



Writing as a middle-aged legal academic[†]

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In this short contribution, I will reflect on legal writing from the perspective of a middle-aged academic – self-defined as someone with around 25 years of experience to draw upon and maybe another 15 years left to go until his retirement.

Let's begin with the process of writing itself. In many respects, my technique for drafting a given paper has barely changed since doctoral days. It is tempting to assume that this approach is so commonplace as to be barely worth explaining – but my experience as a journal editor regularly reminds me that there can indeed be real value in sharing effective principles and practices of academic legal writing.

My technique consists of a combination of three main strands. First, a single-minded focus on structure. I want to organise the world at hand into a list of main points, then those into subpoints, and then those into sub-subpoints ... all done with a pen and notepad, using an idiosyncratic but lightning-fast shorthand first developed during my own time as an undergraduate. Among the many joys offered by our profession, this remains one of

my very favourites, as much for its challenges as its rewards: late-night reflections and revisions inspired by reading the latest batch of case law; unexpected computations while sitting on the 82 bus into Liverpool that need to be scribbled down for later incorporation; the savage but necessary butchery of ripping ideas apart so they can be carefully stitched together again (hopefully) in a more compelling way. Above all, I savour the quiet satisfaction of expressing one's academic self through the innately creative act of imposing some tolerable sense of order onto what might otherwise be perceived as legal chaos, or of discovering latent patterns in materials that might otherwise appear entirely disparate or unremarkable. In any case, the goal is to produce a structure sufficiently detailed that, once it is time to open the word-processor, what remains is largely a matter of converting bullet points into sentences, and thereby skeleton notes into narrative text, in a quasi-mechanical fashion.

Secondly, the question of message. My goal is to write works that convey a clear and memorable thesis, preferably an idea that

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could be communicated on the back of a postcard, but hopefully at least a message that will leave the reader not just better informed than before but with some new sense of insight or understanding of the subject. Some might ask: shouldn't message come before structure? Don't you have some idea of what you want to say before you elaborate the framework for saying it? For me, that order or distinction is not at all clear. I usually start with little more than an intuition that there might be 'something to say' about a given field. But what that 'something' actually is only emerges as my structured understanding of the topic improves. Of course, sometimes my intuition is not matched by my imagination: if I begin to sense that a compelling message will eventually be lacking, I struggle to see the point of working on (let alone finishing) any paper. Usually, though, my intuition is sufficiently grounded in middle-aged experience as to bear some fruit: a thesis takes shape, whether confidently or tentatively. And with the requisite message in mind, I feel the piece has the necessary impetus and a reference point around which the entire structure (and eventually the narrative text) can be tailored and refined. It guides my choices about what issues to include or exclude, what points to emphasise or relegate. It exhorts me to consider whether every word has a role to play within its sentence, every sentence within its paragraph, every paragraph

within its section, and every section within the overall paper. I have learned to enjoy (rather than just feel unsettled by) the way that even relatively small or subtle changes to the core message can necessitate drastic alterations to the overall structure or far-reaching revisions to one's tone and language.

Thirdly, structure and message are also intimately linked to the matter of audience. Whatever professional and personal reward I may derive from my own academic writing, I do not write 'for myself', as if my (essentially publicly supported) research were a sort of private indulgence. I always write for an intended or assumed readership – whether of a given journal, or edited collection, or policy report etc. So, for me, it is crucial that both my structure and my message are tailored to the nature and needs of their eventual audience. In practice, that translates into certain general guidelines that shape almost everything I write (though the context can also justify exceptions, the present paper among them). For example, while I appreciate that many colleagues prefer to allow their core message to emerge only gradually as their paper unfolds, I avoid approaching legal writing as if it were a murder mystery – shadowy characters, twisting plot, sudden denouement. I want my message to be told and understood upfront, so that the rest of the paper is merely a matter of elaboration and substantiation. And the latter also means a fixation with signposting: both macro, for

example, in doggedly summarising what has gone before and what is about to come next; and micro, for example, through a well-settled repertoire of words and phrases (from ‘on the one/other hand’, through ‘nevertheless’ and ‘however’, to ‘moreover’ and ‘furthermore’ ...) that seek to clarify the relationship between one sentence or paragraph and the next. In all situations, if the average reader cannot follow my argument, and follow it first time round, I regard it as a failure of effective communication on my part.

Within or rather because of those parameters, I consider myself lucky not to struggle with the actual process of writing – of getting the requisite words down on paper. I have never experienced ‘writer’s block’. On the contrary, it feels like my working methods (spend whatever time is needed to get the entire, detailed structure in place, before trying to convert hand-written notes into word-processed text) somehow free up mental space, while sitting at the computer, to concentrate (quite literally) on ‘the writing’ – from judging the correct degree of confidence or conditionality with which to assert a given proposition, to choosing the most appropriate expression for conveying my desired intensity of criticism. At this stage, another set of writing guidelines comes into play – aimed at expressing certain values I want to respect in my finished outputs. For example: I prefer to present

and engage with abstract ideas, attributed to or associated with individuals only in the references rather than in the text; if there is good reason to ‘put a name’ to an issue or argument, it should always be done objectively, constructively and respectfully. Another example: keeping a sense of proportion about both what I have to say and how I go about saying it. I think back now to some of my early publications and know that they defy this guideline in a way that makes me cringe with embarrassment: how could I ever have thought that such a specialist technical question about detailed legislative interpretation should be treated as if it were of earth-shattering importance; or that some moderately interesting but frankly marginal criticism of a recent CJEU ruling should read as if straight from the Book of Last Judgment? Middle age is a good time for learning lessons ...

... though also for being stubborn. Even if I should be the first to recognise my own writing faults, in some cases, I have long given up on doing very much to correct them. Take, for example – and this is a source of occasional tension with diligent copyeditors – my consistent but apparently incorrect use of both colons and semi-colons. It makes complete sense to me and has become essential to my methods of written expression, but it is apparently (though at least consistently) incorrect. And from one vice has spawned another: using colons to begin a list, then semi-colons to

mark off its component elements, encourages me to write stupidly long sentences that apparently only I do not perceive as being stupidly long. However, the worst habit of all must be my terribly inefficient practice of adding references only at the very end of the writing process, when the entire narrative text may well be complete, but my memory of which primary or secondary sources I had in mind when I wrote that elaborate sentence or inserted that blank footnote has long since faded away. Again, wickedness flourishes upon wickedness: what a supreme hypocrite that makes me, when I denounce such poor practice as a pathway only to academic despair for any doctoral student or early career researcher.

But if my own approach to writing, with its strengths as well as its deficiencies, has remained fairly constant over the course of a quarter-century, surely what has changed more radically is the wider context in which my research is conducted. Like most colleagues, I assume, and regardless of age or experience, I try to balance the very real freedoms that come with working in the academic profession, against the sometimes considerable pressures exerted upon and by my own institution as well as our wider sector, whilst also absorbing the inevitable knocks and jolts thrown up by the vicissitudes of every human life. And like many colleagues, I assume, though this time maybe closer in age and experience, I suffer the

recurrent sense of intellectual insecurity that wonders whether 'next time' I'll have anything new to say, or whether my best days (such as they were) are now sadly behind me, so all that now remains is to recycle the same handful of ideas, just as I still do my three best playground jokes (think: constipated mathematician; coalman's daughter; two nuns on a bench).

Setting aside such communal tribulations, every middle-aged academic will also have their own more particular story to tell. In my case, it feels like two main sets of factors have exerted an important influence over the wider context in which I have set about my life as a researcher.

First, there are the factors and choices that steer the macro-evolution of our individual academic careers over a period lasting several decades. I perceive my professional experience in terms of blocks or phases – each marked by a particular balance between the different components of the job, and each bringing its own palette of opportunities and challenges. In fact, not just perceive, but actively conceive and pursue – not least as an effective immunisation against the risks of boredom and frustration, sliding then towards resentment and bitterness, that seem to blight so many once happy and productive academic lives. Phase 1: following my first academic appointment in 2000, I enjoyed a brief but blissful period of energy and freedom, comradeship

and collaboration, free from any significant administrative duties, even if there was still plenty of teaching to be done. Phase 2: in 2004 came the Chair in Liverpool, for me a remarkable opportunity, of course, though with it began a period of increasing management responsibilities – not least during my stint as Head of Department. Phase 3: around 2015, the gathering Brexit clouds signalled a new era entirely dominated by hyper-intensive, often positively dizzying, sometimes deeply unpleasant, impact and engagement activity. Phase 4: around 2020, just as Brexit was got done, a new career recalibration began; the opportunity to participate in various institutional, national and international research evaluation processes now constitutes a core part of my professional life.

Of course, each phase in an academic career calls upon us to find the necessary resources and develop the requisite skills not only to survive the experience but hopefully to emerge a little wiser and a little stronger. For me, the Brexit years – seething with tension, strife and abuse, but also full of solidarity, determination and resilience – were emblematic in that regard. And, of course, there are some experiences that provide a valuable sense of continuity across different phases in one's professional life. After 25 years, I still sincerely enjoy teaching EU law to undergraduate students. Through different channels and in varied contexts, I remain dedicated

to mentoring and supporting emergent researchers. And it is not now far off 20 years since I first joined the unique community of scholarship and friendship that is the *Common Market Law Review* Editorial Board. Whatever the battle-scars and encumberments accrued by, and still during, middle age, I nevertheless consider myself very lucky indeed.

But more to the point: what does current Phase 4 mean for my plans and ambitions as an academic author? Of course, the time available for personal research is now much more limited; indeed, for large stretches of the academic year, it feels entirely non-existent. And not just for planning, thinking and writing, but also when it comes simply to keeping on top of the myriad developments taking place across the enormous and dynamic field of EU law. Frankly, I suffer from a constant sense of being way behind or simply out of touch with the latest primary materials. In many respects, I have come to rely on a deeply embedded, historically informed familiarity with and understanding of the principles and forces that underpin the EU legal system. But I see little point in moaning about a lack of time and space that rightly belongs to the emerging rather than the established scholar. I prefer to accept that, since my professional responsibilities have changed, I can and should reimagine also the nature of my own contribution as a researcher. Which means leaving the fast reactions and forensic

analyses (of precisely the sort I once revelled in myself) to the new generation of talented and ambitious colleagues. Instead, I try to concentrate on offering the sort of reflections that can benefit from decades of accumulated knowledge and experience – exploring the structural or systemic features of the EU legal system, identifying certain patterns or challenges that reverberate across the entire framework, of the sort that speak (albeit with different accents) to the discipline of European law broadly conceived.

That reimagining of my own potential academic contribution, prompted primarily by my changing professional profile and commitments, is sympathetically reinforced by the second set of factors referred to above, which are associated precisely with certain broader forces in the evolution of the discipline of EU law. Over the 25 years of my career thus far, EU law has undergone an enormous growth in both breadth of activity and depth of specialisation, alongside a very significant diversification and enrichment of legal and interdisciplinary methods, as well as an increasing intermingling with research grounded primarily in the national legal systems and traditions of the member states. All of that contrasts increasingly with my personal academic profile: I remain a generalist constitutional lawyer, using firmly doctrinal and conceptual approaches, investigating the EU legal system in its own right and on its own

terms. Does that make me a curious relic, in the process of becoming an obsolete fossil? I prefer to think that the growth and diversification of EU legal studies have created room for everyone. I make time to experience and appreciate the enormous diversity that now exists in EU legal research in terms of perspectives, methods and skills. But, perhaps even more so than before, a viewpoint that focuses on the functioning and evolution of the overall constitutional system, together with the identification of cross-cutting phenomena or emergent common trends, can help provide a type of insight, maybe even a sense of collective coherence, that might otherwise be lost through excessive fragmentation or compartmentalism.

It seems fair to add that that aspiration to provide a distinctive sort of academic perspective and contribution has been driven not only by major changes in the discipline of EU law as such, but also by some far-reaching upheavals in the UK as an academic environment. Which inevitably brings us back to Brexit. As Niamh NicShuibhne has already eloquently testified, in this very Reflections on Writing series, withdrawal has impacted significantly upon the experience of being an EU legal researcher in the UK: one regularly hears reports about the dwindling numbers of colleagues, a sense of waning institutional interest or support, the damage done by Brexit's deliberate politicisation or even demonisation of an entire

academic discipline, including the fear or suspicion that that might affect access to various forms of research support, not to mention the risk of being left ‘out of sight, out of mind’ by our colleagues across the EU27 ... Despite all that, I am determined to remain an EU legal researcher writing for my inherently international discipline. Indeed, precisely because of all that, I want to help ensure that the UK remains a vibrant and valued centre of intellectual life in the discipline of EU law – for the benefit of myself and my colleagues, of course, but also for that of the country in terms of its current and future intellectual resources.

And, in that endeavour, it goes almost without saying that the wider UK academic culture offers some positive and distinctive benefits. After all, the way in which the evaluation of research outputs focuses primarily on quality according to the scientific criteria of rigour, originality and significance provide far better support for the cultivation of research excellence than one might find in some other approaches (based largely on quantity and other metrics) or systems (including those that rely on publication quotas or approved journal lists). Though of course, the UK system also has its fair share of problems. To take one example: a gathering sense that the possibility of embarking upon an academic career lies increasingly beyond the realistic aspirations of many working-class students, entirely regardless

of their intelligence, talents and motivation. I would never claim to be able to verify for myself the true scale and seriousness of that problem. But I often wonder, and sincerely doubt whether, if I were an undergraduate student today, but having come from the same socio-economic background as I did, I would ever rank ‘do a PhD to become a university researcher’ among my viable career options.

Let’s conclude with a broader thought – almost painfully pretentious, but nonetheless sincerely professed. Academic freedom of thought together with the time to develop and express it are an enormous privilege for us as individuals: to be paid to think and write, on whatever subject we see fit, in whatever direction our reason takes us, that really is a wonderful thing. Yet we are living through a time when academic freedom feels less and less like a privilege, and more and more like a responsibility, ie to uphold fundamental scientific principles, within the framework of a civilisation built upon the values of liberal democracy, all of which are now under direct attack from increasingly belligerent and confident authoritarian political movements in the UK, across Europe, and far beyond.

What does that responsibility mean? That we should be preparing to defend the barricades?! Of course not. Or at least not yet. For now, it means that we should dutifully carry on with our generally peaceful, largely modest lives as professional researchers. Because particularly

in an essentially incremental and discursive discipline such as law, the real value of what we write lies not only in what we say but also in how we say it: with a bedrock of evidence, rigour of analysis, precision of thought, and clarity of expression. All of which stands in stark contrast to the shallow commentary, or ideological determinism, let alone fake news and deliberate disinformation, that currently appears to dominate so much public discourse. In effect, every work of academic writing has become an act of defiance. And, every day, the ensembled academic 'we' seek to disseminate the same basic scientific and liberal principles that underpin our research, in countless different ways, to as broad an audience as

possible: our students, friends and acquaintances, civil society, lobbyists and influencers, policy-makers, the wider public. In an era of geopolitical turmoil fuelled by the likes of Putin and Trump, when fundamental features of our political and social system feel under direct and existential assault, this middle-aged academic finds himself reflecting upon, and to some degree even comforted by, the idea that our individual academic lives (however dutiful, peaceful, modest or indeed privileged they may be) both inherit and express a body of civilisational values that, through the massive and diffuse labour of our collective writings, we nourish and pass on to the next generation.