

## RETHINKING THE LAW SCHOOL

Law schools, by their very nature, tend to think locally, not globally. This book has a broader scope, both in terms of the range of nations and offers a succinct journey through law schools on different continents and subject matters. It covers education, research, impact and societal outreach, and governance. It illustrates that law schools throughout the world have much in common in terms of values, duties, challenges, ambitions and hopes. It provides insights into these aspirations, whilst presenting a thought-provoking discussion for a more global agenda on the future of law schools. Written from a perspective of a former dean, the book offers a unique understanding of the challenges facing legal education and research.

CAREL STOLKER has been Rector Magnificus and President of Leiden University since February 2013. He was previously Dean of the Leiden Law School. For many years he taught a range of private law subjects. He obtained his PhD degree with a comparative study of medical law. He was a deputy judge at the Court of Haarlem and a deputy justice at the Court of Appeal of 's-Hertogenbosch.





# RETHINKING THE LAW SCHOOL

Education, Research, Outreach and Governance

CAREL STOLKER

Leiden University





# **CAMBRIDGE**UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org Information on this title: www.cambridge.org/9781107073890

© Carel Stolker 2014

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2014

Printed in the United Kingdom by CPI Group Ltd, Croydon CR0 4YY

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data Stolker, C. J. J. M. author.

Rethinking the law school : education, research, outreach and governance / Carel Stolker, Leiden University.

p. cm.

Includes bibliographical references and index.

1. Law–Study and teaching.

2. Law students. I. Title.

K100.S76 2014 340.071′1–dc23

2014022419

ISBN 978-1-107-07389-0 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.



> To Hans (1958–1997) Great brother, passionate lawyer



Trois degrés d'élévation du pôle renversent toute la jurisprudence. Un méridien décide de la vérité; en peu d'années de possession, les lois fondamentales changent; le droit à ses époques. L'entrée de Saturne au Lion nous marque l'origine d'un tel crime. Plaisante justice qu'une rivière borne! Vérité au deçà des Pyrénées, erreur au delà.

Blaise Pascal, Les pensées (1669)

Three degrees of latitude reverse all jurisprudence; a meridian decides the truth. Fundamental laws change after a few years of possession; right has its epochs; the entry of Saturn into the Lion marks to us the origin of such and such a crime. A strange justice that is bounded by a river! Truth on this side of the Pyrenees, error on the other side.

English translation by W. F. Trotter



# **CONTENTS**

	Ack	nowledgments xi			
	Int	roduction 1			
	Som	e challenges for legal education 4			
	Abo	ut legal research 6			
	And	so many other issues 8			
	Are	deans responsible? 8			
	Som	ne methodological remarks 12			
1	Lav	v schools: some preliminary sketches 16			
	1.1	Law schools in all shapes and sizes 16			
	1.2	The United States and the United Kingdom 16			
	1.3	The European continent 19			
	1.4	Asia 25			
	1.5	Australia 29			
	1.6	Latin America 30			
	1.7	Africa 31			
	1.8	Some conclusions 37			
2	Universities and their strategic challenges 40				
	2.1	'Universitas: what a proud word!' 40			
	2.2	Funding of the universities 43			
	2.3	Widening participation: massification, diversification, privatisation and marketisation 47			
	2.4	Diversification in research and the triple helix challenge 55			
	2.5	Between institutional autonomy and state regulation 61			
	2.6	Academics versus managers 66			
	2.7	Globalisation and internationalisation of higher education and research 68			
	2.8	Size and scope: collaboration in higher education 77			
	2.9	Scientific integrity and the league tables: ever more writing, or more reading? $80$			

vii



viii		CONTENTS
	3	Law school in search of identity 88
		3.1 The 'odd man out' in the university? 88
		3.2 Should 'law' be in the university? 89
		3.3 Is law an academic discipline? 92
		3.4 Is law an international discipline? 101
		3.5 Does law need other disciplines? 109
		3.6 Producing academics or professionals? 114
		3.7 Tapping poor law students: education for profit? 116
		3.8 Values 120
	4	Educating law students 130
		4.1 'As university that world was known' 130
		4.2 What makes a good lawyer? 133
		4.3 An excursion into medicine 139
		4.4 Knowledge and understanding, attitude and skills 141
		4.5 Conclusions and outlook 149
	5	Pedagogy: teaching law students 153
		5.1 Some grounds for concern? 153
		5.2 Teaching and learning 155
		5.3 Do students differ? 157
		5.4 The case dialogue method 162
		5.5 Reading: what makes a good textbook for freshers? 169
		5.6 The challenge of mass education: the Leiden project 177
		5.7 Taking teaching seriously 182
		5.8 Conclusions and outlook 189
	6	Legal scholarship: venerable and vulnerable 200
		6.1 One question, nine answers 200
		6.2 Is 'law' a science? 202
		6.3 What makes legal scholarship vulnerable? 205
		6.4 Three perspectives on legal research 212
		6.5 Our common concern for law as an academic discipline 216
		6.6 Conclusions and outlook 228
	7	Lawyers' ways of publishing 231
		7.1 Goodbye to law reviews? 231
		7.2 The editors: student- or peer-run journals? 237
		7.3 Law journals: accessibility, quality, impact and readership 242
		7.4 Goodbye to law books? 248



		CONTENTS		ix
	7.5	Towards an international community of legal scholars	251	
	7.6	Conclusions and outlook 260		
8	Law	v schools' economic and societal impact 263		
	8.1	Legal scholarship: no longer a matter of life and death	263	
	8.2	Do universities have a third mission? 263		
	8.3	The world's 'grand challenges' 267		
	8.4	International legal cooperation: the example of Albania	269	
	8.5	Law and the city: the local impact of law schools 279		
	8.6	Conclusions and outlook 286		
9	Wh	ose law school is it? 290		
	9.1	Universities under attack? 290		
	9.2	The academics? 294		
	9.3	The students (and their parents) as consumers? 300		
	9.4	Our future: the PhD students? 308		
	9.5	The alumni and benefactors? 314		
	9.6	Nobody? University as a public good 321		
10	Cre	eating creativity in the law school 325		
	10.1			
	10.2	Towards a serendipitous microenvironment 328		
	10.3	Leadership = Being there 332		
	10.4	Creating creativity = Creating diversity 338		
	10.5	The importance of food and drink 344		
	10.6	Conclusions and outlook 345		
11	Gov	verning law schools: strategy, leadership		
		l collegiality 347		
	11.1	The importance of having a strategy 347		
	11.2	'Deaning' 351		
	11.3	Collegiality and shared leadership 356		
	11.4	Managing professionals? 359		
	11.5	My own five golden rules 362		
	11.6	Conclusions and outlook 364		
12	Tov	wards a common agenda for law schools: some		
=		iclusions 367		
	12.1		367	
	12.2			
	12.3	What law schools have in common 372		



X CONTENTS

12.4 Opportunities for governance 376
12.5 Opportunities for our research 380
12.6 Opportunities for our education 382
12.7 Conclusion: rethinking the law school 386

Glossary 390 Bibliography 403 Index 434



# **ACKNOWLEDGMENTS**

This project was too big for one person and too vast for one year. In writing this book I have had the good fortune to be helped by many enthusiastic people.

I opted to delegate separate chapters to experts in the relevant fields, such as education, research, third mission, psychology and governance. I am so grateful to them all, and mention their names and backgrounds below.

I would like to express my special thanks to Richard Astley and Ted May, with whom I have had intensive discussions about different drafts of the whole book on a number of occasions in the past year. I am exceptionally grateful to them for their critical comments, their support and for the fine discussions we had.

I would also like to thank Rosmarijn van Kleef, Otto Nieuwenhuis and Catherine Stip, who, as former students of Leiden Law School, provided welcome help and support at different times in my research.

I thank Ann O'Brien, Executive Director of the T. M. C. Asser Instituut, The Hague, for her many valuable comments on the substance of the book. My thanks also go to Boudewijn Sirks, Regius Professor at All Souls College Oxford, for his hospitality and his interest in the project, in that amazing place where the first Professor of English Law, William Blackstone, was once appointed and where the very buildings, books and people have merged to form a magical site.

I would also like to make separate mention of my oldest daughter, Sophie, a master's student at Leiden Law School. In recent years, while I have been involved in writing this book but also during my time as dean of the law school where she was a student, she had been a constant reminder of what legal education should be about: the development of students in so many different ways. It will not always have been easy for her, having her father as dean, but over recent years I have often thought: if, as Dean, you want to know what is really going on in your law school, enrol your own child!



xii

### ACKNOWLEDGMENTS

I would like to thank my wife Anneke, and my two other daughters Esther and Mirjam, for their continual support and for enduring my nervousness about whether or not I would finish the book in time.

I am equally grateful to all those who have provided critical comments on particular chapters, and, in some cases, on several Chapters. My thanks go to:

Mads Andenas (Professor of Law, University of Oslo Law School; Research Fellow of the Institute of European and Comparative Law, University of Oxford)

Umberto Ávila (Professor of Public Law, Federal University of Rio Grande do Sul, Brazil)

Adriaan Bedner (Associate Professor, Van Vollenhoven Institute for Law, Governance and Development, Leiden Law School, Leiden University)

Eric Beerkens (Senior Policy Adviser Internationalisation, Leiden University) Willem te Beest (Vice-Chair, Executive Board, Leiden University)

Jacques Beglinger (Swiss Holdings, Federation of Industrial and Service Groups in Switzerland)

Kurt de Belder (University Librarian, Director of Leiden University Libraries) Cornelis van Bochove (Professor of Science Policy Studies, Centre for Science and Technology Studies (CWTS), Leiden University)

Harry de Boer (Associate Professor, Center for Higher Education Policy Studies (CHEPS), University of Twente)

Jan Bolk (Professor, Leiden University Medical Centre)

Prachee van Brandenburg-Kulkarni (Owner/consultant at Vriksh2grow Consultancy BV)

Dominique Breillat (Emeritus Professor of Law, University of Poitiers, France)

Laurens Jan Brinkhorst (Former Minister of Economic Affairs and of Agriculture, Emeritus Professor of International and European Law and Governance, Leiden Law School)

Sheena Bruce (Project Director and QA Manager, Office for International Education, Leiden Law School)

Simone Buitendijk (Vice-Rector Magnificus, member of the Executive Board Leiden University, and Professor of Women's and Family Health at Leiden University Medical Center)

John Cartwright (Professor of Law at the University of Oxford; Professor of Anglo-American Private Law at the Leiden Law School; and Professeur Invité at the University of Paris II (Panthéon-Assas))

Kurt Deketelaere (Secretary-General LERU, Professor of Law, KU Leuven)



#### ACKNOWLEDGMENTS

xiii

Jan van Driel (Director, Leiden University Graduate School of Teaching, Professor of Science Education)

Naomi Ellemers (Professor of Social Psychology of Organisations, Department of Psychology, Leiden University)

Jürgen Enders (Professor at the School of Management and Governance and Director of the Center for Higher Education Policy Studies (CHEPS) at the University of Twente)

Pieter Feith (Former International Civilian Representative for Kosovo)

Gerrit Ferreira (Professor of Public Law, Faculty of Law, North-West University, Potchefstroom)

Henk Frencken (Educational expert, Leiden University Graduate School of Teaching)

Ioana Galleron (former Vice-President, Conseil d'Administration of the Université de Bretagne-Sud)

Cristina Gonzalez Beilfuss (Professor of Law, University of Barcelona)

Jaap Hage (Professor of Jurisprudence, Maastricht University)

Marilyn Hedges (Leiden University Centre for Linguistics)

Paul van der Heijden (former Rector and President, Leiden University)

Ronald Hooghiemstra (International expert in human rights and rule of law)

Robert Kloosterman (Professor of Economic Geography and Planning, Amsterdam University, Honorary Professor at the Bartlett School of Planning, University College London)

Ans Kluit (Personal Assistant, Leiden University)

Peter Kutner (Hugh Roff Professor of Law, University of Oklahoma College of Law)

Rick Lawson (Dean, Leiden Law School and Professor of Human Rights) Thed van Leeuwen (Assistant Director, CWTS, Leiden University)

Els Lemaire (Former Head, Office for International Education, Leiden Law School)

David Levine (Professor of Law, University of California, Hastings College of the Law)

Ronald Meester (Professor of Mathematics, VU University Amsterdam) Hester Minnema (Director of the Educational Institute, Leiden Law School)

Anka Mulder (Vice-President for Education and Operations, Delft University of Technology)

Jan Nedermeijer (Former Head of the Department of Higher Education, Leiden University)

Sijbolt Noorda (Former President of the Association of Universities in the Netherlands and President of the Academic Cooperation Association, Brussels)



xiv

### ACKNOWLEDGMENTS

- Pınar Ölçer (Associate Professor of Criminal Law and Criminal Procedure Leiden Law School)
- René Orij (Assistant Professor, Department of Business Studies, Leiden Law School)
- Willemien den Ouden (Professor of Constitutional and Administrative law, Leiden Law School, and Dean of the Honours Academy, Leiden University)
- Laurent Pech (Professor of European Law at Middlesex University London, until recently holder of the Jean Monnet Chair of EU Public Law at the School of Law in NUI Galway)
- David Poarch (Former Assistant Dean for Development, Placement and Alumni Relations, College of Law, University of Oklahoma)
- Martijn Polak (Justice at the Dutch Supreme Court and former Professor of Private International Law, Leiden Law School)
- Geert Potjewijd (Former Resident Partner De Brauw Blackstone Westbroek NV Beijing Representative Office)
- Ton van Raan (Professor of Quantitative Studies of Science, Director of the Centre for Science and Technology Studies (CWTS), Leiden University)
- Sarah de Rijcke (Assistant Professor, Centre for Science and Technology Studies (CWTS until 2010), Leiden University)
- Annie Rochette (Professor, Département des Sciences Juridiques, Faculté de Droit et Science Politique, Université du Québec à Montréal)
- William Simons (Emeritus Professor, of East European Law, Leiden University, and Visiting Professor of Law, Tartu University)
- Boudewijn Sirks (Regius Professor of Civil Law at the University of Oxford)
- Irene Slootweg (PhD student/adviser TtT programme, Amsterdam Medical Centre/Maastricht University)
- Robert Tijssen (Professor of Science and Innovation Studies, Centre for Science and Technology Studies (CWTS), Leiden University)
- Christa Tobler (Professor of European Union Law, Europa Institutes of the Universities of Leiden and Basel)
- Frans Vanistendael (Emeritus Professor and Law Dean, Leuven University) Peter Verhaar (PhD, Leiden University Library)
- Kees Waaldijk (Professor of Comparative Sexual Orientation Law, Leiden University)
- Francis S. L. Wang (Dean Emeritus, Professor of Law, Kenneth Wang School of Law; Regent, Honorary Chair, Board of Regents, Soochow University, Suzhou, China; President of the International Association of Law Schools)



#### ACKNOWLEDGMENTS

 $\mathbf{x}\mathbf{v}$ 

- Don F. Westerheijden (Senior research associate, Center for Higher Education Policy Studies (CHEPS), University of Twente)
- Geoffrey Williams (Professor of Linguistics and former Vice-President for International Relations at the Université de Bretagne Sud)
- Paul Wouters (Professor of Scientometrics, Director of the Centre for Science and Technology Studies (CWTS), Leiden University)
- Frank H. Wu (Chancellor and Dean, University of California, Hastings College of the Law)
- My former colleagues from the Strategic Alliance of Research Faculties of Law (SARFaL)
- My former colleagues from the Leiden Institute of Private Law and the Meijers Research Institute and Graduate School

The royalties from this book will go to the international Scholars at Risk Network. Scholars at Risk is an international network of higher education institutions dedicated to protecting threatened scholars, preventing attacks on higher education communities and promoting academic freedom worldwide.