

Law disciplinary guide to the interpretation of UNSW promotion criteria

Generally, the main indicators of research quality are gross numbers of publications, publication in journals deemed to be ranked highly, publication by commercial publishers, high levels of publication citation, international recognition, competitive grants, and completed supervisions of research degrees. While these are used to varying extents as indicators of research quality in law, their relevance must be considered in light of discipline-specific considerations. The notes below are intended to help faculty and university promotion committees in using these general criteria in a discipline-specific setting. They draw on reports on research in Australian law schools from the 1987 Pearce Report (*Australian Law Schools*) to the 2012 Report of the Council of Australian Law Deans (*Assessing Research Performance in the Discipline of Law, 2006-2011*).

1. Journal rankings

There is no generally accepted rank of law journals. The 2010 ERA list was highly contentious, flawed and should not be used. (Doing so runs counter to specific advice from the ARC: see www.arc.gov.au/era/faq.htm). An updated version of a list produced by the Council of Australian Law Deans will be a better (if imperfect) guide.

However, any general ranking finds difficulty in dealing with the fact that, in some areas of legal research, publishing in a domestic, niche journal which may be low-ranked will be a better outlet than a high-ranked general journal. The ARC expressed recognition of this by stating it 'will use a refined quality indicator for ERA 2012. Evaluation committees will assess the appropriateness of the journals used as publication outlets for research, taking into account any regional or applied focus of the disciplinary unit concerned'. According to ARC CEO, Professor Margaret Sheil, "The change empowers committee members to use their expert judgment to take account of nuances in publishing behaviour. This approach will allow experts to make judgements about the quality of journals in the context of each discipline." (Minister Senator Carr's media release, 30 May 2011).

The consensus is that this problem of disciplinary specialization can only be averted by peer review. While effective peer review is very difficult in mass research assessment exercises, it is not in promotion processes. Referees are able to provide specific peer review. In assessing law promotion applications, referees should be asked to comment particularly on the quality of research outputs. Peer review is also provided by the Head of School in her report and by members of the Faculty Promotion Committee.

2. International journals

Appropriateness of journal type varies across law's sub-disciplines. While, for example, an international lawyer or a legal theorist may look to international journals, a property or contract lawyer is much less likely to do so because of the jurisdictional specificity of the law. Some types of law are state or nationally focused and research on them is normally appropriate in

domestic journals. Thus local publication should not be viewed as necessarily an indicator of poorer quality than publication in international journals. Correspondingly, many legal researchers may have a strong domestic profile but receive only limited international recognition due to the jurisdictional-specific nature of the research they carry out.

More generally, law does not have the kind of international hierarchy of generalist journals found in some other disciplines: there is no legal equivalent of *Science* or *Nature*. Prestigious journals such as *Harvard Law Review* and *Modern Law Review* are much more likely to publish work by, respectively, American and British authors than authors from other countries.

Consequently, national recognition and influence may be a better indicator of esteem and expertise in some fields of research. This is particularly true if the field of research is practically focussed in the sense of encouraging domestic law reform.

3. Citation

Citation metrics are not widely used within law to assess research, and thus such metrics are not consistently collected. Some metrics for some interdisciplinary work may be extrapolated from other disciplines, but there is no consistency allowing general use. Many major law journals are not included in citation surveys.

Citation of publications by law reform bodies and by some superior courts is becoming more common but recognition of legal research's impact is patchy. Most legal counsel and courts rarely acknowledge all their sources in written opinions and judgments. Thus lack of citations does not necessarily indicate poor quality, lack of readership or impact.

4. Quantity of research outputs

Quantity is not in itself a sufficient measure of productivity or quality in research in law. Disciplinary conventions are very different from those in some non-HASS disciplines.

- As in many other humanities disciplines, it is not unusual for legal researchers to focus on producing a major book, book chapter or lengthy journal article rather than numerous short articles, or co-authored articles. It is often not appropriate for legal researchers to publish interim results of large projects, and it is common in law to publish work which is less frequent, but is longer and more likely to be sole-authored (rather than large numbers of shorter, joint-authored works).
- Many legal journals publish articles significantly longer than is the norm in other disciplines.
- While collaborative work and research teams are increasingly common in law, attribution of authorship is more confined than elsewhere. Direct involvement in writing rather than, for example, association with a research grant is required.
- Supervisors in law would not be listed as authors of work by higher research degree candidates unless in exceptional circumstances.

These factors mean that a legal researcher may have fewer publications than one in a non-HASS discipline. Quality is a more significant criterion than quantity.

5. *Competitive research grants*

Holding a competitive research grant should be regarded as desirable but not necessary for promotion to levels D & E. UNSW Law is consistently in the top 3 of Go8 law schools for competitive grant income. None the less, many legal academics do not hold competitive research grants.

In general, research funding is less available for Law than in some non-HASS disciplines. Specifically, some areas of legal research are less appropriate than others for funded research. It is, for example, much harder to attract ARC funding for doctrinal research in private law than for empirical research in public law: yet both are of equal significance. Legal researchers are more likely to use documentary than other research methods, such as surveys, interviewing, and other fieldwork: it is much harder to win research funding for the former than the latter. Some areas of legal research lend themselves to large grant applications, but the absence of competitive grant funding in law does not in itself indicate poor quality work.

6. *Postgraduate research supervision*

While the numbers of research students in law are growing (and UNSW Law is consistently in the Go8 top 3), they are less common than in some other disciplines and there are also sub-disciplinary inconsistencies. Research candidates – and consequently opportunities to be involved in research supervision – are more common in some areas than others. Consequently, lack of supervisions and lack of completions should not be assumed to be a negative indicator.

7. *Texts and case books*

In law, texts have a particular significance. Superior texts and case commentary books are not merely secondary materials produced for students. In a tradition going back to the middle ages, superior texts are written by professional and academic lawyers not just to state the law as it is, but to develop and constitute it. Many will contain significant scholarly work and high levels of original and scholarly analysis. These works are seen by the profession as more authoritative than journal articles and often have significant impact in the way legal arguments are developed by counsel and the law is interpreted by courts. UNSW Law has a strong tradition of publishing high quality texts of this kind.

Of course, there are also more conventional student texts. They are often published by the same publishers as the texts discussed above. The selection of which books should properly be treated as research products cannot be done by proxy (that is, by reference to publishers) but can be done by referees providing discipline-specific peer review.

8. *Non-conventional publications*

In Law, some non-conventional publications written as part of the commitment to professional engagement and public service should be treated as equal to other research outputs. These include law reform submissions and reports which often include substantial original research contributions to policy and advocacy work. They make a valuable contribution to the development of law, and while they are often seen as 'service' they may also contain high quality research. Normally, it is expected that research of this kind will eventually be published in conventional outlets and any reasons why this has not occurred must be explained.

Applicants for promotion are expected to make the case that these are research if they wish them to be recognised as such. Evidence of social impact, peer review or its equivalent may be available. Confirmation of authorship responsibility (in case of reports or submissions involving teams) will be needed. In some cases, the placing of the reports on the public record, precludes further publication in academic journals. Where this is the case applicants should detail any such restrictions, in order to indicate that the work is in its final form and not intended to form the basis of further publication.

9. *Impact*

As a research discipline, law has a strong focus on producing material which critiques current legal practice with a view to enhancing the quality of law's service to society. In many areas of legal endeavour, academic publication is a means to that end. Consequently, the discipline places great store on the potential for real world change that a research outcome has, as well as on the status of the mode by which the research is disseminated. As noted in (7) and (8), providing conventional evidence of impact may be problematic.

10. *Referees*

While international referees will be desirable, it will be appropriate in some areas (for reasons noted above) to call on domestic referees, and to use referees from the profession who can assess the impact of publications.

Given the significance of peer review to research assessments in law, the selection of appropriate referees, clear instructions to them, and close attention to their reports are particularly important in Law. Referees may be of particular assistance to promotion committees in commenting on how the discipline-specific factors noted above apply to specific candidates for promotion.
