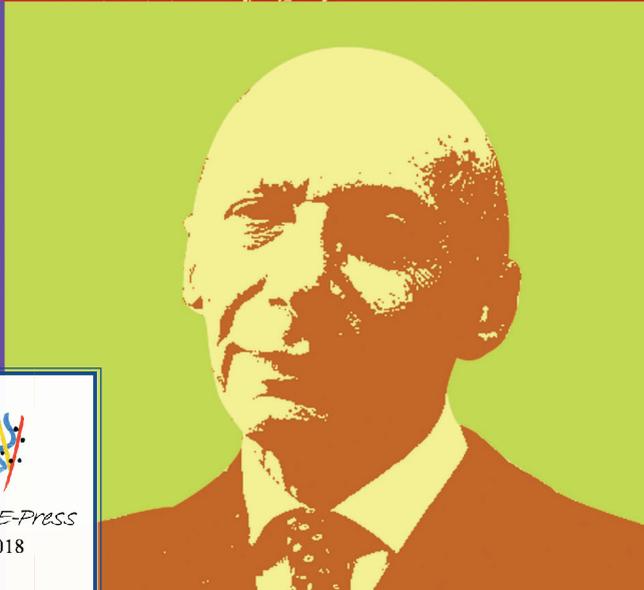
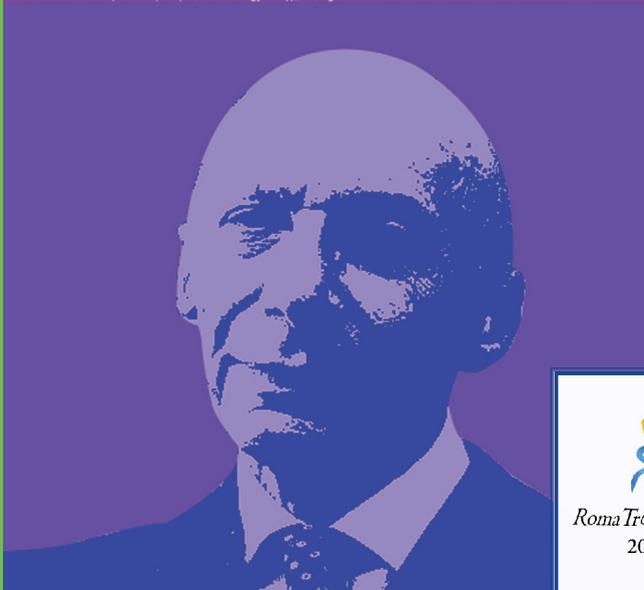
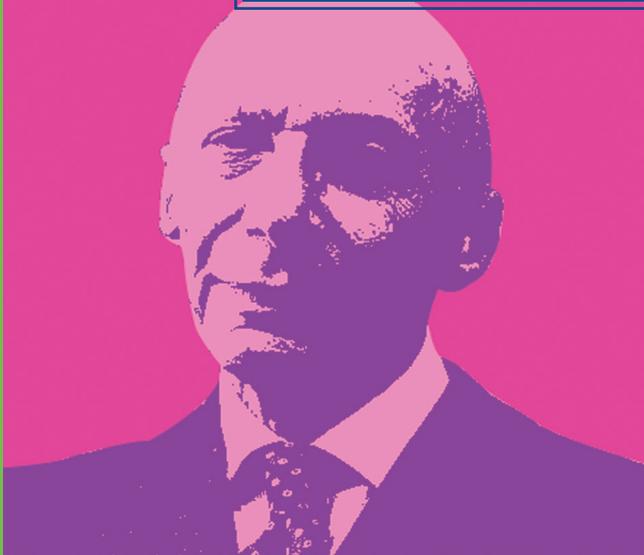


A CURA DI GIUSEPPE CONTE • ANDREA FUSARO •  
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# DIALOGHI CON GUIDO ALPA

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### “Maestro” and “Scuola” as pillars of the Italian academic structure

SUMMARY: 1. The playing field: recruitment procedures – 2. Culture and sub-culture of academic “schools” – 3. “Maestro”-“Magister” – 4. Co-opting as the basic rule of all academic communities – 5. A reputational market.

#### 1. *The playing field: recruitment procedures*

When an Italian academic tries to explain to a foreign colleague the structure of his or her environment he/she is faced with some conceptually untranslatable terms which render his/her presentation incomprehensible, especially when talking to an Anglo-American colleague.

The first – fundamental – notion which I shall have to present, albeit in a cursory way, is the “concorso”, a competitive procedure – common to all European continental countries (*concours*, in French; *Auswahlverfahren*, in German; *concurso* in Spanish) – through which the holder of an academic post is chosen. In Italy (but not only here) a constitutional provision (article 97) establishes that access to any civil service post, at whatever role and level (national, regional, local), must be through a “concorso”.

The aim – which however not very often is reached – is to avoid that those who are in government or in a public office choose civil servants on the basis of discretionary criteria. Civil servants remain in office until retirement and therefore cannot – except in the case of very serious misgivings – be dismissed. If one applies this criterion to academic recruitment one understands how crucial the “concorso” is. All posts for associate and full professor are tenured; and this applies not only to public universities (which are the vast majority) but also to the not many private ones: once a professor is vested he/she remains in role until retirement.

This premise is essential to understand some basic differences with other

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\* Non per esterofilia ma per evidenti ragioni pratiche – tentare di spiegare a degli studiosi stranieri alcune particolarità del sistema accademico italiano – il presente scritto è in inglese.

academic systems in which access is much easier because what is at stake is, generally and especially at the lower level, a limited-time contract of employment which can be renewed and only in a limited number of cases is transformed in a tenure. The “concorso” procedure however is used not only for tenured posts but also for lower positions: Ph.D. candidates, post-docs, assistant professors.

In these selection procedures the role of the “Maestro” and of the “Scuola” are essential, in as much as they are the main track through which access to an academic post is governed. To see things from an institutional perspective, the “concorso” – whatever its mutant rules are (which change in average twice every decade) – sets the legal playing field in which a “Maestro” and a “Scuola” must operate if they want to have some significance.

In an academic mythology the “Maestro” manages to create posts for his “Scuola” like Moses draw water from rocks by striking them. Reality is much less miraculous. The body of law in the field of “concorsi” is highly complex and is made of primary legislation, ministerial decrees, university by-laws and – most important – a vast amount of case law set out by hundreds of decisions by the administrative courts (in first instance the “Tribunali amministrativi regionali”, and on appeal, the “Consiglio di Stato”). The knowledge of these rules – as happens in any regulated market – is essential for the “Scuola” and the “Maestro”. Under-estimation of their importance often leads to extended litigation which may bring to the annulment of the selection procedure or, at any rate, at its forestallment, with consequent loss of time, opportunities and of academic reputation. One can therefore – parodistically – compare the “concorso” to one of those board games with rather loose rules (*e.g.* “Risk”) in which players – in this case the “Maestro” and the “Scuola” – must compete, using the law, their skills but also their shrewdness. The other players may be at a national level as in the case of other “Maestri” and “Scuole” in the same disciplinary sector (*e.g.* private law or constitutional law); but also, at a local level they may belong to other groups wishing to consolidate and expand their position in the faculty. Here the essential rules in the selection procedure must be mentioned. Italian academics is divided in nearly 400 (!) “scientific disciplinary sectors” (SSD) starting with MAT/01 (Mathematical logic) and ending with SPS/14 (History and Institutions of Asia). This fragmentation is generally widely criticized in the sense that it creates hundreds of walled gardens, some of which are controlled by a dozen full professors (sometimes even less: AGR/20, Zoocultures, has nine full professors; L-ANT/01, Prehistory, eight) who, substantially, hold the keys to open or close access to academia.

A further negative feature is that the extremely narrow scope of some SSDs is a significant obstacle to inter-disciplinary researches (and researchers). On the positive side it is argued that this very clear partition promotes studies in areas that otherwise would be neglected or marginalized: it is completely different if occasionally a young philosopher engages – at his/her risk and peril – in aesthetics; or if systematically a considerable group of young scholars research and write on aesthetics which is the only way to gain access to the M-FIL/04 SSD which is entirely and exclusively devoted to aesthetics and different from M-FIL/03 (Moral philosophy).

Therefore the “board game” which absorbs the ingenuity and the efforts of much of the Italian academia is the role that each professor has in his/her SSD, a role which is widely related to selecting those who are admitted to the club. To use another metaphor, in the “concorso” the winner often belongs to a team (the “Scuola”) that devotes considerable time to preparing the game, building academic and professional relations which are indispensable when it comes to decision-making within the selection committee. Sometimes collaboration reigns among the members of the various “Scuole”; in other cases, there is a continuous war in order to control the club, with historical enmities, alliances, marriages of convenience, geographical partitioning of the national territory *et similia*.

## 2. Culture and sub-culture of academic “schools”

It would however be misleading to present the relationship between “Maestri” and “Scuole” and the “concorso”, seen as the moment of public investiture of a scholar, only as a struggle for power. Very often a “Scuola” is strongly characterized with certain distinctive cultural features or methodological tenets. Quite often a new “Maestro” emerges because of the new ideas that he/she proposes and which are gradually received by others and forms a “Scuola”. The cultural differences have been, in the 20<sup>th</sup> century and still, of an ideological nature (mostly as expression of marxism, or secularism as opposed to denominational approaches); at the same time some “Scuole” have characterized themselves for openness to international scholarship as opposed to a purely domestic one. From a methodological point of view in all fields new areas have fallen under investigation, using new parameters and goals. From this point of view the diversity has rendered possible the emergence of pluralistic approaches, and often this has

marked the birth of a new “Maestro” who is remembered precisely for his/her innovative studies which have influenced future generations.

Pluralism can be noticed – at least in the field of legal studies – also from a political point of view: preference towards this or that ideology (left-wing; liberalism; social-catholic) does not appear to be a criterion of selection and of affiliation to a certain “Scuola”, although there may be some areas (typically labour law) which may inevitably determine preferences of scholars.

Looking always at the positive aspects, one of the reasons for which – in no way indulging in nationalistic pride – many Italian academics are of world repute and considered leaders in their field of specialization is precisely the very strong competitive environment in which they have grown and at the same time they have had possibility/necessity to devote themselves entirely to relatively small areas of their otherwise very broad discipline.

What has been said until now is valid for practically all Italian academia, whether engaged in sciences, humanities or social sciences. Clearly a certain number of peculiarities remain especially in those areas which are naturally international (such as mathematics or physics) and others that are naturally domestic (typically Italian language and literature). In other cases, academia is so interwoven with practice – such as in medical schools which usually have an annexed clinic providing services under the national health service – that further aspects (and rules) have to be considered.

Although here we shall be talking of the notion of “Maestro” and “Scuola” in the field of the law, one should consider that this is not a distinctive feature of law professors. As a matter of fact the model of law faculties can be considered an archetype for the rest of academia. From a historical perspective one should not forget that the first European university, Bologna, founded in 1088, was built around the law faculty, to which the others were subsequently added. One of the great professors of those first years was Irnerius, who – quite naturally – gave birth to a “Scuola” with four main disciples: Bulgaro, Marino Gosia, Jacopo and Ugo. There is a further characteristic that must be mentioned. Already at those times it was very clear that one could not study and teach the law without putting it to practice. This is the reason why – contrary to most of other Western countries – a very high number of Italian law professors, especially if their field of expertise is *ius positum* (private law, criminal law, commercial law, administrative law, procedural law), are at the same time practicing lawyers. And in many cases the leading professors in that area are also the leading lawyers, highly demanded by private and public clients. Among the illustrious examples of this tendency is today’s honoured colleague, professor

Guido Alpa who not only is a prominent practicing lawyer but for over a decade has been the Chairman of the Italian Bar Association.

### 3. “Maestro”- “Magister”

A common translation in English of “Maestro” is “mentor”. But clearly its semiotics are different. Its sense is clearly connected to medieval transmission of knowledge in theological and philosophical institutions: not by chance in those ages one speaks of *magister* and of *scholastica*, two terms which entail a very significant pedagogical relationship between the teacher and his pupils. On a much more down-to-earth – and contemporary – vision a “Maestro” establishes a long-lasting relationship with his pupil, which ordinarily starts when the former was the supervisor of the latter’s final dissertation which is a compulsory requirement for graduating. It should be noted that commonly the most gifted students choose the general subject on which they intend to graduate (history of law or civil procedure, etc.), or the professor, having perceived a certain inclination of the student, suggest that he or she graduate with him/her. The final dissertation is the first evidence that a “Maestro” receives on the quality of the student and, after graduation, may suggest that he/she continue their studies in various forms of free and non-formalized collaboration.

A common feature of the past – when young but brilliant professors started their career in provincial universities – was that they prepared the ground for local younger scholars who, afterwards took their place, when their “Maestro” moved to a more prestigious university. Owing to such academic migrations one could easily draw the map of the “Scuola” following the various chairs occupied during the years.

The relationship between “Maestro” and pupil is based on social conventions which are generally followed, being of mutual convenience. On the one side the “Maestro” offers guidance, suggesting topics of research, reviewing the writings of the young scholar, involving him/her in editorial activities (periodicals, edited volumes, case and handbooks, etc.), suggesting his/her name for conferences which the “Maestro” cannot attend. The pupil, in exchange, helps the “Maestro” in providing assistance and tutorship to students; following the preparation of final dissertation; organizing seminars and workshops for students; making background research and completing footnotes of the “Maestro’s” writings. One must consider, that contrary to

academic institutions in other parts of world, Italian professors – and, at any rate, Italian law professors – do not have any secretarial assistance, unless they occupy some position in the academic governance (dean of the faculty, head of a department). The administrative staff is engaged only in the, sufficiently burdensome, red-tape aspects of the office where they work, and in no way are they engaged in activities concerning teaching and research. This is why the role of the junior assistants of the “Maestro” is so important.

The next step is admission to a Ph.D. programme (“dottorato di ricerca”). Here the relationship between “Maestro” and pupil is formalized. In Italy the Ph.D. programme is a three-year curriculum, which clearly depends on the area of research. The number of posts available is limited – very limited, after the general budget cuts to universities – and only half of those admitted receive a grant (apx. € 1000 per month) which is not very high but is tax-exempt and quite attractive in respect of many other forms of first employment, especially for law graduates.

The Ph.D. title is a prerequisite for any further academic career, and therefore is very sought after by all those who have the ambition to pursue it. In the field of the legal professions it is of practically no relevance, although for civil servants (in the judicial bodies or public administration) it may eventually be useful for future promotions.

In this first step the role of the “Maestro” is essential: not only will he/she generally write an extremely laudatory letter of recommendation but will also exert his influence on the selecting committee (if he/she is not already part of it). What is at stake is not only academic prestige, but also the sincere belief in the qualities of the candidate and the strengthening of the “Scuola”. A good and experienced “Maestro” understands quite easily the qualities and the defects of his/her pupils and knows that for the most promising admission to the Ph.D. programme is the only way to steer them away from the temptations of the legal profession or of international institutions, which in many cases may appear much more rewarding.

The problems in the relationship between “Maestro” and pupil arise after the Ph.D.: the pupil may receive a three-year post-doc grant (“assegno di ricerca”), which is important for his/her cv, but does not guarantee any stable position. For this reason, only a few post-docs eventually make their way up the academic ladder into a tenured post.

Here a further legal constraint should be mentioned: in the past (meaning since the mid-19<sup>th</sup> century) academic mobility was very strong, especially at the higher levels. Professors were competing to move to more prestigious universities. In the field of law, clearly, bigger towns offered also

greater professional opportunities. In this 21<sup>st</sup> century, budgetary cuts have substantially frozen the circulation of academic personnel: it is not a remote possibility that a young scholar should graduate from a university, follow all his/her *cursus honorum* in that university, and end up as *emeritus* without ever been a member of any other faculty.

This phenomenon, commonly known as “localism”, is deleterious, because it impoverishes diversity in academic communities and stifles competition on the merits. It is an exceptional event that a young scholar from Rome can win a post in Milan or vice versa. One of the main goals of the “Maestro” is to search for funds for post-doc grants, assistant professors, associate and full professors. In this endeavour he/she must compete with all the other faculty members, each with a similar, and exclusionary, goal. Once the funds have been obtained they are substantially “tagged” for a certain pupil. The “Maestro” has not fought this – or any other – battle for the benefit of some unknown scholar, of dubious repute. If he/she (the external candidate) is so clever why hasn’t he/she found a post in their own university? The most obvious impression is that he/she has been discarded by another “Maestro” and “Scuola” and sent “abroad” in search of fortune.

This approach becomes ever more complex when one climbs the academic ladder and the no-longer young scholar manages to become associate or full professor. It is quite common that there is a in-breeding within a “Scuola”, although there are some noticeable exceptions in which a faculty decides to call someone quite unrelated (but clearly not unfriendly) to the professor holding the post (not all professors have the prestige of a “Maestro”).

#### *4. Co-opting as the basic rule of all academic communities*

Surely the playing field in which the “Maestro” and his “Scuola” operate is governed by a considerable number of laws, regulation, by-laws and case-law. But the turn these formal rules take depends considerably on the basic social norm of all academic communities, *i.e.* co-opting.

Co-optation is a common rule in any selected group: whether a club, a fraternity, a political party, a church, a team. The new-comer must be accepted by his/her elders or peers. It is rather improbable that one can break into a closed circle and become part of it against the will and whim of those who control it. This can be considered a disreputable practice, but it is the practice of all academic communities, especially if they consider

themselves high-ranking.

What might be classified as a feudal organization of Italian academics, is quite simply the formalization of a century-old ritual which brings a novice to high-priesthood. Co-optation in academics is based on evaluations that only very partially have to do with the merits of the scholar who is co-opted: how many times dull-as-ditch-water professors have been preferred to lively and younger colleagues on the basis of well-written arguments that it is impossible to disprove, just as it is impossible to disprove the judgement of excellence given to a film or to a wine over another one?

Personal character, ability to enter in group relationships and conform to certain standards of civility (which increasingly now include to gender issues), co-operation in general academic governance, good and appropriate relation with students, are all elements which are carefully examined. Nobody is willing to accept someone who claims he/she is THE genius, and the rest of his/her colleagues are fools.

If this is the sociology of academic groups – at least in all Western societies – it appears to be rather hypocritical to denounce practices that are perfectly coherent with the co-optation procedure. What should – and maybe could – be measured are the results of these procedures. An extremely difficult task because one might even be able to establish that certain persons should have never been boarded on the university liner of excellence (but often modest researchers are excellent teachers; and vice versa). What is impossible to establish – because there is no counterfactual evidence – is how many hypothetically very good would-be professors have been rejected through the procedures one has set out above. If one had to apply the law of averages to Italian academics, considering – shall we say – the last 70 years and comparing the level of academic reputation in other countries of similar size and tradition the results – notwithstanding the severe criticisms set out above – cannot be considered only negatively.

The role of “Maestro” and “Scuola” is essential in guaranteeing stability to the system. This stability however quite often can turn into stagnation: younger scholars may tend to flatter their “Maestro” in the choice of their topic of study, in their perspectives, rarely challenging his or her conclusions. In some cases, well known, there is a citational obligation. Even if in the field of legal studies impact factor is not an accepted practice to evaluate publications, in some cases those belonging to a certain “Scuola” will quote, in the footnotes, only their “Maestro” and their comrades-at-arms. In these cases, the result is generally conformism and books without any scientific merits. At any rate, in the academic community the social norms are well

known and interiorized by its members since the beginning. It is extremely rare that some misunderstood genius – at least in the field of legal studies (can the victim step forward, please?) – has been forced to emigrate to avoid submission to medieval practices. Rather, the father-son relationship that frequently is established between “Maestro” and pupil encourages the latter – at a certain point – to break the bond and start a new road. If one looks at the field of legal studies surely what is lacking is not pluralism of approaches and methods. More correctly one can lament the lack – in a great number of law professors – of a broader view that goes beyond the national boundaries. But this is not a defect unique to Italian academics. It is sufficient to look at the highly glorified US law scholarship to realize that only a few have ever attempted to discover if and what legal life exists in other jurisdictions. The greater the Nation and/or its history, the broader the comfort zone of academics.

##### *5. A reputational market*

If co-optation is the non-written procedure common to all academic communities, there is a further element of great importance which keeps the system together. Academy is what is called a reputational market. Professors – and law professors are no-different – are valued on the basis of the opinion of their peers. It is quite common that some academics are often interviewed by the media or participate in talk-shows. Generally, the fame they acquire in the general public is inversely proportional to that they have among their colleagues. Especially in continental Europe where professors are high-ranking civil servants their salary is the same whatever their reputation. Their wage is esteem among their peers, co-optation in even more exclusive scientific circles and academies, constant invitation to participate in conference, preface books, direct series, preside selection committees.

The Italian “Maestro” and “Scuola” institutions must be seen in the light of this reputational market. A “Maestro” is such only if he is acknowledged by his peers. Otherwise the term is used in jest, to indicate its opposite. Clearly, if every professor is a “Maestro” simply because he has a pupil everybody can claim to be a “Maestro”. Some, a handful in the last 70 years, outstanding scholars who were tenured still in their twenties were recognized as such very soon. Others became “Maestri” much later. The majority have never claimed to be such, not having such an ambition, although they may

have a very high reputation as individuals.

The difference from an individual reputation and a “Maestro” is the existence of a “Scuola”, *i.e.* a group of younger scholars who continue in the steps of their mentor, who recognize his/her intellectual primacy and express their gratitude in accordance with the social norms of the academic community.

In this the relationship “Maestro”/ “Scuola” is revealing because it is two-ways. The prestige of a “Maestro” for a long time lights the road his/her pupils are following. But at a certain point the academy, quite rightly, asks itself what is the reputation of the pupils of the “Maestro”. In many cases they have kept up to the expectations. In other cases, they simply fall among the average professors of no particular relevance or, worse, their bad reputation may reflect on the “Maestro” who therefore suffers the brunt of his erroneous choices.

In this perspective “Maestro” and “Scuola” are the objects that are weighed in the reputational market and are useful indicators when making choices. The first question which is put to a young scholar, or concerning a professor one does not know, is “Who is your (or his) ‘Maestro?’”. A question that rarely would be made elsewhere, but not for reasons of *politesse*, but simply because it is not a revealing piece of information, while in Italian academics it is the first and most important. In many instances the origin of the scholar is a guarantee of quality, because the “Maestro” is known for his/her rigour in selecting his/her pupils and in preparing them to the many tasks of academic research and teaching.

Therefore, setting aside rather ridiculous metrics imported from hard sciences (ridiculous, obviously, when applied to social sciences and to the humanities) “Maestro” and “Scuola” if used in a non-sectarian way can be extremely useful in guiding evaluation of scholars and of their works.

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From a comparative perspective – which here cannot be presented because it requires in-depth knowledge of social practices – what would be useful is understanding to what extent the relationship Mentor-pupil is or may be relevant in other academic systems; if affiliation to a certain academic group (which in Italy is classified as a “Scuola”) is important in the cooptation procedure<sup>1</sup>. It is therefore necessary to pierce the veil of lip-

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<sup>1</sup> A first attempt in this direction has been made 25 years ago by U. MATTEI and P.G. MONATERI in a special issue of the *Am. J. Comp. L.* (41, 1993) devoted to “*The Faces of Academia: Selecting Minds Symposium*”. It is worth while providing the summary of the issue: T. WEIR, *Recruitment of Law Faculty in England*; J. GORDLEY, *Mere Brilliance: The*

service towards the idea that academia selects only the best, on their merits, and look, instead, at university professors as a large community which includes many individuals with different qualitative levels.

Furthermore - but this is rather difficult in the field of legal sciences - one should look at the output. Insisting on procedures (which is the common approach in the Anglo-Saxon world) as the best guarantee in a selection procedure appears rather one-sided and ignores the fact that players adapt to the rules and tend to build a curriculum in function of the formal requirements of the game. Academic due-process surely may satisfy the need for fairness, but it is doubtful that it is the most efficient way to select the best brains on the market. To close on a provocative idea, maybe selecting university professors is nearer to the ways one selects performing artists than those used to select top managers of a firm<sup>2</sup>.

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*Recruitment of Law Professors in the United States*; P. LEGRAND, *Attitudes v. Aptitudes: In re Faculty Hiring in Canadian Law Schools*; C. MOULY, C. ATIAS, *Faculty Recruitment in France*; J. KOHLER, *The Selecting Minds: The Recruitment of Law Professors in Germany*; U. MATTEI, P.G. MONATERI, *Faculty Recruitment in Italy: Two Sides of the Moon*; R. DE GROOT, *Recruitment of Minds: Selecting Professors in the Netherlands*; N. COHEN, D. FRIEDMANN, *Selecting Minds in a Multicultural, Besieged, Isolated Society*; E. A. FELDMAN, *Mirroring Minds: Recruitment and Promotion in Japan's Law Faculties*; R. BERNARD, *Selecting Minds: An Afterword*; M. J. BONELL, *Legal Studies in Today's Europe: Towards a European Lawyer*. It would be interesting to verify in which countries significant differences have arisen in this last quarter of a century. For further reflections on the French system see P.-Y. GAUTIER, *Le concours d'agrégation au plus intime : Institutes coutumières*, in *Mélanges dédiés à Louis Boyer*, Presses Universitaires Toulouse 1996, p. 221

<sup>2</sup> Or to put it with James Gordley's words (*supra*): “Perhaps the best way for any of us to promote a flourishing of legal scholarship at our schools is to spend less time recruiting and more time thinking about law”.

