



Academic writing: craft, scholarship and finding the time

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The questions posed when I was first approached to write something for this series were intriguing. One which I take first is the question of why I write. The answer to that question I found relatively easy to articulate. The second question was ‘How do I write?’, but a better question might be ‘What makes good writing?’ or ‘How do I go about making sure my writing is good?’ This is much more multifaceted than why I write because writing is both – for me at least – a process of honing my thoughts and the craft of writing. It is simultaneously the process of thinking and of recording in an easily understandable way the outcome of that thinking. I take that second. Lastly, I take the question of how I make sure I have the time and space to write.

WHY DO I WRITE?

Why do I write? I write in part to learn and in part to communicate. It was intellectual curiosity that drove me to do a doctorate. I had finished my undergraduate

degree in Oxford, the BA (Hons) (I did pay the nominal fee later to upgrade to an MA) and the BCL. I had been introduced to the law of restitution while doing the BCL and sat in seminars and tutorials with Peter Birks. Inevitably, what I ended up doing my doctorate on had only a passing resemblance to the topic that I first discussed with Peter, although ‘Mistake’ held pride of place in both titles. As I was doing my doctorate, I taught contract for the Queen’s College, and land law for Mansfield College and St Peter’s. However, to teach I had first to understand, and that was the initial impetus for the DPhil – a desire to understand. How does mistake (later mistake of law specifically) work in the law of contract and unjust enrichment and why?

David Feldman has persuasively argued that, ‘Scholarship involves curiosity about the world, which may be stimulated either by the need to achieve a goal or by desire to understand something for its own sake.’¹ Of course, he went on to explain that there is a bit more

1 D Feldman, ‘The nature of legal scholarship’ (1989) 52 *Modern Law Review* 498–517, 502–503.

to scholarship than just that, but, in my case, it fits very well – a desire to understand for its own sake, coupled with a desire to communicate that understanding to others. Indeed, Feldman went on to explain that the attempt to understand should be guided by three ideals. First, a commitment to methods of investigation best suited to satisfying that curiosity. Secondly, self-conscious and reflective open-mindedness and, lastly, a desire to publish.²

Where am I going with this? We can all get curious about stuff, but it doesn't necessarily turn us into academics. In fact, I got caught up in the 'lemming run' to the City at the end of my second year as an undergraduate. Big books landed in my pigeonhole at Corpus Christi College giving information on qualifying as a solicitor and barrister. All around me, my friends were applying to Slaughter & May and other City firms. So did I. They got jobs. I didn't. I'm glad I didn't. I would have hated it. It's just not me. Academia is, however, most definitely me. The point then is one of identity. Personal identity is a difficult philosophical question with different overlapping sub-issues. One of the first questions, however, we might pick out is one of characterisation. My personal identity in this sense amounts to the traits I adopt to make me who I am. We all have multiple identities in this sense, some of which change over time and some of which do not. My identity can

be contingent and temporary. This creates philosophical questions about whether I am the same person over time, but the important thing for present purposes is what those traits and attributes are and how they are important to me. I am a father and a husband, but obviously there was a time when I was not a father or a husband. I am a Newcastle United fan (not as hard work as it used to be) but also an academic and a scholar in the sense Feldman means it.

What does it mean to write to learn? Obviously, I must read something first, but to really understand the law – why it is the way it is, whether it should be, or whether the case or journal article has it either descriptively wrong or normatively so – I need to write. I cannot think without writing. It is the act of putting something on paper that somebody might read that forces you to think, 'What do I want to say?' and 'Does this – this rule, case, policy whatever it may be – actually make sense?' and then 'Why?' or 'Why not?' All of this can then form the basis for that most common of academic staples, the journal article, or the book chapter or indeed the monographs I have written. In each of these cases I have set about my task with the intention of learning something or discovering something new and then packaging it up in a way that might (or not, but hopefully might) inform or persuade my reader. However, that cannot really explain the reasons for writing blogs, of

2 Ibid 503.

which I have written a few, or for practitioner journals, or even, dare I say, student handouts. There the motivation is purely to explain, inform and persuade. I have already worked out what I think, and now I only need to persuade you and maybe alert you to where the detail may be found.

Who are you? I have said I am writing for you, but who are you? You are anybody who might be interested. Fellow academics, students, policy-makers. Why do I want to write for you? Feldman points to two contrasting models: individualism and communitarianism.³ Individualism prioritises the individual and therefore puts a high value on the ability to choose for oneself what to investigate and how to go about it. Communitarianism provides for the group to pursue goals taking precedence over those of individuals. Of course, one can wonder what those goals might be and how they can be identified separately from individual goals. Communities do not have ideas; only individuals do. At the same time individuals can only achieve anything by being embedded in a community. We do not operate in isolation. I can only test ideas against others' ideas. That requires me to know what you think and what your ideas are. At the very least it is only fair to return the favour. You need to know what I think. As Feldman has also

argued, 'For scholars to operate as a community, communication is essential.'⁴ That communication is what builds a community, where we share and develop ideas and seek the truth together. My understanding is a private good. It gives me satisfaction to have learnt something, but it is also a public good. The pursuit of understanding for the benefit of all is, as Feldman has also observed, one of the values justifying academic freedom (amongst other things, my ability to indulge my curiosity as opposed to being told what to look at) in a liberal system.⁵

It is that which drives the need to inform the academic community and to teach my insights to students and critically to engage with anyone who might be interested. In my welcome message when I took over as President of the Society of Legal Scholars in October 2024, I observed that nobody wants their research or scholarship to disappear into the aether unnoticed. We want to make a difference, or why are we bothering? It is that which drives the journal articles, blog posts, practitioner articles, written evidence to a House of Lords committee on the Property (Digital Assets etc) Bill, responses to consultations and so on. I write because I want to learn and, by doing so, make a difference.

This may all seem a little idealistic in the rat race world of academia we all inhabit with

3 Ibid 507–508.

4 Ibid 504–505.

5 Ibid 508.

the pressure to publish REF-able 3* and 4* publications (that is, publications assessed under the Research Excellence Framework), chase grant money, achieve ‘impact’ and teach ever higher numbers of students, all as our research time and budgets in more and more institutions are cut. We find ourselves running very fast to stay where we are and even faster if we want a promotion. But, unless we are to give up and do what articulate, well-educated, career-mobile people can do – change our jobs – we need to remind ourselves periodically why we’re bothering.

WHAT IS GOOD WRITING?

Writing as a craft

Liz Fisher has pointed out that writing is a craft.⁶ We are sometimes told that a craft takes 10,000 hours to learn and much of that is on-the-job. It is practice, pure and simple. It should be no surprise, therefore, that I think I write better now than I did when my first journal article was published in 2000.⁷ The finished product, and scholarship like any other craft leads to a finished product – the publication⁸ – looks and reads better than it did 25 years ago. I was rubbish to start with, in fact. Early on, Peter Birks impressed on me the need to write, to put things down on paper. This is what I did

and what I have done ever since, but there was one supervision session in my first year which sticks in my mind. I had written something on contractual mistake, and I remember writing it on my computer at home in Oxford, feeling very pleased with myself. I had made claims that various cases were wrong, that some – rather eminent – commentators had equally got it wrong, and everything needed reforming. On sitting down in Peter’s office in All Souls’ College, I was met with the comment, ‘Well, sometimes you have to get worse before you can get better.’ Ouch. I had let my enthusiasm run away with me. I had over-claimed. I had proven nothing, explained very little and persuaded nobody.

I think I have learnt the lesson. Now I take my time. Everything takes longer than you think. This can be irritating. If it hangs around for long enough, you just want rid of the thing. ‘Somebody, please take this off my hands!’ Be patient though. The temptation is to send it off before it is ready. That, I have discovered, gets me nowhere. It simply comes back from the journal with a rejection or instructions to heavily revise. I haven’t really gotten rid of it at all. Writing well requires you to pay attention to the detail – what does the case say? Why? Is Lord X or Mr Justice Y right? Why? Would it matter if I

6 E Fisher, ‘Craft matters: seven tips for legal scholars’ (2023) 35 *Journal of Environmental Law* 11–20.

7 D Sheehan, ‘What is a mistake?’ (2000) 20 *Legal Studies* 538–565.

8 Fisher (n 6 above) 15.

changed this innocuous fact here? This was precisely what I failed to do in my chapter on contractual mistake. Do not claim too much, therefore. If your material does not support a broad claim, do not make it. Writing it down makes it easier to test these things. My reader can tell if I have hung an entire doctrinal innovation on a single throw-away *obiter dictum*. Too much claimed. If you cannot back your claims up on paper and you cannot point to authority in your footnotes to prove it, then tone down the claims. Having worked all the detail through, however, and decided what you can prove, you must render that detailed argument clear to other people. It really is no use if you understand what you mean, but nobody else does. As Peter Birks also said to me, ‘You are writing for the intelligent lawyer who does not already know the ins-and-outs of the topic.’ His point was that I was not writing for me. I was not writing for him either. All of this takes – and it is worth repeating – time, but the shortcuts are not worth it.

It also brings me to my second point. I try to be aware of my audience. Writing a journal article for a generalist journal such as the *NILQ* is not the same as writing a focused piece in a practitioner journal. The reasonably intelligent, but inexperienced, academic is prepared to put the time into reading an

argument. The practitioner wants the headlines. This in turn is not the same as writing evidence for a committee of the House of Lords. The members of that committee were not even lawyers. Everything needed explaining. Terms I assume lawyers understand had to be excised and so on.

Some things, of course, remain the same. Focus and clarity matter. Inevitably, the clearest explanations require the most work. They take longer. This requires editing. It is easy to start at the beginning and always start at the beginning. This means that the first half of the article gets most attention.⁹ The simplest way to avoid this if you find you haven’t got time to get all the way through is to write ‘START HERE’ at the point you stop editing. Then, when you come back to editing, you can scroll down and know where you left off.

Community also helps. I said something about the importance of community above in the first section, but it is important. I need your help. It is easy to get too close to stuff. I might think something is brilliant (when it is not). Sometimes all that is needed is to set the paper to one side for a while and return to it when I’ve had a break, worked on something else, and have sufficient distance from it. Often, however, somebody else needs to tell me that it’s not fabulous, but rubbish. I religiously make use of other

9 Something my colleague Jo Hawkins warns against too. J Hawkins, ‘Tackling the art of writing: tips from an early career researcher’ (2024) 36 *Journal of Environmental Law* 5–8, 6.

people. And, therefore, I feel the need to reciprocate. I make sure book chapters and journal articles all get read by another pair of eyes before I send them out. Writing out a conference talk or work-in-progress seminar helps. It focuses the mind. You can say a lot in 12,000 words, but you can't fit all of it into 20 minutes. It forces you to think about what's really important.

None of this guarantees acceptance. Often these pieces still come back from the journal, marked reject or with instructions to heavily revise. Particularly when you are early on in your career, this can be heavily dispiriting. It feels like a judgement on you. Not on your work, but on you. I used to take it quite personally, but I have now realised that you simply must accept that there is always a reason why it's come back. It's rare for a reviewer not to have genuinely engaged with the piece. Rare, but not unknown. I did have a piece on the justification for a constructive trust remedy for breach of confidence returned with the comment: 'The author does not seem to appreciate that data protection law is much more important in practice.' Maybe. So what? If I'd wanted to write about data protection, I would have done. Luckily, I had a colleague in the IP/confidential information field who agreed this was nonsensical

feedback. The piece went off again and found a home, largely unchanged, in the *Restitution Law Review*.¹⁰

On the whole though, I take a deep breath and work out why it's not good enough. Sometimes I am trying to do too much. Sometimes I'm making assumptions that the audience understands something (and they don't). Sometimes I think 'What is this referee on about? That's not what I meant at all.' Then I have to remember that is not the referee's fault. It's mine. I haven't made it clear or focused enough.

One of the advantages of not writing the first piece in a series like this is that you can look at what other contributions say. In many ways I appear to be lauding the traditional journal article, and, indeed, I do think it is a useful form of writing. Mariana Valverde argues in the first of this series that the academy has made everyone's writing worse. Is she right?¹¹ She claims that too much work on journal articles goes into some soulless disciplinary machine where we write to a predetermined template. Academics are churning out stuff that explains 'Here is what Dr X says. Here is what Professor Y says. I have found a gap here ...' I suspect that some of the least readable such work is because the author has lost sight of the point of the exercise and

10 D Sheehan, 'Information, tracing remedies and the remedial constructive trust' (2005) 13 *Restitution Law Review* 82–101.

11 M Valverde, 'How the academy negatively affects writing practice' (2025) 76(RS) *Northern Ireland Legal Quarterly* 1–8.

is writing a ‘REF-able’ piece, not necessarily the piece they want to write. We come back to the rat race. They feel under pressure. Maybe someone has told them they don’t write enough, or maybe it’s just that general pressure to publish or perish.

Valverde argues that good writing is about storytelling and that academics have lost the ability to tell stories, even if they read, heard and told them as children. Even as it reminded me of my own former poor efforts at writing science fiction or fantasy, it also reminded me of Peter Birks again. Peter was forever telling stories.¹² One such was the window-cleaner story.¹³ I have dirty windows. A window cleaner stops, sees the mucky windows and decides to clean them. I spot him coming up the driveway with his stuff and dive behind the settee. He cleans the windows, and I refuse to pay. The idea this story was supposed to illustrate, that of free acceptance – that, if I freely accept a benefit, I cannot complain if I have to pay – has been heavily criticised. I have rejected it.¹⁴ However, the point is that by using this – and other – stories, Peter managed to bring the subject alive, to illustrate his point in ways that are clear and easily understood, and indeed he could

use such stories to suggest what the answer should be and, possibly most importantly of all, why the reader should care. Such stories are not always necessary. Indeed, they might be misleading. Not every mistaken payment is a case where the shopkeeper realises almost immediately that he has given me change for £50 instead of £20,¹⁵ and yet that was Peter’s go-to story about mistaken payments, and it draws us in. Valverde may or may not have been talking about stories in this sense, but she certainly was talking about drawing your reader in. This illustrates the vital point about good writing. The reader needs to know why they should care. It is quite hard to explain this to them if you don’t care.

Working out what I want to say

This is remarkably difficult, but it ends up with one of Liz Fisher’s tips. Fidelity to the material matters.¹⁶ Partly, that involves my advice earlier not to claim too much, but it also illuminates research methods.

A lot of people have clear research methodologies. Particularly these days, scholars are often taught research methods. Increasing interdisciplinarity means that PhD researchers and masters students are compelled to do a set of

12 See T H Wu, ‘Storytelling in the law of unjust enrichment’ in A Robertson and T H Wu (eds), *The Goals of Private Law* (Hart 2009) 457.

13 P B H Birks, *An Introduction to the Law of Restitution* revised edn (Clarendon Press 1989) 265.

14 D Sheehan, *The Scope and Structure of Unjust Enrichment* (Hart 2024) 107.

15 P B H Birks, *Unjust Enrichment* 2nd edn (Oxford University Press 2005) 6–7.

16 Fisher (n 6 above) 15–16.

courses on social sciences research methods – either qualitative, quantitative or both. The ESRC demands it if it is funding your PhD.¹⁷ Doctrinal lawyers – and I count myself as such – were often never taught such things. As first-year undergraduates we might have been given some pointers on reading cases. This is the head note; this is the judgment; this is what *obiter dicta* are and so on, but by the time we get to doctoral study it is just assumed that we know how to read cases and articles, and so we never see courses in doctrinal research methodology. This, of course, feeds into the way in which we write. As I've said, I write to understand. Some people, I think, already know what they want to say before they ever put pen to paper. I am not that person. The act of putting things on paper helps clarify things, but it also means that my research methodology is a bit of mystery to me. I read stuff. Then I write stuff about the stuff I've read. An ex-colleague at the University of East Anglia once said to me that she had no idea what her methodology or writing technique was. She started writing, and it was like moulding clay until suddenly something popped out that looked OK. Rather embarrassingly, this is probably true of me as well. Sometimes, I think it should not be this way, that my way of working and writing suffers from some obvious methodological flaw. If so, fortunately the only people who

might have noticed are reviewers of grant and fellowship applications who must see something truly awful in my lack of any easily expressible methodology (or maybe the applications are rubbish for other reasons).

I get interested in a topic. Sometimes I read something where somebody says something I viscerally object to. Take my recent interest in the private law of crypto-assets. The Law Commission spent a couple of years producing a report on this – published in July 2023 – and they're wrong in my view about almost everything they say. That does make it easier. I have a target, and I can explain why each of their arguments in favour of control-based title of crypto-assets is wrong. Sometimes, I have found I already have a strongly held view or set of views built up and developed over years. This also makes life easier, as it did in writing my latest monograph, *The Scope and Structure of Unjust Enrichment*.¹⁸ In that case, I only need to work out how to structure the book or the paper.

However, if I start off not really knowing what I want to say or even having a tightly defined research question, it's not like that. This, I think, is what my colleague was getting at when she said she was just moulding stuff until suddenly it looked OK. That is not a good way to explain it, certainly not in the methodology section of an application to Leverhulme

17 ESRC, *Postgraduate Research and Training Guidelines* (2022) 5–12.

18 Sheehan (n 14 above).

or the AHRC. I start reading. I read the cases. Then I read what other people have said. I read the statutes and regulations. I look to understand the context and often how it is dealt with in other jurisdictions. That gives me a sense of where the contours of disagreement/agreement are and what we do not know. Identifying this is not easy. It requires thought to identify what the hard questions are. Sometimes I have thought that, if there is a debate between X and Y, you can simply identify with one side or another, but that is not enough. Once it is written down, I can see that there is nothing much that either X or Y has not already said. That triggers a process of reading more; is there another approach that can be taken? Are there questions that have not been asked? After all, legal doctrine can be approached in different ways. It can be approached internally or externally, descriptively or normatively. If you peer closely enough, the hard question emerges. Don't dodge it. Admittedly, there is no single right way of doing research, but, ultimately, you do need fidelity to the material. The methods you want to use will determine the materials you need, and the materials you have will constrain the methods you can use, the conclusions you reach and what your writing can and cannot claim. This is good scholarship then. Feldman has observed, as

we have noted, that scholarship depends on a commitment to the use of methods of investigation best suited to 'satisfying that curiosity'.¹⁹ It becomes an iterative process. However, fidelity does more than just lay open the questions. Ultimately, it determines the answers and how we ought to express them, and this returns us to the question of craft and the importance of clearly expressing what the material allows for and only what it allows.

FINDING THE TIME

How do we carve out sufficient time to write? There are many possible ways to do this, but one thing is to find the time of day when you are most productive. You will know when that is. Some people swear by the Pomodoro technique²⁰ whereby you set a timer for 25 minutes, and after the time is up you can take a break. Some law schools may offer 'Shut up and Write' sessions where you all come together collegiately for a couple of hours with the express intention of sitting in silence writing. In terms of making the most of your time there are different ways to go about things.

The point though is that we need to make the most of the time we have and find ways to maximise that time. There are constant competing pressures from teaching preparation, to the student wanting

19 Feldman (n 1 above) 503.

20 [The Pomodoro Technique](#).

a 'quick word', to administration, form-filling and so on. I think that in many ways I had an easier ride as an early career researcher all those years ago than people starting out now. There were fewer demands on the time, in that there was a less rigorous attempt by university management to control how we worked, what we did and when we did it. Marking deadlines were less fierce; form-filling was less fierce. There is more to do in that sense now, and the threat that it will grow to fill the space available is greater. And yet the consequences of allowing it to do so are more severe. If you are on a teaching and research contract and you do not write your 'REF-able' outputs, the likelihood of consequences has grown. The pressures have grown and by the same token the complaints about workload. That question of workload is a larger one than can be accommodated in this piece, but I do have one important reflection on how to do yourself some favours.

I think of myself as a good academic citizen. I do reviews for academic journals. I spend time on work for the Society of Legal Scholars and so on. Often, that is not properly reflected in the small number of hours I am work-loaded for citizenship. I do it because it's valuable and useful and someone should. However, I do not do everything. I make no attempt to do so, and I do say 'No'. The first – and possibly only – lesson is: learn to say 'No'. Only by learning to say 'No' some of the time can you have any

hope of protecting your time. Nor can you be legitimately expected to say 'Yes' to everything, so don't feel guilty. The irony of all this is that I can write this piece on writing because over time I have become highly efficient at managing my time. I have been teaching things for decades that, being honest, don't change massively from year to year. I have my REF submission. However, I would say to many an early career researcher that if they were asked to write such a piece as this, reflecting on writing, to say 'No'. There are way too many other things for you to do, valuable and scholarly things that will help your career. Writing this won't. And that's a pity. I started this piece by saying that I had found the questions intriguing. I think different people's responses are even more intriguing.

CONCLUSION

Ultimately, however, you must remember what the point of the exercise is. Know for whom you write and why you write. The academic's job is a writing job. Try to care about the writing for its own sake. If you care about it for its own sake, you will put the time and effort in, you will carve out the time you need, the scholarship will be better and, trust me, the REF submission will take care of itself.