Rob van Gestel and Jurgen de Poorter, *In the Court We Trust: Cooperation, Coordination and Collaboration between the ECJ and Supreme Administrative Courts*, Cambridge University Press 2019, ISBN: 9781108481274, 256 pp., € 128,99

The preliminary reference procedure laid down in Article 267 of the Treaty of the Functioning of the EU, under which national courts are entitled and sometimes obliged to refer questions concerning the interpretation or validity of EU law to the Court of Justice, has often been described in legal scholarship (also by the present reviewer) as an exercise in judicial dialogue. While many have expressed doubt as to the adequacy of this designation, citing both the limited exchange that the procedure provides for and the sparse and occasionally cryptic style in which the Court drafts its judgments, the label has proven persistent. Against this background, Rob van Gestel's and Jurgen de Poorter's effort to empirically analyse the exchange taking place within the preliminary reference procedure and conceptually relate it to the elusive dialogue concept speaks to a long-standing conundrum of EU legal scholarship, convincingly demonstrating what has previously only been intuited, and coupling it with firm recommendations as to the future of the procedure and indeed of the Court itself.

The book centres around an empirical study of the preliminary reference exchanges between the Court of Justice and ten selected Member State supreme administrative courts. The authors rely on quantitatively oriented case law analysis methods as well as interviews with judges on the selected courts. The findings of this study – in themselves an important contribution to the growing field of legal empirical research about the Court of Justice – form the basis of the book's theoretical and conceptual parts.

The book is divided into six chapters. The first chapter succinctly presents the puzzle that the authors set out to address: on the one hand, the Court's insistence that it is engaged in a dialogue with national courts based on mutual cooperation; on the other, previous observations by fellow scholars that the interaction between the courts is far removed from what in ordinary language would be termed a 'dialogue'. The chapter also reveals that while the preliminary reference procedure takes centre stage for their enquiries, van Gestel and de Poorter do not limit their focus to the formal starting and ending times of the procedure but include considerations and actions taken by (predominantly) national courts both before a reference is sent and after the Court of Justice's ruling has been delivered.

Chapter 2 delves into the concept of dialogue. Here, the authors provide an overview of the concept of judicial dialogue as developed in legal scholarship. It traces its origins to Canadian constitutional law before exploring a variety of settings for inter-court communication, primarily following the taxonomy of Alan Rosas' influential article 'The European Court of Justice in Context: Forms and Patterns of Judicial Dialogue' (*European Journal of Legal Studies* 2008). The chapter does not, however, offer a conclusive or even working definition of what

judicial dialogue is, or which criteria an exchange between courts needs to fulfil in order to qualify as one. Instead, it focuses on the functions of judicial dialogue, noting in particular its legitimacy-enhancing potential. While one might agree that this perspective is more fruitful, the absence of a definition is nevertheless surprising in a book that aims to 'establish the extent there actually is a judicial dialogue between the CJEU and highest administrative [courts]' (p 20). A clearer characterization of the minimum requirements of judicial dialogue could have functioned as a benchmark for the empirical study, rendering the analysis more robust and adding to the weight of the ultimate conclusion.

The third and fourth chapters present the empirical study of the interactions between the Court of Justice and the supreme administrative courts of ten Member States: Germany, France, the UK, Spain, Austria, the Czech Republic, Poland, Denmark, the Netherlands, and Belgium. Here, the contentious reader might protest that these are not all specialised administrative courts. For instance, both the Danish and the UK supreme courts have general jurisdiction, and the authors do not explain how non-administrative cases from these courts are identified and excluded from the dataset or, alternatively, how the inclusion of civil and criminal cases from these jurisdictions may affect the findings. A more generous reader might however point out that the significance of the research question addressed in the book is by no means confined to administrative law.

Chapter 3 is dedicated to the analysis of the preliminary reference cases referred by the selected courts. The analysis is largely focused on two issues: first, the types of questions asked and the type of answers received, where the authors develop their own taxonomy of questions and answers; second, the use of what the authors term provisional answers, i e, a discussion in the orders for reference on how the referring court considers that the questions could or ought to be answered. In the former category, the authors attach particular importance to the proliferation and de facto acceptance of questions concerning national provisions' compatibility with EU law – a matter that is, according to long-standing case law, not for the Court of Justice to decide (van Gestel and de Poorter discuss them under the provocative heading 'Questions that should not be asked'). In the latter, they note significant variations between national courts' practices of providing provisional answers, with some courts doing so routinely and others consistently abstaining. The value of such answers are however called into question by the observation that the Court of Justice only very rarely enters into open discussion about the solutions suggested by the referring courts.

Chapter 4 offers a qualitative complement to the case law study by reporting the conclusions of an interview study with judges and, in the case of the Court of Justice, Advocates General of the selected courts. The findings are rich and

cover a wide range of issues associated with the use of the preliminary ruling procedure and with inter-judicial communication generally. The insights from the interviews are also interspersed with the authors' own reflections as to the implications and causes of the choices revealed.

A recurring theme in the book is the Court's use of requests for clarification from the referring court as provided for in the Rules of Procedure, which the authors appear to consider one of the most promising dialogical tools in the Court of Justice toolbox. The empirical study indicate, however, that such requests are very rare in practice. Upon enquiring on the reasons for this reticence, the authors take a critical position as regards the purported explanation – perceived procedural obstacles and negative experiences with previous requests – and instead theorise that refusal to ask the referring court for clarification of the questions leaves the Court with more leeway to interpret and reformulate the questions as it sees fit.

The fifth chapter returns to the concept of dialogue, which is now coupled with the notion of trust. Van Gestel and de Poorter argue that a key reason for the low levels of interaction revealed by the empirical study is a mutual lack of faith in the abilities and intentions of the other court, leading judges at both national and EU level to question the benefit of increased dialogue. Instead of earnestly trying to understand one another, the authors argue, both courts use unclarities to twist the questions or answers to fit their own needs or preferences. While still not providing a conclusive definition, the authors conclude that the current practice does not meet even the 'bare minimum of a judicial dialogue' (p 196). On this basis, the sixth and final chapter outlines three possible futures for the preliminary reference procedure, ranging from a status quo improved only by increased transparency and information sharing on both sides (cooperation) to an ambitiously revised preliminary reference procedure where the authors envision national supreme courts stepping up as auxiliary courts with powers to filter references from lower courts, prepare preliminary answers in a 'green light procedure' or even themselves exercise decentralised EU jurisdiction in certain cases (collaboration).

Reading the book, one is tempted to wonder why an entire scholarly work is dedicated to the question as to whether the interaction between the Court of Justice and national courts under the preliminary reference procedure should or should not be considered a dialogue. If the concept is so problematic, why not just discard it? The rose's scent does not depend upon its name, as Shakespeare teaches us, and the preliminary reference procedure's faults would hardly be worsened, nor its merits diminished, by another label. However, as the authors observe early in their work, the concept of judicial dialogue is not only a description. It is also (among other things) an ideal. The authors state that they refrained from relying on a definition of judicial dialogue as a bench-

mark for their empirical study, as they 'do not believe it is up to [them] to determine what the relationship between the CJEU and highest national administrative courts should be' (p 146). Their fear that a definition would immediately become prescriptive is illustrative of the entanglement between the descriptive and the normative side of the concept.

The conclusion that the practice of requesting and delivering preliminary rulings is not a dialogue is thus more than the neutral observation that the procedure does not fit the definition – whatever it is – of a dialogue. It is not the botanist declaring a specimen to be not a rose, but a peony. It must be understood as a critique. This begs the question what it is a critique for; what are the problems of the preliminary reference procedure that a dialogue could remedy, or that were created by its non-dialogical features?

For van Gestel and de Poorter, the answer appears to be connected to the purpose of the preliminary reference procedure. They identify three competing aims: securing the uniformity of EU law, developing EU law through precedents and judicial law-making, and upholding EU law by protecting the individual rights it creates. For the first and the last purpose, they argue, there is no particular need for judicial dialogue; it is only when the Court of Justice engages in judicial law-making that national courts (and, arguably, other actors as well, including national governments) have an interest in sharing the burden. But unless it is to see itself and its authority drowned in the increasing inflow of cases, the Court of Justice will have to choose, they argue, which of these purposes the preliminary reference procedure should serve. Their own preference, it seems, lays with the law-making purpose – thus making the failure of judicial dialogue critical.

Judicial law-making, however, is not an exclusive trait of the Court of Justice, but an unavoidable feature of adjudication itself – especially on the peak levels of the judiciary. Indeed, the Court of Justice does in this regard not appear to be drastically unlike its national counterparts, neither in methods nor in mandate. Is judicial dialogue yet another infant disease of European law – a sign that the Court of Justice does not command sufficient authority to gain acceptance for its judgments without drawing on the legitimacy of its more venerable colleagues in the Member State judiciaries? And if so, how do we move beyond it, to graduate into a discussion about the independence, authority and proper functioning of the European judiciary, however described?

Van Gestel's and de Poorter's book is not the final word; not on judicial dialogue, not on the preliminary ruling procedure, nor on national courts' relations to each other or to the Court of Justice. However, it certainly increases our knowledge about what goes on behind the closed doors of the judicial chambers. It answers some of the questions raised in previous scholarship, but more im-

portantly, it allows us to formulate new and more insightful questions. Upon those questions, the debate is certain to continue.

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