International Journal of Law in Context (2019), **15**, 310–326
doi:10.1017/S1744552319000302

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SPECIAL ISSUE ARTICLE

Change of style, change of mind: lawyers' writing manners

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Abstract

This paper explores the relationship between style and epistemology as regards the discipline of law – especially in the Romanistic tradition – and, more specifically, its resistance to interdisciplinarity. Drawing on literary theory and discourse analysis literature, the first part of this paper examines the notion of 'style' in relation to academic disciplines. It argues that the variety of writing styles reflects the various epistemologies underlying the different disciplinary discourses and makes interdisciplinarity difficult to implement in general. The second part of this study borrows Roland Barthes's distinction between 'readerly' and 'writerly' texts in order to show that lawyers' writing manners hinder the ability of law to connect with other disciplines. Against the background of the two sections, this contribution will finally include a discussion on what could be done to enhance law(yers)'s capability for interdisciplinary thinking, concluding that style might be not so insignificant a place to start with.

Keywords: legal epistemology; literary theory; discourse analysis; interdisciplinarity; style; civil-law tradition

1 Introduction

If anthropologists use storytelling, economists employ graphs and philosophers resort to abstract language in order to deploy their arguments, it is because they have different (disciplinary) world visions. As such, their writing style is not simply a vehicle, a means, a matter of form, but a matter that partakes in the content, in the very essence of what is being transmitted. Academic lawyers, too, approach texts in a specific way due not to logical necessity, but rather to the 'good manners' that have been traditionally obtained as a result of an effective, yet violent, process of disciplinarisation. While judges and other law practitioners seek to attain justice, that is of course a very specific form of justice – legal justice – and therefore launch themselves in an untiring quest for textual meaningfulness and discursive certainty, legal scholars, unconstrained by instrumental goals, can and should exploit other possibilities in respect of their writing style, especially if they wish to reap the benefits of interdisciplinary thinking. This is, in a nutshell, the argument that I will defend here.

As any text, my text starts from somewhere. While this 'somewhere' can never be fully known to oneself, for one can never travel at the end of his or her prejudices, I must acknowledge, from the very beginning, at least some starting points that, had they been other, would have probably turned this endeavour to articulate the relationship between style and epistemology as regards law into a very different story. Indeed, 'every time I use the word *style* to characterize an object, I place myself, by this very mention, in the position of a … critical subject, inscribed in a personal history' (Bordas, 2008, p. 223, emphasis in original).

Thus, my take on the topic of style in law is informed by my experience of having been trained as a lawyer in a civil-law country, namely Romania, of having then studied law in another civil-law country, that is France, and, not least, of having decided to try to become a comparatist – a decision that has brought me into contact with common-law reasoning as well. Therefore, my contribution draws on

and refers especially to the two national legal systems that I know best: the Romanian and the French. However, I am encouraged to believe that more than one author belonging to other civil-law countries will recognise the scholarship produced within his or her legal community in my account of legal style.[1]

Moreover, my reflection on the articulation between law and style, and, in particular, on the idea that a more or less reflected-upon change in the language we use in research can bring about change at the level of epistemology, is indebted to the years in which I studied for my PhD in Paris. During that period, I realised, somewhat intuitively, that, even before I got acquainted with sophisticated arguments of legal epistemology in favour of interdisciplinarity, my thinking opened up to various disciplinary perspectives essentially because I was learning to abandon the typical authoritative tone of legal language and write otherwise.

I should also add at the outset that this paper starts from the premise that interdisciplinarity is an intellectual enterprise worthy of being pursued. The need for interdisciplinarity in legal research has already been advocated for a while now, both in the common-law as well as in the civil-law world, though to a lesser extent in this latter legal tradition (Balkin, 1996; Ost and van der Kerchove, 2002; Taekema and van Klink, 2011; Bailleux and Ost, 2013). The actual theoretical arguments behind the defence of interdisciplinary thinking in general or in relation to law in particular are numerous. One can move from an ontological view of interdisciplinarity ('reality' is not compartmentalised) to an epistemological, critical one (there is no such thing as 'reality' – there are only community discourses and their interaction is beneficial to knowledge) to an instrumental one (interdisciplinarity is needed to solve problems that cannot be tackled by any single discipline) (Klein, 1990).

When it comes to law, I think there is value in rather defending a critical approach. Indeed, law caught, throughout time, the attention of many other disciplines. In other words, law (as a discipline) does not exhaust the reflection on law (as a social phenomenon). A sociologist's gaze at law will differ then from the typical lawyer's gaze at law and, importantly, both will differ, in turn, from a lawyer's gaze at law through the lenses of sociology. While equally valuable, these perspectives are not, epistemically speaking, amenable to each other. There is value in moving away from one's own territory, so that one can expect compelling explicatory outputs if sociologists or political scientists take an interest in law and, at the same time, conversely, lawyers become preoccupied with sociology or politics. Here, direction matters (from sociology to law or from law to sociology), for one cannot simply assume away the researcher's disciplinary training. No interaction between two, three or more disciplines ever takes place in a vacuum, without the mediation of a person who acts as a translator, to use James Boyd White's notion of the translator as someone

> 'who know[s] that what is said in one language cannot simply be set over into another without loss or gain and who therefore conceive[s] of their task as the creation of new compositions that will establish mutually respectful relations between them.' (Boyd White, 1990, p. 20)

Legal scholars should play their part in the creation of such new compositions by assuming more often the role of interdisciplinary mediators.

[1]Recent literature examining legal education and epistemology in Central and Eastern European countries allows me to think that the style with which I associate civil-law countries such as France is not that different from the style of research employed by scholars from former communist legal systems in the Central and Eastern European region (Mańko *et al.*, 2016). In fact, one can legitimately assume that the communist heritage only exacerbated the positivist epistemology characterising civil-law countries in general. Thus, one author speaks of 'hyperpositivism' in relation to the Polish legal system – an ultra-formalistic version of positivism that appeared in the Soviet Union in the 1930s and was transferred later on to Central European countries (Mańko, 2013, p. 218). Under hyper-positivism, practitioners and theorists alike felt they could safely retreat in the resolution of legal technicalities, thus avoiding the more sensitive political aspects. Therefore, they were careful to insist on the letter of the text and to avoid bringing into discussion what might have appeared as extra-juridical arguments. This style of reasoning became internalised and part of a legal culture that was passed on to post-1990 scholars and judges. With specific reference to the Romanian legal language, Cosmin Cercel (2016) speaks of an 'authoritative style and stubborn philistinism … insisting on law's autonomy, its technicity, and scientificity' (p. 64). When it comes to the style of judicial reasoning in particular, while the thesis of exacerbated positivism might be plausible, Peter Cserne (2015) is right to suggest that formalism is not distinctively Central and Eastern European.

https://doi.org/10.1017/S1744552319000302 Published online by Cambridge University Press

I am very much aware that, for those who are not ready to accept the advantages of interdisciplinarity in respect of law, or who might think that there is already enough interdisciplinarity in law, my thesis about style shall be of no avail, since, for them, either nothing really needs to change or, if it does, it would be so for reasons different than the ones having to do with the pursuit of interdisciplinarity.

It is an empirical claim, I think, to say that law has until now resisted interdisciplinarisation, especially in the civil-law world, despite theoretical efforts to the contrary (Ost and van der Kerchove, 2002; Taekema and van Klink, 2011; Bailleux and Ost, 2013) and a growing presence of interdisciplinary studies in numerous other fields of knowledge (Frodeman *et al*., 2017). Why is this the case and what can be done? My answers shall be structured in three parts. First, I will argue that, because different disciplines embrace different styles in exposing their theories, interdisciplinarity is, in general, problematic and difficult to implement (Section 2). Second, I will claim that lawyers' writing manners, in particular, hinder their ability to connect law to other disciplines (Section 3). Third, against the background of the two previous sections, I will include a discussion on what could be done to boost law(yers)'s capability for interdisciplinary thinking (Section 4).

2 A clash of disciplinary styles

Style seems to be everywhere today in ordinary life, 'absolute reference, ultimate value' (Bordas, 2008, p. 15),[2] in art history as in fashion, in music as in politics. Style comes into play not only in literary texts, but also in scientific texts. In fact, 'every practice … involves a style' (Granger, 1968/1988, p. 11). Moreover, the concept has become an object of study for several disciplines, namely stylistics, linguistics, philosophy, logic and, more recently, artificial intelligence (Molino, 1994, p. 257). In all of these academic discourses, the dominant paradigm commands a view of style that builds on a 'presumption of invariance' according to which 'stylistic variation leaves untouched the truth values' of the message being conveyed (Martin, 1994, p. 11). Pursuant to this vision, there would be, on the one hand, the content, fixed, invariant, and, on the other hand, the form, flexible, versatile. 'The axiom of style is therefore this: *there are several ways to express the same thing*' (Bordas, 2008, p. 58, emphasis in original). This 'thing' would be something from the real world that the mind is able to grasp intellectually, neutrally, cognitively and to which the artist, the writer, the individual gives shape through language, stylistically, emphatically, ornamentally. Under this optic, style is never more than an ancillary element, some 'clothing, mask or make-up' (Compagnon, 1997, p. 9) behind which lies pure meaning. As such, it is literally meaningless, since, though words remain indispensable for the articulation of ideas, the variation brought about by changes in style would not in itself impact on meaning. This conception of style is tributary to a principle of dualism separating thinking (the signified) from language (the signifier) that harks back to Aristotle (Combe, 1994; Bordas, 2008). With this binary vision, we inscribe ourselves in a 'spatialized imaginary' (Combe, 1994, p. 73) at the core of which we find meta-physical dichotomies such as internal/external or outside/inside. Thought would dwell inside one's being and would remain anterior to language, which would only come to make the former available to us, by verbally positing it in the world.

Alongside the idea of a separation between form and content and in close connection with it, the classical ages entertained a normative conceptualisation of style. If one can freely choose among several stylistic possibilities in order to render the exact same information, one had better choose either the form that suits the best the purpose of the message or that otherwise would register some sort of aesthetic superiority. Style appears thus as a synonym for eloquence or elegance. It is perceived as 'a formal decoration …, a distancing from the normal or neutral way of talking' (Molino, 1994, p. 231).

Before the sixteenth century, style used to be conceived from an objective standpoint, as a skill 'out there' that an author could and had to learn by imitation (Molino, 1994): style as a code; style as good

[2]All translations are mine, unless indicated otherwise in the bibliographical reference.

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manners. In this sense, the notion denotes correction justly recalling us the collective dimension of any individual becoming: 'with the mention of the word style … the child makes his or her own a particularly efficient social code' (Bordas, 2008, p. 51). Let us remember that, in art history, 'school' stands as an equivalent for style, expressing a compulsory reference to authority and norms.

Later on, under the influence of the Renaissance and humanist values, authors began to turn their back to this objectifying conception and embrace a subjective view of style, which came to be seen, especially in art history and literary critique, as singular creativity characterising one particular author. Thus, a shift in meaning occurred from correction to distinction and, as such, from a collective to an individual understanding of style.

However, no matter how much we tend today to continue emphasising the individual facet of the concept in order to celebrate free will and the refusal of conventions, the fact remains that most branding in terms of style involves a generalisation (Vouilloux, 2008, p. 205). Academic discourses illustrate very well this duality of style, namely that of carrying at once the connotation of taxonomy and individuality, of repetition and singularity. Indeed, within any given discipline, the writings of the different authors resemble stylistically but the very same writings also differ from the writings of academics belonging to other fields of study. It is then precisely this cross-disciplinary variation in conjunction with an intra-disciplinary repetition that allows us to talk about disciplinary styles.

Therefore, the interdisciplinary researcher finds himself or herself in a difficult position for he or she is bound, before anything else, to deal with the various particularities of the styles that characterise the disciplines in which he or she takes interest. His or her task will be in fact all the more demanding since, as I will try to show, style is never simply only style; that is a question of mere dressing. Disciplines, which are ideologically and discursively situated, inquire into different objects of study or into the same objects of study but under different angles. In doing so, they employ specific vocabularies (jargons) but also peculiar styles of expression visible in academics' speeches, be they written or oral. If natural languages comprise a multitude of linguistic registers, of which the academic register is just one, the latter 'is not the uniformly faceless prose it is thought to be but displays considerable differences between disciplines' (Hyland, 2002, p. 351). Academic English, for instance, is not one (Hyland and Bondi, 2006). Thus, given their socialisation in a specific writing that is reproducing itself from one generation to the next and that remains indispensable if scholars are to obtain their certificate of disciplinary competence, it comes as no surprise that the 'prose' of philosophers differs from the one of historians and that the 'prose' of historians, in its turn, differs from the one of linguists, etc. As Ken Hyland (2004), an author who has extensively investigated the topic of disciplinary identities, points out, academics 'seek to embed their writing in a particular social world' (p. 1).

Moreover, in addition to the variations of rhetoric across disciplines, one is faced with different styles of expression even within the same discipline as one travels from a national context to another. By changing the language of research, we are entering a different cognitive universe, if only because this move will most likely compel us to restructure our work so as to include different bibliographical resources. Indeed, there is more than a chance that a sociologist's study in Spanish that draws on Spanish, Portuguese and French texts will differ from the English contribution of a sociologist who referred to English, American and Australian sources. One author explains that

> '[s]ince intercultural differences are bound to influence the comprehension of events by people belonging to different cultures, research in the field of contrastive rhetoric … has greatly helped the identification of textual aspects which may be attributed to culturally determined schemata reproducing a "world view" typical of a given culture.' (Gotti, 2012, p. 33)

For instance, one such comparative piece of research refers to the difference between English and oriental languages in the 'rhetorical structuring of an argumentative paper' (Gotti, 2012, p. 33; Kaplan, 1966), while another study highlights the fact that, under certain circumstances, language and not disciplinary culture might be the more important variable governing the pattern of meta-text in academic discourse (Dahl, 2004, p. 1808).

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In brief, researchers act in a context that is cultural threefold – because it is nationally, linguistically and disciplinary coloured – and 'where [therefore] what counts as convincing argument and appropriate tone is carefully managed for a particular audience' (Hyland, 2004, p. 3). It is enough to think about all the possible combinations between these three elements – nationality, language, disciplinary training – to which we could add the fact that authors always retain a personal touch, since no two individuals ever 'receive' the one culture, language or discipline in the exact same manner, to end up with a picture very much contradicting the classical view according to which 'scientific practice seems … to set aside the individual, and consequently to turn away from style' (Granger, 1968/1988, p. 13).

While 'a panoptic overview of signature writing styles across disciplines would be an impossible task' (Sword, 2011, p. 15), let us simply keep in mind for the time being that there is significant linguistic variation across disciplines.

Philosopher of science, Ludwik Fleck (1935/2008), had already argued in 1935 that disciplinary communities exhibit different thought styles that make some statements, within a given discipline, possible and render others simply inconceivable. More recent authors, such as Michèle Lamont for instance, identify in the social sciences and the humanities four such 'epistemological styles', namely the comprehensive, the constructivist, the positivist and the utilitarian, and attribute, based on empirical research, to various disciplines different scales of inclination for a particular style (Lamont, 2009, p. 56). Moreover, contrary to the general perception regarding the so-called hard sciences, it is worth noting that scientists also advocate for the recognition of epistemological pluralism:

> 'the very mention of styles, in the plural, corrects the direction of the debate: we shall stop talking of science in the singular and return to that healthy nineteenth century practice of William Whewell and most others: we shall speak of the history and the philosophy of the sciences – in the plural. And we shall not speak of the scientific method, as if it were some impenetrable lump, but instead address the different styles.' (Hacking, 1992, p. 17)

Now, the above-mentioned variation in disciplinary languages and discursive styles has its roots in the obvious fact that researchers across the knowledge spectrum write about very different subjects, from plant-based digital data storage to the dangers of illiberalism. But does this diversity of linguistic styles also reflect the above-mentioned variety of epistemological styles underlying these very different topics?

In providing an answer, I want to first emphasise that epistemology (the style of reasoning or how we reason) and the reasoned content (the reasoning itself or what we reason) cannot be usefully separated from each other (they can, of course, be delineated linguistically speaking, as the first part of this very sentence illustrates). And this conceptual impossibility seems to me to always be the case, not only in respect of those disciplines that more visibly deal with constructed realities, but in the sciences as well. Drawing on the idea of 'styles of scientific thinking' advanced by the historian of science, A.C. Crombie, Ian Hacking (1992) argues that epistemology partakes in the creation of novel objects of study: 'styles … open up new territory as they go' (p. 8). Or, to put it differently, 'it is not so much the object that determines the style or method of inquiry as the style that contributes to construct the object qua scientific object' (Ruphy, 2011, p. 1220). For example, it is statistics that introduced the object of a population characterised by a mean and a standard deviation (Hacking, 1992, p. 15). Thus, 'to be is to be the object of a reasoning process constitutive of a style of scientific reasoning' (Ruphy, 2011, p. 1219). While Hacking's thesis unveils the factitiousness of even those sciences that are generally reputed as only mirroring reality, it should not be taken to mean that epistemological styles precede content: 'We should not have the picture of a style and then the novelties …. We did not first have fauvism, and then Matisse and Derain painting fauve pictures in 1905' (Hacking, 1992, p. 11).

Second, language (the style of speaking or writing) and message (what is being spoken or written, and we have previously seen that what is being spoken or written is always 'content' together with 'its'

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epistemology) cannot be insulated from each other either. Thus, we should acknowledge that 'there is no innocent variation [;]… [a]ny variation is at the same time a semantic variation, and, therefore, finally … everything is meaning' (Valentin, 1994, p. 333). When we proofread our texts and operate changes, even minor ones such as the insertion or the suppression of a comma or a word, are we not, in fact, reflecting on the very message that we want to convey or the criteria of knowledge validity that we let ourselves be guided by?

The French philosopher, Maurice Merleau-Ponty (1969/1992; 1960/2001), challenged the dialectical (thought and language, thought against language, thought or language) and the temporalised perspective (thought before language or language after thought) ensuing from a dualist vision of language. He insisted that the two must be considered in their inextricable entanglement and therefore suggested to rather talk about 'thinking language' ('*parole pensante*') and 'speaking thought' ('*pensée parlante*'):

> 'Thought and speech anticipate one another. They continually take one another's place. They are waypoints, stimuli for one another. All thought comes from spoken words and returns to them; every spoken word is born in thoughts and ends up in them.' (Merleau-Ponty, 1960/2001, p. 25)

This unitary conception does not in any case entail a relation of equivalence or organic suture between word and world. Indeed, words do not unproblematically translate the world (Legrand, 2008). Instead, a non-binary vision allows us to see that each entity of the conventional dichotomy builds upon the other. As such, style inescapably 'embodies an epistemology' (Sontag, 1966, p. 35) – an idea that echoes Marcel Proust's (1927/1989, p. 474) statement according to which style is 'a matter of vision'.

From the negation of the classical separation thesis that assigns to style an accessory role and transforms it into a purely formal element devoid of any signification, it also follows that style is not a matter of absolute free choice and unfettered originality, since the couple 'content–epistemology' forces upon the researcher specific rhetorical patterns and strategic textual markers (and vice versa). This does not mean, however, that we can no longer talk about style: 'the manifestation of a structuration process does not exclude a stylistic dimension' (Legrand, 2003, p. 158). Indeed, a given expression can be singular without being subjective (Laurent, 2000, p. 100), as discursive practices in the realm of academic disciplines prove only too well. Dominique Combe (1991), for instance, evokes 'style' in terms of an 'impetus' (p. 116) – a notion that I believe adequately accounts for how researchers approach writing in academic literature. More often than not, writers attach themselves unreflectively, and very emotionally, to a tradition that limits, in a symbolically coercive way, the number of expressive possibilities available. It is not an exaggeration to say that disciplinary styles entail a form of violence, to which, incidentally, the French word '*stylet*' – meaning a very sharp weapon that can cause small wounds (*Trésor de la langue française*) – alludes.

To summarise, what is apparent to me at this stage is that an interdisciplinary researcher has to make do with a panoply of disciplinary styles that, far from being only variations of words, syntax and other textual elements, represent world visions, entire sets of beliefs about what it takes to advance meaningful knowledge. It is not astonishing then that the moment scholars from any discipline step outside their own field of study, the feeling they experience in their initially tentative path towards interdisciplinarity amounts to nothing short of an intellectual vertigo.

3 Law's 'readerly' style

Are legal scholars from the continental tradition sufficiently well equipped for exploring law outside law and thus undergoing a destabilising epistemic process? In order to be able to offer a response, I will introduce here a distinction put forth by the French literary critic, Roland Barthes, between 'readerly' ('*lisibles*') and 'writerly' ('*scriptibles*') texts.

In his analysis of Honoré de Balzac's novel, *Sarrasine*, Barthes (1970) distinguishes between 'readerly' texts that conduct the reader towards a single meaning, suggesting that this would be the product of a single voice – that of the author constraining the reader to passively receive the meaning – and

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'writerly' texts, which do not seek to stabilise for good *a* message through *a* language, but invite the reader to actively contribute to the construction of the meaning (p. 27). Barthes wants the reader to understand that there is a certain play of the text – the text itself is moving and, at the same time, the reader can make the text move in order to innovate it, to take it far from the (interpretive) beaten tracks (Barthes, 1970, p. 23). Thus, the writerly text, by denouncing the illusion of a progressive narrative that would transport the meaning intact from the author to the reader, allows the latter to do more than just read the text – that is, more than mechanically repeat the words of the author. By contrast, at the risk of a certain degree of incomprehensibility (*ilisibilité*), the writerly text encourages the reader to build in the writing of the author, thus helping reveal its intertextuality (the plurality of the readerly, though not inexistent, is much more limited). The border between writing and reading is thus bound to become blurred. When faced with a writerly text, the interpreter is called upon to reflect on other possible, enriching meanings that would enable him or her to relocate the text beyond what has already been said. Whereas the readerly text is a writing that comforts the reader, the writerly text confronts the reader, by calling into question his or her historical, cultural and psychological codes (Barthes, 1970, p. 31). As such, a readerly text conceals from its reader the latter's interpretive power and, therefore, its structuring mechanisms hamper the possibility of a radical, subversive reading. Indeed, as one author interpreting Barthes suggests, a readerly text obeys a 'principle of solidarity' according to which the reader is presented with a coherent totality that holds up by itself and must not be infringed on the occasion of the reading and a 'principle of causality' by virtue of which a text's narrative revolves around a chain of pseudo-logical determinations that go from cause to effect (Del Lungo, 2016, p. 3).

I should add that the dichotomy 'readerly/writerly' that Barthes advances does not refer to a historical, descriptive discourse.[3] Thus, there are no classical texts that would only be readerly, on the one hand, and modern texts that would only be writerly, on the other (Barthes, 1973, p. 32). Rather, this classification should be perceived as articulating a normative discourse about emancipation as a positive value (on the side of the writerly text) to be contrasted with conformism (on the side of the readerly texts). Thinkers of Luhmannian allegiance would, in fact, ascribe modernity to 'the readerly', perceived as reflecting a functionally differentiated discourse that manages to reduce complexity. 'The writerly', by contrast, with its 'many-voicedness' (Boyd White, 1990, p. 27), seen as incapable of untangling the many faces of reality for the purpose of efficiency, would stand for backwardness. In reply, I would argue that, as academics, we certainly live in a 'system' with a logic of its own, where we do not mainly act as politicians or investors or artists. But, once 'inside' that world, whose internal logic lies essentially in the disinterested pursuit of knowledge, systems theory shall no longer apply (other than for strictly organisational reasons). In other words, if there is indeed a danger in bringing politics or economics to academia, what would be the danger in bringing ethics to physics or law to technology? Would not the peril reside, in fact, in keeping disciplines out of each other's reach, in making them 'prisons of understanding' (Cotterrell, 1998, p. 171)?

This being said, the majority of legal texts (the official, legal materials, as well as the productions of scholars) are, in my view, in the civil-law tradition at least, readerly texts in the sense in which their language compels the reader to extract the only purportedly true meaning of the text, which is moreover presumed to encapsulate 'one single reality' (Bercea, 2014, p. 279). Pierre Legrand (2003) has described French '*civilisme*' in terms of an apodictic style that presupposes a 'sustained affirmation of values such as clarity, fixity, stability, constancy and, correlatively, the refusal of indeterminacy or ambiguity' (p. 178). By translating ordinary life into categories of legal thinking that they often envisage as fixed, stable and complete, lawyers 'ordain the closure of texts' (Barthes, 1973, p. 22). 'The act of naming a thing from the point of view of the law makes it enter the world of "legal things"' (Grzegorczyk, 1986, p. 189). As a consequence, in a lawyer's text, ideally, one should only come across legal objects and engage with them in the pure manner a positivist thinker like Hans Kelsen dreamt of.

[3]I am well aware that Barthes refers to literary texts and not to texts in general. I nonetheless think it is epistemically legitimate to borrow the heuristic value of his theory for an argument involving legal texts.

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Indeed, legal positivism tries to stop the play and the plural of the text by suppressing all the latent aspects that might be relevant from a socio-legal point of view but that legal doctrine qualifies as irritants tainting the supposedly neutral approach to law. This epistemology of exclusion gives birth to linguistic practices that produce readerly texts and vice versa.

At once concrete and abstract, simple and complex, legal language, in particular that of the legislator or the judge, aims at cultivating precision (Mattila, 2013, p. 102). Thus, it often displays a categorical tone. In order to rest assured that the goal of semantic exactitude – linked to such crucial notions as security or liberty – is achieved, lawyers prefer to resort to what in ordinary language one would consider a linguistic mistake (like tautology or pleonasm) (Mattila, 2013, p. 113). Moreover, because law is considered to be a language of reason, metaphors or other means of expressivity are usually not included in practitioners' discourses (Cornu, 2005, p. 313). It is worth mentioning here the instructions given by the Belgian State Council (Conseil d'État de la Belgique, 2008) in a document regarding the drafting of legislation:

> 'be coherent in the choice of words: a) always use the same word for designating the same concept or object; do not show the literary concern for finding synonyms in order to avoid the repetition of words; b) use different words for designating different concepts or objects.'

Moreover, it is recommended to use 'precise words that reflect the exact intention to be conveyed', 'simple', 'ordinary and concrete', 'short' words, 'words deprived of ambiguity, that is words that do not risk to be understood in different senses' (p. 7). Thus, in law, perhaps more than in other disciplines,

> 'one has to be able to say the same thing as the others, in the same way, but from a perspective that under no circumstance stands out, and, thus, one has to be able to reach that pure and perfect textual transparency that remains a classical ideal.' (Bordas, 2008, p. 51)

Of course, the above-mentioned recommendations do not constitute a manual of style that would be compulsory for the legal scholar as well, but they highlight that positive law, the main and sometimes the only bibliography of the legal scholar doing research in the form of legal doctrine, inevitably confronts him or her with readerly texts. Several authors researching in the field of genre analysis suggest that 'law relies on extreme conservatism in the way it constructs its discourses' and that 'textbook writing [in law] is no exception in this respect' (Bhatia, 2004, p. 39; Candlin *et al.*, 2002). Indeed, according to orthodox legal thinking, if the jurist is to be a good jurist, he or she has to withstand the desire of embracing a personal style, since having a style means making one's voice heard; it amounts to putting a signature on one's writing; it represents, at the end of the day, an infringement on the sanctity of law and legal authorities: 'to think formally, to think neutrally, to think impersonally depends on an ideal of self-effacement, an emptying of the subject, a suppression of imagination' (Goodrich, 2000, p. 1120). Let us recall that Emperor Justinian forbade any commentary on the Digest (Pringsheim, 1950/1961) while Napoleon, at the thought of judges freely interpreting the law, would have exclaimed 'my code is lost'. Thus, history tells us that legal language has been conventionally (and paradoxically) conceptualised as epitomising a neutral style[4]: legal style as anti-style.

At this point, I wish to bring in a brief discussion about style in the common-law tradition. To begin with, the formal, categorical and distant style that makes for readerly legal texts in the civil-law world is less common in common-law countries where the language of numerous court decisions, especially those whose social stakes are particularly high, comes close to the aesthetics of literary works, due to, among other factors, the linguistic games intertwining analogies and distinctions that are typical of this legal tradition. Empirical studies focusing on the language of judicial opinions

[4]To this effect, different distancing strategies are mobilised, such as when the writer prefers to say 'it appears that' instead of 'it seems to me that'. Indeed, especially in the civil-law tradition, personal pronouns are a scarcity in research papers: see Sala (2012, p. 137) and the results of my own empirical study discussed *infra*, p. 9.

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have underlined the dialogical character of the common law, which had already been philosophically engaged in other studies (Legrand and Samuel, 2005). Indeed, a typical common-law judge will

> 'enter into a number of dialogues with previous texts: with the evidence, argument and submissions made by litigants in court … with … decisions in the past … with possible future texts: a possible appeal against his/her decision and judges and lawyers who will be involved in similar cases in the future. And finally, writers may enter into a dialogue with their colleagues on the bench who may decide a case differently.' (Orta, 2010, p. 264)

This relational, differential and not referential mentality might explain, at least in part, the relative easiness with which many north-American and other common-law jurists draw on other disciplinary discourses, not only in research, but also in case-law. It is interesting to mention here another empirical study that has identified the number of extra-legal references made by the Supreme Court of the United States and other American courts between 1950 and 1990 (Schauer and Wise, 2000, p. 495). The authors show an increasing tendency in judges' decisions to include supporting references that depart from the typical legal authorities. Thus, from 1950 to 1990, there has been a fourfold increase in the number of non-legal citations in absolute numbers in the US Supreme Court's case-law while the number of citations per page has remained constant (Schauer and Wise, 2000, p. 503).

Further empirical studies explicitly comparing the styles of civil-law and common-law research papers written in English suggest that common-law scholarship is more 'writerly' in spirit than civil-law scholarship (Sala, 2012).[5] The interpretation of data points out the fact that 'CoL [common-law] experts are keener to handle … "polemically comparative" strategies, using alternative viewpoints to support a claim' (Sala, 2012, p. 136) that 'CoL writers tend to exploit interaction and personalization, and use a tentative mode of argumentation, while CiL [civil-law] experts generally resort to a more detached style, and to a more assertive and confident tone' (Sala, 2012, p. 137), that 'the discourse of civil law experts [is intended to] be perceived as authoritative [and] [in order] [t]o attain this, CiL lawyers … limit or avoid relating the propositional content of a claim to their personal and subjective opinion, since this would undermine its value as carrier of objective truth' (Sala, 2012, p. 140) and, finally, that 'CiL experts tend to textualize statements in a positive and confident fashion, representing the propositional content with little co-textual critical framing' (Sala, 2012, p. 140). While common-law thinkers seem to embrace a 'polyphonic rhetoric', which 'demonstrates sensitivity to the view of readers and … seeks to involve them in a dialogue' (Sala, 2012, p. 139), civil-law scholars adhere to the 'principle of non-negotiable truth' (Sala, 2012) and exclude readers, themselves and any disciplinary others from the text, so that the appearance of law's centrality and its peremptory character can be preserved. To take just one example from this study, the use of mitigating resources, that is textual elements meant to relativise the argument, were remarkably (three to ten times) more common in the CoL sub-corpus.

I replicated Sala's empirical study on a sample of 430,000 words corresponding to thirty-two law papers published in 2016 in *Revista Română de Drept Privat* [*Romanian Journal of Private Law*], the leading private law journal in Romania. Results are not at all surprising and point to the 'hyper-positivism' of Romanian legal scholarship. Personal pronouns (first- and second-person) are almost non-existent, as are other textual markers that would indicate willingness from the part of the author to engage with his or her readers or otherwise admit his or her intervention in the handling of legal materials. By way of a comparative illustration, hedges such as the verb 'suggest' appear 0.20 times per

[5]From the point of view of the epistemology and ethics of my research, I must say that I happily came across this empirical study after I had already developed my main theses about the readerly style of civil-law countries. Consequently, I think I was able to avoid the risk of confirmation bias. While Sala's study identifies differences across the common-law–civil-law traditions, it should not be taken to mean that, inside a particular tradition, there is no longer room for relative differences in terms of the readerly/writerly distinction. Thus, I would suppose that German civil law is less readerly than Romanian civil law while still being more readerly than the American common law.

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10,000 words in Romanian law papers, 1.2 times in papers from other civil-law countries written in English and 5.3 times in common-law papers written in English.[6]

In this section, I portrayed the civil lawyer's writing style as readerly, in practice as in research. By contrast, I argued that the common law is, on the whole, more writerly. The scholarship produced in the common-law world also happens to be more interdisciplinary. This can be explained by reference to various historical reasons, which are, in fact, not necessarily the same from one legal system to another. Thus, in the UK, it is essentially the fact that, for a long time, the training of lawyers lied with the professions and not the university, which allowed scholars to produce a type of research unconnected to the pragmatic purposes of the legal practice. As for US common law, it certainly matters that, before becoming a lawyer, one will have been formally trained in philosophy, economics, literature, history, anthropology, etc. Therefore, it would be a mistake to claim that common law's openness towards other disciplinary discourses directly follows from its writerly spirit. But it is, I think, hardly exaggerated to say that language must have played its part.

Interdisciplinarity qua intellectual endeavour solicits as a prerequisite an emotional determination to recognise the other's existence, which, discourse analyses tell us, seems, in general, to be lacking in civil-law lawyers. As I argued before, style and epistemology act inseparably. In other words, the epistemic content, 'the how' of the thinking, lies in the form, in the 'how' of the writing. In law, a discipline that, unlike anthropology for instance, has little self-reflective inclination, it is, I would suggest, the style of writing more than explicit theories that, first and foremost, speaks to questions of epistemology. By reading the imperturbable, too readily readerly legal texts and by learning to write in imitation of the prevalent manners, the student becomes imbued with a legal cosmogony whose tenets will prove unshakable for as long as he or she lives in law. When epistemic reflections are finally, if ever, brought to his or her attention, the student's guise will have already been sufficiently disciplinarised through style to only perceive the theoretical discourse as an incontrovertible confirmation of what he or she already knew more or less intuitively, that is, in the case of the civil-law tradition, law's apodicticity and all its associated presuppositions. The Romanian context provides here a telling illustration. Students are usually introduced to ideas about positivism at the philosophy of law course – an optional subject at most faculties that very few of them take up. And yet, at the end of their four years of study, they will behave, in their final dissertations as in their future research as PhD students, in the most positivist manner there can be, where I take positivism to stand for the proposition that the main scope of legal scholarship is to correctly identify what the law is on a specific matter and judiciously arrange legal materials in a coherent and systematic manner. I also take it to stand for the rationalist belief according to which these tasks of allegedly exact exegesis can be dealt with neutrally, to the exclusion of any references deemed not to count as recognised legal authorities. To come back to my example, by being exposed to 'a brand of writing purporting to present itself in an unproblematic and unsituated mode' (Legrand, 2017, p. 74), Romanian students become positivistically inclined even before theoretically discovering positivism – a doctrine that would commend to them, more explicitly, to '[banish certain knowledge] from the sphere of significance' (Legrand, 2017, p. 74).

Law's readerly style reflects, then, not so much a conscious epistemic choice, but an epistemic mannerism. We can think here at the 'indissolubly Freudian and Lacanian conception of the links between style and the unconscious' (Arrivé, 1994, p. 51). This involuntary acquisition of a specific epistemology through the imposition of certain stylistic rigors is not to be interpreted as forever precluding the advent of alternative epistemologies. It is, however, to say that the correlation between epistemology and style should not be underestimated. There are, I would suggest, good reasons to believe that changes in one will facilitate the emergence of changes at the level of the other. Whereas the perspective that draws an uninterrupted line from epistemology to style appears to be relatively unproblematic, its reverse, namely the view that alterations in style, to begin with, can impact on a discourse's background epistemology, is much less obvious. Upon reflection, though, this thesis seems to me equally convincing; let us not

[6]The data and all the relevant documents concerning this empirical study lie with the author and can be consulted upon request.

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forget that, as the interpreter intervenes in a text, he or she instantly convenes a meeting between style and epistemology. If style shows up then more dressed up than usually, epistemology might feel intimidated and also want to change its garments. As Boyd White writes, emphasising the structural reciprocity between language and identity, 'in important ways we become the languages we use' and 'in remaking our language we contribute to the remaking of our lives and character' (1990, p. 23).

Consider also the following analogy. When we learn a foreign language, it is not only new sonorities, new phrases, new words that we learn. It is also a worldview that is being appropriated (von Humboldt, 1836/1999, p. 60; Whorf, 1956, pp. 212–213). Or, we need not have the entire language at our disposal; in other words, we need not fully master 'its' foreignness (is this ever possible?) before we can start articulating ideas partaking in this foreign worldview that would have simply been unconceivable for us under the linguistic structures of our mother tongue. Similarly, then, if we commence using words, turns of phrase, figures of speech and other textual markers not commonly employed in law, a shift in epistemology could eventually take place as well. And, as in the case of foreign-languages learning, lawyers need not attain Proust's literariness or Derrida's sophistication to actually be able to grasp realities about law that were previously inaccessible to them through the vocabulary prevailing in the paradigm of self-referentiality. I am not suggesting that changes in language will automatically drive novel knowledge into law. And, importantly enough, I am not asserting that this potential novel knowledge will *necessarily* be interdisciplinary. But I do claim that there is an increased chance that the shift from 'the readerly' to 'the writerly' will pave the way for more easily reaching law's extra-legal ramifications, all the more so that this domain seems to be too connected to everything else there is 'there', 'in' the world (Stolker, 2014), that is to the economy as well as to our psyche, to culture as well as to language, to religion as well as to history, to philosophy as well as to politics, to withstand interdisciplinary reflection if its language is demystified and allowed to receive this 'other' content.

At this point, I wish to refer to Boyd White's (1990) critique of the 'language of "concepts"' (p. 22). This author points to the fact that many academic and expository writings are built on the assumption that

> 'concepts are not words … [that] they are the internal or intellectual phenomena that words are thought to label, as markers … as if words had no force of their own, as if they were in fact transparent or discardable once the idea or concept is apprehended.' (Boyd White, 1990, p. 29)

This way of naturalising our thinking is problematic, according to Boyd White, not only because it is untrue to our intellectual life (which presupposes a constant remaking of our concepts by human beings who act in communities of discourse), but also insofar as it encourages us to conceive of our own language as a metalanguage, 'in which all propositions can be uttered, all truths stated' (Boyd White, 1990, p. 31). To resist this totalising vision will prove to be hard and complete resistance is difficult to even imagine. However, we might know 'where in the effort to focus one's attention, and that is on the attitude we have towards the language we are using' (Boyd White, 1990, p. 77). Therefore, Boyd White invites us to exercise ourselves in cultivating 'a literary sense of language' by virtue of which we will come to produce texts that are

> 'language-bound and language-centered; not reducible to other terms – especially not to logical outline or analysis – but expressing their meanings through their form; not bound by the rule of noncontradiction but eager to embrace competing or opposing strains of thought; not purely intellectual, but affective and constitutive, and in this sense integrative, both of the composer and of the audience, indeed, in a sense, of the culture.' (Boyd White, 1990, p. 42)

In other words, to use the vocabulary I proposed here, lawyers need to become aware in their scholarly writings of their writerly possibilities.

In the last section, I would like to pin down a number of more concrete strategies that lawyers could pursue in learning to write other/wise and address a couple of objections that I anticipate as possibly being raised.

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4 Re/learning to write other/wise

I do not think it is possible to imagine a recipe, a list of discrete stylistic measures that would unconditionally lead to the writerly style and, finally, to the epistemological attitude – indeed, interdisciplinarity is a matter of intellectual posture, not of method, nor of epistemology *tout court* – that I advocate here. Thus, I do not adhere to an ontological conception of style for there is no such thing as a stylistic element in and of itself. The stylistic effect of words is necessarily afflicted by contingency. Indeed, '[n]o semiotic element has more or less of a vocation than other to constitute a stylistic mark' and 'depending on context, the one and the same element can or cannot function stylistically' (Vouilloux, 2008, p. 198). Therefore, my suggestions are fashioned having in mind rather a certain ethos than specific stylistic options, which themselves might vary from one national legal language to another as well as from one legal subdiscipline to another.

Thus, legal scholars' style should be reimagined to reflect at least three epistemic aspects of their research: (1) that it is *theirs* (that there is personal involvement in there), (2) that it is the result of a negotiation with *others* (with others' view of reality rather than with reality itself) and (3) that neither the self nor the others – and irrespective of how many others speak with one voice – nor what ensues from the communication between this self and those others capture something beyond language and thus beyond reform.

First of all, lawyers should resist the temptation to write off the vagaries of language and be willing to be more personal (by including such markers as personal pronouns), more narrative as well, allowing 'irony, ambiguity, and contrast' (Boyd White, 1990, p. 27) and eager to resort more to metaphors, analogies and other figures of speech in their discourses. This would remind us that law has always been more about speech and persuasion and therefore about the speaker's ability to 'seize' knowledge in an illuminating, even touching, way than about scientific methods and robust results.

Second, legal language should be richer in reporting verbs (i.e. verbs that refer the reader to supporting references) and other discursive markers giving away the fact that knowledge, at least in the social sciences, represents a product of the inherently selective human mind intervening, with all its prejudices and idiosyncrasies, in relation to others: 'our minds, our questions, our sense of what needs to be said, of what can be said, are all shaped by interaction with others' (Boyd White, 1990, p. 16). Studies show that hard sciences contain fewer reporting verbs, since the authors assume more common ground with the readers (Hyland, 2004, p. 37). On the contrary, 'reporting verbs fit more comfortably' in the vocabulary of the so-called soft sciences (Hyland, 2004). Hence, law should abandon its scientism and, like the soft sciences, develop 'argument schema which more readily regard explicit interpretation, speculation and complexity as legitimate aspects of knowledge' (Hyland, 2004, p. 37).

Third, truth-claiming sentences should make way for more reserved arguments. As I have already emphasised, lawyers, not surprisingly, like to transmit certainty to their audiences. Therefore, they frequently employ what one refers to as boosting techniques – expressions such as 'it is a well-established fact that', 'it is generally agreed that', 'clearly', 'obviously', 'of course', 'can only mean that', which reflect a high level of confidence in the truth of one's assertion or in the beliefs of one's disciplinary community. While avoiding circumspection is not an uncommon attitude in academia, since 'writers need to invest a convincing degree of assurance in their propositions' (Hyland, 2004, p. 37), lawyers' readerly style suffers in my view of overconfidence, thus foreclosing any significant reorientation towards other disciplinary discourses.[7] With Boyd White, I ask, then, '[c]an we become more fully conscious of what we, and our languages, leave out, and find ways to reflect that consciousness in our speech?' (1990, p. 21). 'Can we be, for example, less assertive, less continually assertive, more open and tentative and suggestive in our style?' (Boyd White, 1990, p. 21). If we want legal scholars to produce writerly texts, susceptible of meaningful interaction with texts pertaining to foreign disciplines, we should invite researchers to tone down the peremptory character of law by inserting hedges in their speeches – that is, communicative strategies for reducing the force of statements (e.g. *possible*,

[7]Economics – another discipline largely composed of readerly texts – also happens to be one of the most hermetic in terms of its engagement with extra-disciplinary knowledge (Pieters and Baumgartner, 2002).

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might, *perhaps*). For instance, instead of saying 'the loan contract has five main features', lawyers could write 'the loan contract has *at least* five main features' or 'the loan contract *can be said to* possess five features', immediately suggesting that it is not the reality itself that they are depicting, but always a projection and interpretation of various data with which they have been presented.

This conscious reorientation of one's '*stilus*' (Latin for writing tool) towards other stylistic possibilities is, of course, a particularly ambitious task. First, one needs to fully appreciate that 'language has real power over the mind that uses it, even the mind that contributes to its reformulation' (Boyd White, 1990, p. 28). Second, even as lawyers become aware of the need for 'the writerly', they remain surrounded in their research by numerous other texts (legislation, judicial decisions and legal doctrine) that, we could argue, have to preserve their readerly character if they are to stay functional.[8] Or, in the absence of inspiring models, it can, indeed, be very difficult to operate change. This brings me to the first critique one could address to my argument.

One might object that 'if one wished to kill a profession, to remove its cohesion and its strength, the most effective way would be to forbid the use of its characteristic language' (Hudson, 1979, p. 1). Furthermore, generally, 'one's life is not directly controlled by specialist discourses' (Bhatia, 2004, p. 158). But law does control most of our lives; hence, we might want 'the readerly' with its certainty, assertiveness, apodicticity. Indeed, the practising lawyer, be he or she a judge, an attorney, a legal counsellor or a notary public, is called upon to stabilise the meaning of legal texts with a specific purpose in mind. As such, he or she does not seek to open it up to those countless possibilities of interpretation one can bring to the fore when law is regarded dynamically, namely in its interactions with society. To the contrary, in such pragmatic contexts as judicial procedures, one expressly builds a centripetal discourse whose statements converge towards a single meaning that the attorney upholds rhetorically and that the judge asserts performatively. A text brims over with meanings and yet, at the end of the day, the acting-in-the-world-jurist needs to stop its perpetual movement. But, ultimately, are there any pressing normative considerations that would commend to the legal scholar to engage in the same quest for semantic fixity?

I think there are none. Intellectual life and the quest for knowledge are driven by curiosity, originality, honesty and, besides that, little else. Researchers in law have therefore no obligation to serve the professions and their connivance with practice has been, in my view, rightly decried (Jamin, 2012; Feldman, 2004; Thornton, 2004).[9] If there was in fact someone or something that they should serve, that would probably be society at large, by exposing both the language of legal practice and their own language to critique – indeed, 'by finding ways to recognize its omissions, its distortions, its false claims and pretensions, ways to acknowledge other modes of speaking that qualify or undercut it' (Boyd White, 1990, p. 26). Let us take the following example. A court decision on gay blood donation might advance, in a categorical, readerly way, as its main rationale for the outcome of the case the 'public-health' argument. A writerly investigation, in contradistinction, could point out how the language of the decision promotes stereotypical views about gay people as often engaging in promiscuous behaviour. Briefly, it could tell a much more complicated story than the judicial opinion. Thus, legal

[8]This is not to mean that no practice of law can be functional unless readerly. The common law is a counter-example, being functional while writerly. Since, obviously, both civil law and common law are two models of justice functioning reasonably well, I do not advocate here for a replacement of the readerly style of civil-law practice with the writerly style of common law. Although I possibly see how that argument could also be made, it is not my argument here, which only concerns scholarship. In addressing scholarship, however, I cannot ignore its relation to practice and the less than significant tension deriving from the fact that I exhort researchers to become writerly and interdisciplinary, but most of them, as law professors, will need to continue to train and serve practitioners in a readerly spirit, transmitting technical mastery. (For an argument that 'law's disciplinary identity is bound to the professions', see Douglas Vick (2004, p. 175).) Thus, both legal education and legal doctrine understood as a supplementary interpretive apparatus on which legal professionals can rely in their daily activities pose a challenge to my call that I will deal with below.

[9]This entanglement with practice is present both in the civil-law and the common-law world. If the common-law scholarship affords to be more writerly, it is because practice is more writerly as well (which is not to say that practice is to become writerly in the civil-law world too, as I already mentioned).

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concepts such as the principle of precaution in public-health matters, for instance, presented in an essentialised, unilateral manner in practice would end up being refined in theory, in a manner, we must admit, possibly unworkable in the world of legal practice. Indeed, such a nuanced critique can be hardly imagined from 'inside' the readerly preoccupations of the legal field. Now, if the sociologist is authorised to write about it, I see no reason why the legal scholar should not, if he or she finds it intellectually meaningful. Here, the researcher's lack of the power that the legal practitioner usually holds converts into an opportunity. Certainly, the researcher will be obliged too, at some point, to halt the interpretative flux of his or her theories, but, as a reader, a rereader and thus a writer, of legal materials, he or she will have enriched the discourse with new dimensions. Interpretation is neither a method nor a set of rules but, as Friedrich Schleiermacher said, the art of building 'something finitely determinate from the infinite indeterminate' (Schleiermacher, 1838/1998, p. 124). This something finite and definite differs depending on the capacity in which the jurist performs: as a practitioner – in which case, the notion of 'the readerly' emphasises a specificity of legal texts, that of immobilising understanding for the purpose of tackling a technical issue – or as a researcher – in this scenario, the notion of 'the writerly' brings into focus the necessity for legal academics to cultivate a text's polytonality as an invaluable theoretical resource. Both endeavours are meant to take place in the name of an ideal of justice stemming, on the one hand, from the demand that law decide, resolve, rest the case *no matter what* and, on the other hand, from the goal of instituting a form of discourse that will allow the text to expose its multiple identities or, better said, will allow the interpreter to work a text's multiple identities. At stake lies the acceptance of and respect for diversity. The writerly therefore does not menace the readerly world of the practitioners, which can continue to fulfil its goals, but it allows the legal academic to 'withdraw from her confused loyalties with the practice and to put herself radically into question in her interdisciplinary academic environment' (Minkkinen, 2009, p. 179).

All this, admittedly, does not solve in any way the problem of legal education. What are then law schools for, if we are left with practitioners who need the readerly and researchers, who generally are law professors as well and who seek the writerly? The easy answer would be to say that all faculties transmit to their students simplified versions of what their members research and that, by definition, the process of disciplinarisation is a readerly, foundational one, generally conveying purportedly stable messages with a high degree of assertiveness. The more complicated response would refer to the question of knowing to what extent law faculties could integrate 'the writerly' and 'the readerly' by embracing a broad humanistic education (Nussbaum, 2003) without betraying the legitimate expectations related to the efficient training of practitioners (Birks, 1996). There are good reasons, I think, to further look into this middle-ground, 'hybrid' possibility (Dyevre, 2016) and the concrete shapes it can take across jurisdictions. This is not the place to elaborate on this topic, but let me just hint to one such reason that can be synthesised as what Joseph Pattison called in 1977 the 'great paradox of legal education', namely that 'the institutions which must produce the individuals who will play a vital role in nourishing and shaping society are, in large part, isolated from that society' (p. 62).

My reproach concerning lawyers' writing manners should not be read as a romanticised, elitist critique that would seek to make legal writing more elegant or beautiful. Though research in general and law in particular can certainly be perceived in terms of aesthetics,[10] I am not interested here in this aspect of style. 'Burdened [as it is] by a prestigious aesthetic past' (Bordas, 2008, p. 135), style has nonetheless acquired, besides its artistic and aesthetic dimension, a pragmatic value. It is its performativity that I am concerned with. In his pleading for improving legal style, Bryan Garner (1988) explains that 'there is no style-less legal writing, only writing of more or less grace and adeptness, and belonging to different stylistic traditions and conventions' (p. 104). My intention is not to push for a more graceful style, nor do I evaluate this concept, as Garner (1988, p. 105) does, in terms of exactness and clarity in the use of words. Quite to the contrary, since I assess style in relation to what it can do, that is, in

[10]Pierre Schlag (2002, p. 1049), for instance, says that 'law is an aesthetics enterprise'. Several other authors discuss the esthetical dimension of research even in the sciences (Curtin, 1980; Orrell, 2012).

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respect of its capacity to unlock new epistemic doors and chart new disciplinary territories, I do not exclude the possibility that the language of research in law becomes more abstruse or abstract than it already is.[11] Interdisciplinarity has indeed been associated with 'stylish academic writing' (Sword, 2011, p. 8). However, I do not praise it on aesthetic, but on epistemic, grounds. Hence, I also favour the idea of 'style as epistemology' (Mitchell, 1977, p. 145) and not as a vector of aesthetic values.

Denouncing the dreariness of academic writing in general, an author argues that

> 'academic writers can make a conscious effort to question, vary, and augment the signature research styles of their own disciplines – which often embody deeply entrenched but unexamined ways of thinking – *by* appropriating ideas and techniques from elsewhere.' (Sword, 2011, p. 14)

In concluding my paper, I would rephrase this statement to say that 'academic writers can make a conscious effort to question, vary, and augment the signature research styles of their own disciplines – which often embody deeply entrenched but unexamined ways of thinking' *and thus* they will eventually be able to 'appropriat[e] ideas and techniques from elsewhere'.

References

Arrivé M (1994) Lacan sur le style, sur le style de Lacan [Lacan on style, on Lacan's style]. In Molinié G and Cahné P (eds), *Qu'est-ce que le style?* [*What Is Style?*]. Paris: Presses Universitaires de France, pp. 45–63.

Bailleux A and Ost F (2013) Droit, contexte et interdisciplinarité: refondation d'une démarche [Law, context and interdisciplinarity: refoundation of an enterprise]. *Revue interdisciplinaire d'études juridiques* **70**, 25–44.

Balkin J (1996) Interdisciplinarity as colonization. *Washington and Lee Law Review* **53**, 949–970.

Barthes R (1970) *S/Z*. Paris: Le Seuil.

Barthes R (1973) *Le Plaisir du Texte* [*The Pleasure of the Text*]. Paris: Le Seuil.

Bercea R (2014) Legal translation and legal interpretation: the epistemological gap. *The Translator* **20**, 273–290.

Bhatia V (2004) *Worlds of Written Discourse*. London: Bloomsbury.

Biber D and Gray B (2011) The historical shift of scientific academic prose in English towards less explicit styles of expression: writing without verbs. In Bhatia V, Sánchez Hernández P and Pérez-Paredes P (eds), *Researching Specialized Languages*. Amsterdam: John Benjamins, pp. 11–25.

Birks P (1996) Editor's preface. In Birks P (ed.), *Pressing Problems in the Law*, **Vol. 2**. Oxford: Oxford University Press.

Bordas E (2008) *'Style': Un Mot et des Discours* ['*Style': A Word and Discourses*]. Paris: Éditions Kimé.

Boyd White J (1990) *Justice as Translation*. Chicago: The University of Chicago Press.

Candlin C, Bhatia V and Christian J (2002) Must the worlds collide? Professional and academic discourses in the study and practice of law. In Cortese G and Riley P (eds), *Domain Specific English: Textual Practices Across Communities and Classrooms*. Bern: Peter Lang, pp. 101–114.

Cercel C (2016) Law out of bounds: legal picnolepsy, intellectual austerity, and Romania's legal past. In Mańko R, Cercel C and Sulikowski A (eds), *Law and Critique in Central Europe*. Oxford: Counterpress, pp. 44–60.

Combe D (1991) *La Pensée et le Style* [*Thinking and Style*]. Paris: Éditions Universitaires.

Combe D (1994) Pensée et langage dans le style [Thinking and language in style]. In Molinié G and Cahné P (eds), *Qu'est-ce que le style?* [*What Is Style?*]. Paris: Presses Universitaires de France, pp. 71–93.

Compagnon A (1997) Chassez le style par la porte, il rentrera par la fenêtre [Chase style out the door, it will keep coming back through the window]. *Littérature* **105**, 5–13.

Conseil d'État de la Belgique (2008) *Principes de Technique Législative*. Available at www.raadvst-consetat.be/?action=doc&doc=771 (accessed 20 March 2019).

Cornu G (2005) *Linguistique juridique* [*Legal Linguistics*], 3d edn. Paris: Montchrestien.

Cotterrell R (1998) Why must legal ideas be interpreted sociologically? *Journal of Law and Society* **25**, 171–192.

Cserne P (2015) Formalism in judicial reasoning: is Central and Eastern Europe a special case? In Bobek M (ed.), *Central European Judges under the European Influence: The Transformative Power of the EU Revisited*. Oxford: Hart, pp. 23–42.

Curtin DW (ed.) (1980) *The Aesthetic Dimension of Science*. New York: Philosophical Library.

Dahl T (2004) Textual metadiscourse in research articles: a marker of national culture or of academic discipline? *Journal of Pragmatics* **36**, 1807–1825.

[11]It bears mentioning that such a development would not run counter to what is already happening in other disciplines. Empirical studies conducted on the subject matter of specialised discourses show that academic language, especially in the social sciences and the humanities, has become, during the last century, less and less explicit, i.e. more abstract and difficult to understand for academics who do not specialise in the field concerned (Biber and Gray, 2011, p. 23).

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Del Lungo A (2016) Éloge du lisible (S/Z) [Eulogy to the readerly]. *Carnets* **6**, 1–8, available at http://dx.doi.org/10.4000/carnets.815 (accessed 7 May 2019).
Dyevre A (2016) Fixing Europe's law schools. Available at https://ssrn.com/abstract=2833908 (accessed 20 March 2019).
Feldman S (2004) The transformation of an academic discipline: law professors in the past and future (or Toy Story too). *Journal of Legal Education* **54**, 471–498.
Fleck L (1935/2008) *Genèse et Développement d'un Fait Scientifique* [*Genesis and Development of a Scientific Fact*]. Jas N (trans.). Paris: Flammarion.
Frodeman R, Thompson Klein J and Pacheco R (eds) (2017) *The Oxford Handbook of Interdisciplinarity*, 2nd edn. Oxford: Oxford University Press.
Garner B (1988) On legal style, *ABA Journal*, 1 October, pp. 104–106.
Goodrich P (2000) Law-induced anxiety: legists, anti-lawyers and the boredom of legality. *Social and Legal Studies* **9**, 143–163.
Gotti M (2012) Variation in academic texts. In Gotti M (ed.), *Academic Identity Traits: A Corpus-based Investigation*. Bern: Peter Lang, pp. 23–42.
Granger GG (1968/1988) *Essai d'une Philosophie du Style* [*Essay on a Philosophy of Style*]. Paris: Odile Jacob.
Grzegorczyk C (1986) L'impact de la théorie des actes de langage dans le monde juridique : essai de bilan [The impact of speech act theory in the legal world: tentative overview]. In Amselek P (ed.), *Théorie des Actes de Langage, Éthique et Droit* [*Theory of Speech Acts, Ethics and Law*]. Paris: Presses Universitaires de France, pp. 169–196.
Hacking I (1992) 'Style' for historians and philosophers. *Studies in the History and Philosophy of Science* **23**, 1–20.
Hudson K (1979) *The Jargon of the Professions*. London: Macmillan.
Humboldt W von (1836/1999) *On Language*. Heath P (trans.). Cambridge: Cambridge University Press.
Hyland K (2002) Options of identity in academic writing. *English Language Teaching Journal* **56**, 351–358.
Hyland K (2004) *Disciplinary Discourses*. Ann Arbor: University of Michigan Press.
Hyland K and Bondi M (eds) (2006) *Academic Discourse across Disciplines*. Bern: Peter Lang.
Jamin C (2012) *La Cuisine du Droit* [*Law's Cuisine*]. Paris: L.G.D.J.
Kaplan R (1966) Cultural thought patterns in intercultural education. *Language Learning* **16**, 1–20.
Klein J (1990) *Interdisciplinarity [:] History, Theory, & Practice*. Detroit: Wayne State University.
Lamont M (2009) *How Professors Think: Inside the Curious World of Academic Judgement*. Cambridge, MA: Harvard University Press.
Laurent J (2000) Du style comme pratique [On style as practice]. *Littérature* **118**, 98–117.
Legrand P (2003) Perspectives du dehors sur le civilisme français [An outsider's perspective on French civilisme]. In Kasirer N (ed.), *Le droit civil, avant tout un style?* [*Civil Law: A Style, Before Everything Else?*]. Montréal: Thémis, pp. 153–183.
Legrand P (2008) Word/world (of primordial issues for comparative legal studies. In Petersen H *et al.* (eds), *Paradoxes of European Legal Integration*. Aldershot: Ashgate, pp. 185–233.
Legrand P (2017) Jameses at play: a tractation on the comparison of laws. *The American Journal of Comparative Law* **65**, 1–132.
Legrand P and Samuel G (2005) Brèves épistémologiques sur le droit anglais tel qu'en lui-même [Epistemological briefs on English law in and of itself]. *Revue interdisciplinaire d'études juridiques* **54**, 1–62.
Mańko R (2013) Weeds in the garden of justice: the survival of positivism in Polish legal culture as a symptom/sinthome. *Pólemos – Journal of Law, Literature and Culture* **7**, 207–233.
Mańko R, Cercel C and Sulikowski A (eds) (2016) *Law and Critique in Central Europe*. Oxford: Counterpress.
Martin R (1994) Préliminaire [Preliminaries]. In Molinié G and Cahné P (eds), *Qu'est-ce que le style ?* [*What Is Style?*]. Paris: Presses Universitaires de France, pp. 9–15.
Mattila H (2013) *Comparative Legal Linguistics*, 2nd edn. Goddard C (trans.). Farnham: Ashgate.
Merleau-Ponty M (1960/2001) *Signes* [Signs]. Paris: Gallimard.
Merleau-Ponty M (1969/1992) *La Prose du Monde* [*The Prose of the World*]. Paris: Gallimard.
Minkkinen P (2009) The legal academic of Max Weber's tragic modernity. *Social and Legal Studies* **19**, 165–182.
Mitchell WJT (1977) Style as epistemology: Blake and the movement towards abstraction in Romantic art. *Studies in Romanticism* **16**, 145–164.
Molino J (1994) Pour une théorie sémiologique du style [For a semiological theory of style]. In Molinié G and Cahné P (eds), *Qu'est-ce que le style ?* [*What Is Style?*]. Paris: Presses Universitaires de France, pp. 213–263.
Nussbaum M (2003) Cultivating humanity in legal education. *University of Chicago Law Review* **70**, 265–279.
Orrell D (2012) *Truth or Beauty: Science and the Quest for Order*. New Haven: Yale University Press.
Orta I (2010) A genre-based view of judgements of appellate courts in the common law system: intersubjective positioning, intertextuality and interdiscursivity in the reasoning of judges. In Gotti M and Williams C (eds), *Legal Discourses across Languages and Cultures*. Bern: Peter Lang, pp. 263–285.
Ost F and van de Kerchove M (2002) *De la pyramide au réseau ? Pour une théorie dialectique du droit* [*From the Pyramid to the Network? For a Dialectical Theory of Law*]. Bruxelles: Facultés universitaires Saint-Louis.

Pattison J (1977) Atavism, relevancy, and the hermit: the law school today. *Journal of Legal Education* **29**, 62–65.
Pieters R and Baumgartner H (2002) Who talks to whom? Intra- and interdisciplinary communication of Economics journals. *Journal of Economic Literature* **40**, 483–509.
Pringsheim F (1961 [1950]) Justinian's prohibition of commentaries to the Digest. In *Gesammelte Abhandlungen* [*Collected Works*], **Vol. 2**. Heidelberg: Carl Winter, pp. 86–106.
Proust M (1989 [1927]) *À la Recherche du Temps Perdu* [*In Search of Lost Time*]. Paris: Gallimard.
Ruphy S (2011) From Hacking's plurality of styles of scientific reasoning to 'foliated' pluralism: a philosophically robust form of ontologico-methodological pluralism. *Philosophy of Science* **75**, 1212–1222.
Sala M (2012) Different systems, different styles: legal expertise and professional identities in legal research articles. In Gotti M (ed.), *Academic Identity Traits: A Corpus-based Investigation*. Bern: Peter Lang, pp. 121–142.
Schauer F and Wise V (2000) Non-legal information and the delegalization of law. *The Journal of Legal Studies* **29**, 495–515.
Schlag P (2002) The aesthetics of American law. *Harvard Law Review* **115**, 1047–1118.
Schleiermacher F (1838/1998) *Hermeneutics and Criticism*. Bowie A (trans.). Cambridge: Cambridge University Press.
Sontag S (1966) *Against Interpretation and Other Essays*. New York: Farrar, Straus and Giroux.
Stolker C (2014) *Rethinking the Law School*. Cambridge: Cambridge University Press.
Sword H (2011) *Stylish Academic Writing*. Cambridge, MA: Harvard University Press.
Taekema S and van Klink B (eds) (2011) *Law and Method: Interdisciplinary Research into Law*. Tübingen: Mohr Siebeck.
Thornton M (2004) The *idea* of the university and the contemporary legal academy. *Sydney Law Review* **26**, 481–503.
Trésor de la langue française [online]. Available at http://www.cnrtl.fr/definition/stylet (accessed 10 December 2017).
Valentin P (1994) Style ou sens? [Style or meaning?]. In Molinié G and Cahné P (eds), *Qu'est-ce que le style?* [*What Is Style?*]. Paris: Presses Universitaires de France, pp. 331–339.
Vick D (2004) Interdisciplinarity and the discipline of law. *Journal of Law and Society* **31**, 163–193.
Vouilloux B (2008) La portée du style [Style's reach]. *Poétique* **154**, pp. 197–223.
Whorf B (1956) *Language, Thought, and Reality*. Cambridge, MA: MIT Press.

Cite this article: Mercescu A (2019). Change of style, change of mind: lawyers' writing manners. *International Journal of Law in Context* **15**, 310–326. https://doi.org/10.1017/S1744552319000302