How to write a doctoral thesis in law: Some (fairly trivial) considerations

The first question arising while writing a doctoral thesis in law is quite fundamental: What I am going to do? More specifically, the problem is raised by the fact that, in most university systems around the globe, doctoral theses attempt to combine two elements not immediately compatible: examination as a goal and the writing of research as a means to reach it.

As to the goal of a doctoral degree, this is to “test” the capacity of a doctoral candidate as to mastering certain knowledge, finding points of discussion and offer some (more or less) plausible explanations. In short, the doctoral thesis is an “exam” in which the doctoral candidate needs to show that she or he knows: that she or he knows a certain situation in a specific legal area, she or he knows what the possible problems are and, in the end, that she or he knows how to “remedy” to them (or at least where to start in order to do so).

However, at least for most doctoral degrees in Western legal systems, the way to show such knowledge is not by answering questions posed by an examiner, as is common for most academic exams. The path to be taken by the doctoral candidate in order to demonstrate her or his knowledge is by writing a research (either a monography or as a collection of articles). The problem raised by this choice of means is that the main function of a research in general is not to show the degree of knowledge of the author (at least not explicitly).

The main purpose of a research (at least in a perfect world) is to say something new to the reader or (in case of a more systematizing work), to show a different and perhaps better picture of something already said by others. In either case, i.e. whether innovative or systematizing, the fundamental task does not lie in showing personal knowledge of a specific field of law. It instead lies in either guiding the reader through difficult parts of an author, field, or theory or in leading her or him to a certain solution of practical or theoretical problems of an area of legal regulation.

Needless to say, when I am talking about the different formats of a doctoral dissertation (i.e. research vs. exam), I mean it from an “ideal-typical” perspective, that is an ideal picture of a perfect design in writing a doctoral thesis which in reality always tends to be a mix. However, the use of this “ideal-typical” typology can help a doctoral candidate better understand the possible fundamental

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1 This contribution is largely based on two previous speeches I was kindly asked to deliver, one in Brussels (Belgium) for the Belgian-Dutch PhD-Day (2008) and the other in Stockholm (Sweden) for the Faculty of Law Research-Day (2010). I would like to deeply thank Laura Carlson, Jori Munukka and Fredric B. Korling for their helpful comments on earlier drafts.
paths (or tendency) she or he is taking or should take in writing a doctoral thesis, together with the reasons and consequences of such a choice.

Moreover, I am not here proposing that one format (e.g. “research-format”) is better than the other (e.g. “exam-format”), or, in other words, that the research-means should take over the exam-goal or vice versa. What I am stating here is simply that the doctoral candidate should take into consideration that these two formats may not be compatible and a fundamental choice should be taken already from the very beginning. This is a choice that has to be made by the doctoral candidate (and, to some extent, with the help of supervisor) according to her or his personal preferences and, more importantly, according to certain factors.

First, the choice between the two ideal-typical formats of doctoral thesis needs to be done according to the university system and culture under consideration. For example in Sweden or Germany, the research-format is pretty rare, the goal of the doctoral thesis being traditionally to show the bulk of knowledge possessed by the doctoral candidate in a certain area either to the national academic and professional community, as in Sweden, or to her or his own professor, as in Germany. It is then after the doctoral studies production when the “doctor in laws,” based on the legitimacy of being a “good scientist” acquired through the doctoral degree, comes forward with her or his proposals to the legal world. For instance, this second stage, i.e. the creative one, is usually acquired in Germany by writing the Habilitation-book, i.e. the work that will signal the writer as a possible candidate for future higher and tenured academic positions.

In other systems, and I am thinking here of certain universities in the United Kingdom or in the United States of America, the attitude is more pragmatically oriented. The writing of a doctoral thesis costs money (at least in terms of hours subtracted to the supervisor, who instead could be involved in more profitable enterprises). Moreover, the doctoral candidate has already shown the capacity to deal and master the vast amount of legal knowledge and to point out the relevant legal issue when studying at both the undergraduate and master levels of the complexity of common law. One should also add that most doctoral students have already passed the exam of “how to find legally relevant material” by working as a research assistant to a future supervisor during their final years of undergraduate studies. Therefore, the basic vision of doctoral studies as promoted in some parts of the United Kingdom and the U.S. is one of not being an exam to enter into but rather as a first step already inside the academic environment. Doctoral theses tend to privilege the research-format because the main goal is to offer new solutions to legal problems rather than being an exam to have access to the academic world.

Second, in the choice between the two ideal-types of doctoral thesis, the doctoral candidate should also take into consideration the legal topic she or he is to scrutinize. This reflection should be done in particular in cases where the goal of the doctoral thesis is to be a first step into an academic career. For example,
the research-format is probably more suitable for more established and traditional topics, for instance such as national taxation law or administrative law, i.e. topics to which it is fairly easy to have access (e.g. through databases) to “all” legal sources and legal material connected to the chosen topic. In such a case, reproduction in the form of a telephone catalogue of all that which has been written in a legal system on the topic of income taxation will probably only suffice as an indication that the doctoral candidate is well aware of the function “cut and paste” in the Word-processing program. On the other end, the research-format aids a doctoral candidate in one of the arts of the academic world, i.e. the art of selecting from thousands of articles accessible in Westlaw those 20–30 that are directly relevant for the core issue of the topic under investigation.

However, the exam-format is still a possible instrument to help a doctoral candidate become familiar with the academic way of working, particularly when the topic chosen deals with newer and therefore less “stable” legal topics. One classical example can be writing a doctoral thesis on certain areas of transnational commercial law, a field in which the very quality of being a legal field is sometimes questioned. In such cases, simply collecting all the available sources related to the field, i.e. the exam-format of writing a doctoral thesis, can be an aid in molding, using Pierre Bourdieu’s terminology, a future homo academicus.\(^2\) In particular, it can furnish solid background knowledge as to the extension of the field that the doctoral candidate is going to explore more deeply (and more in a research-format) in post-doc years. In short, the exam-format helps a doctoral candidate set external borders, often very blurry in the newer areas of legal studies, to then concentrate on specific aspects and proposals once the doctoral thesis is finished and, with it, the new field is legitimized by the legal scholarship as “worthy of discussion.”

Third, and finally, the choice between the two ideal-types of doctoral theses needs to be done according to a very pragmatic consideration, namely the doctoral candidate’s plans for the future. As well-known, the doctoral thesis has traditionally had one major underlying role: preparation for an academic career. In such a case, the research-format obviously can give some advantages, in the sense that it shows a fundamental quality of the doctoral candidate as a future homo academicus. This crucial feature is namely not one of “being a good examinee” but rather one of “being a good examiner,” i.e. in being capable of putting under critical or systematic scrutiny certain areas of law and in being also able to mediate her or his results to an audience.

However, particularly in recent decades, theses have been increasingly used by doctoral candidates as a tool in order to acquire necessary knowledge and create fundamental networks in order to pursue a future career outside the university and the academic world in general. Here the most suitable format is most likely the exam-format. Though innovative thinking (i.e. the typical feature of a

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research-format) certainly are not underestimated in the world of practicing the law, the main focus in hiring a certain LL.D. will probably be the capacity of the latter to maintain a deep and detailed knowledge of a certain legal topic; her or his own ability to “split it out” when it is necessary; and finally in the LL.D. being able to split-out the right answer when facing a certain legal dilemma.

As I said previously, this distinction is ideal typical and as far as to the criteria of choice that I have just mentioned, they all have a relative character. In much simpler words, this means that in the actual writing of a doctoral thesis, the doctoral candidate can (and usually does) mix aspects of the research-format and aspects of the exam-format. Of course, they both are usually present in reality, though to a different degree of preference, depending, among other things, on the targeted-reader (as shown below in Part 2). It is possible, moreover, that though a doctoral candidate may be aiming at leaving academia afterwards, she or he can still opt for a research-format, in particularly considering the possibility of opening through a narrow space of expertise (e.g. by “inventing” a new field of law) and then using it on the market as a knowledge-monopolist.

In any event, I think that it is pretty good for a doctoral candidate, particularly at the beginning of writing, to have a clear idea tendentially of what format of doctoral thesis she or he intends to pursue. This is particularly important in light of the fact that each ideal-typical format tends to also be connected to an ideal-typical way of writing. For example, an exam-format doctoral thesis will naturally tend to make use of all the “demonstrating-knowledge” tools offered by standard writing in academia; one can be for instance a large number of and very long and detailed footnotes with presentations of all the works on that to which the footnote makes reference. Moreover, the bibliography of the research-format will be dominated by a few central authors and a few central works by them. The literature list of the exam-format instead will tend to cover not only a vast galaxy of authors; it will also, in particular for the relevant author in the field, cover the entirety of their production, from unpublished and mimeographed works to their own introductions to other authors’ books.

Regardless of preference, it is necessary for the doctoral candidate to choose, at least as a tendency, what type of format to use as a basic model for her or his doctoral thesis. The risk otherwise is not only an imbalance in the writing, where certain parts offer an extensive footnote apparatus while others are completely empty, this being more of an “esthetical” problem. A more fundamental problem arises when doctoral candidates tend to choose to write both a complete exam of the field (mostly in the first chapters of the doctoral thesis) and, after that, the “innovative” part in the second part of the work. In short, they tend to write not one, but two doctoral theses, with the obvious problem of a work that extends itself over the proposed period of 3–4 years and with an extension that can easily reach 600 or 700 pages.
1. When to Write and When to Read?

As to the second topic of this contribution, I would like to address the “phases” of writing a doctoral thesis in law, i.e. the different kinds of work required of the doctoral candidate according to the stage of research she or he is at. Many words have been spent pointing out, for example, that in the first years, most of the time should be devoted to reading in on the topic under investigation while the proper writing should be limited only to the very last years.

Others propose instead a more balanced approach, where the writing always starts with and is parallel to the reading from the very beginning. Still others suggest a more “creative” or “artistic” approach, where the doctoral candidate write down as a first step a rough manuscript, not worrying so much (at this early stage) about collecting information as the field. Once the rough manuscript consisting mainly of her or his “free-thoughts” as to the topic is ready, the doctoral candidate then confronts it with the relevant literature and legal facts, giving rise to a back-and-forward process directed at progressively refining (even to the point of completely altering) the original manuscript.

As to my personal experience, it is extremely difficult to assert that one of these three basic strategies is better than the others. Many factors can influence the choice by a doctoral candidate for one over the other, and in the end, it mostly is a question of subjective capacities and preferences on how to handle the material at one’s disposal. Certain doctoral candidates, for example, need to immediately write down all their thoughts, while others can store and organize information in their mind, to be put in at a later phase of the work.

Regardless, there is one thing hanging like a shadow over all doctoral candidates throughout all their years, regardless of the strategy chosen or at which phase they are in: uncertainty (most of the time vested in terms of confusion). By this is meant that either while reading or writing, the doctoral candidate constantly experiences an incapacity to fully grasp the topic in all aspects. He or she always has to deal with thought-to-be-fixed borders that suddenly blur or with the sudden destabilization of central points in her or his discussion (either because of a new court decision or an established author’s new book).

Regardless of the type of strategy one opts for, uncertainty is always present but, at least in case of a properly written doctoral thesis, it tends with time and work to shift its main location from the head of the doctoral candidate to the paper. What I mean here as to the uncertainty and confusion issue is that it is possible to present three main stages in a writing a doctoral thesis in law.

For the first phase (regardless of whether she or he knows it or is willing to admit it or not), the doctoral candidate will usually have quite a large area of uncertainty in her or his mind as to many aspects of the legal topic under consideration. As for every starting point of every research in law (i.e. also at the post-doctoral level), at the very beginning the researcher is working more in terms of
‘irrational’ sensation as to what her or his work may lead. This sensation is irrational since it is formed by jumps connecting some spots of dispersed knowledge into a rudimentary sketch of a possible final painting depicting and explaining (and in certain case criticizing) a legal area.

However, in order to be granted financial support for starting the project, the doctoral candidate (and also the post-doc scholar) needs to show on paper (e.g. in the very project description) a clear picture of what the work will be about, why it is relevant, all the steps through the years and finally (and almost paradoxically) a hint of the results that are to be reached. In short, in the first phase, widening the uncertainty in the mind corresponds to a clearer picture on paper of the work to be done.

Once the financial support is granted and as the doctoral candidate becomes more familiar through the years with the topic of the doctoral thesis, she or he enters in a second more “balanced” stage, i.e. a stage where the levels of uncertainty tend to locate themselves at a medium level both in the mind and on paper. With the investigation of a topic, the doctoral candidate usually becomes more aware of its external limits, the internal structuring, the problems-raising points and hopefully some perspective as to solutions as to the latter.

On the other end, the doctoral candidate also begins to transfer the level of uncertainty onto paper, i.e. she or he starts to “objectify” the uncertainty, shifting it from a subjective sensation of not knowing how things are and what to do, to being an objective quality of the very topic under consideration. In particular, by pointing out the unclear nature of the legal field under investigation, the doctoral candidate contributes through the writing years in raising not only the need but also the expectations of the “coming doctoral thesis” as a tool to better understand the current legal reality.

In the third and final stage of the process of producing a doctoral thesis, if everything has worked out without major problems, one can observe a complete shift in the uncertainty feature from the mind of the doctoral candidate into the forthcoming doctoral thesis. This means that the doctoral candidate has a full and complete picture of the topic investigated through the years. Not only she or he knows for certain where the clarified areas are; the doctoral candidate can also point out where the “dark or penumbral” spots are, their borders, and possible ways to enlighten them, all important components of the process of acquiring knowledge.

Conversely, the doctoral thesis will present the topic under consideration as extremely complex and dominated by a high degree of uncertainty and unclear features. Particularly in the academic world, or at least this is my conviction, the golden rule is valid for every investigation: a good investigator, when she or he closes a door of her or his investigative room, should always be certain to have opened at the same time another door, in order to not be trapped in her or his own creation.
In less metaphorical terms, we can say that uncertainty is the very essence and driving force of every research process, at least when dealing with law. It is the starting engine of writing a legal doctoral thesis but it is also, at least to a certain extent, the aim one should strive for: to “question” (i.e. to make them more uncertain) established truths and well-fixed legal paradigms. This “striving for uncertainty” is particularly valid in the field of legal research due to the specific nature of the law.

One feature of the role of the legal discipline, as pointed out by Alf Ross among others, is its capability of changing the very object of observation.\(^3\) In contrast to most natural sciences, and to a more direct and higher degree than for most of the social and economic sciences, legal scholars can actually directly influence the choice of patterns of the future development of the law. For example, law professors, by questioning the “existence” of a certain legal principle of efficiency inside tort law as an established “fact,” can actually force future generations of law-makers and law-applying actors to eliminate this principle, even if the original claim was false. Using an epistemological vocabulary, it can be said that Karl Popper’s criteria of falsification, at least when applied to the legal discipline, can (and often tends to) leave room for Robert K. Merton’s idea of theory as capable of being a self-fulfilling (or a self-destroying) prophecy.\(^4\)

The effect of this specific nature of the law and its investigation is then that the primary goal of the academic work in general should probably not be to attempt to find a final and ultimate solution of a certain legal problem. The goal of *homo academicus* (at least in law) should be more to start a new “work-in-progress” situation or, as pointed out by Ronald Dworkin, to contribute as one among the endless chain of authors characterizing both the making and investigating of the law.\(^5\)

2. Who is The Reader?

A tendency of many of doctoral theses (and also for many academic works) is that they are *sender-oriented*. By this is meant that the author, when developing her or his argumentations, tends to have as a point of “objective” evaluation as to the degree of comprehension of the message to be sent primarily her or his own amount (or lack) of background knowledge on the field and her or his own mastering of the conceptual apparatus of the legal field under investigation.

However, as almost needless to say, the writing of a legal doctoral thesis (regardless of whether it takes a research or exam format) is part of a process of

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communication, in particular when considering that a doctoral thesis is part of the legal scholarships which, in its turn and also as pointed out by Mark Van Hoecke’s book among others, is one of the constitutive element of the law as a form of communication.6

I will leave aside for the purposes of this contribution all the post-modernist disbeliefs in the possibility of a “true” communication of messages and their focus on the altering nature of the very means of communication. The point made here instead is that, in the often self-absorbing work of writing a doctoral thesis, the doctoral candidate tends to forget that the primary goal for which the thesis is written, is not for remaining in our own libraries but for being sent to and being read by someone else, i.e. that the doctoral thesis should be primarily receiver-based. In other words, the first step to be taken is writing the doctoral thesis having as a primary goal sending a clear message to a “hypothetical” reader, clear not according to our own judgment but according to the degree of background knowledge and conceptual apparatus possessed by this ideal reader.

This quite obvious and trivial observation of mine naturally immediately raises the following issue: Who is the ideal reader of a doctoral thesis in law? It is actually possible to identify at least four ideal-typical models of readers, each connected to specific requirements of background knowledge and familiarity with the legal conceptual apparatus to be used in the doctoral thesis.

The first, and broader ideal-typical reader, is the general public. Though quite unpopular among the writers of doctoral theses in law, in particular due to the complexity reached by the legal discourse and the legal issues in modern times, it is however possible to find scattered examples of doctoral theses aimed at the general public, in particular in the United Kingdom or in the United States, mostly on race discrimination issues and by Critical Race Theory’s followers. These kinds of thesis are molded around an assumption of a much-reduced background knowledge as to the legal issue at stake and of a limited familiarity of the legal conceptual apparatus. For instance, the general public reader will most likely be unaware of a legal distinction between “possession” and “ownership.”

The second ideal-type of reader that a doctoral candidate can choose is the general legal public reader, i.e. all those actors with a legal (or paralegal) education and dealing professionally with legal matters, both as scholars or as practitioners. In such a case, due in particular to the high degree of specialization of contemporary law, the background knowledge as to the legal issue under investigation should be consider more or less at the same level as the one shared by the public in general. However, the doctoral candidate can start from the assumption that the general legal public reader will have at least a certain familiarity with the legal concepts in general. For instance, the general legal public reader will possess knowledge as to the distinction between “possession” and

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“ownership” but most likely not as to all the different possibilities and modalities of legally becoming an “owner” only by adversely “possessing” a certain good.

The third ideal typical reader is the general legal scholar, i.e. the legally educated person operating professionally mainly inside the academia or institute for legal research, regardless the area of specialization. If the doctoral candidate aims at this person as the typical reader of her or his doctoral thesis, then she or he can be quite confident of a medium level of background knowledge as to the issue at stake. For example, the legal scholar ideal-typical reader will most likely know the legal problems connected with the transnationalization of the law. Moreover, the doctoral candidate can assume a high degree of familiarity with the legal conceptual apparatus, e.g. as to the concept of lex mercatoria.

The fourth ideal typical reader targeted by the doctoral candidate is specialist in the specific area of the legal scholarship dealing with the issue under investigation. For example, it can be all those legal scholars using a law and economics approach to transnational commercial law or those scholars dealing with discrimination issues on the labor market. In these cases, as both the background knowledge and the conceptual apparatus are mastered by the targeted reader at the highest level, the doctoral candidate can easily and directly go into the core matter of her or his doctoral thesis, limiting the purely descriptive part to a minimum.

There could also actually be a fifth ideal typical reader, but it rarely tends to be used as a “model reader” by doctoral candidates (at least in the legal world, but in a wider extent, for instance, in social science or literature). This is when the ideal reader is identified with a specific legal scholar (usually someone considered an authority in her or his own field) or with her or his more restricted circle of collaborators. It then is a question mostly of “locally” designed doctoral theses, i.e. works of investigation functional to very local (not necessarily in geographical sense) problems and offering usually very local solutions.

Regardless what ideal-typical reader the doctoral candidate chooses as the primary receiver of her or his message, it is important to stress the fact that often, in particular considering the different levels of background knowledge and familiarity with the legal conceptual apparatus, it is very difficult to target simultaneously two or more ideal-types. For example, it is extremely dangerous to get into a long description of what the difference between “possession” and “ownership” is from a legal perspective and then immediately move into the law and economics concept of inertia of the legal system, as if the public in general would know what a law and economics approach implies.

Moreover, keeping in mind the ideal-target of the doctoral thesis is a necessary step in order to keep the issue at stake under the spotlight. By switching the “ideal typical reader,” the issue in question often tends to disappear. A classical example is the case of a legal discussion of the nature of financial leasing contracts, namely whether they are a type of loan or property leasing. While this can
be relevant for an audience of the general legal public or general legal scholars, the issue may not exist for the public in general or for a specific legal scholarship. For example, the public sees no change of regulations whether the financial leasing is classified as loan or as property question.

3. How Much English in A Doctoral Thesis?

The next point I would like to address actually, at least in theory, is one of the most important when writing a doctoral thesis, i.e. the one of “how to write a doctoral thesis” in law. Here modern databases present us with a broad spectrum of different styles. One can notice a spectrum of doctoral thesis ranging from the traditional “German style” (e.g. with 6–7 decreasing degrees of chapters, sub-chapters, sub-sub chapters and so on…) to more the Wittgenstein-inspired style of presenting certain basic doctoral theses (i.e. based on some fundamental propositions succinctly expressed and then further specified with also succinctly expressed sub-propositions).

With the positions being so diverse, I think the only thing that I can point out is the question of the choice of language for writing a doctoral thesis in law. My basic suggestion is to start to seriously consider writing the doctoral thesis in English. This choice of a doctoral thesis in English should of course to be evaluated in accordance with certain other choices as pointed out before. For example, if the targeted readers are national or the main goal of the doctoral thesis is to “pass an exam,” the option of a doctoral thesis written in a national language would probably be the more appropriate. One basic point that I would like to stress, however, is that the legal area the doctoral thesis is investigating should definitely not be counted as a factor in order to decide whether to write in English.

With the usual exceptions (e.g. international law, comparative law, or legal theory), doctoral thesis on most legal issues have traditionally been written in the national languages, due to the national character of most of the problems raised by the very national legal regulations. It was a quite obvious choice considering that with nation state-based regulations, most parts of the legal system were closed to the influences and subsequent problems coming from foreign legal systems. Even among some of the few cases where the foreign legal material and problems were accepted (e.g. international private law), the introduction was pursued mostly in national language terms and terminology.

However, due to the phenomenon of the globalization of law, the situation for the legal scholarship, and for the doctoral thesis in particular, has changed dramatically in the past few decades. These changes have more a quantitative than qualitative nature. By this statement I mean that certain areas of a legal system (and subsequent studies on them) have always been open to foreign terminology.
On the other hand, in the past decades one can see how this “international character” of parts of the legal system have rapidly spilled over to other branches of law, branches traditionally considered a monopoly of national legal scholarship and its language. For example, financial markets law or environmental law usually have always been the target of English speaking doctoral theses, due to the historical international nature of the phenomenon and its connected problems. Nowadays (also due to the European Union), areas such as family law, taxation law and criminal law also tend to leave the monopoly of national law-making and law-applying agencies to be transferred into a more super-national dimension, and therefore to a more super-national legal culture where the language of academic discussion is usually the English one.

Besides mirroring this feature of its object of investigation, i.e. a national legal field becoming increasingly English-speaking due to globalization, the use of the English language for writing a doctoral thesis in law brings with it some advantages connected with every choice of language. To choose a foreign language does not only mean to choose a foreign vocabulary; it also means choosing an alternative perspective through which to see and investigate problems, certainly a fundamental advantage when doing legal research. In other words, the choice by the doctoral candidate of the English language can force him or her to think “out of the national law box” in at least two meanings.

First, to insert oneself in the English speaking community of a certain legal area (e.g. taxation law) will most likely help the doctoral candidate focus on the “real” issues of this area, i.e. the issues that are not national rule-related but run to a deeper level, for example at the level of legal culture in this area or at the level of legal principles. Rule-related problems are such as those formulated in project proposals like: “Is the word ‘taxes’ as used in article 36 in accordance with the word ‘financial measures’ as used in article 37?” These kinds of project proposals run the risk of being superficial issues of analysis, since they can disappear in a blink of an eye and often are merely a question of terminology. For example, in simply a few days the legislature can change the word “taxes” into “financial measures” also for article 36, and by this transform the taxation law doctoral dissertation into a work of legal history.

I do not know how the situation is for other academic environments, but I know at least four cases in the last six years in Swedish universities where newly (or on the edge of being) discussed doctoral theses were rendered totally obsolete in one night by a new statutory regulation or by a European directive in the field. On one side, we can say that the doctoral candidates in question were pretty unlucky. On the other side, however, a natural question is raised: how much “scientific research” was contained in these doctoral theses? My suggested answer is that these kinds of rules-related doctoral theses sometimes are giant constructions with extremely narrow and therefore unstable foundations (e.g. a couple of articles of a statute or one judicial decision).
It certainly is true that there are also success stories as to these types of legal investigations. For instance, a good deal of French tort law historically was based (among the others) on the scholarly work concerning a few paragraphs of the Civil Code. However, these kinds of stories are typical of “protectionist” legal cultures and discourses and tend to become more sporadic, in particular when facing globalizing forces putting under constant pressure broader areas of the national legal system, regardless of whether the latter wishes it or not.

The use of the English language and the consequence of the idea of the doctoral candidate of inserting herself or himself in an international debate, can help her or him avoid these types of rule-related doctoral theses. By being forced into an international arena, the doctoral candidate is somehow forced to focus attention on those aspects of the national regulation that are shared by and can arouse interest among her or his foreign colleagues, i.e. aspects of a specific legal field that are also sources of problems in other legal systems.

In other words, the doctoral candidate is forced to dig under the surface of the words on paper and find the issue at the deeper level of a legal culture in a specific area (e.g. by pointing out, as done by Duncan Kennedy, the underpinning and contradictory ideologies behind the contract law of a Western capitalistic system) or at the deeper level of legal principles common to all the Western legal systems as far concerning a certain area of regulation (e.g. by stressing the conflict between certainty of the law and idea of justice in many parts of Western criminal law).7

Connected to this first advantage of using the English language in helping to point out the “real” legal issues in the area of investigation, is a second positive aspect, namely the one related to the possibility of finding “real” solutions to legal problems. By making use of the English language in writing a doctoral thesis, the reality of the solutions tends to increase because the candidate is forced to operate on a non-rule related legal environment (e.g. the international one). Therefore she or he will most likely find the real source of a problem, namely a legal principle or a legal culture, and consequently will operate on those sources instead of tantalizingly playing with words on the surface, i.e. at a rule level. For instance, the doctoral candidate will propose a deep-reaching change in a legal culture’s approach to gender or race discrimination issues, instead of writing an entire doctoral thesis in order to suggest at the end simply changing a single paragraph of the legislation from “he” to “he or she.”

Finally, the use of the English language will help, through the focalization on the real issues of a certain legal areas and therefore possibly common to other similar Western legal systems, the doctoral candidate to also have access to a wide range of solutions offered by 5 or 10 different legal schools of thought rather than, in the best case national scenario, 5 or 10 legal scholars.

4. Conclusion

To conclude this long and fairly trivial list of considerations as to how to write a doctoral thesis in law, my only concrete suggestion starts from the obvious idea that at the end of the day the doctoral candidate is the person who will get the honor or the blame for what she or he wrote. Therefore it is at least better to succeed or to fail on your own; in this, I think, lies the fundamental goal of writing a doctoral thesis: To show that the doctoral candidate is mature for the scientific world, i.e. she or he is ready to expose her or his own ideas, to support them under criticism, and in certain cases, reflect upon any failure and, more often, to enjoy the success. At the end of the day, paraphrasing what Duke Ellington said about music, doctoral candidates should consider as the guiding star of their work the fact that there are only two types of dissertations: good or bad.

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