

Framing Academic Articles

“Readers need your help to engage a conceptual problem, to see why it matters and how it can motivate them to follow a sustained argument.”

By Gregory G. Colomb and Joseph M. Williams

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In previous columns we've discussed the different kinds of writing that lawyers do, ranging from pleadings to transactional documents to contracts to client communications. We have, however, not yet looked at one kind of writing that law students often do and practicing lawyers sometimes do: academic term papers for law school and articles for law journals, trade magazines, and related publications read by other professionals and more general readers (we'll call this kind of writing "academic"). It would be easy to assume that you have mastered this genre by the time you reach law school: after all, you've been writing successful academic papers for years. But we know that many of you still find writing term papers difficult. And even if you do it easily, a complete practitioner must also be able to *explain* to herself and others what she did that made those texts succeed. If we can rely on our experience, that ability is not widespread.

Fortunately, academic writing follows the principles we covered in earlier columns that discussed other genres, but with two key differences. The first concerns the kind of problems they address. Most pleadings, memos, and client communications address a concrete problem that is immediately present in the reader's situation. If the problem is not solved, it exacts costs on someone, often on the

reader. That kind of problem can be solved only when someone *does* something. So a lawyer asks a judge to make a ruling, issue an order, or make some other decision; or she advises a client to follow some regulation or structure a deal in a specific way. In other words, most legal writing is instrumental; it seeks to enlist someone to take an action to address a concrete need.

In academic writing, however, the problems are seldom so immediate or concrete. More important, they rarely address an issue that calls on someone to *act*. Instead, they require only that we improve our understanding or change our beliefs.

The second difference is related to the first. When a document calls for action to address a pressing concrete problem, not only are readers already motivated by their situation to read on, but writers can use those motivations to focus readers on the message. But when a document doesn't address an immediate problem that, left unsolved, will exact palpable costs, but rather a distant conceptual question that affects only our understanding, writers have to work hard to generate and sustain their readers' motivation, attention, and focus.

Of all the writing difficulties we have seen in academic writing, few are as common or as troublesome as those that stem from the fact that its problems are only conceptual. Readers need your help to engage a conceptual problem, to see why it matters and how it can motivate them to follow a sustained argument. If you don't know how to do that reliably, you'll struggle now to hold your teacher's attention; and if, down the road, you can't define a conceptual problem so that readers outside the law can see its significance, you won't succeed in a public forum that depends on convincing others that you have important things to say.

Because you must do most of the work of defining problems to motivate readers in your introductions, this column will look at the introductions to

¹ It is with great sadness that *Perspectives* notes the death of Professor Joseph M. Williams on February 22, 2008. Please see memorial for Joseph Williams on page 186.

successful articles (and class papers). Even more than in more standard legal documents, a well-written introduction to an academic paper profoundly influences not just how we read, understand, and judge what follows, but how well we remember it the next day, and then how we talk about it to others.

Practical vs. Academic Problems

As we explained in an earlier column,² writers must define the problem their paper addresses by making readers see that it has two parts: a situation and its consequences. Readers must see both parts, because what makes a situation a problem are its consequences and its costs, and the less tolerable the consequences the more motivating the problem. For example, a car that won't start is usually a problem, but not much of one if you own two cars and the other one will get you where you want to go. But even if the car that won't start is your only one (and you can't call a friend or a taxi), the significance of the problem still depends on other consequences. You have a small problem if you just want to while away a few hours with a Sunday drive; the problem is more significant if you need to get to an interview for your dream job. It's the size of the cost that defines the size of the problem.

Few writers address problems as immediate and concrete as a car not starting. But legal writers often do. In most legal documents, readers know about the problem, because, as we said earlier, if it is left unsolved, significant pain follows. A judge presented with a motion knows that she must make a decision. A client trying to negotiate a deal knows that he must avoid giving away too much. With practical problems, the tangible cost makes it easy for readers to care:

Problem Situation: Client does not properly evaluate customs fees when changes in exchange rates alter the real price of imported goods.

Problem Costs: Client loses money because it fails to recoup excess customs fees when rates

fall and is assessed penalties when it underpays fees when rates rise.

To paraphrase Dr. Johnson, nothing concentrates the mind like a hanging—or lost money.

But academic problems do not involve tangible conditions with tangible costs. Instead, they are conceptual questions like not knowing how life began or not knowing how the Magna Charta has or hasn't influenced habeas corpus in Asian countries. In some cases, you would have little difficulty showing the full dimensions of your academic question, for example, if its answer might tell us how life began and developed. But you do have work to do if you want to write about how an ancient document has or hasn't influenced the Chinese legal system. What makes this a compelling question is not obvious, except perhaps to a few specialists.

For these kinds of academic problems, you can't point to intolerable costs like lost jobs or lost money. You can't even point to specific, eventual miscarriages of justice, much less to immediate, known ones. All you can do is show that by not knowing whether the English principle of habeas corpus appears in Asia, we cannot know something else, something larger and more consequential: Does habeas corpus speak to a universal principle of justice, or is it merely a cultural artifact of the English-speaking people? Of course, many people will think that that larger question is itself not consequential enough to merit the time to read its answer. But for the specialists, it's a question that might turn their professional lives upside down.

So the challenge of academic problems is their conceptual nature. They are not immediate, pressing problems that exact palpable costs. They do not involve tangible pain or loss that readers are eager to avoid. And they are not concrete events or conditions that readers can readily see. Instead, they raise questions whose answers help readers understand the world in ways that they find satisfying and perhaps even useful, but only in the long run.

As an *academic* writer, your job is to define your academic problem in ways that help readers see

“So the challenge of academic problems is their conceptual nature. They are not immediate, pressing problems that exact palpable costs.”

² Gregory C. Colomb & Joseph M. Williams, *So What? Why Should I Care? And Other Questions Writers Must Answer*, 9 Perspectives: Teaching Legal Res. & Writing 136 (2001).

“When an introduction raises a practical problem, readers are primed to sit up and take note. The Common Ground states the reader’s actual, immediate situation.”

its full dimensions, see why its question needs an answer, and see why your answer is likely to make them better understand something they care about. The most important place you do that is in your introduction.

Pragmatic vs. Academic Introductions

Prototypical pragmatic introductions follow a three-step pattern common in many genres. Here, for example, is how the pattern works out in a simple client communication:³

1 As you recall, in a conference call on June 2,
2 2004, we discussed the exclusivity and first-
3 refusal proposals with representatives of
4 Clearlines.com. *Step 1: Common Ground*
5 Clearlines now claims that in this call we made
6 promises that we do not recall, that are not
7 reflected in our contemporaneous notes, *Step*
8 *2a: Problem Situation* and that would make
9 the deal significantly less attractive. *Step 2b:*
10 *Problem Costs* This letter summarizes the June
11 2 conversation and lists talking points for any
12 further conversations with Clearlines. Please
13 review it carefully now and again before any
14 contact with Clearlines so that there can be
15 no possibility of further confusion on these
16 issues. *Step 3: Resolution/Recommended*
Action

Step 1. The pattern begins (sentence 1) by setting a context that puts readers and writers on a shared ground of information. We call this step **Common Ground**, a position of stability that is generally unproblematic or at least familiar.

Step 2. The next step (sentence 2, line 5) disrupts that stability by raising the **Problem**, something new or newly recognized that threatens both the stability of the Common Ground and the reader’s well-being. That Problem comes in two parts, the threatening Situation (Clearlines is making a surprising claim) and its intolerable Consequences (if they prevail, you lose money).

Step 3. The final step returns readers to at least a promise of stability by stating or promising some

solution to the problem. We call this step the **Resolution**: to solve or at least mitigate the problem, review our talking points before you talk to Clearlines again.

Put together, the introduction looks like this:

1. (Stable) Common Ground
2. (Destabilizing) Problem
 - a. (Threatening) Situation
 - b. (Intolerable) Consequences
3. (Restabilizing) Resolution

A Law Review Introduction

When an introduction raises a practical problem, readers are primed to sit up and take note. The Common Ground states the reader’s actual, immediate situation. The Problem and its costs directly threaten the reader’s well-being. And the Resolution tells the reader what to do to protect himself from harm. In such cases, a writer can count on a reader to be motivated enough by self-interest to read on with focus and attention.

Not so with an article sent off to a law review. If the editors can’t see in the first few pages that it speaks to a question worth answering, it is unlikely to get a sympathetic reading. But even if it should make its way into the journal, readers will flip past it if they don’t see in its introduction that its question is consequential enough *to their beliefs and understanding* to merit their attention.

In order to motivate their readers, law review articles execute the three steps in a standard introduction, but in distinctive ways. What follows is a typical introduction, condensed to highlight its key elements (we have eliminated footnotes):⁴

- 1 In today’s society, would Major John André, a
2 British spy captured behind American lines in
3 civilian clothes in 1780, be hanged? Though
4 he was considered a fearless officer, a fine

³ See *supra*, note 1; Gregory C. Colomb & Joseph M. Williams, *Client Communications: Designing Readable Documents*, 13 *Perspectives: Teaching Legal Res. & Writing* 106 (2005).

⁴ Condensed and adapted from David A. Anderson, *Spying in Violation of Article 106, UCMJ: The Offense and the Constitutionality of Its Mandatory Death Penalty*, 127 *Mil. L. Rev.* 1 (1990).

5 gentleman, and a noble patriot, he suffered the
6 punishment mandated by military law. Over
7 time, our legal traditions have changed, but the
8 punishment for spying has not. Article 106 of
9 the Uniform Code of Military Justice (UCMJ)
10 prescribes that anyone convicted of spying
11 shall suffer the death penalty. It is the only
12 offense for which death is mandated,
13 reflecting the centuries-old judgment of
14 military men that the betrayal of a comrade is
15 a crime so heinous that its proper punishment
16 must be death. *Common Ground*

17 Recently, however, the Supreme Court has
18 rejected mandatory capital punishment in
19 civilian cases, because the Court requires a
20 decision maker to consider the circumstances
21 of the crime, both mitigating circumstances
22 and aggravating factors. Since the mandatory
23 death provision of Article 106 also ignores
24 circumstances, it too might come under
25 constitutional scrutiny: Will the Court apply
26 the constitutional requirement to consider
27 circumstances not only in civilian death
28 penalty cases, but in military cases as well?
29 *Problem Situation/Question* If so, Article 106
30 can no longer be enforced and the UCMJ
31 will have to be revised by Congress. More
32 significantly, if this new civilian standard
33 applies to military justice, it will challenge one
34 of the military's most fundamental values,
35 that the ultimate betrayal mandates the
36 ultimate penalty. *Problem Consequences*

37 This article examines the history of penalties
38 for spying, precedents from the Supreme
39 Court and the Court of Military Appeals, and
40 the status of spying under current international
41 law, concluding that there is very little chance
42 that the mandatory provisions in Article 106
43 can long survive. *Resolution/Answer*

Step 1: Common Ground (lines 1–16). This step does two things for readers. It first locates the issue of the paper in its larger context of legal history, legal theory, or public affairs. It reports the received wisdom, the standard view of the issue the article will address. Ideally, that view is presented in a way that makes it seem settled, unproblematic, and generally shared (even if only by a small number of specialists). But you cannot just report that context as you find it. You must shape this review so that it specifically focuses on just those aspects of the standard view *that you intend to question*, perhaps

by expanding them, but more often by correcting or even refuting them. This review should include many of the key concepts that will also show up in the statement of your question and its answer.

In nonlegal journals, the common ground usually consists of a review of the research that led to the standard view you will question. An article addressing a problem of sound change in Old English, for example, would cite the published articles that established the position the article will correct. In legal journals, however, the common ground is often not a research review, because legal articles usually address issues that have more general social significance than, say, the evolution of Old English *ham* to *hom*—issues such as law enforcement, race relations, congressional powers, and so on. If a law review article does review specific articles, holdings, and other writings pertinent to the issue, that review usually appears after the introduction.

In our condensed example, the common ground consists of the first paragraph that locates a social policy in the history of the law.

In today's society, would Major John Andre, a British spy captured behind American lines in civilian clothes in 1780, be hanged? ... anyone convicted of spying shall suffer the death penalty. It is the only offense for which death is mandated, reflecting the centuries-old judgment of military men that the betrayal of a comrade is a crime so heinous that its proper punishment must be death.

In a standard law review article, the common ground is typically the longest segment of an introduction, often covering as much as a page or more. In its worst version, it goes on for pages mentioning every bit of remotely relevant information that the writer could find.

Step 2: The Problem (lines 17–36). This part of an introduction has two parts, each of which plays a specific role in motivating a reader.

- The first part is the problematic situation—in law review articles, something that we do not know or understand. It is typically introduced with *but*, *however*, or some other word or phrase

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signaling that what follows contradicts or at least qualifies the common ground.

This step motivates careful reading by telling the reader *What you just read may seem to be settled and unproblematic, but in fact it is wrong, or at least not entirely right:*

Since the mandatory death provision of Article 106 also ignores circumstances, it too might come under constitutional scrutiny: Will the Court apply the constitutional requirement to consider circumstances not only in civilian death penalty cases but in military cases as well?

In other words, we may have thought that death for spying is a settled issue, but it is not.

The statement of the problem situation is typically brief, no more than a paragraph and often as little as one sentence. It states what we do not know or entirely understand.

The second part of the problem tells us why we need to resolve it by explaining the consequences of not knowing or understanding the issue as well as we thought we did.

■ Once we see the problematic situation, we want to know why it matters. This typically involves the consequences that make the situation (in this case, our ignorance) intolerable, although writers sometimes replace that with the benefits of resolving it.

If so, Article 106 can no longer be enforced and the UCMJ will have to be revised by Congress. More significantly, if this new civilian standard applies to military justice, it will challenge one of the military's most fundamental values, that the ultimate betrayal mandates the ultimate penalty.

This part is also typically brief. But if the question is arcane or surprising, it may take a few paragraphs to trace all of the consequences that make the question worth answering.

Step 3. The Resolution (lines 37–43). Once readers decide that the question is worth answering, they begin to look for that answer. Most readers prefer to see the answer at the end of the introduction, as in this example. But if you have good reason to save your answer for the conclusion, you have to give

readers *some* resolution—most commonly, a promise of an answer.

This article examines the potential application of the Supreme Court's decision and the challenges it poses to current military law.

Sometimes that promise is in the form of a verbal table of contents:

Part one traces the history of penalties for spying and explains the parallels between Article 106 and civilian law; part two examines precedents from the Supreme Court and the Court of Military Appeals and the status of spying under current international law; part three examines the likely effects of the Supreme Court's decision in civilian law; and part four explores the challenges the decision poses to current military law.

Note that this standard three-step pattern creates a psychological dynamic familiar in many kinds of writing: stability-disruption-restabilization. In this regard, introductions are like fairy tales (with one exception). Almost all fairy tales open in the same way, with a seemingly ordinary, even serene situation:

Once upon a time, Little Red Riding Hood was skipping along the forest path carrying lunch to her Grandmother's house . . .

The next move is predictable: This calm and happy scene is disrupted:

... when suddenly the Wolf jumped out from behind the tree, frightening her so much she almost dropped her basket.

In other words, in the combination of Common Ground + Problem Statement, a writer provides a few sentences to set the scene, first so that we can better understand what to expect in the story, but *also so that he can disrupt that situation, heightening his narrative impact*: what seemed settled stability to the reader turns out not to be so settled after all. In this case, what we thought was true of the law is not.

Like fairy tales, articles also give readers the satisfaction of a happy ending—in this case, the answer to a question that does (or at least should) bother readers. And like fairy tales, that resolution is provided not by the protagonist/reader but by an

outside agent. In fairy tales, that outside agent is a woodsman, fairy godmother, or white knight. In articles, it's the writer who steps in to save the day by answering the question.

The key difference between fairy tales and introductions involves *when and where* readers look for a resolution. In fairy tales, we know that things will turn out well, but we have to wait to the end for the *happily every after*. But few readers look forward to reading law review articles the way that children look forward to mom or dad reading their favorite story. So rather than make their readers wait in suspense, thoughtful writers provide the answer up front, typically at the end of the introduction.

A Term Paper Introduction

Term papers in law school look a lot like law review articles in many respects. But because their goal is not just to teach readers something new but to show a teacher how much the writer knows, they tend to highlight the writer's research a bit more. What this means for introductions is a longer and more research-based common ground.

Here is a typical introduction to a term paper (we have omitted some sentences and many footnotes):

1 When it enacted the Refugee Act of 1980,
2 Congress fulfilled its obligations under the
3 United Nations Protocol Relating to the Status
4 of Refugees. In the 1980 Act, the definition of a
5 refugee is almost identical to the definition in
6 the Protocol. But in addition to bringing U.S.
7 law in line with the internationally recognized
8 definition of refugee, Congress also intended
9 to bring greater uniformity to asylum law ...
10 [explanation of how new definition brings
11 uniformity]. *Common Ground*

12 In addition to a new statutory definition, courts
13 also have new standards of review to guide
14 judicial review of Board of Immigration
15 Appeals ("BIA") asylum decisions. Rather than
16 bring uniformity, however, the new definition
17 and standards of review have proved to be
18 almost arbitrary in their application. Courts
19 have ... [analysis of applications]. Under the
20 guidance of Federal appellate courts, the
21 U.S. now appears to have a system of
22 "standardless" judicial review of asylum
23 decisions. *Common Ground*

24 It would appear that such a standardless
25 system is on its face unfair and that courts
26 should strive to achieve the original intent of
27 the 1980 act, to bring uniformity to asylum
28 decisions. Many commentators have lamented
29 that our current system gives even less
30 deference to BIA decisions than did traditional
31 standards. *Common Ground* But before the
32 current system can be productively criticized
33 and reformed, we must first understand
34 how and why the courts have created this
35 apparently arbitrary system. *Problem Situation/*
36 *Question* Such an arbitrary system might in
37 fact be fairer and more just if, for example,
38 asylum cases are too varied for a single
39 standard or if a vague "substantial evidence"
40 standard allowed courts the leeway they need
41 in cases that rarely have a reliable paper trail.
42 Until we can understand what needs the
43 current system has evolved to meet, we
44 cannot reliably know how or even whether
45 it should be standardized. *Problem*
Consequences

46 Part one of this paper discusses the traditional
47 standards of review that have evolved through
48 both case law and statute. Part two analyzes
49 the "standardless" review problem, namely
50 the failure of many courts to comply with
51 traditional standards. Part three shows why a
52 simple return to a single, uniform standard will
53 not serve the cause either of justice or of U.S.
54 immigration policy. It will also suggest some
55 ways to make the current system less arbitrary
56 without eliminating the flexibility that the
57 courts have created for themselves.

Resolution/Answer

There is little difference between this paper and law review articles in its problem statement (lines 24–35) and resolution (lines 46–57). The problem situation is a single sentence that raises a question by stating what we don't but need to know: *Why did courts depart from uniformity?* The statement of the problem consequences is longer, but still relatively brief: *We can't reliably criticize what we don't understand.* The resolution suggests an answer to the question: *A uniform standard is not appropriate, but we can make the system less arbitrary.* As is often the case, the resolution also forecasts the analysis that will lead up to that conclusion, in the form of a verbal table of contents.

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In its common ground, however, this paper is very different from a law review article. The common ground is (before our elisions) almost four times as large as the rest. Students often use the common ground not only to set up a context for readers but also to begin to establish their standing as informed members of a scholarly community. In this case, the writer offers three kinds of common ground. The first (lines 1–11) analyzes the statute that is not the subject of study but its underlying basis. The second (lines 12–23) presents the known “facts” about the process the paper will analyze. And the third (lines 24–31) presents an expected response to those facts, one that the paper itself will complicate, if not wholly overturn.

With this elaborate common ground, not only does the writer “set up” her readers to think that something seems to be true (*This arbitrary process is unfair*) so that she can show it is not, but she accomplishes two other rhetorical goals. She “educates” her readers about the scholarly conversation her paper will join, and by doing so she establishes her own credentials for entering that conversation as a knowledgeable peer.

Law review articles sometimes take this research-based approach to the common ground, but much less often than the quicker policy-based approach of the Major John André example above. When they do begin with research, it is usually because they address a highly specialized question whose background and significance readers need help to see.

A General Circulation Introduction

Legal publications intended for a general audience typically follow the now-familiar pattern: Common Ground–Problem Statement–Resolution. Once again, they tend to be distinctive not in their problem statement or resolution, but in their common ground. Because writers cannot assume that general readers care about legal questions that can often seem arcane, they try to locate their questions not in the realms of policy or legal scholarship, but in the professional and personal lives of their readers.

You may remember some standard advice about reaching general readers: grab their attention with a snappy quotation, interesting fact, or engaging anecdote. You can’t substitute a snappy opening for a good problem statement, but quotations, facts, and anecdotes frequently serve as common ground in introductions to general circulation articles. Here is one that uses both recent events and a White House quotation to bridge the gap between its technical legal question and its readers’ concerns:⁵

On March 14, 2000, also known as “Black Tuesday” for biotechnology, the White House issued a joint statement by President Bill Clinton and Prime Minister Tony Blair of the United Kingdom. They called for “unencumbered access” to the results of publicly funded genetic research, including all raw sequence data: “To realize the full promise of this research, raw, fundamental data on the human genome, including the human DNA sequence and its variations, should be made freely available to scientists everywhere.” *Common Ground* Even though the statement also endorsed “intellectual property protection for genetic-based inventions,” stock prices in the biotechnology section immediately plummeted. *Problem Costs* But was that a rational response to an announcement that included no new policies? Will individual patents be threatened by publishing the massive amounts of sequence information from the many genome projects under way? *Problem Situation/Question* This article explains what the biotechnology industry can expect from the PTO and why commercial enterprises and academic institutions should not abandon hopes of patent protection for gene-based inventions simply because a relevant DNA sequence appears somewhere in a genomics database. *Resolution/Answer*

In this case, the writer must build a connection between matters readers already care about and a fairly technical question about a highly technical branch of the law. So not only does he frame the common ground in terms of a threat (“also known as ‘Black Tuesday’ for biotechnology”) but he reverses the two elements of the problem statement, beginning with the costs—*Biotech companies may*

⁵ Condensed and adapted from Mark S. Ellinger, *Genome Projects and Gene Patents: What’s Left to Claim?*, Technology Law Alert (Fish & Richardson, LLP, Minneapolis, Minn.) Dec. 2000.

lose money—before he states the question—*Will patents be harder to get once genetic data is widely available?* Then in the resolution, he offers not only an answer but a promised respite from those costs (“should not abandon hopes of patent protection”).

Even in the arcane world of patent law, a good introduction can show ordinary readers not only what they can expect to learn but why they should care enough to want to learn it.

Conclusion

As the proverb tells us, *Well begun is half done*. It may not always feel that way to a writer—especially since good writers often wait until they have a complete draft before they flesh out a complete introduction. But the proverb does tell us something important about readers. Readers

will thank you for an introduction that defines a problem that motivates them to want to see both your answer and how you support it; that locates that problem in a context of familiar understandings and beliefs that are challenged by your question; and then that gives an answer that is plausible but also leads them to ask, *Well, how did you arrive at that?* Such a beginning will launch readers into the body of your paper motivated to learn more, focused on what matters most, and ready to follow your argument to its end. With readers like that, you and your paper are more than half done.

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Another Perspective

“Expertise does not exist in a vacuum; it is a social construct. The concept of expertise cannot exist independently of a community of knowledge. The knowledge about which one is considered by others to be expert is developed, defined, evaluated, maintained, and transmitted by those in the community who are qualified to make judgments about what counts as expertise. If that is so, then we acquire expertise not in a vacuum, but as novices who must be socialized into a community of knowledge, into a community of discourse by those who constitute the community. The process of becoming an expert is at least as much a social process as an exercise of individual effort and intellect. Put this way, expert thinking is successful socialization.

And at this point, perhaps, we can see the wider relationships among the schemes of development, the skills of critical thinking, and the skills of expert thinking: they all emphasize the movement from the concrete to the abstract, from visible presence of a singular instance to the more general and abstract category, from concrete singularity to abstract multiplicity.”

—Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 Legal Writing 1, 13 (1991).