration, like research, carry these traditions as part of their practice. Judicial evaluation proceeds through systematic inquiry to gain useable knowledge regarding one of society's most important institutions. It starts from theory, method and data, and aims to yield practical results.

There is a simple, conventional and highly influential view that divides scientific work into raw data, or facts, and general theories, or laws. This approach was elaborated in the mid-twentieth century by Karl Popper (1969, p. 240-241) and has been drummed into generations of students as the 'hypothetic-deductive method'. Yet its roots go deeper, to Francis Bacon (1960, p. 43), for whom science must 'derive axioms from the senses and particulars' through the examination of things. As Lord Chancellor, England's chief law officer, Bacon was well placed to draw

parallels between science and law. 'Facts' were used by Cicero (1954) to refer to justiciable acts or deeds, and found their way into law and history before Bacon and others applied the term to the natural sciences (Shapiro 2000, p. 167 ff). The approaches of law and scientific inquiry have diverged over time, following the political logic of their institutional bases. These centrifugal forces result in difficulties in cross-institutional communication, which are often evidenced in judicial evaluation debates[7].

Bacon (1960, p. 39) was also concerned with the practical outcomes of science, or the 'command' of nature, and in this, too, we find analogies with law. By inquiring into the cause of things, we can deduce the 'rule' which can be put into operation to achieve an effect. Twentieth century philosophers, including Hampshire (1989, p 53-54) and Toulmin, have noted the analogies between logical or scientific argument and legal argument, and both have their uses.

> Logic is concerned with the soundness of the claims we make–with the solidity of the grounds we produce to support them, the firmness of the backing we provide for them–or, to change the metaphor, with the sort of *case* we present in defence of our claims. (Toulmin 1964, p. 7)

Toulmin's book *The Uses of Argument* emphasises the legal analogy implicit in the terms 'case', 'defence' and 'claims', concluding that 'Logic … is generalised jurisprudence.' (Toulmin 1964, p. 7) Without wishing to make extravagant claims for law's precedence, it is hard to overlook the ancient sources of legal argument going back to Cicero and Quintillian, which predate modern notions of science by centuries. Law, science and practical reason have common roots as illustrated by their shared reliance on rational arguments, empirical facts and higher-level generalisations, including laws and theories.

Judicial evaluation must adhere to rigorous means for establishing facts, justifying conclusions through valid arguments, respecting human dignity and addressing persons and arguments impartially, with caution and rigour. These basic principles are as familiar to the judiciary as they are to researchers, and thus form a good foundation to guide the practice of judicial evaluation.

This brief inquiry into the common ancestors of law and science, and the nature of judicial evaluation as a systematic inquiry, now turns to some of the ways that sciences or knowledge have been classified. To situate judicial evaluation in relation to the other traditions with which it works, it is necessary to clarify what sort of a 'science' it is.

Aristotle (1976, p. 207 ff) distinguished episteme (scientific) and phronesis (practical wisdom) as two important ways of knowing. Judicial evaluation brings a degree of generalised scientific (epistemic) knowledge to the analysis of judging, but it also shares phronesis with the judges, who "bring the eye of the workman (in this case the judge) to understand what the circumstances require and to act accordingly" (Committee for the Evaluation of the Modernisation of the Dutch Judiciary 2006, p. 15-16). Bringing general theoretical principles and rigorous data collection to bear on specific circumstances, judicial evaluation is a *practical* science requiring prudence (phronesis). Some approaches to judicial evaluation are more general, theoretical or 'epistemic' (the present article for example) while others are more practical (e.g. Hagsgård's dialogical approach). Yet all require a fundamental understanding of judicial activity and a commitment to useful results.

Phronesis has the capacity to compare and distinguish among desirable outcomes. One's attention is focussed on what is important for the project at hand. Husserl (1931) revived the Aristotelian notion of intention, as the mind 'reaching out to' its object. We perceive things as they relate to our own projects and intentions: ‘things in their immediacy stand there as objects to be used.’ (Husserl 1931, §27). This

[7] As an example of this debate see Jean and Pauliat (2006).

active scanning of the world for relevant information is revived as a legitimate mode of inquiry, distinct from a passive perception of a world 'out there', which is removed from human and cultural projects or values. It is unrealistic to expect a passive, exhaustive and 'objective' view of a complex and multifaceted phenomenon like the administration of justice. Any assessment will actively select some features, guided by more or less explicit assumptions, intentions, values, or available techniques.

Since judicial evaluation investigates important cultural activities, including legal deliberation, good public management and democratic governance, its styles of research must take that into account. Consequently, its methods are not strictly legal, economic or political, but must be able to comprehend and encompass each of those disciplines. In various guises, judicial evaluation research may comprehend the principles of legal choice, count expenditure and outputs, and gain access to public perceptions.

In its aim to be comprehensive and practical, it is a science of diverse methods. Judicial evaluation is not an end in itself and should not be a ritualistic exercise, as with the publication of many courts' annual reports. Rather, at the end of this this endeavour, consequences and action must follow. The judge, after having heard the witnesses and the parties' arguments, must adjudicate the dispute. In the same way, judicial evaluation is complete and relevant only when it leads to identification of improvement measures; its success may be measured by the degree of their implementation and their effects on the functioning of the system. The Dutch judiciary currently uses an approach that respects such principles and guidelines. It uses qualitative and quantitative methods developed by various disciplines, and considers a plurality of quality criteria including productivity, quality of judicial decision-making, and treatment of court users. (Rechtspraak 2008, Langbroek 2010)

A concern with humanity is basic to judicial evaluation: it studies humans, who know what they are doing and understand and can contribute to the research. The research has consequences for them, and they know it, and they can modify their activity in line with their perceptions of their interests and of the research. They can also communicate about their activities and those of the researchers and other actors in the field. Interactions with the subjects of research are therefore crucial.

Judicial evaluation is, inter alia, an interpretive science. That is to say, it must understand the meanings of cultural expressions, including legal decisions, organisational culture and public demands. Even the interpretation of quantitative data benefits from the input of stakeholders, who generate, and in many cases also record and preserve it. Optimal interpretation requires researchers to know well the context in which they are working, and to enter into dialogue with their subjects. They can check and contribute to the interpretation of data, particularly if they are partners in the research. But their interpretation of the data is always relevant, even if they are not involved in the design and development of the study. Since 1999, the courts of the district of the Rovaniemi (Finland) have developed a method that involves judges, staff and external parties in the evaluation and improvement of justice services (Aarnio *et al.* 2005, Savela 2006). In this, as in the Swedish example, the involvement of the subjects evaluated in the assessment of the data proved to be an effective means for shared interpretation of data and for the identification and implementation of improvement measures (Mohr and Contini 2007, p. 40).

There is a danger that judicial evaluation relying on an autonomous and detached view of science appears to provide incontrovertible evidence for whatever facts are presented. Latour (2005, p. 19) has referred to the 'indisputable power of facts' as a 'worn-out cliché'.[8] As noted above, the EC's Justice Scoreboard, after some

[8] See also Mohr (2012, p 48, 62-63).

general disclaimers, presents its data as preinterpreted and without proper transparency. In that situation science is simply camouflage to disguise a partial position, apparently leading to automatic conclusions. Other examples show the power of an open approach to evaluative research, as in Sweden, where processes are transparent, findings interpreted collaboratively, and the implications for future action are discussed openly.

Any practical social research should always be an open, collaborative process moving between intention, inquiry, interpretation and results. So judicial evaluation must involve active interpretation of data and practical reasoning. It shares these ways of knowing with the law, which is also an interpretive and practical discipline. Since knowledge involves an intentional reaching out to the world, directed towards useful consequences, we conclude that any practical and interpretive science must be attentive to the values on which it is based.

5. Values

If judges, managers and evaluators are to work alongside one another, they need to share certain basic values. Judging, by judges or evaluators, always involves appreciation of the right and the good, as well as the true. So evaluation, whether based on legal or scientific methods, requires appreciation and selection of appropriate values.

The place of intention in practical reasoning indicates the importance of values in this area of science. Practical scientific pursuits, like medicine or evaluation, are constantly making positive and negative judgements. For all its scientific traditions, medicine constantly strives to improve health, to identify and deal with pathological conditions. Canguilhem's study of the normal and the pathological illustrates the fundamental importance of value judgements even when their terms are evolving and disputed. He concludes that the object of medical research 'is not so much a fact as a value' (Canguilhem 1991, p. 229). Medicine 'objectively, that is impartially', researches this world of values between the normal and the pathological, good health and illness. As already noted, the best forms of evaluation seek practical outcomes, and so they share medicine's urge to amelioration. Likewise, the objects of its research are values as much as facts.

In the material presented so far, we have argued that the foundations of judging and research lie at the intersections of knowledge and power. The common roots of science and law in ways of knowing may help open the way to better communications and improved cooperation. Both must recognise their social and political context as valued human activities linked to other important institutions of government and civil society. Judicial evaluation often uses particular criteria that are to be applied to the work of courts and judges, such as timeliness or fairness. Here we intend to go behind those criteria to find the broader values on which such criteria can and should be based. Drawing the parallels between judging and research, we seek values that can be shared between judging and research. Literature on judicial evaluation, philosophy of science and epistemology, and various research ethics and human rights instruments provide useful sources for a set of values and principles that can guide judicial evaluation, bringing together the common heritage shared by judges and researchers.

We have also drawn attention to the common origins and concern with good government which the judiciary shares with the executive and legislative powers. The values underlying judicial evaluation must also find resonance with those other branches of government, to avoid unnecessary conflicts, such as law *versus* management, and zero sum games, such as independence *versus* accountability (Contini and Mohr 2008, p. 49).

We propose certain values that can be shared between different branches of government and ways of knowing. In they are arranged, below, with the more

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'scientific' or epistemological values first, and those most specific to good government last. They might be seen as grading from values of knowledge to those of power; yet there is no clear dividing line between the two. We contend that all are applicable to law and judicial activity. Here we list nine relevant values, and the following paragraphs are numbered accordingly (5.1-5.9). The concluding section deals with each of those values in turn, in paragraphs numbered 6.1 to 6.9, suggesting practical ways for judicial evaluation research to address each of these values in turn.

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5.1. Reliable representation of evidence or data. Scientists, witnesses and judges should all do their best to report evidence faithfully. Judges must present any evidence fairly and comprehensively; not to do so may be grounds for appeal. Scientists must report the data as it was presented to them without suppressing inconvenient findings or fudging results. Witnesses, more simply and comprehensively, must tell 'the truth, the whole truth, and nothing but the truth'.

5.2. Valid interpretation of facts. This value is related to, but distinct from the first. Facts do not present themselves fully formed in the evidence, which may always be piecemeal, without an overview of the entire situation. (Think of the evidence of a number of witnesses, or the outcomes of a number of experiments.) Cicero (1954, p. 24-25) highlighted the role of facts (that which has been done: deeds) within the context of narrative and possibility. The facts must *fit* the evidence, but they are arrived at through a process of *interpretation*. This process may be informed by an appreciation of various other factors: the theory or paradigm within which the science operates, the law applicable to the case, or plausible understandings of human nature. Researchers, like judges, must approach the evidence carefully and in good faith, drawing appropriate inferences from the raw material of evidence.

5.3. Openness to dialogue, effective communication. If the previous value is based upon effective dialogue between the evidence or data and the law or the scientific theory, this is based on dialogue between colleagues and participants. Such forms of dialogue are related in research work, since diverse interpretations should be heard and justified (see also value 5.4.). Judges, like scientists, need to communicate by actively hearing the parties and witnesses, and by putting their own interpretations clearly and persuasively. Where research is based on human subjects, then it is good science as well as decent ethics to hear the ways the participants interpret their own actions.[9]

5.4. Valid argument. At the root of both law and science lie principles of honest and effective argument (Toulmin 1964). Conclusions should be justified through valid arguments, and participants should always be willing to concede to better arguments. This is equally true for lawyers, scientists or judges.

5.5. Coherence. The previous three values come together in the demand for coherence, in epistemological claims (Davidson 2006) as in legal decisions. Amaya (2011, p. 305-306) points out that epistemic conditions of coherence can justify both legal fact-finding as well as the reasoning of legal decisions. To be relevant to legal reasoning, the evidence is understood to the extent that it is coherent with the structure or theory of the case. A legal judgment needs to be argued coherently, that is to say, so that its terms are mutually consistent and meaningful. Likewise, judicial evaluation must reach coherent conclusions from clear criteria.

5.6. Integrity and impartiality. These are personal qualities, equally important to good researchers as to good judges, which can be promoted or undermined by certain institutional arrangements. This is the basis of the principles of judicial and academic independence, including secure tenure (NCSC 2005, Judicial Group on

[9] See Habermas (1990), on discourse ethics, Hagsgård (2014), on dialogue with participants.

Strengthening Judicial Integrity 2008, Andrews 2012, Shetreet 2012). In judicial evaluation, impartiality is required if researchers are to avoid falling into polarised categories of critics and courtiers, wreckers and apologists.

5.7. Equity and fairness. When dealing with the cases of particular parties, it is incumbent on courts and public administration to treat like cases alike, as stated in the Universal Declaration on Human Rights (UDHR); (United Nations 1948, Preamble and arts 2 and 7, Andrews 2012) and to afford all parties procedural fairness (Shetreet 2012). The National Health and Medical Research Council's (NHMRC 2007 (Updated March 2014), 1.4) *Statement of Ethical Conduct in Human Research* (NHMRC 2007 (Updated March 2014), 1.4), applies generally to human research carried out in Australia. It requires 'fair distribution of the benefits and burdens of research', and 'fair treatment' in the recruitment of participants and the review of research.

5.8. Respect for human dignity. Any responsible public actor must respect the dignity of the participants or parties that they deal with. In the case of judges, this applies to the parties before the court (UDHR, United Nations 1948, Preamble and art 1), and in the case of researchers, to the participants in the research. The NHMRC guidelines (2007 (Updated March 2014)) require 'recognition of [human beings'] intrinsic value' (1.10), including privacy and scope for participants to make their own decisions (1.12).

5.9. Conservation of finite resources. This value goes back to the principles of good housekeeping, or *oikos*, at the root of the words economy and ecology. Neither the planet nor any government administration has unlimited resources, so it is incumbent on courts, public sector managers and researchers to do their best with limited resources. This value underlies the goal of efficiency, while being somewhat more general. Courts should likewise do what they can to conserve the resources of the parties, and so discourage time wasting, and promote timely resolution. Timeliness is also derived from the 8th value, above, since it is a requirement of procedural fairness as established by art. 6(1) of the European Convention on Human Rights (Council of Europe 1950).

6. Conclusion

In conclusion, the nine values proposed in the previous section are discussed as they apply to the practice of judicial evaluation. A brief summary of the article's argument follows the numbered paragraphs.

6.1. Good, ethical and useful judicial evaluation collects meaningful data, which it then checks and reports in a transparent manner. Decisions on which data are worth collecting are made by reference to evaluation criteria based on the substantive values of justice systems. Data is not worth collecting, interpreting and publishing simply because it is readily available or because it can be expressed numerically. Data need not be quantitative. There are relevant areas of judicial performance, such as quality or understandability of judicial decisions, that cannot be meaningfully expressed in quantitative data (see the Swedish example and the efforts presented by Langbroek and Linden (2014) in this collection). In addition, qualitative data is often more easily understood within the judicial context, and buried under fewer layers of abstraction, than numerical data. Limitations of the data are acknowledged, not simply in disclaimers and footnotes, but in the interpretation of the data and in the conclusions that are drawn. So, for instance, if a range of conclusions could be supported by certain data, they will all be acknowledged, and stakeholders given the opportunity to comment. Much of the data that is readily available has very limited use in judicial evaluation, due to variations in ways of measurement across different courts and jurisdictions (i.e. a lack of reliability). Such data can work as "markers" of particular phenomena (delays, rather than fast processing), but these are only relevant if they lead to more comprehensive and context specific analysis.

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6.2 Valid data faithfully represents the reality under investigation. It does not interpret itself, but must be accommodated to a satisfactory understanding of the entire subject evaluated. This involves a broad and well-grounded knowledge of the subject, which can best be checked with the participants. For instance, in the Swedish dialogical approach, data collection is always followed by at least two steps in which data are checked from multiple perspectives, essentially by the entire court personnel. On the contrary, the Scoreboard presents pre-interpreted data where, as seen, there is no room for checks and additional analysis. The 2014 release of the Scoreboard, has responded to criticism by introducing some room for dialogue between the Commission and member states: 'Poor performance revealed by the Scoreboard indicators always requires a deeper analysis of the reasons behind the result' (European Commission 2014, p. 3). It is noted that good performance should also be analysed, for the lessons it may offer.

6.3. Dialogue with research participants and court personnel neither begins nor ends with data interpretation. The criteria and issues to be addressed in the research should be informed by the concerns, interests and values of stakeholders. (See the comments on data worth collecting, 5.1.) The implications of the findings should be discussed with a wide range of stakeholders (including judges, other court personnel, and the public). This dialogue may be carried out more or less formally, in conversation or on-line, in focus groups or through structured responses to published interim reports. Finally, all relevant stakeholders should have the opportunity to devise strategies to address any of the successes, shortcomings, constraints or opportunities identified through the research.

6.4. At all stages of judicial evaluation research, open and honest arguments and narratives should justify the purposes of the research, the methods, the findings and the conclusions (as they become available). These should be expressed to participants, and should frame the dissemination of the results to stakeholders and the public. In particular, conclusions must be clearly derived from transparent data, criteria and values. Strategies and responses should be derived from the findings, and not from agendas established elsewhere. They should be justified with the rigour and clarity of a well argued judicial decision. The EU Commissioner presents the Scoreboard under the 'justice for growth' agenda: 'timeliness, independence, affordability, and easy access are all hallmarks of an effective justice system. These are all crucial elements for making a country an attractive location for business and investment' (European Commission 2014, p. 1). This one dimensional justification of judicial services in terms of economic growth neglects the main institutional goal of justice systems.

6.5. Research, findings and strategic responses should form a coherent whole, each addressing the important values and criteria on which the evaluation is based. This consistency should be clear to stakeholders and the public. In the case of the Göteborg Court of Appeal, concerns over the quality and understandability of judgments led to efforts to improve the ways in which judgements are written. Thus, coherence was maintained from the purposes and aims of the research, through to the responses, and right down to the judgments themselves (Contini 2010, p. 117, 124-125; see also Hagsgård 2014).

6.6. Researchers coming to judicial evaluation, whether from within the courts, from a ministry, or from an outside research institution or consultancy, must clarify their own relationship to the subject of the evaluation. Motivations for the research should be confronted, and any conflicts acknowledged and dealt with. For instance, whether the courts are trying to justify increased funding, or the government is proposing cuts or reforms, the research should strive for impartiality to ensure its reliability and broad acceptability. Likewise, at the micro level, researchers need to approach each of the stakeholders and their concerns without preconceptions, and should hear all their points of view impartially.

6.7. The participants in research have equal human worth, whether they are judges, other court staff or parties. This implies that all will be kept informed of the purposes and progress of the research, and will have appropriate opportunities to access and comment on the results. The costs and burdens of the research, as well as the benefits, should be equally distributed. The clearest example here, is the involvement of all the staff, regardless their tasks or profile. M.B. Hagsgård (personal communication 29-30 March 2012)[10] has found that even the cleaners have provided useful assessments and suggestions about how to make the court building more hospitable.

6.8. Judicial evaluation research must respect the privacy and dignity of all participants and stakeholders. At a minimum this means files, proceedings and identifying data must be protected from inappropriate use or access. More broadly, the outcomes of the research should recognise the needs of all stakeholders and participants to have adequate control over their own circumstances, whether this be in the workplace, or in their litigation or other dealings with the courts. This value should inform research from the beginning of data collection to the point of deciding appropriate actions to address the findings of the research. More generally, ethical rules should be agreed upon to protect key values, including the basic rights required of the research process and those guiding the administration of justice. In Sweden, the developers of the dialogue method found it necessary to preserve the anonymity of the persons providing data, assessments and suggestions for improvements. The national representatives within CEPEJ were concerned that the Scoreboard's use of data collected for other purposes was a breach of trust with participants in the original data collection (a basic principle of research ethics). The issue was only resolved when CEPEJ was directed by its supervising body, the Committee of Ministers of the Council of Europe, to make the new data available for the preparation of the Scoreboard (CEPEJ 2013).

6.9. The research itself should not waste resources, and it should be attentive to the need for courts and judicial proceedings to be efficient. Cost effectiveness is no more than one value among the nine identified here, and it should be given appropriate weight in both research and court management. Costs and resources must be comprehensively understood by researchers, so that they include those of the parties as well as the court; of the judiciary as well as the executive. Consequently, the length of proceedings would be considered, but so too would the resources required to bring lawyers, parties and witnesses to court. Time and money should be spent well in achieving the vital aims of the judicial system. Research can contribute to this, so that any resources it requires can themselves be justified, either in terms of increased efficiency or improvements in any of the other crucial areas of the provision of justice. Despite the difficulty of assessing costs against benefits, it is safe to say that exercises with practical outcomes, such as the Swedish work reported by Hagsgård, are less wasteful than ritualistic exercises with no practical benefit, such as the Scoreboard.

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This article has sought to elaborate the principles to be followed by good judicial evaluation, a form of research that works at the boundaries of the various branches of government. Each has its own traditions of power and knowledge. Power is shared and at times contested between the various branches of government, while knowledge is understood in different ways by law, science and other disciplines such as public sector management. That these traditions share certain intellectual and historical roots offered the chance to find common ground at the most fundamental level of values. The nine values elaborated in section 5 were converted to practical guidelines in this concluding section.

[10] Marie B. Hagsgård. Treatment of parties and writings understandable sentences: Topic of the quality work of all wedish court in 2011-2014. *IRSIG-CNR Workshop.* Bologna, 29-30 March 2012.

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In summary, it is concluded that best practice in judicial evaluation should follow the guidelines just proposed. Meaningful data must be collected, reported clearly and interpreted transparently. This involves dialogue and collaboration between researchers and stakeholders. Conclusions should be derived from honest arguments and communicated effectively, just like a good judicial decision. The findings should be consistent with and reflect the shared values of government, law and research. Researchers must strive to be impartial, and where they do represent or report to a particular interest, this should be declared. Participants in the research are to be treated with equal dignity and respect, while their rights to privacy are respected. Finally, research should encompass the conservation of resources, both in the criteria applied to evaluating justice systems, and in its own practice. It follows that judicial evaluation can avoid wasting resources by applying these principles to improving the administration of justice.

References

Aarnio, A., *et al*., 2005. Finland. *In:* M.Fabri *et al*., eds. *L'administration de la justice en europe et l'évaluation de sa qualité.* Paris: Montchrestien, 227-248.

Agamben, G., 2008. *Signatura rerum: Sul metodo* Torino: Bollati Boringhieri.

Amaya, A., 2011. Legal justification by optimal coherence. *Ratio Juris,* 24 (3), 304–329.

Andrews, N., 2012. Fundamental principles of civil procedure: Order out of chaos. *In:* X.E. Kramer and C.H. Van Rhee, eds. *Civil litigation in a globalising world.* The Hague: Asser Press, 19-38.

Argyris, C. and Schön, D.A., 1978. *Organizational learning. A theory of action perspective.* Reading, MA.: Addison-Wesley.

Aristotle, 1976. *Ethics*. Harmondsworth: Penguin.

Bacon, F., 1960 (1620). *The new organon and related writings.* Indianapolis: Bobbs-Merrill.

Canguilhem, G., 1991. *The normal and the pathological.* New York: Zone.

CEPEJ, 2012. *European judicial systems, edition 2012 (2010 data)* [online]. Strasbourg: Council of Europe. Available from: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf [Accessed 13 December 2014].

CEPEJ, 2013. *CM(2013)104 add2, 12 August 2013* [online]. Available from: https://wcd.coe.int/ViewDoc.jsp?id=2091395&Site=CM [Accessed 22 December 2014].

Cicero, M.T., 1954. *Rhetorica ad herennium.* London: William Heinemann.

Committee for the Evaluation of the Modernisation of the Dutch Judiciary, 2006. *Judiciary is quality* [online]. The Hague: Ministry of Justice. Available from: http://www.coe.int/t/dghl/cooperation/cepej/quality/JudiciaryQuality_nl.pdf [Accessed 13 December 2014].

Contini, F., 2010. The reflective court: Dialogue as key for “quality work” in the swedish judiciary. *In:* P. Langbroek, ed. *Quality management in courts and in the judicial organisations in 8 council of Europe Memberstates* [online]. Utrecht: Montaigne Centre and CEPEJ, 151-173. Available from: https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1716655&SecMode=1&DocId=1666264&Usage=2 [Accessed 13 December 2014].

Contini, F. and Mohr, R., 2007. Reconciling independence and accountability in judicial systems. *Utrecht Law Review* [online], 3 (2), 26-43. Available from:

http://www.utrechtlawreview.org/index.php/ulr/article/view/46/46 [Accessed 13.

Contini, F. and Mohr, R., 2008. *Judicial evaluation. Traditions, innovations and proposals for measuring the quality of court performance.* Saarbrücken: VDM.

Council of Europe, 1950. *European convention on human rights and fundamental freedoms. Signed in Rome, November 4, 1950* [online]. http://www.echr.coe.int/Documents/Collection_Convention_1950_ENG.pdf [Accessed 22 December 2014].

Davidson, D., 2006. A coherence theory of truth and knowledge. *In*: *The essential Davidson.* Oxford. University Press, 225-241.

Easton, D., 1965. *A framework for political analysis.* Englewood Cliffs: Prentice-Hall.

Easton, D., 1981 (1953). *The political system.* New York: Knopf.

European Commission, 2013. *EU Justice scoreboard* [online]. Brussels: European Commission, Directorate General for Justice. Available from: http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_communication_en.pdf [Accessed 22 Dcember 2014].

European Commission, 2014. *The 2014 EU Justice Scoreboard. Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions* COM(2014) 155 final [online]. Bruxelles: European Union, Publications Office. Available from: http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2014_en.pdf [Accessed 13 December 2014].

Foucault, M., 1969. *L'archéologie du savoir.* Paris: Gallimard.

Foucault, M., 1979. *Discipline and Punish.* London: Peregrine.

Foucault, M., 1991. Governmentality. *In*: G. Burchell, C. Gordon and P. Miller, eds. *The Foucault Effect: Studies in Governmentality.* London: Harvester Wheatsheaf, 87-104.

Habermas, J., 1990. *Moral consciousness and communicative action.* Cambridge, MA: MIT Press.

Hagsgård, M.B., 2008. Internal and external dialogue: A method for quality court management. *International Journal For Court Administration* [online], 1 (2), 10-18. Available from: http://www.iacajournal.org/index.php/ijca/article/view/98/79 [Accessed 13 December 2014].

Hagsgård, M.B., 2014. Internal and External Dialogue: a Swedish Approach to Quality Work in Courts. *Oñati Socio-legal Series* [online], 4 (5), 993-1014. Available from: http://ssrn.com/abstract=2541449 [Accessed 23 December 2014].

Hampshire, S., 1989. *Innocence and experience.* Cambridge, MA: Harvard University Press.

Husserl, E., 1931. *Ideas: General introduction to pure phenomenology.* English translation from the German ed. (1913). London: Allen and Unwin.

Jean, J.-P. and Pauliat, H., 2006. An evaluation of the quality of justice in Europe and its developments in france. *Utrecht Law Review,* 2 (2), 44-60. Available from: https://www.utrechtlawreview.org/index.php/ulr/article/view/25/25 [Accessed 13 December 2014].

Judicial Group on Stregthening Judicial Integrity, 2008. *Mt. Scopus approved revised international standards of judicial independence* [online]. Available from: http://www.cristidanilet.ro/docs/MtScopusInternationalStandrds.pdf [Accessed 22 December 2014].

Langbroek, P., 2010. Quality management in the judicial organisation in the netherlands. *In:* P. Langbroek, ed. *Quality management in courts and in the judicial organisations in 8 Council of Europe Memberstates* [online]. Strasbourg: CEPEJ, Council of Europe, 81-91. Available from: https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1716655&SecMode=1&DocId=1666264&Usage=2 [Accessed 13 December 2014].

Langbroek, P., Linden, T. van der, 2014. Researching Justification Texts of a First Instance Court: from Assignment to Results and Reporting. *Oñati Socio-legal Series* [online], 4 (5), 1071-1098. Available from: http://ssrn.com/abstract=2533325 [Accessed 24 December 2014].

Latour, B., 2005. From *realpolitik* to *dingpolitik* - or how to make things public. *In:* B. Latour and P. Weibel, eds. *Making things public - atmospheres of democracy.* Karlsruhe and Cambridge MA: ZKM and MIT Press, 14-41.

Mohr, R., 2012. Signature and illusion: Lessons from the baroque for 'truth' in law, arts and humanities. *Australian Feminist Law Journal* [online], 36, 45-63. Available from: http://ro.uow.edu.au/lhapapers/337/ [Accessed 13 December 2014].

Mohr, R. and Contini, F., 2007. Judicial evaluation in context: Principles, practices and promise in nine european countries. *European Journal of Legal Studies* [online], 1 (2), 1-40 Available from: http://www.ejls.eu/2/30UK.pdf [Accessed 13 December 2014].

NHMRC - National Health and Medical Research Council, 2007 (Updated March 2014). *National statement on ethical conduct in human research* [online]. http://www.nhmrc.gov.au/book/section-1-values-and-principles-ethical-conduct [Accessed 13 December 2014].

NCSC, 1995. *Trial court performance standard and measurement system,* Williamsburg. [online] https://www.ncjrs.gov/pdffiles/tcps.pdf [Accessed 22 December 2014]

NCSC, 2005. *Courtools* [online]. Williamsburg: National Center for State Courts. Available from: http://www.courtools.org/~/media/Microsites/Files/CourTools/CourToolsOnline-Final.ashx [Accessed 22 December 2014].

Ng, G.Y., 2005. Nederland. *In:* M. Fabri, *et al*. eds. *L'administration de la justice en europe et l'évaluation de sa qualité.* Paris: Montchrestien, 301-320.

Popper, K.R., 1969. *Conjectures and refutations: The growth of scientific knowledge* London: Routledge and Kegan Paul.

Rechtspraak, 2008. *Quality of the judicial system in the Netherlands* [online]. The Hague. Available from: http://www.rechtspraak.nl/English/Publications/Documents/Quality-of-the-judicial-system-in-the-Netherlands.pdf [Accessed 13 December 2014].

Savela, A., 2006. *Evaluation of the quality of adjudication in courts of law principles and proposed quality benchmarks quality project of the courts in the jurisdiction of the court of appeal of rovaniemi.* Oulu: Painotalo Suomenmaa.

Shapiro, B.J., 2000. *A culture of fact: England 1550 - 1720.* Ithaca: Cornell University Press.

Shetreet, S., 2012. Fundamental values of the justice system. *European Business Law Review,* 23 (1), 61-75.

Toulmin, S., 1964. *The uses of argument.* Cambridge University Press.

United Nations, 1948. *Universal declaration of human rights. Paris, December 10, 1948* [online]. New York: United Nations. Available from: http://www.un.org/en/documents/udhr/index.shtml [Accessed 13 December 2014].

Wenger, E.C. and Snyder, W.M., 2000. Communities of practice: The organizational frontier. *Harvard Business Review,* 78 (1), 139-146.

Wittrup, J. and Sørensen, P., 2003. Quality and justice in Denmark. *In:* M. Fabri, P. Langbroek and H. Pauliat, eds. *The administration of justice in Europe: Towards the development of quality standards* [online]. Bologna: Lo Scarabeo, 119-145.