



# The craft of writing in legal scholarship

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Writing about writing is hard to do, if only because the practice of writing is often so personal. If you write a letter with a pen (which perhaps few people often do now) you are committing something of your personality to paper, not only in what is said, but in the way it's said and even in the style of personal handwriting – the way the script looks on the page. Expressing oneself in print or via electronic distribution removes that personal factor of handwriting style. But the writer hopes at least for a wider audience by means of technical reproduction.

As a writer presenting your thoughts publicly you want to be read, and so you have to adapt your expression to your imagined readers. Fundamentally and obviously, writing in any context is about communicating as effectively as possible, whether it's a matter of telling a story, explaining a theory, dissecting the reasoning in a law case, marshalling and presenting a set of facts, making an original argument, taking part in a debate, expressing dissent, or evoking moods through poetry or prose. Whatever kind of writing it is,

the idea is always to persuade the reader that you have something to say. As in an oral conversation, the aim is not to bore, but to keep the attention of the person or people addressed. Beyond that there are surely innumerable reasons for writing.

The best reasons probably arise from inner necessity in the writer, a personal drive linked directly to one's own pre-existing commitments, interests and enthusiasms, rather than some externally directed pressure (such as, in an academic context, that of satisfying a national university research assessment census). The following discussion should suggest that externally driven writing is rarely as personally fulfilling as writing springing from an internal need to communicate. I have been lucky in always having had substantial freedom to choose my own academic projects and the writing commitments that go with them, but undoubtedly it is possible to become strongly enthusiastic about and deeply engaged with a writing project having initially been externally directed into it. However, in this article I am more

concerned with the 'how' of writing than the 'why'.

Reflection on one's own practice as an academic in writing books and articles is certainly essential. But again, it is usually a private matter. In my case it is never-ceasing self-reflection. How to write better? How best to organise what I want to say? How to make sure I'm accurate? How to present the complex as simply as possible without oversimplifying? How to be fair to the subject matter so that the reader isn't misled into a superficial view? But at the same time: how to communicate intricate ideas as widely as possible, in the most user-friendly way? How to make the text flow? How to give it enough structure, with a beginning that moves steadily through to the conclusion, so that one can even hope for some aesthetic arrangement in it?

Popularising can be a word of disparagement, but there can be a great deal of satisfaction in finding ways to interpret difficult ideas as simply as possible with maximum clarity. Then the reader gets a sense of achievement from having mastered something that might previously have seemed just too remote to tackle. And the writer gets at least as much satisfaction from having managed to communicate as well as possible, and to know that it was through the studied craft of writing that communication was made possible.

When the most basic communicative essentials of writing are set out in that way,

the line between teaching and writing (the two key tasks of the research academic) becomes just a difference in scope or emphasis. The satisfaction from being thought to have communicated well through published writing is not fundamentally different in nature from the satisfaction of sensing, from student reaction, that a class or seminar has been well taught, or a lecture has been well received. These are just different sides of the academic's obligation to communicate.

Of course, classes or lectures that go well are much of what makes university teaching seem worthwhile as a career. And having one's writings recognised as worth reading and, if possible, influential in some degree creates part of the satisfaction of being a scholarly writer. If we are honest and we emphasise the fundamentals of what the academic role should be in a field such as legal studies, surely these are the key satisfactions to be sought. With luck, they make it possible to bear other things: bureaucracy, managerialism, rankings, all the form-filling, not to mention the classes and lectures that didn't go well.

Probably, thinking about one's writing practice should remain a matter of quiet, never-ending personal self-reflection unless some general, widely applicable guidelines and advice can be distilled from that reflection. A classic, very well-known instance of a writer producing such a distillation which has been widely

influential is George Orwell's essay 'Why I write' (1946).<sup>1</sup>

Orwell sets out four motivations which he claims lie at the root of all prose writing. The first is 'sheer egoism', the wish to be noticed, talked about, remembered, to make a personal mark. Another is 'aesthetic enthusiasm' – desire to share an experience, a discovery, or to express delight in words themselves. And there is what he calls the 'historical impulse' – 'to see things as they are, to find out true facts and store them up for the use of posterity'. Finally, there is what Orwell labels 'political purpose', by which he means a 'desire to push the world in a certain direction, to alter other people's idea of the kind of society that they should strive after'.

Orwell, of course, was a political writer, and how far all of these motivations are generalisable or as fundamental as he claims may be debatable. He can be quite discouraging in what he says: 'Writing a book is a horrible, exhausting struggle, like a bout of some painful illness.' In my experience that doesn't have to be true, but the drive, the strong wish to say something publicly, does need to be there. For Orwell, it was necessarily a political drive: 'it is invariably where I lacked a *political* purpose that I wrote lifeless books', he says, and he must have been thinking of 'political' in his wide sense. It does seem

necessary to find ideas that you care about and need to convey, however limited they seem. It is that commitment to communicate something subjectively important to the writer that sustains the motivation to write when it begins to flag.

Writing at length does not have to be as soul-destroying as Orwell suggests, but it does require an unshakeable determination to see the project through and envisage it as a completed work. That requires confidence. Some academics easily find their confidence (maybe they have a compulsion to write for publication and the issue is just to decide on a topic), others find that confidence is something to be gradually built up through the experience of working on and completing smaller writing tasks. Seeing one's work in print is, for many people, a gratifying experience. I began by writing, in academic journals, a few case notes of about 1500 words and one or two brief book reviews. And my confidence was boosted hugely when the first note I wrote (on a variation of trusts case) was selected for inclusion in a student casebook on trusts.

Orwell says, 'one can write nothing readable unless one constantly struggles to efface one's own personality', but he readily breaks his own advice in his essay, which contains much about his own background and motivations

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1 First published in *Gangrel* (1946) 4 (summer). The essay can be found on the [Orwell Foundation website](#).

as a writer. Surely a lot depends on the context and to some extent on the writer's preferences. I find it embarrassing when the personal pronoun 'I' crops up too much in what I'm writing. But this present commissioned task – to write about the craft of writing – almost demands the revealing of some of one's own experiences.

You will have noticed that in writing this I've so far been hiding behind George Orwell. But perhaps one can sometimes be too self-effacing because a personal element can add life to a text. Yet it can also quickly become self-indulgent. Too much 'I' can focus away from what is written and on to the writer in irrelevant ways: an excess of Orwell's 'sheer egoism'. And too much 'we' in a text has many dangers. 'We' can suggest an identity of experience and prior understanding between writer and readers that should not be automatically assumed. Or it can seem to exclude others who are outside this imagined community.

Nevertheless, much depends on the context of writing, which can vary greatly even within academic legal scholarship. When I first began to write about law it was often to contribute to doctrinal legal scholarship. In such analysis – analysing judicial decisions and systematising legal rules – an impersonal style seemed right. When I started my career, academic lawyers often used to avoid all personal reference in expressing opinions about the merits of a case. Instead, they would sometimes

mimic the barrister's old idiom: 'It is submitted that ...' Even, 'it is respectfully submitted that ...' (when they wanted to be especially critical). In most academic legal writing now, such self-effacing formulations have disappeared. Legal scholars are more like academics in many non-legal fields, exploring and expanding their own research terrain, not commenting deferentially on the judicial process.

Nowadays, much book-length legal doctrinal analysis is found in practitioner books often written by practising lawyers, sometimes in combination with legal academics. The field of law-related inquiry that is left for university legal scholars beyond this has become very large. It includes wider policy-oriented, historical, comparative and interdisciplinary commentary on law, many kinds of legal theory informed by various disciplines in the humanities and social sciences, and the diverse, ever-expanding fields of empirical and theoretical research now called socio-legal studies, which draw on social science methods and social theory.

No single writing approach is necessarily appropriate to all of these different kinds of research on law. As legal scholarship becomes increasingly interdisciplinary and multidisciplinary, the problem of communicating across different academic traditions and methods becomes more pressing. I am convinced that it can be solved. Not many people straddle two contrasting knowledge fields or

disciplines with equal commitment to both. But that has been my experience. Most of my writing over several decades has been in two broad and strongly contrasting fields of knowledge: jurisprudence (juristic legal theory) and sociology of law.

Jurisprudence is sometimes thought to be primarily a philosophical enterprise, and the greatest danger in writing about it is unrelieved abstraction and a lack of concern for social context. Legal scholarship intended to be intelligible to lawyers at large is not philosophy – that is, it is not addressed to philosophers and validated by their particular canons of disciplinary validity. Writing about legal ideas and concepts is a key part of jurisprudential writing, but to remain intelligible to legal scholars in general it has to relate to the professional practice of law – law as lawyers, in their many different kinds of practice, experience and use it.

And I think it has to relate also to citizens' experience of law – that is, to a social experience of what law means in everyday life to those who encounter it. Complex and quite abstract theoretical ideas in jurisprudence ought to be explicable in commonsense language, without an excess of technical jargon. There was, after all, a time when jurisprudence was seen as a kind of knowledge not just of law but of life, which should be accessible to educated laypeople. It has long ceased to be that. But there is no reason why

legal scholars should not write in ways that make theoretical writing about the idea of law something with which well-informed citizens, no less than legal professionals, might engage.

In contrast to jurisprudence, sociology of law is a social science, seeking empirical knowledge of the social world, which includes law. I began to read jurisprudence before I had any formal education in sociology. It takes time to acclimatise to the literature of social theory, which I think is the most important part of social science to relate to jurisprudence, but it can be done with patience and a recognition that all scholarly fields have to have some minimal conceptual vocabulary of their own. That vocabulary needs to be learned but not seen as forbidding. The key to good writing in social science, including in its applications in legal scholarship, is – as always – clarity and simplicity; saying everything with short words in preference for long ones; using short sentences rather than convoluted ones; trying to be aware of the reader's interests and fears. I break these rules all the time, but I try to remember them. And they are really no different from the rules applying to any writing about law. Use simple words to express complex ideas; try to meet the reader halfway. And, contrary to what Orwell implied, don't always hide your personality if it can help to communicate.

Case notes and book reviews were a good way to start for me,

if only because writing to (small) scale is a good discipline. Check and keep to the required word length for the publishing outlet in which you aim to place your writing. I can say that for me the best training in writing to scale came not from academic writing but from a sideline in journalistic writing<sup>2</sup> that I followed for many years, and which began even when I was still an undergraduate.

I fell in love with jazz music while still at school and eventually began writing record and concert reviews, interview pieces and musician profiles for music magazines. It was an activity that I carried on alongside academic life for many years and much enjoyed. I still occasionally write journalistic pieces on music now. Part of what I learned from that experience is that it is possible to write informally as well as concisely, and that there can be merit in writing quickly, as long as you have your facts and ideas worked out well before you start.

Quick writing can often flow well, and journalists always have to write to scale and to deadline. Also, writing about a subject such as music necessarily involves subjectivity and the analysis of one's own personal reactions to musical experience. If the writing is to come alive it has to be informed by personal enthusiasm. I found that there was no point, at least

for me, in writing about music I didn't like. The satisfaction was in trying to explain to readers why I thought some music was good and interesting, and in trying to influence them to hear it in new ways and gain (more) intellectual and emotional enjoyment from it.

So, in this context, the personal element could be a way of aiding communication with the reader. It was an attempt not to claim a common community between writer and readers, but to offer them an insight into the writer's personal experience that might be informative and might help them form their own subjective perspectives on the topic being discussed.

I think I carried some of this journalistic experience into my academic writing – for example, in blog writing, which is a relatively new vehicle for academic writing about law. Blog posts usually have to be written to strictly limited scale. I have occasionally contributed to the blog of the Socio-Legal Studies Association and much enjoyed doing so. It is an experience of having to pare down what the writer wants to say to something necessarily brief and concise. The blog post has to make its points not through comprehensive documentation but through very selective reference, evocative illustration and careful generalisation.

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2 Mariana Valverde's journalistic experience, as recounted in her [article](#) included in this series, was very different from and far more intensive than mine, though my more sporadic journalistic work did extend over many decades and still continues occasionally.

Writing full-length essays or journal articles, let alone writing books, involves very different problems and techniques. The scope and quality of the research are the underpinning before a single word can get written. But journalistic techniques are not irrelevant and can set useful imperatives: to write clearly, to scale, and accurately; to use, where possible, short words and simple sentences free of unnecessarily intimidating technicality. All these principles can still apply. Personal elements and informal expressive techniques can have some (but not too much) place in academic writing, as more obviously they do in much journalism. Writing quickly also has its virtues, as long as all the research has been done thoroughly, so that thoughts can be put down on the page or on the computer screen in a flow, with a continuity that, at its best, can make things easier for the reader.

As a reader you will have noticed that I have broken almost all my suggested writing rules or guidance in this piece. Rules are made to be broken, but there has to be a good reason for doing so, a reason that should be intelligible to and perhaps accepted by observers of the rule breaker. Maybe Orwell's rule about limiting the intrusion of personality is a case in point. As was said at the beginning of this piece, the practice of writing is often a very personal thing.

If I analyse my own practice, I recognise that I had a compulsion

to write from an early age; certainly, from when I was a teenager. I wrote a few short stories then, now fortunately lost. And, through much of my academic career I have written, as I said, about music, also about musicians, and about the worlds in which they live and work. I have also kept a diary for many years and that has been a vehicle for writing down thoughts and recording the details of events quickly, without needing to think about any reader except myself. A few of those informally written notes and reflections become elements that feed, after much transformation, into published writings. But often they are just an *aide memoire*, a means to fix detail on record, because my natural inclination is much more towards theoretical ideas than towards the accumulation of factual detail. Recording details is a way to preserve them and occasionally my diary is a reference source I can use to recover memories of the detail of experience. I have also written short 'notebook' pieces for my own pleasure, not for sharing with anyone else. They are exercises in writing seriously – but again quickly – on any topic that interests me, and in small compass of not more than 2000 words.

The books I have written contain many personal elements, although I was not particularly aware of that or intending it at the time I wrote them. But all of them were driven by 'political' concerns in Orwell's widest sense. My first

book, *The Sociology of Law: An Introduction*<sup>3</sup> (1st edn 1984) was intended to help to mark out and legitimise a scholarly field of social scientific study of law, which was then a controversial idea for many legal academics. Several other books were intended to promote the idea that jurisprudence and legal theory needed to be sociologically informed and closely related to the political, legal professional and social contexts in which legal doctrine exists. *The Politics of Jurisprudence* (1st edn 1989)<sup>4</sup> confronted the abstractions of legal theory with lawyers' professional concerns and political issues. My most recent books, *Sociological Jurisprudence* (2018)<sup>5</sup> and *Jurisprudence and Socio-Legal Studies* (2024)<sup>6</sup> have waged a little campaign to try to shift juristic attention closer to the social sciences and away from a fixation with philosophical abstraction: one might say away from the study and out towards the world of everyday social experience. But that would be more polemical than is intended here. Nevertheless, I think Orwell was right to say that it helps to have a passion of some sort driving the writing.

It might be useful, finally, to say something about organising the practice of writing. This can only be a personal view because every writer's practice is different, related

to personality and chosen projects. My practice, having decided on a project, is to try to research all existing literature that seems relevant to it and to make extensive notes, organised provisionally to address the different sections or chapters of what I plan to write. What then follows is much thought and self-questioning. What seems important and unimportant in what I've read? What arguments seem to emerge that I want to develop or challenge? How does all this material relate to earlier theoretical work that I've done? Does it challenge or extend my earlier published ideas? How can I use it to advance or revise those ideas? After all the research has been done, and that crucial stage of reflection on the material has been completed – as far as I'm able to complete it with the resources accessible to me – the writing can begin.

It is not easy to start writing, although I always seem to know when it is time to start. I have to force myself to start on the first day, but once I do, I usually find the writing can flow during that day (because the research and the thinking out of ideas have largely been completed). Once a writing project is underway, I try to write every day until it is completed. That means forcing myself to start each day. Once started, however,

3     *The Sociology of Law: An Introduction*, 1st edn (Butterworths 1984).

4     *The Politics of Jurisprudence : A Critical Introduction to Legal Philosophy* 1st edn (Butterworths 1989).

5     *Sociological Jurisprudence: Juristic Thought and Social Inquiry* (Routledge 2018).

6     *Jurisprudence and Socio-Legal Studies: Intersecting Fields* (Routledge 2024).



I'll usually write quickly about 1500 words during the day. But first there must be revision of the previous day's writing. Each day's draft has to be subjected to ruthless checking and editing before I go on to write another 1500 words or so. Sometimes sections have to be moved around after reflection; or extended or discarded. Gradually a complete manuscript – whether for an essay or a book – is produced. Then there must be more checking and revision, and a judgment as to whether the whole piece hangs together coherently and achieves what the writer intended.

Writing does not have to be 'a horrible, exhausting struggle', as Orwell suggested. Regular writing – even sometimes without a view to publication – can steadily

improve the writer's craft. And none of the ideas about writing discussed above should be treated as a rigid rule, even when proposed by a writer as celebrated as Orwell. They are merely guides reflecting personal experiences of writing for publication.

Ultimately, personal development of the craft of writing is the gateway to great satisfactions in legal scholarship, as in other academic fields. It can be the means to make an effective contribution to advancing knowledge, and to achieving the kind of real personal fulfilment that can come from setting out one's findings and thoughts as well as possible, publicly in the marketplace of ideas.