

# 1 Introduction

## 1.1 Focus of this book

In short, a literature review is the comprehensive study and interpretation of literature that relates to a particular topic (Aveyard, 2010, p. 5). Such a study is undertaken with two different aims in mind. Firstly, a literature review may serve as a preliminary – and we believe necessary – investigation prior to embarking on a larger academic research venture. The main purpose here is to provide a critical account of the literature in a particular area in order to demonstrate why a new study is required. In other words, to *embed* and *justify* a proposed research question. Secondly, a literature review may form the entire academic project. In this case, the literature is reviewed in order to *answer* a particular question.<sup>1</sup>

In this book, we will focus on the literature review in the former sense, that is, as the first step in a bigger study. We want to emphasize the (often-underestimated) importance of conducting a systematic literature review at the start of an academic legal research project<sup>2</sup> (**chapter 2**) and introduce the basic steps we deem necessary in order to successfully complete it. We move consecutively through the process of delineating your topic and determining the information to search for (**chapter 3**), designing and carrying out a systematic search for relevant literature (**chapter 4**), critically appraising the literature (**chapter 5**), and synthesizing, discussing and presenting your findings (**chapter 6**).

Before we proceed to that, we find it important to address briefly why we think the construction of this book was necessary for the legal discipline (*paragraph 1.2*), to present the methods we followed to reach our findings (*paragraph 1.3*), and to provide some information on how we think this book should be used by our intended audience (*paragraph 1.4*). We sincerely hope this book helps those undertaking academic legal research to overcome existing insecurities and that it, mod-

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1 An example of this is Meuwese & Snel's '*Constitutional Dialogue: An Overview*' (2014). Cooper (1998) emphasizes that a literature review that "appears independent of new data" can serve many different purposes.

2 Our understanding of academic legal research is a broad one. We not only consider it to include more traditional forms of legal scholarship – doctrinal legal research, comparative law, legal history, and legal theory/jurisprudence – but also the more interdisciplinary forms of legal research that have evolved over the years – socio-legal, law and economics, empirical legal studies, et cetera – see *paragraph 3.3* and *paragraph 3.4*.

estly but still, contributes to the efficiency of your research trajectory and the quality of your thesis.

## 1.2 Why this book?

Legal scholarship is a discipline in transition (Van Gestel, Micklitz, & Maduro, 2012, pp. 12-19). One of the structural changes legal scholarship is undergoing is an increasing focus on legal research methodology. As a result, the body of literature on legal research methods has grown strongly over the past years.<sup>3</sup> Several of these contributions come to the – in our view, right – conclusion that the performance of a comprehensive preliminary investigation is a prerequisite for both the construction of a solid research proposal<sup>4</sup> and the efficient and auspicious realization thereof (Epstein & King, 2002, p. 59; Samuel, 2014, pp. 26-27; Snel, 2017b; Vranken, 2014, pp. 59-60).<sup>5</sup> What we did not find though, is the necessary elaboration of how exactly that might take place.

We believe that we cannot expect novice legal scholars to execute a preliminary investigation in a meaningful way without providing them with at least some written guidelines on how to do so (best combined with courses by librarians and researchers who have experience in carrying out a systematic literature review<sup>6</sup>). The activity at stake is simply too complex to be learned by trial and error during the course of a single (or even a few) research project(s).<sup>7</sup> Especially if one realizes that, because of globalization and digitalization of both legal scholarship and the law itself, the body of research materials at the disposal of the legal scholar has become larger and more obscure than ever before.<sup>8</sup>

While guidelines on how to do a literature review in legal scholarship are missing, one could argue that the legal scholar in search of information on how to do a systematic literature review only has to reach beyond the boundaries of her discipline. We, however, sincerely believe that legal scholarship should not and cannot

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3 For textbooks, see for instance Cahillane and Schweppe (2016) and Hanson (2016). For dissertations, see Tijssen (2009, with English summary), Kestemont (2016) summarized in English in Kestemont (2015), and Snel (2016, English version forthcoming).

4 Moreover, in many countries, the literature review has become a standard element of research proposals required by research funding agencies.

5 Snel (2017a) distinguishes between preliminary research aimed at (1) the state of knowledge on a given subject, (2) the construction of a research framework, and (3) assessing the feasibility of the research project through a pilot study. In this book, we confine ourselves to the first type of preliminary research.

6 Also proposed by, for instance, Davidson (2010), Osborne (2016), and Drake (2016).

7 Also take into consideration the fact that empirical research has revealed that students and postgraduates (including those studying law) often overestimate their own information and research skills, including their ability to retrieve relevant literature on a particular topic. See for instance Barry (1997), Green and Macauley (2007), and Osborne (2012).

8 We have not only noticed a rise in sheer numbers, but also in ‘new’ source-types such as blogs – blawgs –, unpublished papers, reports, Wikipedia pages, et cetera.

rely merely on guidelines developed in other disciplines. While that literature may serve as a welcome source of inspiration (as it did for us, see *paragraph 1.3*), we emphasize that the exact way in which a literature review is carried out are, in the end, (too) discipline-dependent. Legal information systems do not function in the same way as the *Cumulative Index to Nursing and Allied Health Literature* does, the close connection that exists between legal scholarship and legal practice results in a distinction between academic, professional and popular publications which is uncommon in most other disciplines (Stolker, 2014, pp. 207-210), and so on.

Seen in conjunction, this has led to our belief that the creation of this book was necessary. We believe it is high time to develop some guidelines for doing a systematic literature review that are specific to legal scholarship; that we provide our young scholars with both an alternative to learning on the job and an opportunity to benchmark the practices they have evolved themselves.

### 1.3 How this book was compiled

We established the guidelines we present in this book by conducting a systematic literature review *on* the systematic literature review ourselves. A search in the most important databases and on the open web quickly showed us that there is an abundance of contributions from scholars operating in various disciplines (in all shapes and sizes) that deal with our topic.<sup>9</sup> As it was impossible to consult and incorporate the insights from all of these materials, we decided to focus on published textbooks and journal articles in the disciplines of medicine, social science and humanities<sup>10</sup> which actually propose *techniques* that may be employed when engaging in a systematic review of the relevant literature on a particular topic.

Where necessary, we translated what we found so that it would fit the specific characteristics of legal scholarship and added clarifying examples.<sup>11</sup> To ensure the

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9 Apart from published works, we also came across several unpublished papers, policy documents, course manuals, websites, instruction videos, and so on. Not all of them use the term ‘literature review’. As Cooper (1998) and Garrad (2011) remarked, there are many terms that are sometimes used interchangeably to label similar activities, including ‘research review’, ‘integrative research review’, ‘research synthesis’, and ‘meta-analysis’.

10 This is motivated by the fact that the relevant literature is particularly well-developed in these disciplines (also remarked by Baude, Chilton, & Malani, 2017, p. 45; Cooper, 1998).

11 We noticed that we were not the first to do so. Dobinson and Johns (2007, pp. 22-32) used Fink’s ‘*Conducting research literature review: from the internet to paper*’ to design a method for identifying relevant legislation, cases and secondary materials in law. Baude et al. (2017) argued for the development of methods for performing systematic reviews that are specifically tailored to legal analysis. What these contributions have in common is that they use the insights from the books and papers on the systematic literature review to present lessons on how to *answer* a legal research question, thus – in our conception – ignoring an important lesson: that the systematic literature review is first and foremost necessary to *find* and *develop* an academic research question. This, however, does not mean that their translations were not useful to us. On

correctness of our translations, we drew upon the scarce and fragmented *legal* literature that addresses certain aspects of the literature review (have other legal scholars proposed techniques that are similar to those we developed by translating the insights from other academic disciplines?).<sup>12</sup> The examples added were mainly extricated from the experience we have with both the drafting and assessment (in the context of research proposals for dissertations and students' theses) of systematic literature reviews.

#### 1.4 How to use this book

This book was written with, in particular, two groups of readers in mind. Primarily, it is aimed at undergraduates who are engaging in academic research (including a bachelor's and/or master's thesis) as part of the requirement for their degree program. We, however, sincerely believe that more experienced researchers (especially doctoral students, but also more seasoned researchers) may also benefit from the insights we provide in this book.

We would like to warn our readers of the fact that the straightforwardness of this book may lead to an underestimation of the difficulties that may be encountered when doing a systematic literature review. We believe this will change, however, as soon as the reader applies what she has learned to the practice of her own research. Only then will it become clear that the distinct steps of the literature review are more difficult than they may at first appear. Therefore, after finishing each chapter, the reader is encouraged to apply the suggestions to her own research project. Be aware, though, that in reality the different steps may overlap and/or require mutual input (compare Wisker, 2015, p. 64).<sup>13</sup> This means – and we will repeat this regularly – that you will have to go back and forth a lot between the different steps we propose.<sup>14</sup>

Perhaps superfluously, we would like to add that applying the methodology in this book to an actual research project will not automatically guarantee the quality of the literature review. Doing research comprises much more than simply follow-

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the contrary. These works provided inspiration, concrete insights and examples that we were able to use for our purpose here.

- 12 Legal publications that, for instance, provide an overview of databases where source materials can be found and how to search these databases.
- 13 For instance, when critically appraising the literature, you may come across an interesting association with your topic that you did not anticipate. This might mean that you have to go back to the step where you designed your search process to enable you to include the literature that relates to your association, see *paragraph 5.5*.
- 14 Even after you have finished (the first version of) your literature review. See Bryman (2008, p. 83), who stated: “[b]ear in mind that reading the literature is not something that you should stop doing once you begin designing your research. You should continue your search for and reading of relevant literature more or less throughout your research. This means that, if you have written a literature review before beginning your data collection, you will need to regard it as provisional. Indeed, you may want to make quite substantial revisions of your review towards the end of writing up your work”.

ing a list of technical procedures (Barbour, 2001, p. 1115; Fisher, Lange, Scotford, & Carlarne, 2009, p. 227). Although we profoundly believe that the guidelines we provide can contribute to the quality and efficiency of your research, we recognize that the quality of that research is ultimately dependent on a combination of being systematic *and* elements like integrity, talent, intuition, creativity, imagination, perseverance, analytical capacity, and even coincidence or luck (Cook & Campbell, 1979; Poincare, 1913).

On a final introductory note, we want to mention that while this book specifically focuses on the literature review as a preliminary investigation for a research project, the insights provided are, of course, also relevant for the situation where the literature review forms the entire project.