

# NOTES ON THE STYLE OF THE LAW

## *Lord Denning's Scar*

by

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≈ style ≈ writing ≈ classics ≈ reflections ≈



AS THE NEW YEAR BEGINS, it is worth taking a moment to consider the great contrasts of legal style, the two ways of writing. This question is particularly relevant in light of a recent interaction this publication had on Twitter.<sup>1</sup> One account, purporting by its user-name to be an extant aspiring barrister mentorship service,<sup>2</sup> insisted dogmatically that absolute simplicity and minimal expression in style was necessary to succeed in applications. This, I in turn responded, reflected a misunderstanding of style. It is necessary for each writer to assess both the context (and audience) as well as her own authentic writing voice and skill, and then to determine by best judgment what is necessary. As advice to untalented beginners, it is perhaps useful to issue blanket prescriptions, but advanced writers (and everyone applying for pupillage has had a university education and thus is not a beginner) must use discretion and care in choosing. For those who can master the subtle art of ornamented writing, which is tricky, dangerous, and risky, there can be great rewards in deploying it. Equally, unadorned writing, far from being easy, is just as difficult and risky, because the writer has fewer tools by which to impart the full subtleties of the advocate's case. 'Simple' is a misnomer; Hemingway-like concision is a challenge as difficult as writing with the filligree Victor Hugo.

This is a matter of discernment each legal writer must make on her stylistic journey. It comes from reading, writing, reading more, and writing more, and is an ongoing, continuing process. The result is the ultimate prize of legal writing, what Prof. Garner in *Elements of Legal Style*,<sup>3</sup> reminds us should be our lodestar: the

1 'Twitter', circa the end of 2022, was a popular web-site for the posting of short textual public statements, known as 'microblogging'. For why I include an explanation as to what Twitter is, see this previous post.

2 This publication has taken no steps to verify or validate the claim to be a mentorship service made by this account, and makes no comment on such claim.

3 Hereinafter, *Elements*.

authentic individual voice of writing. Much as an advocate cultivates her own distinct voice in oral proceedings, so too should her written proceedings develop the precise balance of style which most suits her talents and preferences.

The two styles of which I speak are referred to in *Elements* as the Asiatic (adorned) and the Attic (unadorned), following on from the classical tradition. Prof. Garner cites Cardozo J as the epitome of the style, and points out his opinions remain appreciated precisely because of how elegantly they are written. The key is not one or the other, but rather to find what is good, what captivates the reader, what keeps him engaged with the argument. Needless fluff distracting from the argument is wrong, but so is stripping the argument such that it is painful or impossibly dull to read. Here, *Elements* quotes the invaluable Voltaire: ‘*touts les genres sont bons, hors le genre ennuyeux.*’ All style works, except that which bores.

For thinking about this contrast, and precisely what each sort of style conveys, the starting point is necessarily Prof. Eric Auerbach, and in particular his essay ‘Odysseus’s Scar.’<sup>4</sup> Prof. Auerbach uses a close reading of the Homeric text to draw a contrast between the externalising force of the detailed Homeric style, in which even something as incidental as a scar on the face of Odysseus merits interrupting a battle for a long digression. This is contrasted with the more laconic Biblical style, where a few things are brought into the foreground, but much else is simply left unsaid, leaving open a vast amount for contradictory interpretation. Prof. Auerbach connects this style to the purpose of each text; the story of David in the Bible views itself as telling history, and therefore spares the elaborate detail of myth, whereas Homer is telling a legend in which all can be made clear and the internal lives of the characters brought to the surface. Thus, each work has a style which suits its intent. The styles, in other words, are tools, tailored to what is needed. These are, of course, extremes; legal writing should be neither mere history (or else there’s no advocacy) nor can it ever be legend (though a few common law doctrines do seem like legend). Instead, Prof. Auerbach’s contrast is a useful way for thinking about the characteristics of the adorned and unadorned styles:

We have compared these two texts, and, with them, the two kinds of style they embody, in order to reach a starting point for an investigation into the literary representation of reality in European culture. The two styles, in their opposition, represent basic types: on the one hand fully externalised description, uniform illumination, uninterrupted connection, free expression, all events in the foreground, displaying unmistakable meanings, few elements of historical development and of psychological perspective; on the other hand, certain parts brought into high relief, others left obscure, abruptness, suggestive influence of the unexpressed, ‘background’ quality, multiplicity of meanings and the need for interpretation, universal-historical claims, development of the concept of the historically becoming, and pre-occupation with the problematic.<sup>5</sup>

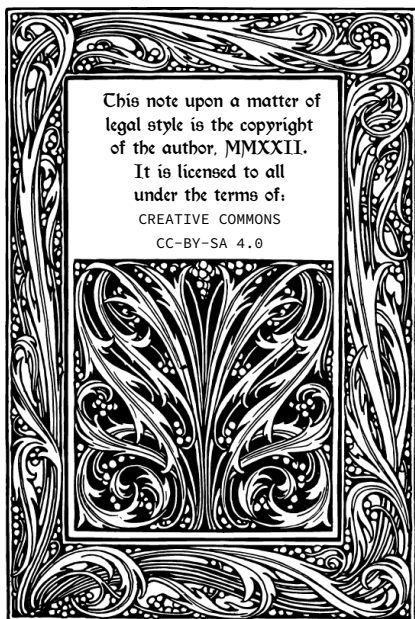
4 Collected in E Auerbach, *Mimesis: the Representation of Reality in Western Literature* (W R Trask, tr, Princeton University Press 1971), ch 1.

5 *ibid*, 23

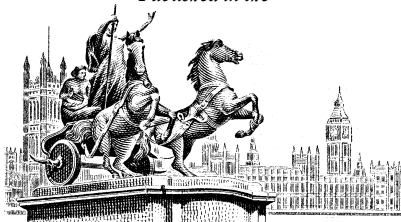
Another consideration came in a useful metaphor by the late Dr Isaac Asimov. The good doctor, in an editorial in his eponymous publication,<sup>6</sup> contrasted the mosaic and the plate glass. The former consisted of many interlocking elements, which together, like a symphony revealed the meaning. The plate glass was transparent, it made no point other than to get the reader directly to the outcome. As the good doctor noted, both are difficult styles, but his preference was firmly for the plate glass. Personally, I am for the mosaic, but I nonetheless find the good doctor's classification very useful. In law, we haven need of both types of writing, and every shade in between. In some cases, a plate glass can be more confusing than a mosaic, because there are unconnected facts and conflicting precedents. The mosaic, arranging them artfully, allows for comprehension, to see the collective picture created by dozens of authorities giving slightly differing points. Equally, in some cases, directness, showing the simple ambit of a statute, the clear meaning of a fact, is called for. The point is *context is everything*. That is the Prime Directive of style, the first rule. Know if you are working in a legal area that is a sleek modern office building or a timeless cathedral, and build the appropriate window.



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