BEWARE THE "MONOLOGICAL IMPERATIVES": SCHOLARLY WRITING FOR THE READER

I.

INTRODUCTION

Picture this: Young Calvin, pencil in hand and poised on paper, snaggled blond head tilted toward the task. Hobbes looks on, intrigued. Calvin gazes upward, gestures with the pencil, and says, "I realized that the purpose of writing is to inflate the weak ideas, obscure poor reasoning, and inhibit clarity." Holding the evidence of his genius aloft, he continues, "With a little practice, writing can be an intimidating and impenetrable fog! Want to see my book report?" Hobbes reads, "*The Dynamics of Interbeing and Monological Imperatives in* Dick and Jane*: A Study in Psychic Transrelational Gender Modes*." Calvin, looking smug, declares, "Academia, here I come."[1]

Here they come, indeed: young legal scholars trailing clouds (not of glory, but) of unrelenting, smoggy obscurity, insights (should there be any) inflated, conflated, confounded in wads of jargon, buttressed by logic so muddled as to befuddle any reader venturing beyond the title. Has it come to this? Writing that is an exercise in obfuscation, reading that is a decoding test for the reader, who, fool enough to plow ahead through verbiage, fails to be enlightened because she fails to grasp (never mind *find*) the writer's thesis? And this depressing observation is just about vocabulary. What about verbosity, esoterica, disorganization, and sentences that grind and leap from one to the other like gears suffering an unpracticed foot on the clutch?

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[1] *Calvin & Hobbes* cartoon.

A legal scholar with a hot topic for an academic note or article, who has completed her[2] research, tabulated her results, nested her syllogisms, and is ready to write, may have a good idea of what to say but a less clear one as to how to say it. A possible first step is, of course, to study the format, the style, the tone of one or more authors whose many articles the scholar has read in preparing to write her own. But which of these merit emulation? And when there are differences, which practice is preferable? Another early step might be to consult a good book on the subject, such as Eugene Volokh's *Academic Legal Writing*[3] or *Scholarly Writing for Law Students* by Elizabeth Fajans and Mary Falk.[4] These guides take the writer from inspiration to framing and on to the narrower scope of this article: carpentry and polish. The objective here is to give the scholar—the law student, student editor, professor, or practitioner—a few tools to critically assess articles or notes intended for law-review publication (by herself or others) so as to discern practices worth emulating.

To this end, this article describes principles of good writing that every legal scholar should take to heart (and pen).[5] Throughout, though, it offers only guidelines, not edicts; suggestions,

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[2] In this article, the writer's gender is fictitiously feminine; the reader's is fictitiously masculine. This assignation has no subtext; its only meaning is that gender neutrality is an issue of which the writer should be aware. Treating one party as female and the other as male is one way of signaling this awareness and of demonstrating the irrelevance of gender to the topic being developed. There are of course other ways of dealing with this sticky issue, gender neutrality—from describing all parties as masculine to flipping back and forth randomly from one sex to the other to resorting to plural pronouns or to using only nouns and no pronouns at all. All these methods are artificial and all can distract from the topic. The author should choose the method she considers least distracting and with which she is most comfortable. Whatever device the author uses to avoid being labeled sexist, so long as it is used consistently, the reader will eventually accept, ignore, and get on with focusing on the topic.

[3] EUGENE VOLOKH, ACADEMIC LEGAL WRITING (2d ed. 2005).

[4] ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS (2000). *See also, e.g.,* Richard Delgado, *How toWrite a Law Review Article*, 20 U.S.F L. REV. 445 (1985–86). *See also* MARY BARNARD RAY & JILL J. RAMSFIELD, *Scholarly Writing* and *Scholarly Writing Process, in* LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN 359–68 ()

[5] Such principles focus not so much on "correctness" insofar as that term signifies "rules of . . . [the] Standard American English [dialect]" as on "appropriateness"—practices that reflect "the reader's expectation of what is appropriate." VEDA R. CHARROW & MYRA K. ERHARDT, CLEAR & EFFECTIVE LEGAL WRITING 163 (1986).

not commands.[6] The overall focus here is style, but the discussion begins with observations of format. These are followed by a few stylistic principles that govern clear and effective writing. None of these principles is a revelation to the student of method or to the accomplished writer. But for the academic writer less focused on or less familiar with such principles, being aware of and practicing them can clear the fog from syntax, illuminate the writer's thesis and its development, and help keep the reader's eye on the text. This last objective should be the writer's first: to anticipate the reader's understanding and responses and to know what piques and what holds the reader's interest.

II. FORMAT

A. THE TITLE

Titles of academic articles are typically—but not necessarily—of two parts: title and subtitle. When the title as a whole is descriptive, as it must be to some extent,[7] the first part is generic, the second part specific. So much is obvious, perhaps not even worthy of mention. But well worth mentioning is the title's importance (and that of a subtitle): it is the first opportunity to snag the reader's attention or curiosity—with humor, with allusion, with trope,[8] with detail. The titles that follow all do two things: they alert the reader to the topic and they give that awareness a little twist that entices him to read on.

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[6] For "[a]ny rule where the process of writing is concerned can be violated to good effect. Context controls meaning." GEORGE D. GOPEN, EXPECTATIONS: TEACHING WRITING FROM THE READER'S PERSPECTIVE xv (2004). *See generally* George D. Gopen, THE SENSE OF STRUCTURE: WRITING FROM THE READER'S PERSPECTIVE (2004).

[7] For a more thorough approach to choosing a title, see VOLOKH, *supra* note 3, at 56–60 (Volokh advises that a title (2) be descriptive enough that a database word-search will land the article in the researcher's list and comprehensible enough that the researcher recognizes the article's relevance, (2) include any concept it discusses or pioneers, (3) use wit, if it fits the subject matter and the writer's personality, (4) be edited for tightness and preciseness, (5) avoid clutter such as case names, statutory citations, and jargon.)

[8] Regarding tropes: we all know metaphors should never be mixed—at least not in the same sentence. But metaphors are verbal illustrations, and the more fresh and vivid they are, the more likely it is they will resonate with

The Politics of Intellectual Property: Environmentalism for the Net?[9] This is the most common type of title:

a generic, descriptive title, objective in tone, followed by a subtitle suggesting a context

that will rouse the reader's interest because, as here, for example, it is at first glance

discordant with subject matter suggested by the title. (I.e., Isn't environmentalism about

global warming? about air, not ether?)

Walking While Muslim[10] A title alone can intrigue the reader by unsettling the expected. This title

plays on the reader's awareness of and sensitivity to the "Driving While Black"

phenomenon and thus arouses not only the reader's interest, but very likely primes her

emotions to respond, as well.

"Cardozo's Foot": The Chancellor's Conscience and Constructive Trusts[11] Here again, the title itself is the

tickle: "Whazzat?!" the reader says to herself—what can a scholarly article have to say

about feet, not to mention illustrious ones? The subtitle explains by implying equity is

involved, but it does not explain enough to satisy. So the reader is drawn into the text to

learn that the Chancellor's foot is a metaphor for the Chancellor's conscience or, as we

would term it now, discretion.

Throwing Stones at the Mudbank: The Impact of Scholarship on Administrative Law[12] What could be better

than apt metaphor to catch the reader's attention? This one has the advantage, too, of its

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one reader or another. If nothing else, they can break the monotony of a more straightforward exposition.

[9] James Boyle, *The Politics of Intellectual Property: Environmentalism for the Net?*, 47 DUKE LAW JOURNAL 87 (October 1997).

[10] Margaret Chon and Donna E. Arzt, *Walking While Muslim*, 68 LAW & CONTEMP. PROBS. 215 (Spring 2005). Of the same ilk are titles that throw a phrase we are familiar with into a new setting, *e.g.*, John Goldring, *Babies and Bathwater: Tradition or Progress in Legal Scholarship and Legal Education?*, 17 U.W. AUSTL. L. REV. 216 (1987) (listed in Mary Beth Beazley & Linda H. Edwards, *The Process and the Product: A Bibliography of Scholarship About Legal Scholarship*, 49 MERCER L. REV. 741 (Spring 1998)).

[11] H. Jefferson Powell, *"Cardozo's Foot": The Chancellor's Conscience and Constructive Trusts*, 56 LAW & CONTEMP. PROBS. 7, 7 (Summer 1993) (quoting TABLE TALK OF JOHN SELDEN 177 (Frederick Pollock, ed., 1927)).

[12] Jack M. Beermann & Ronald A. Cass, *Throwing Stones at the Mudbank: The Impact of Scholarship on Administrative Law*

wit: one throws stones at bottles or cans to hear them plink, or skips them across water; neither noise nor other ripples emanate from stones landing in a hill of wet dirt.

Jazz Has Got Copyright Law, and That Ain't Good[13] Juxtaposition of formal phrasing to patois here is witty wordplay; who would not want to read on in expectation of more of the same?

The rhetorical tricks—juxtaposition, allusion, metaphor, and wordplay—illustrated in these few examples may not come easily to the writer; we're scholars, after all, not necessarily poets or standup comics. But we do share a certain cultural environment, not just that of the law, but that of our times, our communities, our interest in music or art or fly-fishing, for that matter. The title can not only catch the reader's eye, but prime his interest by letting him know that the topic is rooted in a context he shares with the writer.

Although the title is the writer's first opportunity to give wing to her creative genius, it is possible to go too far. Puck is a sprightly sprite, for sure; but he is also a mischievous one. A title that goes over the top will as quickly put a reader off as one that hits just the right tone will catch and hold his attention. A good title is as much a matter of good taste as is dressing appropriately. Too much alliteration in an article's title is like too much pink in the courtroom; the obscure allusion rewards too few; the reader's eyes might roll at the cliché.

How strike the right tone? Give free rein to that genius on the first round, and, if it's not quite right, put it aside until the article is finished and start all over again. Play with the options, then check them out with a few colleagues. The cultural context we inhabit includes not just our fields of study and our worldly experience, but our tastes. At least in the asking you might share a good laugh.

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45 ADMIN. L. REV. 1 (1993) (listed in Beazley & Edwards, *supra* note 10.)

[13] Anonymous, 118 HARV. L. REV. 1940 (2005). For a host of other effective titles, as well as articles well worth

B. THE INTRODUCTION

1. A Hook[14]

By rights, a writer might lead the reader to plunge straight into the frigid waters of the announced topic, or he might awaken the reader's interest with context—historical or jurisprudential background. Or the writer can lure the reader with an anecdote, a teaser, a hook. The *Calvin & Hobbes* cartoon above is a bit flip, but a great hook. Here's a more appropriate example of a hook initiating an article on administrative law, a topic not known for its liveliness. (Who would think!)

> On June 29, 2001, just outside Klamath Falls, Oregon, an angry mob of farmers took actions into their own hands. Massing around the closed floodgates of a federally operated irrigation ditch, the crowd defied federal government orders, burst open the floodgate locks, and returned the flow of water to the thirsty soils of their croplands. The mob stayed put and made camp for the next few days, challenging federal officials time after time by unlocking the gates as soon as they had been closed. The crowd finally was dispersed under the stern direction of United States Marshals. The battle lines could not have been more clearly drawn. The farmers cried for relief from dry irrigation ditches and the specter of failed crops. The federal government stood firm. The gates had to stay shut and farmlands go dry in order to save endangered fish dependent on the stored waters. The following March, however, amidst the flash of news cameras and proud speeches, the Secretary of Agriculture and Secretary of the Interior quite publicly opened the very same floodgates. What made the first liberation of water an act of civil disobedience and the latter a high-profile case of wise federal governance? Improbably, the answer came from a room full of scientists and a practice called peer review. [15]

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reading, see EXCERPTS FROM THE GREEN BAG ALMANAC & READER (2006).

[14] The rhetorical hook is also called a "zinger" or "lead" that similarly draws the reader into to exposition. DONALD HALL, WRITING WELL 187 (1973); WILLIAM ZINSSER, ON WRITING WELL 55–56 (2001) ("Coax the reader . . . ; keep him inquisitive.").

[15] J.B. Ruhl & James Salzman, *In Defense of Regulatory Peer Review*, 84 WASH. U.L. REV. 1, 2 (2006).

Why is this an effective hook? Because, like a good story, it first sets the scene, puts the reader in the mud.[16] And it introduces its topic in a way that engages the reader, that might even raise his hackles and urge him to assume an attitude toward the topic.

Hooks are not necessarily bound by the typical expository paragraph structure that begins with the general statement and winds down into detail. In fact, in the Klamath Falls example, the topic is announced last in a sentence that also lures the reader into the exposition that follows. In the *Grutter* example below, the topic is stated first, then explained a bit; the hook is a single sentence that comes last. Both bring the reader to the edge and give him an inviting peak at what lies ahead.

Like titles, good hooks do not come easily to all texts. In fact, plenty of articles do perfectly well without having any hook at all. But somewhere in every legal article is a narrative[17] or case facts (or a hypothetical) or even a startling incongruity that illustrates the writer's thesis. As a lead-in, it snags the reader's attention and readies him for a more explicit statement of the thesis that is to come, as this paragraph does:

> The Supreme Court's 2003 decision in *Grutter v. Bollinger* upheld the use of racial affirmative action as a means of increasing student diversity at the University of Michigan Law School. But in doing so, the Court also prohibited the use of racial quotas in affirmative action programs, finding the pursuit of racial balance to be a "patently unconstitutional" governmental objective. *Grutter*'s prohibition on racial balance is nominally rooted in a desire to promote colorblind race neutrality in the culture's allocation of resources. But ironically, it is the Supreme Court's aversion to racial balance itself that perpetuates racial discrimination.[18]

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[16] *See* VOLOCK, *supra* note 3, at 33 (Because "the most compelling problems are *concrete* ones," the hook should be "specific," whether "a real scenario . . . [or] a plausible hypothetical.")

[17] Often this is a personal narrative relating how the author arrived at the topic. Personal narrative gives context and credibility to what follows, without a doubt. But it is a device that can put off a reader who, having seen too much of it, is more interested in the writer's perspective on the topic than in her experience with it.

[18] Girardau A. Spann, *Race Jurisprudence and the Supreme Court: Where Do We Go from Here?*, 7 U. PA. J. CONST. L. 633, 633 (Feb. 2005).

After a clear but unexciting statement of the article's topic, the hook comes in a single sentence as a surprisingly strong indictment: the Court's own "aversion to racial balance." This is not merely ironic, the reader will think; it is appalling.

A hook need not be dramatic. But as it hints at the article's thesis, it should make the reader *care* about it—engage his interest, his imagination, or perhaps even his ire.

2. The Topic, the Thesis, the Argument

The topic of the piece—perhaps its thesis or argument[19]—should then be stated outright. It may have been suggested already by the title and a hook, of course; but now is the time to give an explicit tug on the line to the reader and let him know what he's in for.

The writer's statement of her thesis should be consonant with her writer's style—in her voice. "This article will explore . . . ." is perfectly adequate. "My objective here is to expose, explain . . ." is adequate, as well. But why allow the entity that is the article or the personage of the author to intrude at all? Ideally, the thesis should enter the reader's consciousness unimpeded by the author's ego. Here, for example, is such a statement for this article:

> An academic writer's expository tasks are three; only the first of these is writer-centered. The writer must describe a topic, including its academic context, and express her slant on, her attitude about, that topic. The second two tasks are reader-centered: the exposition must be a logically planned and clearly signaled journey. Third, the plan and the signals should be so subtle as to be unnoticeable, so the journey simply unrolls like a carpet beneath the reader's feet. The carpet—whose design is the writer's style—may be rich in color and figure, but these should not be so loud as to distract the reader from the path of the topic's exposition.[20] Style is not just hue and curlicue, after all, but clarity and cohesiveness[21]—the warp and woof of exposition.

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[19] By "thesis" I mean a topic plus attitude; argument is a thesis of more evangelical heft but short of diatribe.

[20] *See* Delgado, *supra* note 4, at 452 ("Law review prose should aim to be spare and clean, without any conscious style or affectation.")

[21] Joseph Williams was neither the first nor has he been the latest to attach these words to these qualities of good

Ideally, reading is a meditation; effective writing of any sort, including academic writing, puts the reader in a deep quiet in which the writer's message is transported into the reader's consciousness without the reader's being aware of the means of transport. Effective academic writing is art; like any other aesthetic genre, it is (or should be) subversive in that way. Unless it's the writer's intent to prod, to goad, to provoke, the reader may not know he's been persuaded, converted, recruited until it's too late. If he's only been entertained, he leaves laughing; if moved, he leaves inspired; if inspired, enlightened. If provoked, he is roused to fume, to exclaim, to respond. But as to the manner of the writing, only the student of method will go back and examine the means of transport, the figures in the carpet. Otherwise, the means should be invisible, the art alluring but not distracting. The objective of this article, by contrast, is to violate this principle: to draw back the curtain on method and expose the craft.

3. A Prefatory Word About Style

The introduction gives the reader his first taste of the writer's style. It is a momentous moment. Loose, unfocused paragraphs or prose that is thick with jargon or a sentence that goes on and on and on is sure to put off all but the most determined reader. A writer who is partial to color and curlicue should indulge in these judiciously, employing them to catch the reader's attention, but not to dress every meaty point. The writer should cultivate (and this article aims in part to illuminate) a reader-centered style, one that will help the academic writer put the insight onto the page not just comprehensibly, but in a manner that both communicates and pleases— that *lures* the reader to plunge on past the title, to swim on to the end without flailing or gasping,

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prose. But to his analysis of this and another eight such qualities, I owe my terminology and many other observations that follow here. JOSEPH WILLIAMS, STYLE: TEN LESSONS IN CLARITY AND GRACE 1–80 (3d ed.

except perhaps at grasping the insight, entertaining an epiphany, trailing the highlighter through engaging observations or, for the fun of it, through mellifluous prose.

4. Define Your Terms

Unfamiliar terms can be defined as they come up in the body of the article. But if they are seminal to the entire piece (and they are not numerous), introducing them early is helpful. How helpful? Familiar terms contribute to the reader's comfort level. A term he knows is the easy chair; an unfamiliar one jerks him out of that chair (and the magnetic field of the article) and drives him to the dictionary. Here's an example of introducing and clarifying terms early on:

> [Although] "race" and "ethnicity" are difficult and contentious terms to define, this article treats them both as social constructs with overlapping meanings. Whereas race refers to groups identified by physical traits and geographic origin, ethnicity refers to groups sharing a common kinship, nationality, religion, language, or culture. Because these categories are socially constructed, their definitions depend on the social context.[22]

This paragraph exemplifies a second reason to define certain terms early: esoteric or sensitive terms should be explained at their first mention to obviate offense or misunderstanding. "Race" and "ethnicity" are, as the author admits, hot potatoes. In such instances in particular, it is wise to say soon what is meant by the terms used.

Speaking of terms, they should not be varied, not just in the introduction, but throughout the article. Any term that needs defining,[23] in particular, but also any noun of import should go by the same name from start to finish. Call like things likewise. Keep terminology simple and

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1989).

[22] Karen Rothenberg and Alice Wang, *The Scarlet Gene: Behavioral Genetics, Criminal Law, and Racial and Ethnic Stigma*, 69 LAW AND CONTEMP. PROBS. 343, 347 (Winter/Spring 2006) (citations omitted).

[23] What needs defining depends, of course, on who the journal's readers are and what they know. If the author is unsure of the sophistication of a journal's subscribership, the journal editor will have a better idea.

consistent. The thesaurus may be the writer's friend for finding the most precise word in a given context and for avoiding the tedious and distracting repetition of common words. But it is no friend to the reader regarding terms of art. Once a term of art is tucked into the reader's memory bank, the writer's urge to demonstrate its many permutations should be suppressed. If such variation does not outright confuse the reader, it may distract him, suggesting perhaps that the variation represents some subtle difference in meaning that he hasn't grasped (and that doesn't exist). Unless the writer knows that her reader is as familiar as she with the difference between "Internet" and "internet" or "telco" and "Baby Bell,"[24] the variation will just baffle the reader. A minor point, maybe; but if it causes the reader to puzzle and stall, the magnet of the prose has lost its pull on the reader.

5. The Roadmap

The "roadmap" can be a useful convention—it is certainly a common one— to include in an article's introduction. But it belongs there, only, and preferably at the introduction's end. Thereafter, more roadmaps (such as those announcing the topic for the next section) can just get in the way of the exposition. Once past the introduction, the reader should need no more to navigate the article than signposts such as headings, subheadings, and marvelously subtle and adept transitions.

A roadmap can be dull as asphalt or nebulous as the sky above. The more parts and subparts named in the introduction, the more numbing the map. A particularly lengthy or complex article can be preceded (if journal convention permits) by an outline or

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[24] Susan Crawford, *Network Rules*, 70 LAW & CONTEMP. PROBS. 51, 52 n.5 (Winter 2007).

table of contents, instead. As for the roadmap itself, a simple description of the contents

and their sequence is perfectly adequate. For example:

> Because the keystone article in this symposium critiques but stops short of suggesting an implementation plan, this article offers guidance for moving from diagnosis to treatment. Part II summarizes the keystone author's diagnosis; Part III offers approaches to putting into action the reforms that might follow from that diagnosis. Part IV considers whether these reforms are best implemented by the government or the market. Part V concludes.[25]

This roadmap is neither saturated with the first person nor does it overwhelm with overly

detailed directions or other verbiage. And the simplicity of the last sentence is amusingly

understated: What more need be said of a conclusion?

Another point regarding the roadmap's style: A roadmap has neither a mind nor a voice of

its own. A part is not a person: it does not argue; it does not discuss. A section is expository: in

the active voice, it may "introduce" or "present" or "focus on." In the passive voice it may be a

location: "An argument that things are not what they seem is presented in section III. Section IV

follows [active again] with the counterpoint: that things are, in fact, just that."

But, conventions aside, does the reader need a roadmap at all? The thesis will be

developed; that is all. Headings and subheadings give the same information, are easier to read, and

are located where they can be more helpful.

B. DIRECTING THE READER PAST THE INTRODUCTION

1. Headings

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[25] For the original, see David A. Hyman, *Getting the Haves to Come out Behind: Fixing the Distributive Injustices of American Healthcare*, 69 LAW & CONTEMP. PROBS. 265, 267 (Summer 2006).

Once the reader has negotiated the roadmap in the introduction, her way into the text is eased with the help of headings, for which the roadmap, if any, may already have paved the way. Headings (and subheadings and so forth) are no more than the article's outline. They are an indispensable organizational tool for the writer and an equally useful finding-and-reminding tool for the reader. If there is any hope shared by the judge reading a brief, the law-firm partner reading a memo, and the legal scholar reading an article, it is that the experience be efficient. Time is the premium, and any device, like headings, that facilitates and speeds comprehension is a boon.

The writer should assume the reader in fact reads the headings. Headings and subheadings expressed as full sentences should not be repeated, even with slight variation, in the first sentence of the first paragraph of the section. On the other hand, the first sentence should at least allude to the topic stated in the heading. Then the section should move directly into developing that topic. This is not the time for another roadmap, even an abbreviated one.

If the discussion preceding a new section is so drawn out that the reader might need reorienting to the article's broader topic, a transition sentence or two could be called for. Something like this, for example, suffices without further fuss: "So much for the background. Now for a brief case study."[26] Any more than this—a paragraph, say—looks for all the world like a mini-roadmap. Law-review articles are unfortunately rife with such mini-roadmaps, cluttering each new section with unnecessary information in the insistent first person of the author and with references to this Section or that Part. These should be avoided, for they are intrusive and they distract, breaking the reader's spell of walzing along with the topic, alone.

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[26] James Boyle, *A Politics of Intellectual Property: Environmentalism for the Net?* 47 DUKE L.J. 87, 100 (October 1997).

2. The Tourguide

Directions to the reader are effective and unintrusive when they focus on the topic. Their nemesis, ironically, is the "tourguide" who directs the reader hither and yon with signposts—explicit directives about where to go in the text.

In the transition sentence example (a) below, the subject of the sentence is the topic. In example (b), the subject is instead a part of the article, itself, anthropomorphically crowding out the topic and implying the presence of the writer (or some other persona), pointing insistently ahead:

> (a) These deficiencies can be better understood in the context of how criminal-law principles apply in city-council proceedings.

> (b) *The next section considers and discusses* these deficiencies in the context of how criminal-law principles apply in city-council proceedings.

The transition's framing by overt signpost in (b) does nothing more to ready the reader's movement into the next section than the simpler and subtler version preceding it. In fact, by introducing noise that distracts from the topic, it does less.[27]

Equally unnecessary is the author's acknowledgment that a point has been made before. That some material will be repeated throughout an article is inevitable. A thesis is being *developed*, after all; each point builds upon preceding points. The writer need not apologize for such repetition in the form of such hackneyed and unhelpful phrases as "as noted above." Appearance of apology aside, they can irritate the reader who remembers and worry the reader who does not.

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[27] Example (a) also demonstrates an appropriate use of the passive voice: it is better that the real subject of the sentence be implied— "You, reader, can better understand these deficiencies . . . ."—than introduce a subject—"the next section"— that is wholly extraneous to the topic's development. *See infra* note 49.

More specific signposts, like "as discussed in Part III.B, above," are similarly unnecessary for the reader's orientation. They simply pull the reader's attention away from the text under his nose. At the least, they are a hitch in the reader's progress; at worst, they direct the reader's attention backward when it should be moving forward.

But *directing* the reader forward ("as I detail in the next section") is almost as bad as directing him backward. The writer should let the topic develop, unroll by itself without popping in, pointing. If the writer truly cannot resist the more overt directive impulse, the footnote is the next option, on which the reader may exercise the prerogative to depart the text and so satisfy his desire to see a source or to answer the burning questions whether the topic was touched on before (*See supra* Part A.) or will be expanded upon later (*See also infra* Part III (detailing this point).). But caveat: the writer's objective is to keep the reader's eye on the text and his attention focused ahead, not behind. Footnotes, like officious textual signposts, impede that objective.

There are better, more subtle directives than the tourguide's signpost, and these are perhaps more appropriately discussed as a feature of a writer's style.[28]   From the standpoint of format, of plotting the development of an article, though, the writer need only know that the less complicated the layout, the better. Let the headings announce the topic; let the topic speak for itself; leave the voices behind.

D. BACKGROUND AND BEYOND

Title, hook, thesis. Then, inevitably, background. There's no question that any writer's thesis rests on a foundation of history and of scholarship. Only the poet or novelist is free of the

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[28] Such techniques, including transitions, are stylistic insofar as they impart a sense of the text's cohesiveness. *See infra* III.C. Cohesiveness.

obligation to reveal to her reader the sources of her inspiration. But a background section, whether it be part of the introduction or in a section of its own, must sail between the Scylla of inadequacy and the Charybdis of excess. Law-review editors, the "Everyreader" whom an author should be thankful to have, will usually help the author steer clear of Scylla. But the Charybdis that threatens the scholarly writer from the other side is at least as great a danger. It is not a rocky promontory, but the potential maelstrom of detail or of tangents that can suck the writer into depths almost entirely beyond the reach of her topic. The background is a context, not a treatise; it should be proportioned to the topic—not so comprehensive as to swallow it altogether.[29]

Background is of course not confined to an early section, but is woven throughout the development of the thesis in the sections that follow. Whatever the thesis, that development should be logically structured and the logic be apparent to the reader. The pattern of analysis depends on the question being addressed—it could be dialectical, such that a thesis and antithesis are described and ultimately synthesized; it could be chronological, as of an idea evolving over time; it might be organized by analyzing subissues individually or by posing a number of solutions to a single problem. Whatever the chosen pattern of development, the stronger analyses or arguments should precede the weaker ones, lest the reader doze off before he is edified or convinced. Section and subsection headings help immensely here, for they allow the sleepy reader to negotiate the remainder of the article as he pleases, to skip ahead to a section that interests him more or to flip back to read more carefully one that he did not adequately appreciate earlier. And because the headings represent the logic of the development, they signal the logic of the analysis,

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[29] This is a common, not just a personal complaint: *See, e.g.*, W. Lawrence Church, *A Plea for Readable Law Review Articles*, 1989 WIS. L. REV. 739, 739 ("The author's own contributions to theory and understanding[] is buried under a mass of supplemental dross.").

itself. Trust in the soundness of that logic is seminal to the reader's remaining engaged and ultimately to his being convinced.

III. MATTERS OF STYLE

Writers' styles are adapted to their audiences. Many scholars forget this when they sit down to record the results of their research and their insights. "It is my style," the author avers to her editor, insisting that her lengthy and labyrinthine sentences go untouched. But the writer's style, if inspired by some personal genius, should nevertheless be honed by her awareness of who the reader is and by what she can expect the reader to understand. Principles that support clear, cohesive writing are basic, even innate. Yet because they are so obvious, the writer, often swept up in a creative tide, forgets their importance, and it takes an editor or the author herself in an editorial mode to fine-tune the text with such principles in mind. These principles are the subject of a good many good books on good writing. The few included here are so because they are frequently overlooked by the academic writer, yet they are easily applied, resulting in effective, readable prose.

A. DRAMATIS PERSONAE

An article involves three parties (rightly excluding tourguides): the topic, the reader, and the writer. Only the first of these should be audible: the topic. The second is a tacit given around which all structural and stylistic decisions should revolve: the reader. And the third is— or should be—invisible: the writer.

1. The Narration v. the Narrator: The Author's Use of the First Person

On occasion the academic writer is writing about herself or her experiences and drawing

insights from these that will interest and enlighten the reader.[30] At these times, the person

imperative to the monologue, "I," is hard to avoid. But when the writer is addressing a topic that

is not herself, she has no business jumping into the topic's exposition and competing with it.

Even when the article shifts from objective, descriptive exposition to the normative (what should

be done about the problem described)—even then, the writer's presence is a distraction. The

writer might think first person is called for when she is stating her opinion; yet it is almost always

obvious that any opinion stated in the article is her own because she is, after all, its author.[31]

In fact, opinion stated without its "I" or "we" hardly dulls the judgmental barb; on the

contrary, the absence of the writer makes the barb more acute because it says, "This is how it is,"

not "This is how I think it is." The former engages the reader in a way that she will respond,

"This is true" or, "This is nonsense." The latter engages a reader in a way that she will respond,

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[30] *E.g.*, Carolyn Heilbrun and Judith Resnik, *Convergences: Law, Literature, and Feminism*, 99 YALE L.J. 1913 (June 1990). Such articles take their style and tone from the essay, popularized by the likes of Montaigne and Emerson, which detail, conversationally, personal journeys whose insights the essayist assumes will be appreciated by the reader. No doubt the insights are; but they can be even more effectively delivered when not packaged in the personage of the writer.

From another slant, the preference for third or first person is one that reflects the nature of the publication—e.g., the formal style of the law journal or the relaxed style of journalism. Into this hopper go editorial questions about such conventions as the use of contractions, serial commas, and hyphenated phrasal adjectives. Although conventions are about editorial preferences, such preferences should, like the style of the prose they punctuate, be first about how they facilitate the read.

[31] Joseph Williams observes that we tend to use "metadiscourse to name rhetorical actions: *explain, show, argue, claim, deny, describe, suggest, contrast, add, expand, summarize,*" which require the first person. Other metadiscourse does not always rely on the "I," such as metadiscourse that "name[s] the parts of our discourse: *first, second, third; to begin, in conclusion*; . . . reveal[s] logical connections: *therefore, however, on the other hand, if so*; . . . hedge[s] our beliefs: *it seems that, perhaps, I believe*; . . . guide[s] our readers: *Consider now the matter of, . . . we might at this point recall*." WILLIAMS, *supra* note 21, at 28 (3d ed. 1989). Williams notes that the use of first person in academic writing is typically confined to the introduction and the end, but that, wherever it is used, "it is all a matter of choice." True. But the choice of metadiscourse that guides, that connects, or that hedges is helpful to the reader in a way that the intrusion of the author is not. The better view, overall, is that of Strunk and White, who, in writing of an author's cultivating a personal style, advise, "Place yourself in the background. Write in a way that draws the reader's attention to the sense and substance of the writing, rather than to the mood and temper of the author." WILLIAM STRUNK JR. & E.B. WHITE, THE ELEMENTS OF STYLE 70 (4th ed. 2000). If the author's mood and temper might enhance the argument, then these are more effectively relayed through devices of diction and syntax than through the use of the

"I agree with this guy," or, "This guy's nuts." The difference in a persuasive piece is that the de-personalized argument will stimulate the reader to have a one-to-one relationship with the idea ("I, the reader, feel something must be done."); the personalized one permits the reader to remain outside it, a mere observer ("Ah, so Author Smith thinks this and Commentator Jones thinks that, etc."). The argument poised in terms of its own virtues rather than in terms soldered to the writer's self is the more powerful and persuasive one.

Sometimes, the intrusion cannot be helped. One author, writing of figurative speech in judicial opinion, owns up to coining a term of art in this straightforward way: "I call this social process constitutional myth-making, whereby potent metaphors, symbols, scripts, and mantras are constructed and disseminated by individuals and institutions to create legal meaning."[32] Or a writer may wish to soften what might otherwise appear to be a too-rigid or too-narrow point of view with the acknowledgment that it is just a belief personally, perhaps fondly, held. "I rather think . . . ," he wants to be saying. "I know I'm out here on a limb and you, readers, are entirely entitled to cut it off, but let me just put this out there." Or the writer is wishing to explain why his analysis goes only so far:

> Applying this sort of analysis to the problem identified by so & so would be a massive undertaking. It would require detailed information on this & that, on the amount of that & this, and other data beyond the stars. However, an extremely simplified model, not completely divorced from reality (I hope), can give some sense of the possible distributional effects of the "this" and the benefits of the "that."[33]

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insistent first person.

[32] Robert L. *Tsai, Fire, Metaphor, and Constitutional Myth-Making*, 93 GEO. L.J. 181, 184 (Nov. 2004).

[33] For the more adept original, see Lawrence Zelenak, *Of Head Taxes, Income Taxes, and Distributive Justice in American Health Care*, 69 LAW & CONTEMP. PROBS. 103, 106–07.

The parenthetical, "I hope," reveals the author's modesty at offering an approach that, if herculean, might at least shed some light on the problem introduced by so & so. It's not too much; it's even endearing. But such intrusions, gentle though they be, should be rare.

A writer's self-reference is sometimes tolerated in the introduction (where the reader might expect to see it, but not miss its absence); or in footnotes, which, should the reader choose to read them, have by their very nature already trumped the text for his attention; or in the conclusion, by which time the spell of an exposition standing on its own may be broken, anyway. Many fine writers are careful to expunge the first person from all *but* these places, assuming, perhaps, that the personal framing of the exposition or argument humanizes it. This is perhaps a reasonable assumption; perhaps this glimpse of the writer's character will please the reader and pique her interest. Or, perhaps not.

It is common for a writer to announce his thesis hand-in-glove with his persona, and because it is common, we tolerate the practice:

> My comments here are in the nature of friendly amendments. Even though I think the emperor looked quite fine in his altogether, exposing his folly here is laudable. Similarly, although I believe that the empire was unaffected by this folly, other aspects of the empire have now been exposed to be in dire need of reform.

But in the following version, first-person references are expunged. Is the revision any less friendly? Are the author's points of view about the topic any less definite or any less patently his own?

> These comments are in the nature of friendly amendments. Even though the emperor looked quite fine in his altogether, exposing his folly here is laudable. Similarly, although the empire was unaffected by this folly, other aspects of the empire have now been exposed to be in dire need of reform.

The writer's person is simply unnecessary. The mark of the writer's personality should be his style (the length and variation of his sentences, for example, his diction and syntax, his use of alliteration, assonance, and trope), not the use of first person, which just gets in the way of the topic. Academic writing is expository writing. Expository writing is about a topic viewed from the author's point of view, not (unless the author is, in fact, the topic) about the author himself.

2. The Reader

Addressing the reader introduces a personage ("you") who, like "I" or "we," ordinarily does not belong in the article. Even when such direction is only implicit, urging the reader to "note" this or "recall" that can be as insulting to the reader's intelligence as reminding him that something has been "discussed above." Not every reader welcomes the writer's sidling up to him, taking his elbow, and commandeering his journey through her article.

Nevertheless, occasionally addressing the reader in the imperative mood ("Consider this") is a rhetorical device that can catch the reader's attention, give him a little shake. But using the device should be governed by two questions: One, will the reader appreciate the intrusion? Two, is it called for by the reader's flagging attention? (And if so, has the text lost its momentum?)

3. Other Personae and What They Have to Say

The scholarly topic—and the text that expounds upon it—cannot exist in a vacuum. Without research and its documentation, the text has no contextual ballast. But what matters most? The source or the topic? Yes, sometimes it is the source. Sometimes the writer is discussing another writer's approach to a topic and commenting on its aptness or otherwise. For example, the writer may be responding to another's seminal article, or she may be discussing at length another scholar's particular approach to the topic. Or her mention of the source's name

may be to explain why a point of view is bizarre, for example, or biased: "Robert McHenry, a former editor-in-chief of the *Encyclopaedia Brittanica* [and thus not a neutral observer] criticized Wikipedia, arguing that information is only as reliable as its source; the more we know of the latter, the more trustworthy is the former."[34] Or the source may be a person universally recognized as so authoritative that the topic cannot as credibly be discussed without his or her mention.

But other times—in fact, most often—the identity of the source of the quote is simply of no interest to the reader, who is on the lookout for the writer's ideas and their inspiration, after all, not a roster of scholarly names. Introducing another scholar's quote, then, should not habitually begin with the name of the scholar. Formulae such as "In Professor X's words, . . ." or "Professor Z writes . . . " introduce an unnecessary phrase (because the footnote cites the source of the quote) and characters who distract from the narrative itself.

A quotation should of course be framed by context and not just slapped on the page. If the writer feels the source of the quote is vital to this context, then the source should be part of the framing sentence. Whether to name names is a choice that each writer should nevertheless make deliberately, as does the author of this passage:

> Here and there amidst the morass of law reviews are occasional stabs at candid self-criticism. For example, various observers have noted that supposedly analytical commentaries are predominantly descriptive and mildly plagiaristic;* those published during pending litigation interfere with the judicial process;* the scholarly voice lacks factual discipline;"* and that scholarship *qua* scholarship on law may not even exist.* Justice William Douglas said that law review articles are written by paid hacks espousing the views of their clients.* Professor Arthur Miller argues that objectivity is impossible in law review articles because of lawyers'

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[34] Robert McHenry, The Scribe's Problem Child, TCS Daily (3 Jan. 2006) *available at* http://www.tcsdaily.com/article.aspx?id=010206D ("My criticisms of Wikipedia have been chiefly of the process, which is too open and unguided to produce reliably good output.").

inalienable commitment to advocacy.* Professor Roger Cramton sees their "extraordinary proliferation" as "harmful for the nature, evaluation, and accessibility of legal scholarship."* Professor Elyce Zenoff (in an article entitled *I Have Seen the Enemy and They Are Us*) sums up the common criticisms: "Published articles lack originality, are boring, too long, too numerous, and have too many footnotes, which also are boring and too long."[35]

The framing sentences for the material quoted here include some sources, but not without purpose. The writer of this passage thought carefully about whom to name, what to paraphrase, and what to quote. What is left is a summary of others' approaches to the paragraph's topic that crescendos in detail. The increasing information about the writer's sources, including their titles, is, like the increasing length of the quotes themselves, a use of detail that lends authoritative and emphatic weight to the words quoted.

In general, though, the same principles of a reader-centered style that unobtrusively lures the reader into the text should guide the introduction of quotes: the break between text and quotation should be as imperceptible as possible. The quotation is an illustration, an expansion of a point made in the text. Unless the writer's subject is also his source, the framing should focus on the point the writer wishes the reader to take away, not on those whose comments have contributed to it. Compare these three passages:

> 1. Unlike other musical forms, jazz "has remained uniquely in touch with the animating force of its origins."[36]

> 2. Jazz is unlike other musical forms that have morphed over the centuries. Geoff Dyer writes that jazz "has remained uniquely in touch with the animating force of its origins."

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[35] Omitted citations are marked with askerisks. Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 933 (1990) (quoting Roger Cramton, *The Most Remarkable Institution: The American Law Review*, 39 J. LEGAL EDUC. 323, 336 (1989); Elyce Zenoff, *I Have Seen the Enemy and They Are Us*, 36 J. LEGAL EDUC. 21, 21 (1986)).

[36] Anonymous, *supra* note 13, at 1942 (quoting GEOFF DYER, BUT BEAUTIFUL: A BOOK ABOUT JAZZ 185 (1996)).

3. Jazz is unlike other musical forms that have morphed over the centuries. In his book, *But Beautiful: A Book About Jazz*, Geoff Dyer writes the following: ["Jazz] has remained uniquely in touch with the animating force of its origins."

All three examples demonstrate correct means of introducing a quote. The differences between them lie in the author's intention. If it is to expound upon the author Geoff Dyer, then the third example gives the most information; if Geoff Dyer has already been introduced, then this same purpose is served equally well (and more smoothly) by the second example. But the first example is ideal if the author's topic is the music, not the man.

B. DICTION & SYNTAX

1. Diction

Diction is about word choice—selecting an appropriate word and using it correctly. For this, there are no guides better than a current *Webster's* (or its equivalent) and a usage dictionary.[37] The writer (and editor) should pass through her manuscript with antennae toward not just the meaning, but the nuance, sound, and rhythm of the words. This does not mean choosing the arcane or the stilted, multisyllabic word for the sake of its impressiveness (beware the "monological imperatives"); it means opting for the most exact word under the circumstances. Such circumstances include, of course, assumptions about who the reader is and how much he knows. They should also include the potential for a word's misconstruction. Any word that can be misread on the first pass should be avoided or its meaning made clear by its context.[38]

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[37] *E.g.*, BRYAN GARNER, A DICTIONARY OF MODERN LEGAL USAGE (2d ed. 1995)

[38] For example, "while" can mean simultaneously and although. When it initiates a subordinate clause preceding the main clause, its meaning will be ambiguous until the main clause is read. Rather than make the reader suspend comprehending its meaning, use it unambiguously: While I fiddled, Rome burned; although the music flowed, the flames did not abate.

All word choices should opt for the specific over the general.[39] When the specific noun is an unfamiliar word or term of art not made clear by it context, the writer might indulge the reader with a definition or a synonym tucked appositively between commas following the noun and so forestall the reader's impulse to stop reading and go search for a dictionary.   Verbs, especially, should be specific. Numerous sentences that rely on "has" or "is" can render prose flaccid; those that root in verbs with power and depth render it strong and deep.[40] This goes as well for modifiers. Some are so vague that they sap the energy from the word they are meant to emphasize. Take "very." "The Act provides very little guidance as to how to weigh these factors." Eliminating the "very" leaves "little" with more punch: "The Act provides little guidance as to how to weigh these factors." On the other hand, if the writer feels an adjective or adverb needs an adverb of its own, it could be the wrong adjective or adverb. "The Act provides scant guidance as to how to weigh these factors'" might be best of all.

Another sap-sucking modifier is "quite": "Concerns about bias are quite salient." "Salient" is strong enough on its own. It gains nothing from a boost by the likes of "quite."[41] "Salient," though, may not be the best choice, either: beware the modifier so chic that it verges on cliché. "Robust," for example, is specific, it is vivid, and these days it is woefully overused.

2. Syntax: Effective Sentences

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[39] To this, the writer might be wise to "[p]refer the short word to the long, the concrete to the abstract; . . . the familiar to the unfamiliar." JACQUES BARZUN, SIMPLE AND DIRECT 18 (2001). Such preferences depend, of course, on the author's purpose and who the reader is. "Modify these guidelines in the light of the occasion, the full situation, which includes the likely audience for your words." *Id.*

[40] There are always exceptions to such advice, of course. Using the empty "there is . . . that " construction can be an emphatic device when used deliberately (and sparingly): because there is nothing up front, the emphasis is thrown to the sentence's end *See* WILLIAMS, *supra* note 21, at 69.

[41] Despite its excessiveness, "quite salient" is a popular phrase. A Westlaw search revealed thirty-four appearances in the JLR database.

Others have written comprehensively about both the reader's expectations and the principles of clear, cohesive writing that attention to such expectations engenders.[42] Many of these principles have been dubbed guidelines for "Plain English."[43] They are no less useful for making academic prose clear than for statutes, contracts, and administrative rules.[44] Among these are three principles of effective syntax:

1. The subject should cleave unto the verb, after which the object, if any, should soon follow.[45]

2. Context and topic come early;[46] climax comes last.[47]

3. Prefer the active voice. But do not spurn the passive voice; rather, use it appropriately, as when the action matters more than the actor.[48]

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[42] *E.g.*, GEORGE GOPEN, THE SENSE OF STRUCTURE (2004); JOSEPH KIMBLE, LIFTING THE FOG OF LEGALESE (2006); WILLIAMS, *supra* note 31.

[43] *See, e.g.*, JOE KIMBLE, *supra* note 42, at 70–71; RICHARD WYDICK, PLAIN ENGLISH FOR LAWYERS (1998).

[44] *See* KIMBLE, *supra* note 42 at 49 (citing 17 C.F.R. § 230.421(b), (d)).

[45] "Readers of English expect that the arrival of the grammatical subject will be followed almost immediately by the arrival of the verb." GOPEN, *supra* note 42, at 31. Transitive verbs should likewise be closely followed by their object: "Keep the subject, the verb, and the object together—toward the beginning of the sentence." BRYAN GARNER, LEGAL WRITING IN PLAIN ENGLISH 23 (2001). Such principles are nonetheless always subject to those of emphasis. *Compare* "The poet need not reveal the sources of her inspiration to her reader" *with* "The poet need not reveal to her reader the sources of her inspiration." The placement of "reader" in the first sentence signals that it is more important than "sources of inspiration"; in the second, it's the "inspiration" that counts more.

[46] These are sometimes the same thing: topic is context. Or context can be orienting, as in time or space. *See generally, e.g.,* WILLIAMS, *supra* n. 21 at 40 ("Put at the beginning of a sentence ideas that you have already stated, referred to, implied; ideas that you can safely assume your reader is familiar with, will readily recognize.")

[47] WILLIAMS, *supra* n. 21 at 65 (the "stress" segment of a sentence); GOPEN, *supra* note 42, at 37 (the "stress position").

[48] *See id.* at 24–26. The voice in a sentence like this one—"Whether the use of first person is ever appropriate in academic writing is discussed in the next section."—Williams would term "institutional passive." *Id.* at 27. Compare the alternative formulation, active voice in the first person: "In the next section I discuss whether the use of first person is ever appropriate in academic writing." Which is more important: the actor or his action? If the latter, then institutional passive is appropriate. Passive is also appropriate, Williams observes, when its use shifts the old information to the beginning of the sentence and the new to its end. *See id.* at 45. Passive gets its bad name from such obviously inappropriate uses as avoiding the actor—e.g., "Mistakes were made." Which is more important: the actor or the action? Who made those mistakes is usually at least as important as the gravity of the mistake itself.

Writers of academic prose are licensed to take liberties with these principles, but the exercise of that license should be deliberate and informed by an awareness of its effect on the reader. Patterns that are unexpected are less facile to read. Yet this is not always undesirable: slowing the reader down in this way is one means of emphasizing the words in that pattern. Style is all about choice; the more the reader knows about the effects of her choices, the more mastery she has over her style.

3. Syntax: Effective Paragraphs

Although syntax is commonly understood to be the order of words in a sentence, it can be thought of more broadly, as the architecture of the paragraph, about which the academic reader has quite definite expectations.[49] These are often that the topic sentence comes first and a transition sentence comes last and in between is the development of the topic made coherent by a regular application of transition words or other links. Here is such a paragraph:

> This paragraph is about paragraph development. After the topic is announced, it should be explained, illustrated, expanded upon. The content of the paragraph is also governed by the sentence-structure principle that context precedes the subject–verb pair and that climax comes last. In the paragraph, however, the climax position is occupied by a "landing,"[50] a "coda,"[51] or a transition sentence[52]—a springboard to the topic of the next paragraph.

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[49] *See generally* GOPEN, *supra* note 42, at 94–129. Gopen urges the writer to free herself from the "Procrustean bed" of such structures as the "*Wizard of Oz*" paragraph (The sky is blue because, because, because. Therefore, the sky is blue). For Gopen, a paragraph "topic" is more precisely described as the paragraph's "issue" and the writer's "point": "the *issue* refers to the intellectual boundaries within which the discussion may wander; the *point* is the interesting place within those boundaries at which the reader is intended to arrive." *Id.* at 113. Gopen offers a number of enlightening rhetorical principles that permit more "protean" development: (1) "Readers of English initially expect that the point of a paragraph will appear as the last sentence of the paragraph's ['issue.'" *Id.* at 117. (2) "Readers of English expect that if the point of a paragraph is not the last sentence of the paragraph's issue, it will be the final sentence of the paragraph." *Id.* (3) "Readers expect the point of a paragraph to be made explicit either just before the discussion of it begins or just after the discussion of it ends." *Id.* at 121.

[50] MARY BERNARD RAY & BARBARA COX, BEYOND THE BASICS: A TEXT FOR ADVANCED LEGAL WRITING 213 (1991) ("The landing, or the concluding statement . . . tells the reader the significance of the logic concerning the broader issue [being addressed and] answers the question "So what?" "It is also the platform leading to the next point."); GOPEN, *supra* note 42, at 120 ("In a paragraph, the coda, when there is one, is always the last sentence. . . . It is the safest place, for example, to insert a wisecrack, a witticism, or even a slight pun. It can be used to restate the

This example is competent, but it is much too simple, and it overstates the plan. The pattern of any one paragraph depends on what comes before and what follows. It depends on whether it is the first paragraph in a section, the last, or one somewhere in the middle,[53] on whether it is one sentence or many, expository or narrative. The topic is often implicit; it may even wait till the paragraph's end to show up, as it does in the "hook" narrative paragraph about water-liberating civil disobedience in Klamath Falls.[54] Wherever and however it appears, though, the paragraph's topic should be obvious.

It is perhaps useful to think of a paragraph less as a pattern than as a shape.[55] Its shape is determined in the first instance by the writer's intention, as to develop (or continue developing) a point or to punctuate it, as with a single sentence. Its shape is determined as well, of course, by the topic to which it is devoted. Topics may be elephantine, but the paragraphs that discuss them should be proportioned not to the whole elephant but to its parts. The paragraph's shape is thus determined, too, by length, or, more exactly, visual space.[56] It is arguably as much length, or space, that determines how far a paragraph needs to go before it breaks off. Once the expansion of a topic's exposition begins, paragraphs may break for as little as a visual breath, a shift from part to subpart; the break need not wait for the next seaworthy point.

point.")

[51] GOPEN, *supra* note 42, at 120.

[52] Take care that any transition sentence does not usurp the topic sentence for the next paragraph. *See* BRYAN GARNER, THE WINNING BRIEF 93 et seq. (1994)

[53] *See* GOPEN, *supra* note 42, at 123–129 (discussing "point placement" in first, middle, and last paragraphs).

[54] *See supra* text accompanying note 15.

[55] This is George Gopen's description. GOPEN, *supra* note 42, at 94, et seq.

[56] "Keep your paragraphs short. Writing is visual—it catches the eye before it has a chance to catch the brain. Short paragraphs put air around what you write and make it look inviting, whereas a long chunk of type can discourage a reader from even starting to read." ZINSSER, *supra* note 14, at 80.

So: a paragraph can be visualized as a structure; it can be visualized as a shape. When the pattern of the paragraph's development coincides with what the reader expects to see, it has structural coherence. The cohesive aesthetic of that shape, though, relies as much on the words chosen and repeated as on the architecture of the sentences or of the paragraph itself.

C. COHESIVENESS

A fourth principle observed by others who have studied what makes writing clear and cohesive is this: Keep the topic and what it is called consistent, and use transitional words thoughtfully, ordering the development of a point so as to need them as little as possible.[57] The paragraph below, butchered for illustrative purposes, is from an essay about the crisis of AIDS and the cost of its treatment in South Africa. The South African government sanctioned violations of patents for AIDS drugs, and U.S. drug companies filed a lawsuit. This paragraph picks up where the suit and drug prices have been dropped in response to international political pressure.

> In the United States, the widespread impression was that the problem had been solved. To clarify, according to newspapers and television, there had been two problems: first, high prices; second, the suit that kept the South African government from doing something about them. In fact, the problems fit the classic American picture of an abuse—that is, an aberration in a broader pattern in which everything is more or less okay. In other words, someone is doing something wrong, and once the wrongdoer is stopped, things will right themselves. Nevertheless, things have failed to right themselves.[58]

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[57] WILLIAMS, *supra* n. 21 at 40–52.

[58] For original, see JEDEDIAH PURDY, BEING AMERICA 136–37 (2003) (quoted *infra* in text accompanying note 60). My apologies to the author for turning his gold into straw.

Cohesiveness here is at the cost of flow, not to mention conciseness. The sentences hiccup from one loud transition word or phrase to the next. If any other, more subtle techniques are at play here, they're not apparent. All that's left is stickiness.

The less obvious the connective tissue, the more fluid the prose will be. Rather than the overt transition word—*additionally*, *furthermore*, *finally*—and its kin, the explicit transition sentence, the writer might use words or phrases that connect paragraphs (and sentences) by virtue of evoking what the reader already knows. Such subtle connections can be made with as little as a definite article ("the" principle) or a demonstrative pronoun ("this" principle). Or the reader's familiarity with what has come before can be evoked by echoing a key word or phrase (the technique of using "verbal echoes") or by parallel structure. By alluding recognizably to what the reader already knows, such quiet transition techniques help him link where he's been to where he is and so ease his way forward.

Verbal echoes enhance coherence if they are sufficiently exact and sufficiently fleshed out to make the reference unmistakable. A demonstrative pronoun or definite article alone may not be enough, but a demonstrative pronoun and a shorthand expression of what it refers to are just the ticket. The first sentence in a section entitled "From State Legal Pluralism to Global Legal Pluralism" is re-written below in three guises a transition sentence might take on. (*With commentary*)

1. The decisive question regarding [**these two areas**] is whether these normative orders are "law." *What two areas? "State and global legal pluralism" is the heading just above . . . are these the areas to which the author refers? Or does he mean "the law of the Internet and* lex mercatoria"—*areas discussed in the preceding section? A demonstrative pronoun (these) points to something the reader should be familiar with. But sometimes it is not specific enough.*

2. The decisive question regarding [**the two areas discussed above**] is whether these normative orders are "law." *This manner of specificity is likewise unhelpful: the reader cannot be*

expected to remember what these areas were any more than where they were discussed; he should certainly not be advised where to go fishing for them.

3.   The decisive question regarding [**these two areas—in the realm of the Internet and in the new *lex mercatoria*—**] is whether these normative orders are "law." *Here, the echo renders the reference specific enough, and the reader gets to stay where he is.*[59]

Transitional echoes are most helpful when they specific, but also when they are true to their model. Like key terms that should not vary throughout an article, echoes that work best are those that are recognizable. They need not be identical, but they do need to be unmistakable.

Like transitional echoes of repeated words or phrases, judiciously repeated sentence structure enhances cohesiveness. The repetition creates a rhythm that, like waves, connects. This rhythm is evident in the South Africa AIDS paragraph restored below to the original. This is followed by the passage parsed: the transition words are underscored to illustrate each of these transition techniques—definite article, demonstrative pronoun, and echoes of key terms and of sentence structure. The first sentence of the paragraph that follows is included for its parallelism:

> In the United States, the widespread impression was that the problem had been solved. According to newspapers and television, there had been two problems: high prices and the suit that kept the South African government from doing something about them. These fit the classic American picture of an abuse: an aberration in a broader pattern in which everything is more or less okay. Someone is doing something wrong, and once the wrongdoer is stopped, things will right themselves.
>
> Things have failed to right themselves.

<div align="center">* * *</div>

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[59] For original, see Ralf Michaels, *The Re-Statement of Non-State Law: The State, Choice of Law, and the Challenge From Global Legal Pluralism*, 51 WAYNE L. REV. 1209, 1209 (Fall 2005). The author's published version is perhaps best of all, for the subject–verb pair follows context: "Both in the realm of the Internet and in that of the new *lex mercatoria,* the decisive question is whether these normative orders are 'law.'" *Id.* at 1221. All that is lost in this version is the relatively greater emphasis on "the decisive question" when it initiates the sentence. And where to put the emphasis is always the author's prerogative, not the editor's.

In the United States, the widespread impression was that the <u>problem</u> had been solved. According to newspapers and television, there had been two <u>problems</u>: high prices and the suit that kept the South African government from doing something about them. *Repeating the word "problem" echoes its use in the preceding sentence and so links the two sentences. If the writer had used the word "issue," for example, the echo would be perhaps too subtle and the early opportunity for cohesiveness missed.*

<u>These</u> fit the classic American picture of an abuse: an aberration in a broader pattern in which everything is more or less okay. *Using a demonstrative pronoun, "these," points directly back to something the reader has just seen*

Someone is doing something wrong, and once the wrongdoer is stopped, <u>things will right themselves</u>.

<u>Things have failed to right themselves</u>.[60] *This is the most musical linking technique of all: parallel structure, which is particularly effective here because this sentence says in an identical pattern the opposite of its model, jolting the reader to attention. Parallels here reach beyond structure, as well; they are poetic in repeated or contrasted sounds—someone, something, wrong, wrongdoer, doing, stopped.*

D. Brevity and Length

Brevity is a topic too vast to address credibly here. Other authors have composed lists of wordy phrases to avoid;[61] others opine on sentence length.[62] The key to a reader-friendly style is less brevity per se, though, than variation. The long, then the short. The short, the short, then the long. Poets of our era know this trick well. Their poems may be inscrutable, but they are never monotonous.

Paragraphs can be as long as needed to develop a topic, but the writer who is a reader knows that the end of a paragraph, like the end of a chapter, marks a place for the reader to take a breath, to stop a spell and ponder, to look up and see why the dog is barking so. The length of

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[60] PURDY, *supra* note 58, 136–37.

[61] *See, e.g.*, WILLIAMS, *supra* note 21, at 90–92; .

[62] *See, e.g.*, VEDA R. CHARROW & MYRA K.ERHARDT, CLEAR AND EFFECTIVE LEGAL WRITING 96 (1986) (noting studies in linguistics and psychology that show readers "can hold only a few ideas at a time in short-term memory" and that shorter sentences thus facilitate their comprehension); KIMBLE, *supra* note 43, at 71 (In an essay originally entitled, *Plain English: a Charter for Clear Writing*, Kimble advised, "Prefer short and medium-length sentences. As a guideline, keep the average length to about 20 words."); WYDICK, *supra* note 43, at 38 ("Keep the *average* sentence

paragraphs, like that of sentences, should be planned with as much thought to the effect of length on emphasis and rhythm and rest as to the satisfactory development of the paragraph's topic.

An article's length is governed of course by its content; but the breadth and division of that content should be decided (as with paragraph development) with this in mind: the reader's attention span. If an article can be read between the reader's sitting down and his getting up again, then the article is just about the right length. If it is longer, then the reader will favor breaks, divisions, breathers. There are reasons books have chapters, after all. Who among us has not flipped ahead to find the next break?

IV. CONCLUSION

I write not to change the world, but as friend to friend, to those of like mind. . . . Yet there is a value . . . in the process of writing itself, in seeking to attune oneself at the center of one's mind and being to one's imagined reader."[63]

This sampling of stylistic points that should guide the genius of the academic writer is anything but comprehensive, yet it seems about time to stop. For if the author wants her reader to follow her to the end, whether she has in fact exhausted her topic is less important than having retained the reader's attention. The reader who, having finished the text, is eager to know more about the topic can always mine the footnotes for sources cited. The writer who has more to say can say it another time.

Besides, this article was not intended to be comprehensive, but to sensitize the writer to what matters most in cultivating an effective scholarly style: the reader. The objective was to expose the irksome (or joysome) stylistic habits that strike this editor's eye. Rules of grammar and

length below twenty-five words.")
[63] James Boyd White, *Why I Write,* 53 WASH. & LEE L. REV. 1021, 1037 (1996).

syntax are, when violated, barriers to clarity that the writer can look up and apply on her own. It is harder to know whether and why one's prose is less than clear enough, less than comprehensible enough, less than magnetic enough to attract and hold the reader. But this is the craft of effective scholarly writing: shaping prose with practices that draw readers to the text and propel them forward. The legal writer who can step into the reader's shoes has seized means no less important than her ends—that is, of communicating what she has to say.