I receive many requests to sit on PhD juries (perhaps their number will decline once I am no longer a Member of the CJEU!). Most of the time, I decline politely. Normally, some carefully delineated small corner of EU law is being put under a conscientious microscope by a hard-working student; and it is clear from the laborious title of the magnum opus that the resulting thesis will be very worthy, very comprehensive and (forgive me) very dull. I am almost pre-programmed to send back a 'sorry, but no' letter; and when I do so, my academic conscience barely pricks me. Being a serving advocate general is a very full-time occupation, without agreeing to read hundreds of additional pages of legal analysis in the evenings or over the weekends.

This request was different.

The research student in question – Cecilia Rizcallah – was launching herself flat out at an extraordinarily ambitious project, divided (like Caesar’s Gaul) ‘in partes tres’. In the first part, after a descriptive and historical analysis, she proposed to deconstruct the principle of mutual trust and then to reassemble the Lego building blocks in a way that made better sense to the reader. In the second part, she would examine both the foundations and the limits of mutual trust (and, there was a broad hint that she would probably conclude that both were rather wanting in intellectual rigour and consistency). The third part promised to improve the practical application of the principle whilst respecting the requisite imperatives of unity, diversity and equal treatment, so as to place greater emphasis on protection of fundamental values. Having tried my hand, in an Opinion or two, at striking the correct balance between mutual trust and fundamental values, I could see that this would be right up my street – a piece of research that I would genuinely want to read and ponder over.
And so I put my normally well-honed instinct of self-preservation to one side and wrote back – even, eagerly – accepting the invitation to sit as a member of her PhD jury.

When I got the thesis to read, I was not disappointed. The written text was of exceptional quality. The coverage of the topic was meticulous and wide-ranging, her analysis deft, subtle and thought-provoking. Under the guise of a ‘mere’ PhD thesis, she had effectively written a major reference work for scholars in the field.

Let me cite what I wrote in my separate contribution to her examiners’ report – I hope that it gives a ‘feel’ for the wider importance of her work:

‘To say that this thesis is ambitious would be an understatement. Most commentators – like, I suspect, the CJEU nowadays when writing its judgments – tend to limit themselves to the particular area of EU law (for example, the European Arrest Warrant) that catches their attention or that they presently need to deal with. Those who have written academically on mutual trust in their chosen area, whatever it be, tend to offer their views on how, in that area, the EU legislator and the CJEU have developed and interpreted the concept. Instead, the author has here set herself the formidable challenge of ranging across EU law as a whole: first, to trace the historical development of mutual trust from its precursors; and then to offer a structured, logical and up to date exposition of mutual trust as it now manifests itself ‘horizontally’ across EU law. I commend that approach. The examples of mutual trust at work that catch the most attention and provoke the most controversy – in the Area of Freedom, Security and Justice (‘AFSJ’) – did not spring fully-armed like Athena from the head of Zeus. They have their origins in humbler and more mundane areas of EU law, such as the mutual recognition of professional diplomas, or equivalent safety measures for goods that are then transported across frontiers between Member States.

Along the way, inevitably, there are a number of paradoxes that need to be explained. If we all really trusted each other’s legal systems to be as good, in every respect, as our own, mutual trust would present no difficulty. (We would also be living in Utopia rather than the real world.) If we had that level of trust, however, we could probably agree on quasi-total harmonisation at EU level. We would not feel the imperative need to defend the individuality of our own systems and solutions; and so we would not need mutual trust, after all, because we would have uniform sets of rules that we could apply. It is precisely because we often do not have the necessary trust to harmonise fully that we fall back on the principle of mutual trust in order to make the system work. That rests on the premise that we do, at least, have a sufficient set of shared values. We cannot, in
every case, require everything about the ‘other’ legal system to be proved to the hilt. If we did, that would be the end of most of what has been built up so painfully since the inception of the EEC. And yet, if we are also to ensure that the individual rights guaranteed by the Charter are to be respected, it must be possible, in an appropriate individual case, to test the assumptions behind mutual trust. To echo a favourite phrase of President Lenaerts: ‘mutual trust is not blind trust’. Blind – maybe not; but how closely should the national judge be invited to look in any particular case?’

Cecilia Rizcallah’s thesis, now snugly nestling between these hard covers, tackles these, and many more questions, with rigour, deftness and aplomb. It is a wide-ranging, provocative and valuable work of scholarship: an exceptional first book by a young academic who is going to be a genuine high flyer. As she spreads her professional wings, her dynamism and energy will surely enrich our understanding of many other areas of EU law, from the Charter of Fundamental Rights to the refugee crisis to environmental law. I look forward to reading her again – with a view to exchanging ideas and learning from her, rather than sitting in judgment over the quality of her work.

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