



# Writing: why, how and when?<sup>†</sup>

Emily Jackson\*

Law School, London School of Economics and Political Science

Correspondence email: [e.jackson@lse.ac.uk](mailto:e.jackson@lse.ac.uk).

There are times when I write for very dull and uninspiring reasons, perhaps because I've been asked to contribute something by a nice colleague, *and* I don't have a good reason to say 'no', *and* I think I could do it relatively quickly and easily. Happily, there are usually more positive reasons for writing, of which an overarching one – which applied to this particular request to 'write about writing' – is that I think it might be interesting and fun to do. I love reading and get huge pleasure from the painstaking process of converting a stream of consciousness in my head into words on a screen. But aside from interest and fun, my reasons for writing fall roughly into four categories.

## WHY?

First: anger. If I feel cross, affronted or irritated by something, writing about it can be my way of feeling as though I am 'doing something', however ineffectual. And, fortunately for me, medical law serves up endless issues that

matter to me or to people I care about.

My first forays into medical law (having started out writing about feminist jurisprudence and family law) were related to the regulation of reproduction. When I was in my late 20s and early 30s, every aspect of pregnancy – including preventing it, ending it, trying to start it and policing it – felt personal. Although I had initially planned to write a quasi-textbook about the regulation of reproduction, as I became more immersed in the subject, I found myself becoming crosser and crosser. I no longer wanted to write a dispassionate account of the law relating to birth control, abortion, pregnancy, childbirth, assisted conception and surrogacy, and so my text turned into what could fairly be described as 'a bit of a rant', organised around the central claim that women should be allowed to make these important decisions for ourselves.<sup>1</sup>

I've been cross about other things since then – occasionally for reasons that are personal and

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1 Emily Jackson, *Regulating Reproduction: Law, Technology and Autonomy* (Hart 2001).

raw, and more commonly because something just feels unfair – and putting this sense of injustice, or at times actual rage, to work has undoubtedly helped spur me on to write. For example, I became interested in the regulation of the pharmaceutical industry when I found out that it had proved impossible to prosecute a pharmaceutical company which had hidden ‘commercially inconvenient’ trial data about a serious adverse side effect. Fortunately for me, I had a wonderful colleague and co-author, sociologist Linsey McGoey, who not only shared my outrage,<sup>2</sup> but also taught me a great deal about the pharmaceutical industry’s reliance upon ‘strategic ignorance’.<sup>3</sup>

A second reason for writing is to try to figure out something that I find puzzling. In relation to medical law, I tend to start from the presumption that if someone wants to make a choice about their body or their life, it should be up to them. When I first started working in this field in the late 1990s, I was thrilled by John Harris’s

unflinching libertarianism<sup>4</sup> and by conversations with my late colleague and friend Helen Reece, whose work was bravely uncompromising in its defence of autonomy.<sup>5</sup>

I’m not a complete libertarian though, and I do think there should be some limits to freedom of choice, although I don’t always find it easy to work out where and why. In relation to assisted conception, for example, I am worried about patients being sold treatments with a very low chance of success, even if they are fully informed about this beforehand. Some ‘paternalism’ in restricting patients’ freedom of choice seems justifiable to me, but I puzzle over how extensive this should be.<sup>6</sup>

Or, to take another example, in the last decade or so, I have been hugely impressed by the sensitive way in which judges in the Court of Protection have sought to respect the preferences of people who lack mental capacity, but at the same time, I agree that it is sometimes right to override those preferences. Writing about this was a way to try

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2 Linsey McGoey and Emily Jackson, ‘Seroxat and the suppression of clinical trial data: regulatory failure and the uses of legal ambiguity’ (2009) 35 *Journal of Medical Ethics* 107–112.

3 Emily Jackson, *Law and the Regulation of Medicines* (Hart 2012).

4 John Harris, *Clones, Genes and Immortality: Ethics and the Genetic Revolution* (Oxford University Press 1998).

5 Helen Reece, ‘The paramountcy principle’ (1996) 49 *Current Legal Problems* 267–304.

6 Emily Jackson, ‘A perfect storm: non-evidence-based medicine in the fertility clinic’ in Graeme Laurie et al (eds), *The Cambridge Handbook of Health Research Regulation* (Cambridge University Press 2021) 373–381.

to explain, or impose some sort of order upon my own contradictory instincts or impulses.<sup>7</sup>

When the Supreme Court compared patients with ‘consumers exercising choices’ in a decision about informed consent,<sup>8</sup> I was struck by the comparison, given my memory from contract law that consumers’ choices are generally pretty *uninformed*. If consumers do not engage with information provided before they enter into standard form contracts, perhaps unwittingly, why should patients be any different? That made me wonder whether medical law might be able to learn anything from behavioural economics, and the evidence that consumers are more interested in advice or ‘ratings’ than they are in reading and weighing up a contract’s terms and conditions.<sup>9</sup>

A third reason is shock. A couple of years ago, I was invited to a meeting about embryo models, probably because of my interest in the regulation of embryo research. After learning about what scientists

were doing and where this research could lead, I was astonished. I can still remember the journey back from Cambridge, chatting about what we’d heard with another equally shocked attendee. If I didn’t know about these amazing developments in stem cell biology, it was likely that others didn’t either, and writing about it was a way to communicate not only how thrilling this new research is, but also to draw upon the history of the regulation of embryo research in the UK in order to set out the potential benefits to research of a permissive regulatory regime.<sup>10</sup>

My final reason for writing is confined to one rather large writing commitment, my *Medical Law* textbook.<sup>11</sup> I started a Medical Law course at the London School of Economics (LSE) in the late 1990s, and although there were a couple of textbooks available, there wasn’t anything that was a good fit for the course I wanted to teach. Ian Kennedy and Andrew Grubb’s *Medical Law* was an excellent book, but in its third edition, it

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7 Emily Jackson, ‘From “doctor knows best” to dignity: placing adults who lack capacity at the centre of decisions about their medical treatment’ (2018) 81 *Modern Law Review* 247–281.

8 *Montgomery v Lanarkshire Health Board* [2015] UKSC 11.

9 Emily Jackson, ‘Challenging the comparison in *Montgomery* between patients and “consumers exercising choices”’ (2021) 29 *Medical Law Review* 595–612.

10 Emily Jackson, ‘Future challenges for UK regulation of brain organoid research’ (2025) 33 *Medical Law Review* fwae047; Emily Jackson, ‘Regulating embryo models in the UK’ (2024) 11 *Journal of Law and the Biosciences* lsae016; Sarah Franklin and Emily Jackson, *The 14 Day Rule and Human Embryo Research: A Sociology of Biological Translation* (Routledge 2024).

11 Emily Jackson, *Medical Law* 6th edition (Oxford University Press 2022).

was too big, too expensive, and too unwieldy for undergraduates.<sup>12</sup> When someone from Oxford University Press approached me about writing a 'text and materials' book, I was tempted only because I thought it would be helpful for my students. I wrote it for them, and I continue to do so, often choosing extracts because I can imagine the lively class discussion we will have about them.

### HOW AND WHEN?

Once I have decided that I am going to write about something, my very unsophisticated way of going about this – I would hesitate to call it a method – is to begin by reading a lot and making lots of notes. At some point, I start to worry about what I want to say, and I generally try to figure this out while walking (for this, my three-mile walk to work has become invaluable). After a while, on one piece of paper, I will write bullet points of 'interesting things' in a scattergun way, and I'll stare at that piece of paper for a long time, trying to impose some sort of order or flow on my random observations. Eventually, and after more time spent reading through my notes, and more long walks, I'm ready to draw up a detailed plan, with section headings and subsection headings, and I start filling this in by writing.

As I have got older, I have realised that there are several things

that really help me with the process of writing. One is to have lots of different writing commitments on the go at the same time. I find some stages in the process of producing a piece of writing easier, and others harder. The 'reading a lot' stage, for example, is easy and fun. I sit at my computer, reading electronic versions of articles, cases, books, policy documents etc, and making notes into a document, or a series of documents, along with my own comments. At the same time, I'm continually adding to my reading list, finding references in other people's footnotes, or coming across random things that can take me in new directions.

As an aside, that this process of reading interesting things and thinking about them is actually a part of my job never ceases to amaze me, and makes me feel eternally grateful for my good fortune and privilege (in my year off before university, I spent five months working in a warehouse, sticking price labels on toiletries, which undoubtedly helped to cultivate a 'glass half full' attitude to academic work).

Sorting out references and footnotes and correcting proofs are other easy tasks that I can do in odd slivers of time here and there. In contrast, the hard jobs for me are planning and writing, and, for them, I have to be in the right frame of mind. Writing lots of different things simultaneously means that

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12 Ian Kennedy and Andrew Grubb, *Medical Law* 3rd edn (Oxford University Press 2000).

there is always something I can be getting on with, even when I'm exhausted and unable to think straight after a week of challenging meetings and/or back-to-back teaching.

The second thing that has made a difference to me as I've got older is co-authorship. I find it really energising to write things with other people, and I often agree to co-author something, or ask someone to co-author with me, because it sounds like it might be fun. I'm currently writing something about assisted dying with Colin Gavaghan and Rob Heywood, people I've known for years but haven't had the pleasure of writing with before. I'm hugely enjoying checking in with them via Zoom every couple of months, to share what we're thinking about the current Bill's progress through Parliament.

Writing with people from other disciplines, for me most commonly sociology, has also helped me to realise that my instinctive focus on identifying and worrying about a problem with the law will only ever be a part of the answer to any social problem.

I have also learned the value of abandoning or giving up on something that isn't working. This can happen early in the process when I've realised that there just isn't anything interesting to say, or that it's all been said perfectly well already. More painful, but no less valuable, is giving up on something after receiving negative feedback. Sometimes, an article just doesn't

work, and although it's never easy to hear that, it's better to abandon something than continue to 'flog a dead horse'. In my experience, abandoned work is seldom entirely wasted. While working on something new, I've often found myself cutting and pasting sections, or even just the odd sentence or two, from something I gave up on years ago. As a whole article, it may have needed to be put out of its misery, but parts of it may go on to have a useful afterlife.

When I was in my late 20s, I very nearly gave up on an academic career altogether because I thought it just wasn't working out. The problem was that I didn't have anything to say. I had been working on family law, and I felt as though I had run out of steam. I had no new ideas, and everything I wanted to say had been said already by others, far more eloquently than I could ever have managed. Having gone straight into a research post and then a full-time teaching position after graduating, I didn't have another career to fall back on, and I very seriously considered abandoning law altogether and starting on a completely different path.

What changed for me was that – for reasons I can't now remember – I started to become interested in abortion law. I went to panels about abortion law at conferences, and I started to read about it, and to meet people involved in policy-making and activism, including from other academic disciplines. Here was an issue I cared about, where the law

was clearly problematic on multiple levels, and where there was a great deal of academic commentary with which I did not just disagree, but which I found massively and personally offensive. Suddenly, I felt energised again, and as though I had something I wanted to say.<sup>13</sup> From abortion, I became interested in the history of compulsory sterilisation, the policing of pregnancy, and the regulation of assisted conception.<sup>14</sup> A new job at LSE enabled me to set up a new course in Medical Law, and I was hugely fortunate to find a subject I love and care about, and continue to feel passionately about 27 years later.

The final, but really important piece of the writing jigsaw for me, is feedback. A few years ago, we were having yet another discussion in a departmental meeting about how to satisfy students' apparently unquenchable thirst for feedback, communicated through disappointing National Student Survey scores. At some point, a colleague said something which resonated with me, about acknowledging how bad we are ourselves at receiving feedback.

*In theory*, like our students, we want as much feedback as possible

on our work. But in reality, many of us don't actually want to read whatever awful things reviewers might have said about it. If feedback is negative, I tend to avoid reading it, at least at first. When an article has been rejected, I know I should immediately read the reviewers' comments thoroughly and think carefully about them. But, knowing that the journal's answer is 'no', my instinct is to file the email away in order not to have to think about it for a while. Of course, in time, I will go back to the comments, and, however difficult they might be to read at first, they are invariably invaluable in making the article better, or clearer, or prompting a complete and necessary rethink.

Feedback is incredibly useful, but in order to be useful, it will also sometimes be challenging to hear. Despite this, shirking or avoiding feedback is always a mistake, and in my experience, the more feedback – oral and written – the better. I've often received the most useful feedback from colleagues whose area of expertise is very far away from my own, whose distance enables them to say that the whole piece doesn't work, or that they don't understand what I'm saying, or what the point of it is.

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13 Emily Jackson, 'Abortion, autonomy and prenatal diagnosis' (2000) 9 *Social and Legal Studies* 467–494; Emily Jackson, 'Abortion: medical paternalism or patient autonomy?' in Ellie Lee (ed), *Abortion: Whose Right?* (Hodder & Stoughton 2002) 1–15.

14 Jackson (n 1 above); Emily Jackson, 'Conception and the irrelevance of the welfare principle' (2002) 65 *Modern Law Review* 176–203; Emily Jackson and Ellie Lee, 'The pregnant body' in Ellie Lee and Mary Boyle (eds), *Real Bodies* (Palgrave 2002) 115–132.

In my experience, it's important to ask for feedback on a piece of written work at the right time: not too early, so that your reader has to wade through irritating typos and grammatical glitches, and not too late, when you've become so attached to it that you're not open to hearing that it is fundamentally flawed and you need to start again. My writing has also benefitted from being read by non-academics, including one very old friend who saved me from some gruesome mixed metaphors.

Presenting 'work in progress' at conferences and seminars will invariably highlight gaps, omissions and inconsistencies of which I was previously unaware. As well as experts saying you should read X or that you've misunderstood Y, I've also benefitted enormously from the comments of non-medical law colleagues at staff seminars, who have pointed me in the direction of a tangential but hugely helpful body of literature, or a different way of looking at a similar problem, which I wouldn't have found otherwise.

Reading some 'classic' texts on a difficult question – 'What is consciousness?' – that I need to get to grips with for my current work on organoids, I have been struck in the 'Acknowledgments' by quite how many previous iterations these books had clearly been through, and by how many people had contributed to the development of the ideas they contain. It has made me reflect on the widespread perception today that we are all in a hurry to get things published

quickly. Of course, there are external pressures that contribute to this sense of urgency, including the need for a 'job paper', a REF contribution or a promotion 'case'. But, in reality, the pressures tend to be to publish high-quality work regularly, rather than at breakneck speed. In our mentoring and career development advice, we should be stressing the value of taking time over a piece of writing, by getting feedback on successive oral and written versions of it, and by being willing to take a break from it and only go back to it when you've figured out how to fix a thorny problem.

It is also worth noting – as was pointed out to me by my fabulous colleague Marie Petersmann, in her feedback to me on this piece – that putting together constructive and kind feedback on others' work is itself an important aspect of academic writing. We tend to think of peer-reviewing articles, grant applications and promotion applications as an administrative chore, rather than an exercise in creative and productive writing. But being able to offer commentary which is honest and useful, while also being sensitive to how it will feel to be on the receiving end of it is an important skill.

Finally, and this goes back to my job on an industrial estate in Watford in the 1980s, it is undoubtedly true that, as well as being pleasurable and life-enhancing, writing can also be challenging, stressful and anxiety-inducing. Most academics will have

struggled with writing at some point – as I did in my late 20s – and failing to write can provoke horrible feelings of self-doubt. But having done a job where from 8am to 5pm, I watched the hands on a clock turn agonisingly slowly, while doing something so mindless that

there was never going to be even the tiniest chink of satisfaction, I feel lucky every single day that I have a job in which I can regularly choose to do something – like writing these reflections – just because I think that it sounds like a fun and interesting thing to do.