WHAT'S WRONG? PUBLISHING IN INTERNATIONAL PEER-REVIEWED JOURNALS ON RUSSIAN LAW

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When pursuing publications in international peer-reviewed journals, many legal scholars from Russia and the wider post-Soviet space face severe difficulties. This paper looks at the reasons for these difficulties in two analytical steps. Firstly, it offers a quantitative analysis of the output of the two leading international law journals that accept submissions on doctrinal law to see how often in the two preceding years (2014 and 2015) post-Soviet legal scholars with their main place of work at a university have made it into these journals. Secondly, it asks what the qualitative standards for publication in such journals are and why they are at odds specifically with the scholarly tradition in the wider post-Soviet space. The main finding of the paper is that there is a mismatch between the high goals posed by university administrators in elevating universities to some standard of excellence and the limitations presented in the field of legal scholarship. The conclusion is that a substantive re-thinking of the approach to legal scholarship is required. The introduction of 'early legal writing' at least at the level of master studies is one recommendation to adequately prepare a future generation of legal scholars.

Keywords: scholarly impact; peer-review; university ranking; legal writing; styles of reasoning.

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1. Introduction

Knowledge production at universities and other higher education institutions has increasingly come under pressure. On the one hand, there is a major international debate about the so-called 'research-teaching nexus', starting from the famous notion of the 'unity of teaching and research' as the hallmark of the 19th century German model of higher education. In this debate, positions range from disconnecting teaching from research altogether to requiring a strong research focus for every university teacher.[1] On the other hand, a neo-liberal approach has been encroaching on higher education institutions. Especially in countries with a high share of state institutions, the question is increasingly asked what these institutions deliver for the tax-payer's money and how their 'products' (i.e. graduates) could become more employable with degrees that are more closely oriented towards the needs of the labor market.

A second set of developments is not necessarily neo-liberal in nature, but has become part of the emerging paradigm of higher education transformation: the idea of competition between institutions and the desire to produce rankings. Perhaps starting with the famous annual Boat Race between the Universities of Oxford and Cambridge, in English-speaking countries there has long been an obsession with measuring and comparing the performance of entire universities. Especially in the United States, with its very large share of private universities, the main motive was

[1] Brigitte Kossek, Survey: Die forschungsgeleitete Lehre in der internationalen Diskussion (University of Vienna, Center for Teaching and Learning, 2009), available at <https://ctl.univie.ac.at/fileadmin/user_upload/elearning/Forschungsgeleitete_Lehre_International_090414.pdf>.

not really to prevent wasting taxpayers' money, but just the pure joy of competition. When in Continental Europe both paradigms met and combined (approximately in the late nineties), something began to emerge that may be called 'the quest for excellence'. For some unexplainable reason, this 'quest for excellence' has firmly taken root in Russia and some other countries of the wider post-Soviet space[2] as well. Vaguely reminiscent of Mao Zedong's 'Great Leap Forward', President Putin in May 2012 decreed that by the year 2020 a minimum of 5 Russian universities shall reach top 100 positions in 'the world ranking of universities'.[3] Meanwhile, in a development that is similar to the role of credit rating agencies (e.g. Standard & Poor's, Moody's), the leading university rankings have diversified and offer a wide spectrum of methodological approaches and emphases.[4]

While it would be preposterous to ask the Hirsch index of the young Alfred Einstein or of many of his peers in the early 20th century, today's developments leave most scholars worried that their 'Hirsch' is too low. In the bargaining for public funds between ministries of higher education – rectors – deans – heads of institutes, metrical systems of impact measurement serve as an important factor. When funding decisions are being made, the neo-liberal paradigm demands the commitment of scarce public resources to those areas of science where the measurable effects are predicted to be the greatest. Investing funds in research on new materials or technologies, for instance, promises a high likelihood of scholarly impact because the research findings will be instantaneously communicated to the entire world and will enter all future scholarship in the respective field. Ultimately, it is believed, this strategy will open up the way into the world's 'top 100 universities'.

Legal studies, by contrast, are mostly national. Of course, in today's globalized world even developments in national law can have a significant impact on the world. But apart from international and comparative law (including EU law as a point of reference), the impact of most research on national law will be in the national legal community.

In the case of legal publishing in Russia, the situation is even more peculiar. While Russian university administrators place a premium on publications in peer-reviewed

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[2] This paper uses the somewhat awkward term 'wider post-Soviet space' to indicate that while the main focus of the analysis is on Russia, it also covers other countries with a Soviet scholarly legacy. On the other hand, it is clear that universities in the Baltic countries, although technically also 'post-Soviet', have shed the Soviet scholarly legacy fairly quickly.

[3] Указ Президента от 7-го мая 2012 г. № 599 «О мерах по реализации государственной политики в области образования и науки» [Ukaz Prezidenta ot 7-go maya 2012 g. No. 599 "O merakh po realizatsii gosudarstvennoy politiki v oblasti obrazovaniya i nauki" [Presidential decree No. 599 of 7 May 2012 "On measures to impement state policy in the field of education and science"]].

[4] There are three major rankings competing with each other: the Times Higher Education World University Rankings, the Academic Ranking of World Universities (ARWU), also called the Shanghai Ranking, and the QS World University Rankings. The CWTS Leiden Ranking looks specifically at Web of Science indexed publications in the years 2010–2013. Meanwhile, the Times Higher Education also offers specialized regional foci such as the BRICS & Emerging Economies Rankings, the Asia Universities Rankings, and two new rankings: The World Reputation Rankings and the 150 under 50' Rankings.

English-language journals indexed in Scopus and Web of Science (in order to be able to demonstrate the 'impact' of their research findings), the actual attitude of the scholarly community outside of Russia is very mixed. One the one hand, for doctrinal research on Russian law there is often a 'who cares?' attitude. Unlike the Soviet Union, Russia is no longer an 'exporter' of legal rules to the world (not taking into consideration some restrictive types of legal approaches, like NGO legislation, that are copied by other countries inside the Eurasian Economic Union). Some knowledge of doctrinal Russian law may be of interest for comparative purposes, but otherwise it is hard to imagine why the world would be keen to learn about the advances in Russian doctrinal legal research (just as most other nations' doctrinal research is of limited interest). On the other hand, there is a huge interest in studying the factors that determine Russia's political development, the creation of domestic policies, its foreign (security, energy, military) policy, and any legal argument that serves as an underpinning for one or the other policy doctrine. Where black letter law research addresses one of these points of interest, it can be guaranteed to meet a high level of interest worldwide. Coming back to the example of NGO legislation: while the Law on non-commercial entities[5] is usually only a small dot on the radar of the international legal community, a number of burning issues are posed for policy-makers across the world by the Russian government's 'foreign agents' approach and by the effects of this legislation on civil society and the country's further democratisation.

Against this background, this paper is concerned with advice that can be given to doctrinal legal scholars from Russia and the wider post-Soviet space on how to navigate this labyrinth of expectations and requirements, and to offer some objective perspectives on overcoming these challenges. There are many myths and unfounded beliefs that publishing in a peer-reviewed, indexed international journal will automatically make you a better scholar. As a matter of fact, I do believe that doing so can help you to become a better scholar, but it is certainly no short-cut. The danger is that while university administrators heavy-handedly enforce their system of impact measurement without regard to the specifics of the field of legal research, they create an incentive for circumventing the requirements and ultimately help to produce a market of shady conferences and dubious journals that promise quick publication 'successes' in indexed journals.[6] This paper argues that university administrators are about to re-invent a system of central planning that, similar to the central planning of the Soviet economy, distorts incentives and creates huge inefficiencies.

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[5] Федеральный закон от 12 января 1996 г. № 7-ФЗ «О некоммерческих организациях» [Federal'nyi zakon ot 12 yanvarya 1996 g. No. 7-FZ „O nekommercheskikh organizatsiyakh" [Federal Law of 12 January 1996 No. 7-FZ „On non-commercial organizations"]].

[6] On this development, see also the very lucid article Балацкий Е., Юревич М. 'Мусорные' журналы мирового научного рынка, Новая газета, April 27, 2016 [Balatsky E., Yurevich M. 'Musornye' zhurnaly mirovogo nauchnogo rynka, Novaya Gazeta, April 27, 2016 [Balatsky E. Yurevich M.'Junk' journals of the world scientific market, New Newspaper, April 27, 2016]], available at <http://www.ng.ru/science/2016-04-27/10_magazines.html>.

The conclusion of this paper is that when it comes to promoting publications in indexed international journals, there is a strong need for preparing potential authors as early as possible. 'Early legal writing' should be a central element in contemporary legal education in Russia and the wider post-Soviet space, and it should start at the level of master studies. What today's generation of established scholars has to painfully re-acquire should become part of the legal education of the next generation of lawyers.

I will build my argument in the following steps. At first, I want to look at the market in which doctrinal lawyers of Russian law[7] can publish ('Where to publish'). This chapter consists of two parts. In the first part I will look at the history of the relevant journals and where they now stand. In the second part I will conduct a short empirical analysis of the publication patterns in the two leading peer-reviewed English-language journals. Secondly, I will look into the peer review process and its psychology. Thirdly, I will summarize my own experience from years of editing research papers on Russia law ('How to write'). Finally, I will conclude my findings with an argument in favor of 'early legal writing'.

2. Where to Publish

2.1. Your Journal of Choice

The history of the debate on 'where to publish' goes back approximately 60 years, and its effects are felt to this day. When the rivalry between the United States and the Soviet Union after the Second World War turned into the so-called Cold War, the ideological, political and military confrontation created a strong demand for expert knowledge on the respective opponent. In the United States, regional studies on the Soviet Union and its network of affiliated countries became a major innovation in the academic setting. Indeed, most of the research institutions that now claim world leadership in 'Russian Studies', 'Post-Soviet Studies', 'Caucasian Studies' and 'Central Asian Studies' evolved from early initiatives to promote research relevant for the national security of the United States. The journals that were created at that time were all deeply rooted in the social sciences. In fact, these journals continue their operation to this day, and because they have such a strong standing and tradition, they are almost invariably indexed in Scopus and Web of Science. Examples include

- *Studies in Comparative Communism* (continued as *Communist and Post-Communist Studies*);
- *Communist Economies* (later renamed to *Communist Economies and Economic Transformation*, now called *Post-Communist Economies*);
- *Soviet Studies* (continued as *Europe-Asia Studies*);
- *Soviet Economy* (continued as *Post-Soviet Affairs*);
- *The Soviet Review* (continued as *The Soviet and Post-Soviet Review*).

[7] Or any other national law of the wider post-Soviet space.

As mentioned before, an author interested in publishing on doctrinal Russian law could consider turning to any of these high-level indexed journals. However, he or she is only likely to be published if he or she manages to utilize the doctrinal approach in a broader social science framework. Hence, the paper can no longer be driven by the doctrinal research interest, but must be completely rephrased and embedded into another discipline's theoretical framework(s). For an ordinary legal scholar this is virtually impossible within a reasonable amount of time.

It is however a great irony of history that the United State's interest in Soviet affairs largely ignored the law, or looked at law only as a tool for implementing decisions. In continental Europe and above all in Germany, by contrast, there was a genuine interest in Soviet (Russian) law, possibly dating back to the pre-war years and into the 19th century. In contrast to the United States, where the study of law was submerged by the dominant regional studies approach, law remained a distinct topic of interest in Continental Europe. Although there were a number of regional studies institutions like the *Osteuropa-Institut* at the Free University of Berlin, it was mostly on the law faculties' level that special chairs (*kafedry*) were established to research so-called *Ostrecht* (East European law). West Germany used to be dotted with such chairs, while in the Netherlands, Leiden University stood out as a center of research on Soviet law. And, of course, this research infrastructure spawned its own journals, some of which survive to this day. It is this history that explains the specificity of the journals now accepting manuscripts on Russia law.

The basic divide that can be drawn in this journal landscape is between the post-Leiden experience and the way things evolved in Germany. Leiden University's *Institute of East European Law and Russian Studies* under the renowned Prof. Ferdinand J.M. Feldbrugge started publishing the *Review of Socialist Law* in 1975. Due to its close ties with the United States and with congenial academic staff (Ger P. van den Berg and William B. Simons, to name but a few), the *Review* flourished and became a hub for transatlantic research on the law of the Soviet Union and its affiliated states. In 1992 the journal was renamed the *Review of Central and East European Law*. When the Cold War ended and Leiden University decided to cut back on its Soviet law activities, it was William B. Simons who rescued the *Review* and, taking it from the University of Trento to the University of Tartu, made it the strongest and most respected international peer-reviewed journal of our times, with 40 volumes in print and indexation with both Scopus and Web of Science.

The journals created in Germany were closer to the national legal tradition. Unlike the Leiden *Review of Socialist Law*, which from the very beginning appeared in English, German journals were published in German, and they brought the German doctrinal approach to the study of Soviet law. As such, in a way, despite being a Cold War product of the 'know your enemy' mentality, they continued the long-standing tradition of legal exchanges between Germany and the Russian Empire.

In 1991, when the Soviet Union disintegrated and the idea of *Ostrecht* came to an end, the smaller German journals were gradually discontinued.

- *Recht in Ost und West,* undoubtedly the flagship publication of the Soviet-critical legal approach, was published from 1957 by *Vereinigung Freiheitlicher Juristen* in Berlin in association with the *Institut für Ostrecht* in Munich. In 1998 it merged with *Osteuropa-Recht* (below).
- *WGO Monatshefte für Osteuropäisches Recht,* published by the University of Hamburg from 1958, fought on for almost two decades, but was finally discontinued in 2011.
- The aforementioned *Osteuropa-Recht* appeared first in 1954. It is published by the *Deutsche Gesellschaft für Osteuropakunde* (German Association of East European Studies) as part of the original 'troika' of Association journals (along with *Osteuropa* and *Osteuropa-Wirtschaft)*. Currently, *Osteuropa-Recht* accepts manuscripts in German and in English. It is not formally peer-reviewed (although the editorial board keeps a close look at manuscripts), and it is neither indexed in Scopus nor in Web of Science.

To summarize, for the doctrinally-oriented Russian legal scholar who wants to publish in an international peer-reviewed and indexed journal, the situation is quite devastating. The many journals that exist and that have the necessary credentials will accept only papers in a critical social science tradition. Papers devoted doctrinally to some problem of Russian law have no chance. The only leftover from the 'old days' is really the *Review of Central and East European Law*. Alternatively, he or she may look to publish in English in *Osteuropa-Recht*, but getting an article into *Osteuropa-Recht* is more a case of publishing abroad than publishing internationally, as the journal is not indexed in Scopus and Web of Science.

It would be wrong, however, to end this conclusion on a pessimistic note. What has been described is the situation as it has been created historically. Nowadays, there are a number of good alternatives. First of all, since 2013 there is the *Russian Law Journal*, which has made a considerable mark on the publication business. In contrast to the *Review of Central and East European Law*, which is a proprietary journal published by Brill Nijhoff, the *Russian Law Journal* is open access and, most importantly, since December 2015 it is indexed in Scopus. Other journals, among them the *Wider Europe Journal of Law and Politics* (to be created with Brill Nijhoff by 2017) are forthcoming. In addition, there are numerous journals on comparative and/or transnational law, which may occasionally accept a paper from a Russian legal scholar.

2.2. Who Got There

One of the painful things to understand from the very beginning for every author on Russian law is how difficult it is to satisfy the quality standards required by international peer-reviewed journals. To look at this problem in greater detail, it is interesting to do an empirical study on who got published in international peer-reviewed law journals. Let us for this reason compare the issues of the two last volumes (2014 and 2015) of

the *Review of Central and East European Law* (RCEEL) with the *Russian Law Journal* (RLJ). The latter received indexation in Scopus only in December 2015. But given its serious ambition to reach this goal, it is fair enough to assume that the quality standards for publication in 2014 and 2015 were not less demanding.

The challenge in making such a comparison is to eliminate all publications that may distort the comparison. Therefore,

- the focus is only on research articles, not on book reviews, conference reports, or other materials;
- Russian scholars showing an affiliation with a Western university are not counted;
- Russian scholars publishing in tandem with a Western co-author are not counted;
- Russian authors who are judges, attorneys-at-law, in-house lawyers, deputies of legislative assemblies or otherwise politicians are not counted.

Applying this rigorous exclusion scheme, we shall be looking only at authors whose primary employment is as lecturers/professors at Russian universities.

Both the RCEEL and the RLJ have 4 issues per year, but in the two years under consideration the RCEEL combined issues 3 and 4 in one double issue. The RCEEL carries on average 3 research articles per issue, the RLJ 4 research articles. Judging by this quantitative output, it becomes clear that in a given year the total number of research papers is fairly limited, standing at around 16 (RLJ) and 12 (RCEEL).

Russian Law Journal

Year, Vol.: No.	Share of post-Soviet university professors or lecturers, %	Name	Affiliation
2014, 2: 1	25[8]	Andrey V. Kashanin	Higher School of Economics, Moscow
2014, 2: 3	20	Natalya Kravchuk	Higher School of Economics, Moscow
2014, 2: 4	16,6	Iryna O. Izarova	Taras Shevchenko National University, Kiev
2015, 3: 1	25	Elena F. Gladun	Tyumen State University
2015, 3: 2	50	1) Elena A. Lukyanova 2) Nadezhda N. Tarusina	1) Higher School of Economics, Moscow; 2) Yaroslavl State University
2015, 3: 3	25	Mikhail V. Antonov	Higher School of Economics, St. Petersburg
2015, 3: 4	25	Yury Rovnov	Higher School of Economics, Moscow

[8] This number does not consider Sergey Shakhray who published in this issue. Despite the fact that he is an accomplished lawyer and renowned professor of law, he is visible in public as a politician first and foremost.

This overview shows that there is a clear predominance of the Moscow branch of the Higher School of Economics in RLJ publishing. Over the course of 2 years, only 7 regular university professors or lecturers from Russia and one from Ukraine made it into the pages of the RLJ.

Review of Central and East European Law

Year, Vol.: No.	Share of post-Soviet university professor or lecturer, %	Name	Affiliation
2014, 39: 1	33	Mikhail V. Antonov	Higher School of Economics, St. Petersburg
2014, 39: 2	0		
2014, 39: 3–4	0		
2015: 40: 1	0		
2015: 40: 2	33,3	Mikhail V. Antonov and Vladislav Denisenko	Higher School of Economics, St. Petersburg / Voronezh State University
2015: 40: 3–4	33,3	Mikhail V. Antonov and Ekaterina Samokhina	Higher School of Economics, St. Petersburg / St. Petersburg University for the Humanities and Social Sciences

It would be misleading to produce an average of Russian professors or lecturers publishing in any given issue of RCEEL as in most issues there were none. However, on three occasions during the past two years Michail V. Antonov managed to publish one of the three research articles per issue, in two cases bringing along lesser-known co-authors from other Russian universities. Antonov has also been a member of the RCEEL editorial board since 2014 and as such is the only representative of a Russian university on the board.

To conclude, the statistics show that there are extraordinarily few Russian law professors or lecturers who manage to get into either journal. There is indeed a serious bottleneck when it comes to international peer-reviewed journals of a general legal profile accepting doctrinal research on Russian law. Whether editorial policies favor Moscow (RLJ) or St. Petersburg (RCEEL) and why it is that the Higher School of Economics is so prominently represented cannot be answered here. But the results clearly demonstrate how difficult it really is to get into an international peer-reviewed journal on Russian law.

3. The Peer Review Process

In peer reviews there is increasingly a set of standards emerging that is applied to papers from vastly different scholarly traditions. Technically, the most common type of peer review is the double-blind peer review where the reviewer does not know the author and vice versa. This "blindness" of the peer review process is important because it objectifies the demands and does not leave room for personal sympathies or preference for a particular cultural background. This basic type of peer review comes into play when an author submits a manuscript for a regular journal issue.

The second type of peer review is a variation of the first: it is practiced when a guest editor is taking part in the publication process. The guest editor may be the convenor of an academic conference who takes upon him- or herself the task of selecting from among the conference presentations those papers which he or she thinks fit together. Alternatively, there may be an open call for papers, in which case the guest editor will select the papers that fit together well and cover a certain topic. In both cases, the guest editor is familiar with the authors and works with them to bring the papers into the best possible shape. It is only then, once the guest editor is satisfied that the chosen papers deserve to be published together in one special issue, that the papers will be haned over to the editor-in-chief for the regular double-blind peer review.

The problem with peer reviews is that peer reviewers usually do their work as part of their professional position (most often university professors), and there is, as a rule, no separate payment for their efforts by the publisher. So, while peer reviews are generally accepted in a spirit of collegiality and a genuine desire to help, there is nevertheless an amount of time and effort that the reviewer expends. This is time that he or she could otherwise use for projects and publications and as such, at the end of the day, spending a lot of time on peer reviews may diminish his or her own output, as measured by university administrators. So despite all the goodwill that is brought to the review, somewhere in the process there is most likely a "tilting point" where frustration can turn into anger and adversariality.

Frustration can arise most quickly when the submitted paper is not in perfect English. Indeed, it is often not understood that by the stage of peer review the paper ought already to be in the best possible shape, in flawless English and with a line of argument that has been widely discussed and improved. It is perhaps difficult for a novice of peer-reviewed publications to understand that a peer reviewer can only bring his full potential to a paper when all language issues have been resolved. This is indeed critical. In some scholarly traditions a good scholarly analysis necessarily entails long, complex sentences. An argument presented in weak language and convoluted sentences is certain to create frustration even in the most well-meaning peer reviewer and so the 'tilting point' is quickly reached, whereby the reviewer is unable to assess an argument's strength due to a lack of linguistic clarity. As a result, he or she is more prone to express a negative vote and less willing to make constructive suggestions on how to improve the argument.

Apart from language issues, there is basic methodology to be taken into account (see 4. below) and journals invariably have a style sheet that gives details of requirements vis-à-vis footnotes, references, etc.

When it comes to bringing the paper into shape, three concepts need to be distinguished: the first is copy-editing, the second deep-reading and the third proof-reading. Copy-editing can potentially be done by the author him- or herself (though only after putting away the manuscript for some time). Copy-editing is usually defined as the process of taking raw material to improve the formatting, style, and accuracy of the text. The goal of copy-editing is to ensure that content is accurate, easy to follow, fit for its purpose, and free of error, omission, inconsistency, and repetition. From an author's perspective, it is sometimes easier to engage in the process of writing without paying close attention to the journal's style sheet. At the stage of copy-editing, however, all the formalities need to be meticulously observed.

The 'deep reader' is the next instance that needs to be involved. It is mandatory that the deep reader is not only a native speaker, but also somebody with some background in the legal field in question. His or her task is the most demanding one. Not being an expert on the subject-matter as the peer reviewer himself, the deep reader is the one who needs to brush up the language to a perfect English legalese, and who is a critical companion to the author in assessing the strength of the argument. Very often, a weakness in the argument is hidden behind a poor formulation. Understanding what the author really means and translating this into simple English is then often a first step to assessing the argument as such.

Proof-reading, by contrast, comes fairly late in the process. A manuscript is proof-read when it has gone through type-setting to make sure that during this process no glitches have occurred. Normally, the author him- or herself is asked to proof-read the manuscript once it has been typeset, and to give the final clearance for printing.

To sum up, while we tend to be most concerned with the peer review process, the real challenges lie before this stage, in the work that needs to be done by the author personally and by the deep reader under authorial supervision, when ensuring that the author's ideas are presented in perfect English with concise and convincing argumentation. Needless to say, very often these high levels cannot be attained at once. So then it is the review process that takes over and deals with the remaining weaknesses. And again, not all problems in the manuscript can be revealed at once and upon the first read-through. It is not uncommon that a manuscript goes through 3 or 4 rounds of peer review.

4. How to Write

Every reviewer brings a certain set of expectations to his or her task. Peer reviews in a formal sense have been practised for several decades now, and despite the fact that there is no formal catalogue of expectations, a certain standard approach can

be detected. In the remainder of this text, I would like to elaborate on this standard approach against the background of papers as they are still being produced in what may be called the post-Soviet scholarly tradition. With a premium placed by university administrators on publications in journals indexed in Scopus and Web of Science, this advice may be almost life-saving for the aspiring scholar from the post-Soviet region.

4.1. Finding the Title

The title of the article is the first message that is being sent to potential readers when they scan library catalogues or publishers' newsletters. While in the post-Soviet tradition titles are sometimes dull and uninspiring (e.g. 'On some problems of the law of bankruptcy'), titles in Western journals often consist of two parts. The first part is sometimes snappy and provocative, or, as some put it, 'sexy', while the second part is more serious and pins down the problem to be covered in the paper.

Examples:

- "Trafficking Justice. How Russian Police Enforce New Laws, from Crime to Courtroom."
- "The Ties that Bind. Perspectives on Marriage and Cohabitation."
- "A Tale of two Cities. Municipal Policing in the Russian Cities of Krasnoyarsk and Irkutsk."

There is of course the danger of going over the top with the title. In a good title, the first part may contain a play on words or an allusion to some literary or other cultural product (e.g. a movie) that people understand and cherish. When seeing a familiar phrase suddenly placed in an unfamiliar context and used to characterise some scholarly problem, the reader's curiosity may be aroused. The choice of title can also signal a certain lightness of the prose. You may expect that the text is intriguing and cleverly written, giving pleasure and intellectual stimulation. In the post-Soviet tradition, a 'serious' text is most often one that is heavy to read and uninspiring.

4.2. Writing the Abstract

The abstract is like your paper's business card. In every field of scholarship there is an increasing number of publications that need to be considered, evaluated and, if useful, incorporated. This overflow of information becomes even more difficult to handle when authors pursue a multi- or interdisciplinary approach and have to familiarize themselves with the literature in a number of adjacent fields.

Unlike even an executive summary, the abstract is the piece of text that a hurried reader will scan before deciding whether to expend time on the reading of your paper. Therefore, it is of utmost importance that the abstract is concisely written and presents exactly your research question, outline of methodology or steps undertaken, and the result of your work. The abstract must not be confused with the introduction to a paper. It should contain, on average, no more than 10 lines.

It should be free of technical language or jargon and give every reader, including those not familiar with the specific field of research, an understanding whether the argument presented is relevant to his or her research. The general idea is KISS: keep it short and simple![9]

In order to ensure that an abstract is 'kissable', it must be written at the very end of the writing process, when the entire argument is crystal-clear in the author's mind. It is also very important that, unlike the title, which can act as a kind of teaser, the abstract needs to explain the paper's result. Do not feel that you should keep the result a secret only to be unveiled in the conclusion. The abstract needs to give it away at once, otherwise it cannot fulfil its function.

In the literature on academic writing[10] there a great many recommendations for how to write a convincing abstract. The advice is most often not specific to the field of law, but applies to social sciences in general. It also needs to be emphasized that all advice in this field is subjective by nature, and there simply is no formula for 'the perfect' abstract.

According to *Macgilchrist,* a five-finger pattern should be observed when drafting an abstract:[11]

1. Thumb: Topic and background. What topic does the paper deal with? What is the point of departure for your research? Why are you studying this now?
2. Index finger: Focus. What is your research question? What are you studying precisely?
3. Middle finger: Method. What did you do? Which concepts did you use?
4. Ring finger: Key findings. What did you discover?
5. Little finger: Conclusions and implications. What do these findings mean? What broader issues do they speak to?

If this model is followed, the result will be an abstract that has the perfect 'hourglass shape': it starts broadly, then tightens to focus on the research question and methodology, and broadens again to discuss the conclusions and their implications.

It is quite interesting to analyze the abstracts presented by Russian legal scholars in RCEEL and RLJ for the period under consideration. It may be harsh to say, but almost none of them come close to the 'perfect abstract' idea described above. Most are too long and do not possess the characteristic 'hourglass shape'. They do not focus on the research question and do not communicate the results of the research. While it is perhaps more useful to learn from 'worst practices', let us nevertheless

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9 Felicitas Macgilchrist, Academic Writing 44 (UTB/Schöningh 2014).

10 See, for example, Tim Skern, Writing Scientific English: A Workbook (UTB 2009); John M. Swales, Christine B. Feak, Academic Writing for Graduate Students: Essential Tasks and Skills (3d ed., University of Michigan Press 2012); Wayne C. Booth, Gregory G. Colomb, Joseph M. Williams, The Craft of Research (4th ed., University of Chicago Press 2016).

11 Id., at 26.

examine two abstracts that come close to the ideal type of abstract and represent at least some 'good practice':

Nadezhda Tarusina, European Experience and National Traditions in Russian Family Law[12]

"Twenty years have passed since the new Family Code of the Russian Federation (RF), which has become the key source for family law in Russia, was signed into law. During this period, the Family Code has frequently been criticized by experts on the administrative and judicial practice of civil jurisprudence. Legislators have begun to pay attention to these experts' assessments of the law to determine what reforms may be necessary. The purpose of this paper is to analyze the current problems with Russian Family Law by drawing upon the experience of both European Family Law courts and the Russian legal system."

Fig. 1: The hourglass shape of an abstract

This abstract by *Tarusina* represents at least half an hourglass. She starts broadly, by introducing the state of family law in Russia and explaining why it is worth studying now (i.e. frequent criticism by experts and legislator's attention to the problem), before going on to pose the key question (i.e. what reforms may be necessary) and present her methodology (i.e. studying the experience of both European Family Law courts and the Russian legal system). What is missing in this abstract is the re-broadening of the hourglass shape. What are *Tarusina*'s findings and what implications do they have? From all abstracts by Russian law professors and lecturers writing in RCEEL and RLJ, this is by far the shortest abstract and, I would say, the most elegant one.

Andrey Kashanin: Debates on Criteria of Copyrightability in Russia[13]

"In codifying intellectual property rights, Russian legislators have left the issue of what standards of originality and creativity form the criteria for copyrightability a matter of debate. Nevertheless, this issue is crucial to answering questions about where the lower threshold for the copyrightability of a work lies. Indeed, it is essential to determining which intellectual works with an insignificant creative component but of high economic importance (e.g., databases, computer software, advertisement slogans or design work) are to be copyrightable. Analyses of debates in legal literature and court rulings issued over the past few years warrant the conclusion that there is a trend in favor of setting

[12] Nadezhda Tarusina, *European Experience and National Traditions in Russian Family Law*, 3(2) Russian Law Journal 97 (2015).

[13] Andrey Kashanin, *Debates on Criteria of Copyrightability in Russia,* 2(1) Russian Law Journal 57 (2014).

more relaxed standards of originality and creativity and granting copyright protection to works of low authorship. This article addresses the problem of identifying criteria for copyrightability and noncopyrightability in the Russian legal system. It models various types of demarcation criteria, and analyzes their strengths and weaknesses. It also describes the trend in Russian judicial practice of granting copyright protection to works of low authorship, whilst outlining some of the problems and contradictions that this entails. The article compares principles that have evolved under Russian law with similar principles used abroad, mainly in Germany."

The abstract by *Kashanin* is another good example of a fairly well-executed realization of the five-finger pattern, although it is far too long and slightly confused. The first sentence introduces the topic and background, explaining that the Russian legislator has been dealing with the codification of intellectual property rights, but that he has left one issue untouched. *Kashanin* then 'raises the volume' to explain why it is necessary to address this problem ('issue is crucial', 'it is essential'). In the middle of the abstract he makes his research question plain: how to identify criteria for copyrightability in the Russian legal system. He also explains his methodology (i.e. modeling various types of demarcation criteria, analyzing their strength and weakness, and comparing similar principles used abroad). What is lacking is a presentation of his result and why this is important. One weakness of this abstract is that the sentence 'Analyses of debates in legal literature and court rulings issued...' does not really fit into the entire structure of the argument. It could be seen as a hypothesis that informs his research question. Then again, it reads as if he is already presenting his result ('conclusion'). But it does not make sense to do so before the actual research question has been formulated. On the whole, the abstract is too detailed and partly repetitive, but in its basic architecture it is still close to the five-finger pattern.

4.3. Writing the Introduction

In the literature on academic legal writing[14] there are a host of recommendations on how to write introductions. Similar to the many guides on how to write abstracts, these texts are prepared for natural sciences, social sciences and humanities, but (as far as I am aware) there is no advice on writing introductions for papers in law and no specialized advice for authors from the post-Soviet tradition.

According to this literature, every introduction should have a typical 'shape' and should display typical 'moves'. The general 'shape' is that of an inverted triangle: the information flows from the general to the specific. So while it is fine to start broadly, there should be a visible tendency to increasingly focus the text. In doing so, an author should observe the following 'moves':

1. Establish a territory: claim centrality, make topic generalizations, review previous research.

[14] See supra note 11.

2. Establish a niche: indicate a gap, raise a question.
3. Occupy the niche: outline your purpose, announce your research question, announce your central findings.

Post-Soviet authors generally have no problem in starting broad and establishing their territory. A lot of authors love to show off their erudition, explaining the ideational, historical or even metaphysical origin of their topic. The more authors include such 'learned' explanations, the more likely they are to delay or even miss the second and third moves: establishing a niche for themselves by formulating a research question and presenting some gap analysis, i.e. explaining why this particular research question is new and how it distinguishes itself from questions asked in other work available. This is truly a 'must' for every introduction. And while a few lines of general background do not hurt, the explanation of the research question should really take center stage. In social science research, this is also the moment to explain methodology, especially when there is a quantitative approach to the research.

The mistakes described above point towards a more fundamental problem. Authors from the post-Soviet scholarly tradition assume that they are writing on a 'topic', but they are often unwilling to identify a research question. In fact, avoiding a research question and instead covering a much more broadly defined topic is intimately linked to how authors see themselves in the production of knowledge. A lot of scholars in the post-Soviet tradition share an understanding of science that is in essence encyclopaedic. They have often read a large amount of literature and, in order to be 'deemed worthy' to add to this library of knowledge, feel the need to connect their work with all foregoing major writing in the field. This approach is in essence reverential, and it serves to underscore the importance of the author's own research.

While there is nothing fundamentally wrong with this, it misses an important element of knowledge creation in the Western world. By focussing strictly on research questions and evaluating the entire existing literature in the light of novelty and originality, the Western approach is essentially disrespectful. It sees the paper's or book's approach as part of a big global process of knowledge production, and by refuting existing research or pointing out gaps and weaknesses it aspires to arrive at a new way of explaining how we should see the world.

As if sensing their overly broad approach, authors from the post-Soviet scholarly tradition often feel inclined to add another dimension to the introduction: the notion of timeliness, i.e underscoring the research's importance by relating it to some current event. Especially when the work is directed at lawmakers, timeliness is often considered a major point in the introduction.

Again, while there is nothing wrong with emphasizing timeliness, it creates a surrogate for what the research question should deliver: novelty in the development of the analytical perspective. Novelty is defined by the community of scholars as a result of a gap analysis. To choose one example, the quality of a legal approach that asks whether the protection of cultural heritage abroad can be effected by

national criminal law or whether there are arguments in favor of adopting universal jurisdiction is in principle unrelated to the historical event of Syrian-Russian troops liberating Palmyra from the Islamic State. Even if Palmyra had not been liberated, the question would be as valid and relevant from a scholarly perspective as it could be. If the liberation of Palmyra coincides with the publication of this paper, it will be a fortunate coincidence. But nothing more.

Finally, it is not uncommon and can be quite useful to conclude the introduction with a short forecast of how the argument will unfold in the main body of the article. Authors from the post-Soviet scholarly tradition sometimes tend to credit their readers with a great deal of intelligence and perseverance, leaving them alone to plough through dozens of densely written, loosely structured pages without any guidance. In the U.S., the opposite is true: readers are often assumed to be 'dummies' with short attention spans, needing detailed guidance to make their way through the paper. The result is often a style of writing where at every step an argument is first announced, then developed, and finally summarized. From a European perspective, this approach of 'taking the reader by the hand' is sometimes seen as patronizing, but it does have its merits. Finding a good balance is the author's task, but it is always a good idea to conclude the introduction with a basic 'road map' that illustrates how the text will develop.

4.4. Writing the Main Part

4.4.1. Formalities

As discussed with regard to the 'road map' approach in the introduction, the main part of the writing should be structured in 3 or 4 parts (for papers). 3 or 4 parts is also a good measure when writing a book with 200+ pages and a significant number of chapters. The main goal is to keep the structure simple and to be able to connect every part back to the overarching research question. Arriving at such a 'simple' structure is actually quite difficult because every author tends to move towards increasing complexity when developing his or her arguments. So taking a step back and framing the entire research into some 'biblical' measure of simplicity is quite a daunting task. Very often, upon first writing, the structure of the argument may be okay, but when new layers of writing are added the argument gets confused and loses its connection to the research question. Hence, developing the structure of your main part is not a matter of piling chapter upon chapter, but of going back and forth between the research question and the idea of a simple structure that you should be arriving at in the end.

Contrary to most of the scholarly traditions in Continental Europe, international journals do not support structures with more than two levels (let's call them 'section' and 'subsection'). Very often, when it comes to subsections, publishers do not even assign a numerical value. Rather, the title of the subsection is simply placed in italics. While books are sometimes divided into number of levels, using either 1., 1.1, 1.1.1

or A.I.1.a), journals never use such a high degree of complexity. The main part should consist of only a few sections – designated as 1., 2., 3., and 4. – each with two or three subsections if needed.

As discussed before, every section should conclude with a summary of the argument so far. Whether pre-announced in the U.S. fashion or not, the summaries are critically important to enable the quick reader to skim through the text. The point is that even if you have managed to spark the interest of a potential reader, he or she may not be willing to read the entire paper. Instead, he or she may just read the introduction, the various section conclusions and the overall conclusion.

Perhaps for reasons of purism, journals will not allow you to highlight key words by making them bold or underlined. While this is very common in other types of documents (e.g. policy papers), journals will not let you do this. And perhaps for a reason. A well-written paper in English can be a model of simplicity. The average sentence length can sometimes be as little as five words. Long, convoluted structures, common in languages like German and Russian, are completely absent. Therefore, if the argument is written in plain and simple English, there is no need to highlight key words.

Another feature typical of the post-Soviet scholarly tradition is the extensive use of footnotes. It is perhaps due to German scholars that footnotes sometimes carry a second level of text (or narrative, if you will). You frequently find 'capsules' of text in the footnotes, in which the author discusses some aspect related to the main argument, but obviously not sufficiently interesting to be discussed in the main text. In the Russian scholarly tradition, footnotes are less lavishly used than in the German tradition, but depending on the author's preference they can still represent a second level of analysis. To say it clearly, this approach is completely unacceptable for an English-language international journal in the social sciences. Footnotes are used sparingly, with all references contained in the text (as a rule, by putting the name of the author and year / page number in parenthesis). The reason is simple: by not allowing a second level of narration, the author is forced to decide whether what he or she thinks is interesting is really necessary for the argument. If it is just 'by the way', it has no place in the text.

Admittedly, law journals (including RCEEL and RLJ) seem to be slightly more relaxed about footnotes. The reason for this may be that – unlike in social science journals, where either you have your own data or you refer to other papers – in law you may need to discuss a large number of cases, giving meticulous references. Nonetheless, authors from the post-Soviet tradition run the risk of using this necessity as an invitation to open up a second level of analysis, which should definitely be avoided.

4.4.2. Contents

Once you come to the analytical part of the paper, you think that nothing can go wrong. Unfortunately, in most cases this is a mistake. Just like the norms and expectations concerning the abstract, introduction and structure, there is also a very

distinct style of reasoning that should be used in the analytical part. It is often said that the common law emerged according to the logic of inductive thinking, by developing precedents and extracting some larger rules from them. This style of thinking is similar to the reasoning expected in an international peer-reviewed law journal. It starts from the research question (or hypothesis) and broadens to the extent necessary to answer the question. Put most simply, the way of thinking is like a triangle, with the top representing the research question, and the direction of the argument is top to bottom.

The 'bottom' in this case means that the material basis of the analysis may get broader and broader, e.g. by including historical analyses, comparative materials, philosophical principles, etc. There is only one condition: the breadth of treatment is dictated by the research question. So if it is necessary to branch out into some more fundamental fields or into some first principles, that is fine, but only to the extent that it is needed to answer the research question.

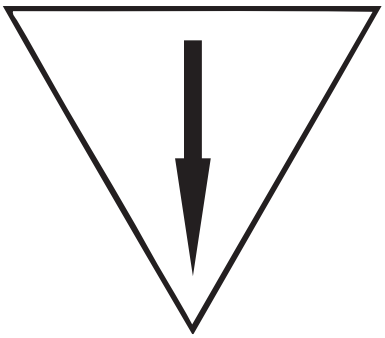

Fig. 2: Deductive style of reasoning

The problem with this approach is that for many authors from the post-Soviet scholarly tradition, it is simply counter-intuitive. Like all scholars in continental Europe, they are trained in deductive thinking, deducing practical applications from first principles. In their academic training they have been told to start every paper rather broadly. This includes not just establishing the scholarly credentials in the introduction, but first and foremost starting the analytical part of the paper by outlining the guiding principles or major schools of thought relevant to a certain question. Even if authors have a particular novelty in mind, they will address it only towards the end of their paper. Therefore, the overall way of thinking is like a triangle turned upside down. Again, the overall direction of the argument is top to bottom. But this time, the beginnings are fairly broad, and only towards the end of the analysis will the author address the core point that he or she had in mind when elaborating on the topic. Mind you, this core point is usually not announced in terms of a research question, so it is up to the reader to understand what a paper like 'On some problems of the law on bankruptcy' is really arguing.

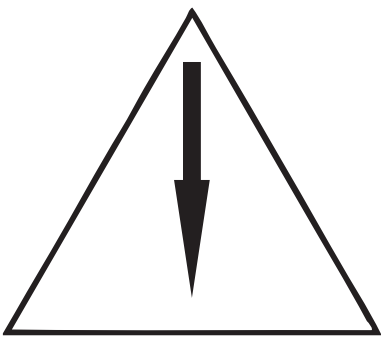

Fig. 3: Inductive style of reasoning

In light of this, it becomes clear why it is often downright impossible to 'translate' a scholarly analysis written in the post-Soviet

tradition into a paper for an international law journal. It is often difficult enough to break up the convoluted sentence structure (not only in Russian, but also in German) and rephrase the argument in short and concise sentences. Even if this task can be managed, it would still be necessary to reverse the entire flow of the argument or, figuratively speaking, to turn the triangle around and start the argument from the research question.

A second observation relates to the quality of the scholarly argument. In Western legal thinking any given problem is discussed in an 'upward movement'. If a question cannot be solved on the level of 'horizontal analysis', including grammatical and systematic interpretation, the researcher will invariably adopt a functional approach in light of higher principles, i.e. constitutional norms, fundamental rights and freedoms, and human rights. In the post-Soviet scholarly tradition, researchers will build their argument in a 'downward movement'. If a given question cannot be solved by 'horizontal analysis', researchers will look for the answer in the Resolutions of the Plenary of the Supreme Court or in some ministerial circular or other executive-type normative document that is below the formal law in status. This tendency to neglect higher-ranking law and in particular the Constitution is part of a tradition that is steeped in legal positivism. When a problem is 'solved' by a Resolution of the Plenary of the Supreme Court, a presidential decree or a ministerial order, the practical weight of the argument is so strong that any attempt to deduct innovative solutions based on higher-ranking law becomes practically pointless. Positivism is thus stifling legal creativity and produces largely uninteresting and unimaginative arguments. Consequently, it is very difficult to translate such arguments into the open and inquisitive framework of an international law journal.

Finally, one dimension of scholarly analysis that is specific to legal research is work with judicial decisions. For some reason, post-Soviet authors are more confident engaging in legal debate based on doctrinal positions, at most taking on the decisions of the Supreme Court, Constitutional Court or the European Court of Human Rights. Opening up the full wealth of judicial decisions down to courts of general jurisdiction has for decades not commanded much attention. And there were, of course, reasons for this. Historically, the most convincing reason was the poor publication practice, i.e. the difficult factual accessibility of court decisions in a country as big as Russia. The second reason is perhaps even more problematic. To put it provocatively, it may have been connected to the perceived lack of independence of the courts of general jurisdiction. Widespread corruption in the justice system reduces the expectation that courts will follow the spirit of the law. This may be a somewhat prejudiced approach, but what is certainly true is the widespread view that lower-instance courts do not take advantage of their independence to arrive at truly innovative decisions that may affect the development of law. In fact, I personally believe that they increasingly do and that it is worthwhile to open up the treasure-trove of lower-instance court decisions. However, the more widely-held perception still is

that the development of law through judicial decisions is a matter primarily for the Federal Courts, and that there is not much bottom-up development in elaborating new views and positions.

4.5. Writing the Conclusion

Authors in the post-Soviet tradition have a tendency to finish with broad conclusions, sometimes even returning to the issue of timeliness. The novelty that in most cases had been presented towards the end of the analytical part is often already forgotten. Instead, authors are glad to place themselves in the great scholarly traditions of their particular school of thought. For the hurried reader who expects to find the gist of the argument, the conclusion often reads like an extended version of the introduction. There is also often new material introduced, in which case the discussion turns to a different set of questions altogether.

Needless to say, all these aforementioned practices are completely contrary to what a conclusion in an international law journal should look like. The conclusion is the place where the research question is answered in a summary way. It is the place that the hurried reader will start with when deciding whether or not to read the full paper. Therefore, there is a strict requirement of symmetry between introduction and conclusion. Anything that goes beyond the scope of the research question is strictly prohibited. Under no circumstances can new material be added or the 'topic' be broadened. So, in terms of difficulty, writing a conclusion is really simple. It just needs to echo what has been elaborated and connect it back to the research question in the introduction.

5. Conclusion: Towards an 'Early Legal Writing Approach'

When it comes to promoting publications on Russian law in peer-reviewed international journals, there is a strong need to prepare potential authors as early as possible. Having looked at the two major journals of a general legal profile and the experience in editing submissions from authors of the post-Soviet tradition, it becomes clear that the way young scholars are traditionally taught how to publish is completely inadequate for this new reality. What is needed is a change of generations. Today's teachers of law who studied in the Soviet Union, even if they have some knowledge of English, are hardly in a position to train today's generation of students how to grow up to publish internationally in their professional future. This may sound offensive and is of course not meant to diminish the scholarly achievements of an entire generation, but looking at the experience that this paper summarizes, it simply needs to be stated as a fact.

There is one possible counter-argument that comes to mind when writing this. Why would students need to be taught these skills in the first place? Now that Russia

has switched successfully to the Bologna model of B.A. / M.A. (*magistratura*) studies, for the first level students should obtain the basic knowledge that they require for some basic legal occupations. In this logic, it would be sufficient to begin training students with a view to publishing at the *magistratura* or even the *aspirantura* levels. The problem with this counter-argument is that it may be technically convincing, but it overlooks one very insidious effect of the traditional way of teaching. If students are not taught to be inquisitive, to ask questions and to challenge established wisdom, they will never even get near being able to formulate research questions in the future. What is embodied in today's international peer-reviewed journals is a style of scientific inquiry that is completely at odds with the tradition of amassing knowledge in black-letter law. It is about a *Grundhaltung*, a fundamental approach to studying law, that needs to be inculcated into students from the first year of their studies. Once students reach the doctoral level, they may have already been spoiled and find it difficult to understand what is asked of them.

Publishing in peer-reviewed international law journals is thus not an 'add-on' to legal education, but it is a challenge to completely re-think the way we study law. In the beginning of this paper, I criticized the wisdom of today's 'Top 100' program in Russia. This criticism should now be refined. It is certainly a good thing to be ambitious and to establish policies that challenge the established ways of doing things. Having more than five Russian universities among the world's top 100 universities would be a major achievement. And the reality is that this 'battle' will not be decided in the field of legal education. But in the spirit of simply starting things or at least trying to, there is the eternal question of 'what is to be done?'

My own suggestion is that 'Early legal writing' should become a crucial element in the contemporary Russian legal education, and it should start at least at the level of master studies. What today's generation of established scholars has to painfully acquire should become part of the legal education of the next generation of lawyers in Russia.

In the last paragraph of this conclusion, let me bend one rule that I had promulgated above, i.e. the requirement of symmetry between introduction and conclusion, and introduce one new piece of information. So far, the effects of early legal publishing are not yet sufficiently researched. In a paper, published in February 2016 in the journal *Research in Higher Education*,[15] the careers of about 4,000 PhD recipients in Portugal from all fields of science over almost 50 years were analysed to see whether publishing during their PhD studies had any impact on their long-term productivity. The results extended the previous literature[16] by showing that those who publish during their PhD

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[15] Hugo Horta, João M. Santos, *The Impact of Publishing During PhD Studies on Career Research Publication, Visibility and Collaborations*, 57(1) *Research in Higher Education* 28 (2016). DOI: 10.1007/s11162-015-9380-0.

[16] See in particular William F. Laurance, D. Carolina Useche, Susan G. Laurance, Corey J.A. Bradshaw, *Predicting Publication Success for Biologists*, 63(10) BioScience 817 (2013). DOI: 10.1525/bio.2013.63.10.9, who inter alia found that pre-PhD publication success was the strongest correlate of long-term success.

studies have greater research production and productivity, and greater numbers of yearly citations and citations throughout their career compared to those who did not publish during their PhD. Moreover, it is found that those who publish during their PhD studies are more adept to publish single-authored publications and engage in publications with peers based abroad, thus suggesting both higher levels of scientific autonomy and international collaboration dynamics. By comparison, those who wait to publish their first work until they have their doctorates in hand may be missing out to those who publish while still PhD students.

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