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Law, Legal Expertise and EU Policy-Making: Introduction

Emilia Korkea-aho and Päivi Leino-Sandberg

1.1 INTRODUCTION

1.1.1 *The Thrust of the Book*

Experts increasingly play a more central role at all levels of public governance. As holders of expert knowledge, they are considered trustworthy providers of certainty and answers in the face of increased complexity, interdependence and the fast-changing pace of life.¹ The authoritative certainty to which they lay claim causes them to be frequently called upon and consulted by policy-makers. Their importance has increased as policy-making has become more complex and intense. Yet experts cannot be contained within a single definition. They constitute a highly heterogeneous group and include in-house specialists, public interest stakeholders, lobbyists, and academics. This diverse group possesses specialised and technical knowledge across a wide range of policy fields and legislative instruments.

Expertise-driven policy-making is sometimes argued to be most noticeable in the European Union (EU). Not only does the EU rely on expertise, but it also nurtures the very expertise it relies on.² As Hans-W. Micklitz remarks in his contribution to this volume, '[t]he whole inner machinery of the EU is

¹ Peter M. Haas, 'Introduction: Epistemic Communities and International Policy Coordination' (1992) 46 *International Organization*, 1–37; Robert Dahl, 'Finding Competent Citizens: Improving Democracy' (1993) 351 *Current*, 23–30; Stephen Turner, 'What Is the Problem with Experts?' (2001) 31 *Social Studies of Science*, 123–149; Kevin M. Esterling, *The Political Economy of Expertise* (Ann Arbor: University of Michigan Press, 2004); Sean Gailmard and John W. Patty, *Learning While Governing: Expertise and Accountability in the Executive Branch* (Chicago: University of Chicago Press, 2013).

² For example, in 2011, the Commission responded to the call from a group of MEPs by establishing a financial programme to support the creation and running of two non-governmental organisations in the area of EU financial policy-making. In its press release, the Commission announced its support for 'the development of a *European centre of financial*

dependent on self-named and EU-certified experts'. However, research on the role of expertise in EU policy-making is predominantly interested in technical, scientific, organisational, or other non-legal forms of expertise, supplied by economists, engineers, and scientists. The discussion has overlooked legal experts, such as in-house legal advisors in national ministries or the European Parliament and legal professionals working in law firms, elsewhere in the private sector, academia, and not-for-profit non-governmental organisations (NGOs). At the level of international law, some studies have addressed the 'invisible college of international lawyers',³ but primarily through the international lawyers' own lenses and personal histories.⁴

This collection of essays fulfils a twofold purpose. First, we bring together a group of legal scholars and sociologists to investigate how lawyers, through the deployment of their expertise and knowledge, act as experts in matters of EU-related policy-making at national, European, and international levels. Our investigations contribute to sketching the contours of a new space for studying legal expertise. Second, we draw on theoretical and empirical research and the idea of law as a social and political practice. As a socio-legal work, the book aims to contribute to the methodological enrichment of EU law by engaging in both an empirical and self-reflective study of what constitutes legal expertise. Although focusing on the EU, the ideas elaborated in this book can be further discussed in other national, international, and transnational contexts of law- and policy-making.

In this introductory chapter, we contextualise the subsequent chapters by describing and explaining what we mean by legal expertise and provide some ideas as to why legal and nonlegal research has sidelined legal expertise. We

expertise that would stimulate the involvement of consumers and non-industry stakeholders' (emphasis added). In other words, the Commission assisted NGOs in becoming experts. See EU Commission, 'EU Commission adopts proposal to help fund financial services NGOs', press release, 15 June 2016.

³ Oscar Schachter, 'The Invisible College of International Lawyers' (1977) 72(2) *Northwestern University Law Review*, 217–226, at 217. See also Santiago Villalpando, 'The "Invisible College of International Lawyers" Forty Years Later', ESIL 2013 5th Research Forum: International Law as a Profession, Conference Paper No. 5/2013 (4 December 2013), <https://dx.doi.org/10.2139/ssrn.2363640>.

⁴ See, e.g., *Collection of Essays by Legal Advisers of States, Legal Advisers of International Organizations and Practitioners in the Field of International Law* (New York: United Nations, 1999); F. D. Berman, 'The International Lawyer: Inside and Outside Foreign Ministries' in Christopher Hill and Pamela Beshoff (eds.), *Two Worlds of International Relations: Academics, Practitioners and the Trade in Ideas* (London: Routledge, 1994) pp. 79–92; Michael P. Scharf and Paul R. Williams, *Shaping Foreign Policy in Times of Crisis: The Role of International Law and the State Department Legal Adviser* (Cambridge: Cambridge University Press, 2010).

then discuss what we know about legal expertise in policy-making and reflect on the methodology of studying legal expertise and experts.

1.1.2 *Defining Legal Expertise and a Legal Expert*

There is no single definition of expertise or expert. For the purposes of the present collection, we understand expertise to mean a person's widely recognised knowledge, skill, or technical prowess which is accorded status and authority by her or his peers. Legal expertise accordingly refers to legal skills and knowledge of the law gained through a formal legal education and work experience. To be called a legal expert, a person typically requires a university degree providing its holder with an understanding of the legal system. Formal legal education is necessary, as it entails professional recognition and distinguishes a degree holder from lay people, who may have an interest in, and opinions about, law but lack the professional qualifications allowing them to make legal arguments.⁵ Yet, a legal degree alone does not suffice, because the ins and outs of the profession are often learned in practice. The different contexts analysed by our authors are also visible in the definitions for legal expert that they use.

Does the EU have its own definition of a legal expert or a say in how to become one? While legal education has remained the prerogative of member states, the EU has had a role to play in the extent to which lawyers are able to offer legal services outside their home countries and become European legal experts.⁶ Secondary legislation sets EU-wide rules which nonetheless leave the national legislator with much discretion to shape the conditions under which a lawyer from one member state is admitted to another member state's legal market.⁷ In

⁵ Many fake lawyer scandals relate to cases where someone pretends to be qualified to represent clients in courts. Non-lawyers making legal arguments in politics or on Twitter rarely raise eyebrows.

⁶ In *Gebhard*, the ECJ required that 'Member States may not ignore the knowledge and qualifications already acquired by the person concerned in another Member State'. Case C-55/94 *Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano* [1995] EU:C:1995:411.

⁷ See Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, OJ 1977 No. L78, 26 March 1977, p. 17, last amended through Council Directive 2013/25/EU of 13 May 2013 adapting certain directives in the field of right of establishment and freedom to provide services, by reason of the accession of the Republic of Croatia, OJ 2013 No. L158, 10 June 2013, p. 368. See also Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, OJ 1998 No. L77, 14 March 1998, p. 36; Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ 2005 L255, 30 September 2005, p. 22 (as amended).

practice, member states have considerable influence in determining who can be a legal expert in their markets, regardless of EU rules and procedures. Traditionally, the legal profession, in particular as far as practising lawyers are concerned, is regulated neither by the EU nor member states, but based on self-regulation. As professionals, members of the legal profession are given discretion to determine their own rules of conduct. In exchange for this privilege, lawyers are expected to abide by a set of professional values – competence, independence, and serving the public interest – which distinguishes them from purely commercial actors.⁸

The legal experts we study in this collection have gained their work experience in various contexts: as legal advisors in EU or national bureaucracies and non-governmental public interest organisations, as lawyer-lobbyists in private practice, or as legal academics in universities.⁹ All possess legal expertise in EU-related policy-making gained through a legal education and practical experience. We understand ‘EU-related policy-making’ to mean the adoption and implementation of general decisions of political and social interest at European level by which we mean not only the level of EU institutions but also EU matters at national level and the EU’s increasing external policy role. Recognising the importance of national matters as EU matters cuts across the chapters of this book.¹⁰ Policy-making includes the legislative process, the adoption of regulatory policies or executive decisions, and the negotiation of international agreements.

⁸ Scott L. Cummings, ‘What Good Are Lawyers?’ in Scott L. Cummings (ed.), *The Paradox of Professionalism: Lawyers and the Possibility of Justice* (Cambridge: Cambridge University Press, 2011), p. 1.

⁹ We are leaving aside lawyers working in the context of adjudication and arbitration, since these questions are already covered in, e.g., Duncan Kennedy, *A Critique of Adjudication: fin de siècle* (Cambridge, MA: Harvard University Press, 1997); Arman Sarvarian, *Professional Ethics at the International Bar* (Oxford: Oxford University Press, 2013); Gregory Shaffer, Manfred Elsig, and Sergio Puig, ‘The Law and Politics of WTO Dispute Settlement’ in Wayne Sandholtz and Christopher Whytock (eds.), *The Politics of International Law* (Oxford: Oxford University Press, 2016); Yves Dezalay and Bryant G. Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (Chicago: University of Chicago Press, 1996); Sergio Puig, ‘Social Capital in the Arbitration Market’ (2014) 25 *European Journal of International Law*, 387–424.

¹⁰ It also connects with what the EU itself expressed in its first Rule of Law Report: ‘The EU is based on the rule of law. Threats to the rule of law challenge its legal, political and economic basis. Deficiencies in one Member State impact other Member States and the EU as a whole.’ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2020, ‘Rule of Law Report: The rule of law situation in the European Union’, COM (2020) 580 final, p. 2 (emphasis added).

1.1.3 Researching (Legal) Expertise

Expertise is a much-researched topic among social scientists, primarily sociologists and political scientists.¹¹ Lawyers have also studied the use of expertise and experts in various contexts of decision- and policy-making.¹² The standard approach to expertise in legal scholarship (to which, broadly speaking, the contributors to this volume belong) focuses on how judges deal with aspects of technical subjects of which they have limited mastery.¹³ Particularly at national and EU levels, these studies typically question the capability of (lower court) judges to adjudicate on highly complex information in various fields of human life, such as in medical reports or toxicology documents.¹⁴ Although such studies address the role of expertise in policy-making contexts, they focus exclusively on scientific and technical expertise.¹⁵

Legal research, but also research on expertise more generally, has ignored and overlooked what constitutes lawyers' 'own' expertise in policy-making. We believe that it has also left unexamined assumptions that underlie the nature of legal expertise ('technical', 'non-partisan', 'apolitical') and the conflicting expectations legal experts might encounter as to the role they should play. Despite the interest which scholars of international law have shown in the alleged 'neutrality' and 'invisibility' of expertise and in how experts frame discussions and influence policy choices and possible alternatives, there has

¹¹ Harry Collins and Robert Evans, *Rethinking Expertise* (Chicago: University of Chicago Press, 2007); Sheila Jasanoff (ed.), *States of Knowledge: The Co-Production of Science and the Social Order* (London: Routledge, 2004). On the role of expertise in defining a profession, see Mike Saks, 'Defining a Profession: The Role of Knowledge and Expertise' (2012) 2(1) *Professions and Professionalism*, 1–10.

¹² A representative example is Monika Ambrus, Karin Arts, Ellen Hey, and Helena Raulus (eds.), *The Role of 'Experts' in International and European Decision-Making Processes* (Cambridge: Cambridge University Press, 2014). See also, more recently, Vigjilencja Abazi, Johan Adriaensen, and Thomas Christiansen (eds.), *The Contestation of Expertise in the European Union* (Cham: Palgrave Macmillan, 2020).

¹³ E.g. Sheila Jasanoff, *Science at the Bar: Law, Science, and Technology in America* (Cambridge, MA: Harvard University Press, 1995).

¹⁴ E.g. Kenneth R. Foster and Peter W. Huber, *Judging Science: Scientific Knowledge and the Federal Courts* (Cambridge, MA: MIT Press, 1991); Maria Lee, 'Experts and Publics in EU Environmental Law' in Anthony Arnall (ed.), *The Oxford Handbook of EU Law* (Oxford: Oxford University Press, 2015), pp. 991–1041; Tiina Paloniitty and Mariolina Eliantonio, 'Scientific Knowledge in Environmental Judicial Review: Safeguarding Effective Judicial Protection in the EU Member States?' (2018) 27 *European Energy and Environmental Law Review*, 108–114.

¹⁵ For instance, none of the eighteen chapters in Ambrus et al., *The Role of 'Experts'* that concern environmental governance, human rights, and financial policy at international and EU levels discusses the role of legal experts.

been less interest in what constitutes the legal expertise of international lawyers.

We argue that as lawyers and legal scholars we have been slow at analysing our own expertise and whether our experience or conception of experts differs from those of other disciplines. However, this is not to suggest that lawyers have entirely avoided looking inwards up till now. The present collection is indebted to the attention given to the legal profession in the ‘law and sociology’ and ‘sociology of law’ literature. The central thrust of this literature is that the legal profession is believed to enjoy a unique role in society. Legal professionals are trusted to handle important matters and take professional responsibility for policymakers and clients’ affairs, be they conducted in the public or private interest.¹⁶ Studies internal to the profession are mostly centred on questions of professional independence as a governing principle of legal expertise. Studies on legal professionals as experts in policy-making are rarer and largely US-centred.¹⁷

The absence of studies on legal expertise as a defining feature of the legal profession is perhaps most striking in the EU context. Ever since the introduction of Cappelletti, Seccombe, and Weiler’s ‘Integration through Law’ project,¹⁸ few have doubted the centrality of law in the European integration

¹⁶ See, e.g., Richard L. Abel and Philip S. C. Lewis (eds.), *Lawyers in Society*, 3 vols. (Oakland: University of California Press, 1988–1989); Richard L. Abel, ‘Comparative Sociology of Legal Professions: An Exploratory Essay’ (1985) 10 *Law & Social Inquiry*, 1–79.; Terence C. Halliday, *Beyond Monopoly: Lawyers, State Crises, and Professional Empowerment* (Chicago: University of Chicago Press, 1987); Robert Dingwall and Philip Lewis (eds.), *The Sociology of the Professions: Lawyers, Doctors and Others* (New Orleans: Quid Pro Books, 2014).

¹⁷ William H. Simon, ‘The Professional Responsibilities of the Public Official’s Lawyer: A Case Study from the Clinton Era’ (2002) 77 *Notre Dame Law Review*, 999–1022; Allan C. Hutchinson, ‘“In the Public Interest”: The Responsibilities and Rights of Government Lawyers’ (2008) 46(105) *Osgoode Hall Law Journal*, 105–129; W. Bradley Wendel, ‘Government Lawyers, Democracy, and the Rule of Law’ (2009) 77 *Fordham Law Review*, 1333–1362; Ann Southworth, Anthony Paik, and John P. Heinz, ‘Lawyers in National Policymaking’ in Scott L. Cummings (ed.), *The Paradox of Professionalism. Lawyers and the Possibility of Justice* (Cambridge: Cambridge University Press, 2011) pp. 220–242. France is an exception to the North American focus in the literature. In France, lawyers have tended to define themselves in political terms, and legal experts’ professional identity has historically been constructed through explicitly rejecting market transactions and privileging a political definition of the profession as a collective. For a comparative view of the United States, Germany, and France, see Terence C. Halliday and Lucien Karpik (eds.), *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries* (Oxford: Oxford University Press, 1997).

¹⁸ The ‘Integration through Law’ project began at the European University Institute, Florence, in 1978 and was directed by Mauro Cappelletti, Monica Seccombe, and Joseph H. H. Weiler. The *Florence Integration Through Law* series, edited by Cappelletti, Seccombe, and Weiler, was the result of this research project and comprises a number of volumes published in the

process. Despite this, EU law scholarship has been almost solely focused on the European Court of Justice as an epitome of legal expertise. Päivi Leino-Sandberg's monograph *The Politics of Legal Expertise in EU Policy-Making* (2021) is an exception in that it discusses the role of legal advisers working in the EU institutions. In EU law scholarship, research into lawyers as legal experts has been considered to require the regard of a neutral outsider and thus an external approach. Over the past twenty years, literature marked by a sociological, even everyday, perspective on this legal dimension of European integration has appeared,¹⁹ building on earlier socio-historical analyses of law and lawyers as critical instruments in European integration.²⁰ Sociologists examining the legal profession from the outside have studied lawyers in various roles, including as lawmakers and bureaucrats in the EU. In these studies, recourse to legal expertise is seen as a part of promoting the European integrationist agenda. This, however, leaves aside much of the ordinary policy-making process – which this collection attempts to bring to light. By way of a bridge from that existing tradition, the collection nonetheless includes two chapters by sociologically oriented political scientists (Avril, France and Vauchez). Our hope is that, by bringing together lawyers and sociologists of law, the collection will examine the legal profession from both the inside and the outside.

1.2 LEGAL EXPERTISE IN POLICY-MAKING

Today, scholars interested in experts and expert governance are confronted with a dilemma. Policymakers turn to experts for advice to make the right decisions and communicate these to the general public. Yet, expertise is at the same time challenged more than ever by both policymakers and the general

1980s. See also Daniel Augenstein (ed.), *'Integration through Law' Revisited: The Making of the European Polity* (Farnham: Ashgate, 2012).

¹⁹ Antoine Vauchez and Bruno de Witte (eds.), *Lawyering Europe: European Law as a Transnational Social Field* (Oxford: Hart, 2013); Antoine Vauchez, *Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity* (Cambridge: Cambridge University Press, 2015).

²⁰ Antoine Vauchez, 'The Force of a Weak Field: Law and Lawyers in the Government of the European Union (For a Renewed Research Agenda)' (2008) 2 *International Political Sociology*, 128–144; Antonin Cohen and Antoine Vauchez, 'Les juristes et l'ordre politique européen' (2005) 26 *Critique internationale*, 97–99 and the articles that follow their introduction. See also Antonin Cohen and Antoine Vauchez, 'Introduction: Law, Lawyers, and Transnational Politics in the Production of Europe' (2007) 32 *Law & Social Inquiry*, 75–82 and the articles that follow their introduction; Yves Dezalay and David Sugarman (eds.), *Professional Competition and Professional Power: Lawyers, Accountants and the Social Construction of Markets* (London: Routledge, 1995).

public. Many recent elections and national consultations, including Brexit, have been seen as votes against expertise. For Sismondo, writing about post-truth, ‘optimism about the coexistence of democracy and expertise may be misplaced’.²¹

The fact that politicians and the general public regard ‘experts’ and ‘specialists’ with suspicion also has repercussions on legal experts. We believe that discussions on who counts as an expert and what constitutes expertise should include legal experts and expertise. By initiating such a discussion, we do not claim that lawyers are ‘special’ or that their expertise is fundamentally different from other disciplines. Instead, we argue that legal scholarship must also take the distrust of experts seriously and treat it as a matter of concern for the legal profession. Can legal expertise maintain its authority in the post-truth policy-making process? This is a crucial question to ask, because lawyers’ own understanding of their work relies on objectivity and neutrality.

Can lawyers uphold the values of objectivity and neutrality when facts are ‘less influential in shaping public opinion than appeals to emotion and personal belief’?²² Is there an emotional, demonstrative side to legal expertise and how does it fit the standard conception of legal expertise as content-oriented speech? Strong argues that ‘conventional means of responding to legal and political misconceptions (i.e., content-oriented speech aimed at those who are believed to have simply failed to hear the relevant information)’ no longer suffice.²³ Does suspicion towards experts concern all types of legal expertise, or are some better than others at ensuring their (epistemic) authority? Recognising the post-truth challenge to the contemporary policy-making process, this collection argues that distrust of (legal) experts is not only a political problem of policymakers and people questioning why and what experts are saying; it is also a legal problem implicating constitutional democratic governance.²⁴

Scholars have long been preoccupied with the question of how professional and technical expertise fit into the governance process of a democratic society. The resulting literature is informed by the distinction between ‘democratic politics’ and ‘policy’. The former ‘describes the theory and practice of the power struggle between the players inside the polity’. The latter, on the other hand, is a concept that refers to activities that aim ‘at the planned formation of

²¹ Sergei Sismondo, ‘Editorial: Post-truth?’ (2017) 47 *Social Studies of Science*, 3–6, p. 4.

²² See Oxford Languages, ‘Word of the Year 2016’, <https://en.oxforddictionaries.com/word-of-the-year/word-of-the-year-2016>.

²³ S. I. Strong, ‘Alternative Facts and the Post-Truth Society: Meeting the Challenge’ (2017) 165 *University of Pennsylvania Law Review*, 137–146.

²⁴ Sarah C. Haan, ‘The Post-Truth First Amendment’ (2019) 94 *Indiana Law Journal*, 1351–1406.

social domains such as economy, environment or education through collective binding decisions'.²⁵ For decades, students and practitioners of public law and administration have been taught that policy should not be driven by democratic politics and polls of the moment. Although politics set the tasks for policy, the power struggles of democratic processes are not supposed to interfere with administrative work, where government officials armed with technical expertise advance public interests.²⁶ The predominance of the administrative domain, with its scientific and technocratic *modi operandi*, is what is sometimes considered to characterise the administrative state.²⁷ However, the pendulum has swung the other way. Now the question is whether expert-driven policy-making with its scientific tendencies is a risk to politics, squeezing the life out of the democratic process.²⁸

To date, scholarly inquiry into the relationship between policy and politics has identified two major positions, one building on separation and the other on politicisation.²⁹ As an illustration of the latter, critical international law (which is far ahead of EU law in discussing expertise) has held that the authority of experts in policy-making relies on the framing effect that expertise has. By shaping and reshaping issues, experts are able to (unduly) influence the domain of politics.³⁰ In other words, all expertise is political. David Kennedy, for instance, has argued that the 'background' work of experts has a framing effect, with an overt bearing on 'foreground' decision-making.³¹ The

²⁵ Gerhard Vowe, 'Politics, Policy, Polity' in Lynda Lee Kaid and Christina Holtz-Bacha (eds.), *Encyclopedia of Political Communication* (Thousand Oaks: Sage, 2008), sections 620–621.

²⁶ David Rosenbloom, 'The Politics-Administration Dichotomy in U.S. Historical Context' (2008) 68 *Public Administration Review*, 57–60.

²⁷ In the United States in particular, but also in the EU to a certain extent, the existence of the administrative state has been discussed with reference to administrative agencies. See, e.g., Adrian Vermeule, *Law's Abnegation: From Law's Empire to the Administrative State* (Cambridge, MA: Harvard University Press, 2016).

²⁸ See, e.g., Frank Fischer, *Democracy and Expertise: Reorienting Policy Inquiry* (Oxford: Oxford University Press, 2009); Christine Boswell, *The Political Use of Knowledge: Immigration Policy and Social Research* (Cambridge: Cambridge University Press, 2009); Ray Pawson, *Evidence-Based Policy: A Realist Perspective* (London: Sage, 2007). See also, in the EU context, Åse Gornitzka and Ulf Sverdrup, 'Who Consults? The Configuration of Expert Groups in the European Union' (2008) 31 *West European Politics*, 725–750.

²⁹ Tansun Demir, 'Politics and Administration: Three Schools, Three Approaches, and Three Suggestions' (2009) 31 *Administrative Theory and Praxis*, 503–532.

³⁰ Revisiting the argument of how knowledge becomes power, David Kennedy, 'Law, Expertise, and Global Political Economy' (2018) 23 *Tilburg Law Review*, 109–120.

³¹ David Kennedy, *A World of Struggle: How Power, Law and Expertise Shape Global Political Economy* (Princeton: Princeton University Press, 2016). See also Ole Jacob Sending, *The Politics of Expertise: Competing for Authority in Global Governance* (Ann Arbor: University of Michigan University Press, 2017); Annabelle Littoz-Monnet (ed.), *The Politics of Expertise in International Organizations: How International Bureaucracies Produce and Mobilize*

present collection builds on the critical narrative with which international law scholars approach expertise in policy-making. The other approach, founded on separation, is instead concerned with the depoliticisation of the work of experts, focusing on how they mostly deal with technical and neutral questions in the spirit of craftsmanship and administrative engineering. The holder of legal expertise is presumed to be ‘apolitical’ and ‘neutral’, and the advice given as legal expertise is projected as ‘objective’ and ‘unquestionable’.³² This corresponds to the perception legal experts have of themselves, although it often remains unexpressed and unexplored.

Despite taking the international law criticism of expert power seriously, neither of the above positions is – at least, in their pure versions – tenable. It would be an oversimplification to revert to the position that all expertise is political. Not only is this too easy as an explanation, but it overlooks the fact that an administration is driven by its own (bureaucratic) logic, which refuses to succumb to politics. This tension never disappears; it merely manifests itself differently in different cases. Equally unconvincing is the claim that the work of experts has no political influence on the choices and alternatives on the policymaker’s table. The tasks experts deal with on a daily basis are about more than just implementing policies set by elected officials.

So, how to go on from here? We posit that the study of legal expertise offers a new take on this issue. First, it leads us to ask what role law assumes in the policy-politics (expertise-democracy) dichotomy, and in this way to help question the explanatory value of the dichotomy. Are legal experts like any other technical or ‘professional policy’ experts? Do legal experts try to go beyond the dichotomy by stressing the special nature of their expertise? How do they navigate the dichotomy in their daily tasks? Second, the literature on the relationship between expert administration and democratic politics has paid little attention to what France and Vauchez in this collection describe as ‘the blurring of the public-private divide’ and the ‘spectacular rise of state expertise within private law firms’.

The provision of legal expertise in policy-making is not the prerogative of a governmental lawyer. This book introduces and develops the notions of in-house and external legal expertise. The expression ‘in-house legal advice’ is usually

Knowledge (London: Routledge, 2017); Holly Cullen, Catherine Renshaw, and Joanna Harrington (eds.), *Experts, Networks and International Law* (Cambridge: Cambridge University Press, 2017); Anna Leander and Tanja Aalberts, ‘The Co-Constitution of Legal Expertise and International Security’ (2013) 26 *Leiden Journal of International Law*, 783–792.

³² See, e.g., Jean-Paul Jacqué, ‘The Role of Legal Services in the Elaboration of European Legislation’ in Antoine Vauchez and Bruno de Witte (eds.), *Lawyerling Europe: European Law as a Transnational Social Field* (Oxford: Hart, 2013), pp. 43–54.