

On Moving from Private Practice to Academia

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1. Introduction

By reason of the SCCL jubilee, I have been asked to share a few reflections on the transition from life as a law firm partner to that as a full-time researcher and teacher. This contribution will be organised as a list of differences, where each heading signifies something characteristic of university life.

Before delving into the traits that divide us, I will however say that in my limited experience there are more similarities than differences. This, I believe, is because ultimately the way we live and work and the problems we choose to try and work out are more to do with the nature of law and who we are, than where we happen to earn our living.

The legal problems one encounters in academia, as well as the sources contributing to the solution of said problems, are surprisingly similar to those encountered as a legal counsel. The legal profession is an academic one.

This is physically demonstrated by the fact that any self-respecting law firm has an actual library in its offices. It is also intellectually evident if one considers the task of any legal counsel, which is to guide one's clients by way of a full understanding of the law pertaining to the client's issues. In order to arrive at that advice, or to produce a valid argument, lawyers need to consult the same court cases and literature as any scholar.

One's colleagues are every bit as friendly in academia as in any law firm I have known, although I was – and still am – filled with wonder at the length of the actual lunch breaks away from one's desk that occur at the University.¹

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¹ The most remarkable feature of which is that coffee is regularly enjoyed sitting down among colleagues, not in solitude at one's desk.

All in all, I ended up spending 15 years in the banking and finance departments of Stockholm law firms. In 2019, I was lucky enough to be accepted as a doctoral student at the Stockholm University Faculty of Law. My main supervisor, professor Göran Millqvist, swiftly organised a room for me across the hall from his office at the Stockholm Centre for Commercial Law. An arrangement I am sure he has regretted many times.

After defending my doctoral dissertation in 2023, I have stayed on as a post-doc researcher and teacher, holding on to my room which has everything one needs for working plus a nice window.² At the time of the jubilee, I will have stepped into the role as director of the SCCL. It is with great humility and excitement that I take on the task of continuing to build on this exceptional research environment together with old and new colleagues.

2. On Differences

2.1 No Borders

A practicing lawyer will perhaps impress you with stories about regularly going to London, New York and Frankfurt. However, when he³ is there, his advice will be strictly confined to Swedish law. The firm's liability insurance does not cover venturing into other legal systems. He will therefore entertain a network of local counsel in other jurisdictions, as well as regularly consult the *Lex Mundi* or other guide where no personal contacts have yet been established. The private practitioner is further not easily employed in other countries, because of formal requirements to have obtained a law degree within the legal system where one intends to operate.

In contrast, the marvellous reality of academia is one of a free exchange of ideas and employment opportunities. Including other jurisdictions in one's own work is encouraged, and even if one may not fully master them, a light comparison may still add some flavour to the Swedish problems to be resolved.

² Or rather, there is a window-like opening which allows me take in the view of a corridor where students que up before entering an exam hall.

³ Only men are both successful lawyers and will try to impress you with travelling for work. Women lawyers travelling for work will not have time to talk to you. This is not personal; According to Statistics Sweden (SCB), on average, women perform unpaid household work for 5 hours and 36 minutes more per week than men. In addition, women spend 23 minutes more a day on their appearance, to conform to societal norms. See www.jamstallid-hetskartan.se/det-obetalda-arbetet and www.hbes.com/who-spends-time-on-their-looks (both visited on 14 November 2024).

My first encounter with the absence of any meaningful borders was the conference *Nordiska Förmögenhetsrättsdagarna* in Helsinki in 2019. There, the Nordic peoples discussed and debated legal issues as if we were all one and the same. Having just embarked on my doctoral studies, I was embarrassed about how little I knew both of the shared history and flourishing exchange of ideas between our countries in the field of commercial law, and of the weight that Norwegian, Danish and Finnish academics carry in Sweden. At the same time, I was impressed by my new colleagues and their ability to participate in a debate on contract law which transcended borders. The cooperation between legal scholars from different jurisdictions is a fabulous benefit of being part of academia.

2.2 No Trying to Control the Future

During the (pleasantly long) lunch breaks at the SCCL, the topic of discussion among colleagues is often not the latest movies or holidays, but the law. Whilst this was an area occasionally discussed during breaks at the law firms I worked at, the approaches taken are generally, I would say, different.

At the University, legal scholars will often identify research problems in available legal materials, such as reported cases and legal statutes. Instead, as counsel, I would engage with my client in a sort of planning exercise.

Writing a contract is a way of governing the future behaviour of the parties and to ensure as far as possible that they stay out of trouble. Or, if trouble arises, that my client has the better position. Rather than inspiring extensive analyses of non-mandatory rules, this requires knowledge of the outer boundaries of the freedom of contract. Identifying the contingencies that cannot – possibly or efficiently enough – be dealt with in the documentation of a transaction then leads to an effort to eliminate those risks or to find ways to compensate for them.

On the other hand, as a researcher, it seems utterly meaningless to contemplate what parties can or might be up to in real-life transactions. Since the real-world circumstances at hand can vary indefinitely, and parties adapt as the law evolves, such approach by a researcher would be all too fickle. Whereas a private practitioner is satisfied to have his or her efforts in a certain case be forgotten as soon as the bill is paid (and provided the client is happy), the scholar will likely prefer it if his or her long hours of research results in literature that endures for at least a few years.

Instead of planning for future real-life events however, the legal scholar is deeply committed to the future of his or her field of law. In essence, I have encountered two types of academic lawyers so far. Everyone, I believe, fits into one or both of these categories to a varying degree.

The first type is passionate about contributing to the legal development in a certain field. Legislation must be improved, Supreme court precedents should be scrutinized, and the literature must contribute to improving the state of the field in question. For this type of scholar, private practice is not an option since advancing the cause of real-life clients is too small and inconsequential.

For the second type, engaging in legal research is a hobby and a living all at once. Legal developments and paradoxes are the subject of vivid discussion, because, essentially, they are so much fun. Real-life cases can be entertaining in a way too, if they are complicated enough. The risk with private practice for this type though, is that cases become too similar as you specialise and grow, rather than offering increasingly challenging legal puzzles.

(Personally, I probably belong to the second type on most days. As time goes by, however, I notice a tendency of becoming more agitated when something is “wrong” with the law. This is certainly good for motivation, but less so for blood pressure.)

2.3 No Responsibilities

The privilege of teaching our nation’s future lawyers of course comes with an awesome responsibility. Lots of research is being conducted thanks to grants and scholarships from foundations to which one must report what has been achieved. That being said, a huge benefit of university life compared to that of a law firm partner is that one does not have to carry the burden of earning enough so that others can keep their jobs, and the rent can be paid. Such connections between one’s own performance and that of the faculty are mysterious and may in fact not exist.

On that note, from a career perspective, I still have not figured out how performance is measured at the University. Perhaps it is not, which is of course mainly a relief for most people. When performance is measured in a transparent and predictable way, however, there is arguably less room for politics and for (subconsciously) promoting the person that most reminds you of your younger self or that you just like the most.

Law firms may come across as inhumane, with requirements on billable hours and on partners to bring in a certain amount of money to the firm. While such an environment can exert pressure on a person, the non-visible-pressure might perhaps take at least as big a toll.

One of the features of being a private practitioner that comes with the duty towards clients, is the responsibility towards the profession itself. As an *advokat*, one is supervised by the Bar Association (Sw: *Advokatsamfundet*), and one's actions will rub off on one's colleagues as well as on the value of the professional title. Becoming an advocate would previously require an oral ethics exam and recommendations, along with formalities such as a certain amount of time spent as legal counsel and the absence of a (financial) criminal record. Since my own entry into the Bar in 2009, the entrance test has become increasingly hard and now includes proving the holding of some knowledge of the law.

This may all appear as a burden. But, surprisingly, once admitted to the Bar Association, one's professional identity and the responsibilities towards clients, colleagues, and society, are clear and easy to explain. In contrast, not having obtained any particular title within academia, I now offer nothing but confusion to friends and family – including my own children – when asked about work.

2.4 No Teamwork

A law firm consists of people, some of which have considerable self-esteem and clout. Some will generate more billable hours than others, conferring upon them a kind of sparkle. Individual lawyers will cultivate their reputations and thrive when attracting clients that request them personally. That being said, legal advice is teamwork. When you send drafts, opinions and memos that bear the firm's letterhead, it is not about you personally.

Scholarship, on the other hand, is all about you. Nowhere to hide behind a firm letterhead. No particular circumstances of a case or the privilege of client information to stop your work from being scrutinised. This is a curious existence, and it can be paralyzing. When working for a client, your effort is naturally limited by the time you have at your disposal (before the deal must close) and the price your client is willing to pay (not for your perfecting a sentence).

In academia, one does not have the benefit of those constraints. And since the papers or chapters one writes generally are not produced in exchange for

money (but rather as a way of gaining access to other sources of income), deadlines tend to be treated more as recommendations. Initially, I was surprised by the casual missing of deadlines that I noticed among my new colleagues. With time, I have come to appreciate that it is worse to publish something too early than to join the community of deadline-extendors.

2.5 No Secrets

Nothing is quite as annoying in the pursuit of knowledge as the practitioner's duty of confidentiality. The secrecy surrounding actual transactions and up-to-date legal intricacies is motivated both by professional standards and commercial savvy. As a legal scholar, however, your work is out in the open. This makes it harder to let go of something you have written, since you know anyone can read it, and, that anyone will be able to also read the critique that sometimes follows.

At the same time, I have found that since I am not interested in acquiring new clients, practicing lawyers are happy to share their insights or discuss relevant problems on a no-name basis. This exchange of ideas furthers research, and perhaps research can also further the gathering of knowledge among those who advise people in real crises. Along with the truly transnational nature of research, the access and open exchange of ideas is what I have come to treasure most in academia.

It is the SCCL's network of curious, generous, and knowledgeable practitioners, experts, and academics that makes it such a rich research environment. Let us continue to deepen this exchange.