Becoming a (Critical) EU Law Scholar Today

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I remember a colleague once told me that when a discipline starts to be preoccupied with itself, there is something wrong – especially with the people who partake in such endeavours. And yet, this is exactly what Vincent Réveillère has invited us to do in a series of online seminars entitled "Controversies over Methods in EU Law" and this symposium. And I think it is an important endeavour.

In my contribution I would like to consider some of the challenges that the discipline of EU law – and EU law *scholars* in particular – face today. I shall take advantage of the medium of this debate – an online blog that sits at the intersection of scholarship and journalism – and provide some rather free-floating reflections on what it takes to become an EU law scholar today.

Turning the existential crisis of Europe into critical knowledge, called for by LoïcAzoulai, requires – among other things – critical scholars. The question is, however, whether the present conditions allow for such people to emerge. I discuss only four of the many obstacles that critical scholarship faces today and conclude with a call for something that might be called "critical scholarship about legal scholarship".

Who is a critical scholar of EU law?

Firstly: who counts as a "critical scholar" of EU law? An easy reply would be "someone who criticizes EU law in a scholarly fashion". However, what is it to "criticize", especially in the world of scholarly production where being critical is a valued quality (as opposed to "doctrinal" or even worse, "descriptive")?

Perhaps we can still refer to Horkheimer's distinction between traditional and critical theory. The latter puts emphasis on the situatedness of all thinkers, their knowledge and focus. Their ability to even *see* something as a problem is determined by their place, in time and space. Someone "critical" in this sense would see any insight (and the solution, that may follow from it) as only partial and temporary, open to further questioning and problematizing, never fully "objective".

At the same time, critical theory has always had a much broader ambition beyond "mere" better understanding. It has sought to emancipate societies through "unveiling and unmasking" and as such inspired thinkers of various political convictions, from Michel Foucault to Sheila Benhabib.

Critical theory has however also used the notion of "praxis": action aimed at changing the world through critical knowledge. The latter seems to be in great supply today, scholars mobilizing themselves, acting as "Good Lobby Professors" and writing numerous petitions to all sides. However, at which point does their knowledge become part of the governing ideology, contributing to forms of oppression rather than freedom?

Bernard Harcourt asks these questions in his recent book on Critique & Praxis. It seems to me that all scholars who want to change the world (or "just" to save the rule of law and democracy in the EU) should read the book, written in a painfully personal style by a critical theorist who acknowledges that his civil rights advocacy – defending people on the death-row – may at the same time help to maintain the fundamentally unjust system of criminal "justice" that it seeks to displace. What if the "good lobby" efforts or petitions to the Commission and elsewhere do the same? Is there someone to see it?

Secondly, it is also far from clear who counts as a "scholar", or which knowledge counts as "scholarly"? Opposed to what: "practical"? Such distinctions are increasingly difficult to be made, e.g. when universities employ "professors in practice" This is already part of the problem I would like to address here: that the focus on practice and utility of one's knowledge makes

it not only uncritical, but also in some fundamental sense unscholarly.

Becoming a scholar: step one

Most EU law scholars today (certainly those who entered the discipline in the last 25 or so years) have a PhD in law. "A PhD in law" does not always mean a PhD in *EU* law: as the latter penetrated more and more fields of national law, it is perfectly possible to become an expert on a specific sector of EU law, such as tax law, contract law or constitutional law, with a PhD in such fields.

Likewise, sometimes the core of a PhD is to examine the EU's effects on a field of national law, without any ambition to provide knowledge exceeding the boundaries of the given jurisdiction (the first limitation being the language). That is not my concern, however, although much can be said about the parochial nature of EU legal scholarship produced in countries with dominant legal and language cultures, including the United Kingdom (where I obtained my PhD at Oxford and had my first academic job at the LSE).

What I want to shortly reflect on is what it takes to write a PhD on EU law today – in general, and how this can affect the ability to become a critical scholar.

First of all, while in the past most young people entered PhD programmes in order to become academics (to avoid another round of definitional pitfalls, this meant that ultimately, at one point they wanted to become professors of law at a university), today many of them would become "knowledge workers". This includes jobs such as officials in national or EU public institutions, advisors in private practice (beyond law firms there is a large universe of consulting business etc.) or members of think-tanks. Not always has this been their first choice, but the labour market for academics has become extremely shrunk – and competitive as a result.

PhD programmes reflect this shift, and the emphasis has turned away from writing a thesis as the ultimate proof of a graduate student's qualification. Today, graduate students in many countries have to obtain varied knowledge and skills certified by ECTS (or other) credits. As a supervisor I sometimes wonder when a student can find their time to read, think and write (which to me is the heart of scholarly activity). Add significant teaching obligations to this (as some systems like to use PhD students as a cheap labour force and experience in teaching is also expected from academic job applicants) and the situation gets even worse.

Scholars and knowledge workers

My main concern, however, is not with the little time that PhD students have for reading, thinking, and writing. This can be addressed (at least partly) with self-discipline and various time-management tools (which can quickly turn into another bureaucratic burden, if applied by the central administration, which wants to supervise the supervision). Ultimately, however, we are all mortals and have limited time *for* our life, as Oliver Burkeman has helpfully reminded us in his best-selling book that estimates a lifespanat about 4000 weeks only.

The true problem is with the shift in the nature of the PhD itself: the current Danish PhD order e.g. states: "The PhD programme is a research program aiming to train PhD students at an international level to undertake research, development and teaching *assignments* in the private and public sectors, for which a broad knowledge of research is required". Note the word "assignment": it presupposes the existence of someone who assigns – a director or manager. This goes straight against the idea of the production of (critical) scholarly knowledge which emerges out of the researcher's own interests and preoccupations. To identify the right "research question" is the key – for a PhD thesis as well as an article, book or a large collective research project. And as most of us holding a PhD know, the equally difficult part is to be able to justify the effort, constantly questioned by colleagues, but also friends and family, who would prefer to see one's talent to be devoted to something more immediately practical.

Today, however, it is fairly common to employ PhD students to write their thesis as contributions to such larger projects, where the question (and often the

methodology) has been identified by someone else. No need to question anything: there is the (project) money provided by someone, hence, the thesis and its question "must" be useful – to someone.

As we will see below, the problem does not end here, it only begins at this stage.

Becoming "someone": boostingone's research career through social media

In the past, this would probably come only after the concern with getting a job, and certainly after the question of publishing. Now, however, our students are being educated in (and get ECTS credits for) how to effectively use social media in order to "boost their research career" (I do not link to the particular entrepreneur offering such course so that I do not help to advertise such a thing).

At this point, I must admit that I was fortunate enough not to ever have a Facebook or Twitter (let alone an X) account. What I am going to say is based on external observations, supported by the proponents of "digital minimalism" and critics of "surveillance capitalism" (both are enough, in my view, to be extremely avoidant of such things, as humans, and not only scholars).

Far more influential legal scholars have expressed their scepticism of Twitter (even before Elon Musk started making it much worse) as a tool for deliberation or even as something that can help young scholars "establish prominence in a field". All people using these services should have this on their minds: the primary purpose of all social media is to extract value from their users and all else is only secondary (and instrumental) to this goal, although, if cleverly (and wisely) used they can bring something of value to the latter. The question however is, at what price?

The issue I want to raise here specifically in relation to our concern with the conditions for the emergence of critical legal scholarship is however different: if, in the (not so distant) past the primary tool to get recognition in academia was through one's publications and presence at conferences, today even PhD researchers are expected to be present on social media (some institutions consider the number of followers as a proof of someone's "social impact"). If a publication required peer review that would (in most instances) have excluded something that the author would regret later, and a bad presentation at a conference could be easily forgotten by its audience, social media have much greater (and lasting) impact. Social media can therefore rather support conformism than critique.

Being an author: or a knowledge-producer?

There is another issue, which I have realised when observing a younger colleague's "withdrawal of his name" from a book review (published at a law blog). The review (co-authored with a more senior and well-known colleague) had quickly been criticized for containing "destructive insults", being "mocking" and "disrespectful" of the book it purported to review. (I do not provide links to the reviews and the Twitter reactions to it, which I have both obtained through a colleague, as it is not my intention to put the author under further pressure; in fact, I know his other scholarship and found it inspiring at many levels).

The "withdrawal" has been immediately praised by some senior colleagues – probably signalling to the author that his reputation has been redeemed, another sign of how this asset is being obtained in today's academia. Nobody noticed, to my knowledge, this rather awkward thing: how can a name be "withdrawn" from a piece?

To publish something is not like signing a petition (where it can be possible to take our support back, especially if we did not have much time to think about it). To me the academic authorship is the very core of what makes me a scholar. Perhaps the words of a Czech philosopher Josef Šafařík, invoked in a similar debate in my home country (concerning a critical review signed by an author-collective), express the best what I mean here: "The more books you read, the more debates you have … the more you will find that the only thing that cannot be shaken is not the reasons, but the personal guarantee of the writer. Truth is what you personally guarantee".

In other words, you have either authored something, and you personally guarantee what you have

said, or not. But it is impossible, in my view, to "withdraw" someone's name from a piece: unless you want to admit that you have not been the true author or, you simply retract the piece from public domain. Is this conception of authorship being lost in today's academia, which is mostly seeking quick recognition and immediate impact? Or does it have to do with a perception of scholarship as something impersonal, responding to something else than one's own curiosity and desire to know more?

Conclusion: we need a critical scholarship about legal scholarship

I have skipped many other issues, especially those concerning scholarly publishing (the dark side of the turn to open-access and the related pressure of some publishers on editorial boards, that have resulted in more than one clashes with academics on the editorial board).What are scholars supposed to do?

The key thing seems to be producing results that can be well counted (in various metrics) by external evaluators – managers and "expert panels" assessing grants. Publications in *impacted* journals, contributing to the individual researcher's *h-index*, that would increase their chance to obtain a *prestigious grant* that will address some *pressing challenge*, which the society (speaking through the medium of money) experiences. Can it be true that all scholars today are mere knowledge-workers, doing things that are valued by someone else?

Critical scholars are however supposed to think for themselves, and what they produce can only be evaluated by their peers through judgment: something that cannot be reduced to a number of criteria in boxes to be ticked, or even by the number of citations. The ability of "thinking for ourselves" – "eigenes Denken" – invoked by Rudolf Jhering and recalled almost 150 years later by Martti Koskenniemi in his address to the IVR conference may be the most lacking resource in today's academia. Koskenniemi argues:

Normal science produces policy-proposals on matters that seem interesting to regime-rulers – that is, well-resourced Western public and private institutions. But research that endorses *eigenesDenken* cannot rest content with solving "problems" other people have given. Its interest is not in producing policy-proposals but in asking how policy-proposals are produced in the first place?

The above is only a gist of a far greater problem we all have today: and this can be the reason why turning to ourselves is needed. In other words, a critical scholarship about legal scholarship is needed.

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