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## NOTE

# LEGAL SCHOLARSHIP FOR NEW LAW TEACHERS\*

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ROSS BUCKLEY\*\*

This article considers four issues for new law teachers: why write, what to write, how to write and where to write (in the sense of where to get published). I was prompted to write it by memories of how mystifying the scholarly process had been for me. The article attempts to systematise some approaches to legal scholarship and to consider anecdotally those which work for me.<sup>1</sup>

## WHY WRITE?

There are, to my mind, five reasons to write legal scholarship. The relative importance of each depends entirely upon one's own priorities and values.

The principal reason I write is my enjoyment of the process and the challenge — the act of putting words on paper and the struggle to write well are both deeply satisfying.<sup>2</sup>

Another major reason to write is for the advancement of one's career. In most law schools promotion is based primarily upon scholarly output.<sup>3</sup> The academic role is commonly perceived to have three strands: teaching, scholarship and service to the university and broader community. By my lights, teaching is by far the most important of these functions.<sup>4</sup> It will fall to few of us to shape the law for the good. Yet it falls to each of us, every day, to influence our students for good or ill. Teaching is enjoying something of a renaissance in Australian law faculties.<sup>5</sup> More and more faculties are adopting formal promotion criteria that rank

excellence in teaching and scholarship equally for promotion purposes.<sup>6</sup> Yet the hard truth unfortunately remains that while there are many objective ways to establish excellence in teaching,<sup>7</sup> excellent teaching is still commonly perceived as something difficult to define, let alone measure.<sup>8</sup> Excellence in scholarship, on the other hand, is still commonly perceived as relatively easy to establish,<sup>9</sup> notwithstanding that such assessments often equate excellence with volume, not quality.<sup>10</sup> The lamentable but likely end product of the renaissance in teaching in Australian law faculties is that academics who are competent teachers and excellent scholars will be promoted more readily, and further, than those who are competent scholars and excellent teachers.

A third reason to write is as a self-education tool.<sup>11</sup> Research and preparation is rarely as thorough for teaching as for writing. Writing is an excellent means of keeping current and forcing deeper thought about issues: my teaching often comes alive when on a topic about which I have written.<sup>12</sup> Writing is important for me because it makes me a better teacher.<sup>13</sup> In the words of Le Brun and Johnstone, “good teaching in law must necessarily be infused by good scholarship”.<sup>14</sup> This is, however, a matter of balance: when writing, I am not developing new and interesting teaching methods and modules. Furthermore, the good scholarship required to infuse good teaching need not be the scholarship of the teacher. John Carter and Andrew Stewart published an excellent article in 1993 that elucidated and refined my principal theme in teaching contracts.<sup>15</sup> It now informs my teaching of the course. Research also has other pitfalls. Teaching topics within my area of expertise calls for a special discipline to ensure my presentation and questions are at a level likely to engender the students’ interest rather than my own.<sup>16</sup>

A further reason to write is to contribute to the development of the law through the cases and legislation. For some of my colleagues this is the principal reason to write. Legal change is typically slow. One way to promote it is through service on a law reform commission. Another is through writing. As John Maynard Keynes reminds us:

The ideas of economists and political philosophers [and, dare we add, legal scholars], both when they are right and when they are wrong, are more powerful than is commonly understood ... I am sure that the power of vested interests is vastly exaggerated compared with the gradual encroachment of ideas ... Soon or late, it is ideas, not vested interests,

which are dangerous for good or evil.<sup>17</sup>

Our role in developing and propagating ideas and in guiding and shaping the law is important. This role is fulfilled more frequently and fully by law teachers in the United States and most civilian jurisdictions than here,<sup>18</sup> with results which are positive for the law and the teachers themselves. It is a role legal academics in Australia<sup>19</sup> need to embrace more fully.

The final reasons to write are to contribute to other's understanding of the law — academics and practitioners alike — and to be part of the community of scholars.<sup>20</sup> The delight at meeting a lawyer or law teacher who has read one's writing and found it useful or stimulating is not to be undervalued.<sup>21</sup> The community of scholars is without borders and participation in it can be a source of much satisfaction, guidance and inspiration.<sup>22</sup>

### WHAT TO WRITE?

The threshold issue on what to write is “what is legal scholarship?” This seemingly simple question admits of no simple answer.<sup>23</sup> Much like pornography, many people profess to know it when they see it,<sup>24</sup> but individuals' definitions of it vary widely.

Legal research is mostly applied research — it is mostly concerned with the identification and solution of problems, not the search for truth. And, while one might expect applied research to be mainly empirical, it is, in law, only rarely so. For these two reasons it does not resemble research in the sciences and from that perspective can appear to be simply writing about things. Attempts to define legal scholarship in the U.S. for tenure and promotion purposes usually result in defining it as published material which is analytical, significant, learned, well-written and disinterested. Each of these terms is further defined so, for instance, analytical means the material must provide a detailed, well-supported and sophisticated analysis that does more than merely describe a body of law but advances our understanding of the topic.<sup>25</sup> Many Australian legal academics would probably subscribe to a similar definition, though with less emphasis on the requirement of disinterestedness.<sup>26</sup>

The range of work which can comprise legal scholarship is broad: in addition to the traditional doctrinal article or text, it includes theoretical analysis, sociological studies,<sup>27</sup> law reform

reports and draft legislation, and empirical research. None of these non-doctrinal areas are well served in Australia.<sup>28</sup> Most legal scholarship is concerned with the exposition, analysis and reform of doctrine. In particular, empirical work has been neglected. While empirical studies are, perhaps, more likely to attract research funding, the collection and analysis of data requires a knowledge of statistical methods and is expensive and time consuming. Until appointment and promotion committees regularly rank empirical work more highly than doctrinal research, the larger skill base and greatly increased investment of time it requires is apt to go unrewarded. The lamentable result is that questions fundamental to the professional preparation aspect of legal education, such as what solicitors do on a daily basis, what legal knowledge they call upon, and what skills they employ, have been left entirely to anecdote,<sup>29</sup> and studies of the impact of various laws have been remarkably rare. We argue for changes in the law on the basis of reason and principle but usually with nary a supporting statistic.<sup>30</sup>

Law schools vary greatly in the degree to which they value the different types of legal scholarship. As a new teacher my view is that you should write the type of scholarship in which you are interested — after all there are many law schools in Australia today and ultimately you will be happiest in one which values the type of work you value — but an appreciation of the prevailing culture of your workplace will prepare you for how it is likely to be received and ready you to argue for its importance. The question of what to write has two further senses:

1. Which topics to write on?
2. At what level of sophistication and abstraction and at what length to write?

### *Which Topic?*

There are a number of paths open to a new law teacher in search of topics on which to write. One approach is to ask around; ask more experienced academics or practitioners what are the gaps, what is in fashion, what needs to be explored? People often have interesting ideas without the time to pursue them; you may be able to do so. Related to this approach, is to strive, if possible, to attach yourself to a group of scholars. If in your faculty there is a tradition of group research, there is often a need for a willing, less

experienced member of the team. A second approach is to get yourself on the conference circuit — present as many papers as possible and hope for feedback on content, suggested topics to present on, and the like. Papers for presentation are often faster to write than those for publication and presentations at least diminish the sense of isolation which accompanies most scholarship. A third approach is to enrol in an LL.M.<sup>31</sup> or S.J.D. programme which is assessed by research papers. You will have to write in the areas of your subjects and will have to submit the finished product within a time frame. To revise your research papers for publication should not then be burdensome, and the subject coordinator should be of assistance. A fourth approach is to write for publications which need regular, shortish contributions, such as law society and some professional niche journals. Writing frequently on topics suggested by the publisher achieves a number of ends. For the journal it fills a need — informing its readership of recent developments. For the writer it promotes confidence, results in a number of publications, and, importantly, can provide foundational ideas for later, more ambitious pieces.

So there are four ways to identify topics on which to write. There are doubtless many others. The choice of topic is a personal issue about which I will say only two things. First, a vast field of inter-disciplinary research lies untilled before legal academics. I would encourage new law teachers with an interest in other disciplines to write about their interrelationship with law, broadly defined. Law teachers should look beyond the law school for inspiration, collaboration and assistance; and should consider publishing outside the usual legal journals. Many other disciplines are interested in cross-fertilisation with the law even if the law, as yet in Australia, may not be as interested in the resulting flowers.<sup>32</sup>

Secondly, as a general proposition, the production of groundbreaking scholarship is an extremely difficult undertaking,<sup>33</sup> which, in my view, is virtually impossible unless the scholar is passionately engaged with the topic. One view is that as academics we fulfil ourselves and our function best by following our interests and passions<sup>34</sup> — if we are to march to the beat of someone else's drum we may as well practise law and be better paid for it. Scholarship offers a chance, which I believe should not be missed, to discover one's own voice in content and in style. In Gebnan's words, "For those who do not upon entry in the academy think of

themselves as scholars, its appeal is often discovered slowly and with a sense of surprise".<sup>35</sup>

### *At What Level of Sophistication and What Length to Write?*

Apart from choice of topic, the new scholar has to decide upon the type and extent of treatment of the topic. I have grouped these two questions as they are interrelated — higher order analysis can rarely be done in 2,500 words. The options facing the new scholar are to write (i) large, sophisticated articles for university law reviews or professional niche journals; (ii) chapters in books or legal encyclopedia such as Halsbury's or Laws of Australia; (iii) shorter, more practical articles for professional niche journals; (iv) short, practical pieces for law society journals and the like; or (v) short commissioned pieces for loose-leaf services. This is again a question of personal taste and temperament. One view is that learning to write well is an incremental process and the new law teacher should set their sights accordingly.<sup>36</sup> This argues in favour of options (iv) or (v) and was the path I took. My first article was 4,500 words on trade finance for the Queensland Law Society Journal. It said nothing new and yet was not pointless. It resulted in a little feedback from the profession, led to a small consulting job, attracted a new student to the university's masters program and, gauging from the feedback, assisted some practitioners.<sup>37</sup> Equally importantly, it gave me practice in writing formally and footnoting my sources and the quick acceptance of the piece engendered some confidence. The writing of case notes often serves this function well.<sup>38</sup> Another form of shorter writing is for loose-leaf services such as those published by CCH. This tends to be relatively well paid and relatively heavily discounted in scholarly terms. Accordingly, it is an allocation of effort about which a new law teacher needs to think carefully.

In making such decisions, particular attention should be paid to the categorisation of, and weightings assigned to, various types of scholarship by the Department of Employment, Education, Training and Youth Affairs. The department's classification of scholarship is used to determine the allocations between institutions of the annual research quantum (about \$216 million in 1998) and the research infrastructure block grants. Many law school or

university incentive schemes designed to reward research are keyed off the department's categorisation and weightings, so new teachers are well advised to become familiar with them.<sup>39</sup>

Some of my colleagues express difficulty in writing briefly. For them, writing leads ineluctably to wrestling with the issues in depth. There is a limited market in Australia for articles above 10,000 words — longer pieces need to be particularly well written and reasoned to be published.<sup>40</sup> I have known the careers of talented people set back by writing ambitious pieces early. One of my colleagues wrote a 17,000 word article on a very difficult topic. The referees of journals to which it was submitted thought it showed real promise but was a little disjointed and unfocussed (as was to be expected as it can take substantial experience to structure such a large article). Eventually my colleague had to discard the more ambitious parts of the analysis and cut the piece to 9,000 words to get it published. Some of his self-confidence ended up in the waste bin with the cuttings.

The other option is to contribute to books or legal encyclopedia. An invitation to contribute to a book is probably unlikely to come early in a career unless it is a work edited by one of your colleagues. The academic prestige of the undertaking will depend upon the subject and nature of the book. Writing for a *Halsbury's* or *Laws of Australia* is more attainable and quite well regarded although it is not as prestigious as writing for refereed journals.

The production of a body of scholarship is a long journey. My advice would be to follow your interests and passions in choosing topics and to try to write initially in the marketable size range of between 3,000 and 8,000 words.<sup>41</sup> Don't be concerned if you write across a range of topics — a degree of diversity is desirable and often essential if one is to discover the areas in which one loves to write.<sup>42</sup> New teachers are often required to teach outside their areas of interest. Preparation for such teaching may usefully lead to some, probably brief, articles in that field. On the other hand, writing a number of articles in the same area has great rewards in terms of efficiency and there is a stage in one's career to enjoy those rewards. One usually revisits a topic with more clearly formed ideas and clear thinking is the basis of clear and relatively easy writing. Before I explore how to write, however, one final question remains.

### *To PhD or Not to PhD?*

This is the inescapable question new law teachers now have to face.<sup>43</sup> Looking ahead in 1994, Le Brun & Johnstone wrote,

Specialisation and credentialism will continue apace. Those already teaching will be “encouraged” to complete doctoral qualifications to advance, while progress towards, or completion of, a doctoral qualification will become an entry point requirement for new law staff.<sup>44</sup> The type of doctorate matters little in my opinion — whether SJD or PhD.<sup>45</sup> The issue is whether to undertake one at all. It is certainly possible for experienced teachers to enjoy a full career without a doctorate.<sup>46</sup> However, for new law teachers the day envisaged by Le Brun & Johnstone has come to pass in many law schools. A doctorate, or substantial progress towards one, has become an entry requirement. The merits of this trend could be debated at length but it is its mere existence that is relevant here.

In this context, there are at least three reasons to do a doctorate: (i) because you seek the qualification to promote your career; (ii) because you have come across a topic which you wish to investigate deeply; and (iii) because the journey appeals, i.e. because you want to. Inevitably all three reasons will interact in most people’s choices. My principal reason for doing a doctorate was because I found, somewhere deep inside, that I wanted to do it and this proved to be a most sustaining reason.

For a 25-year old with little or no experience of scholarly writing and little experience in the law a doctorate must be a daunting, difficult and at times demoralising task. Doctorates are traditionally undertaken young in the natural sciences but this makes far less sense, at least to me, in law. A doctorate in the sciences is often a technical undertaking requiring creativity and nimbleness of mind, but not the perspective born of experience called for by many of the better doctoral topics in the humanities. A common pattern is for new law teachers to teach for at least a few years and apply an incremental approach to legal scholarship, before commencing a doctorate. How to structure ideas, write in a scholarly fashion, and cite sources are, in my view, all lessons best learned on smaller tasks.

If you do intend to PhD, one obvious step is to collect materials on your proposed topic and refine it for a few years before starting to write. I had collected many boxes of material, quite painlessly, over four years of teaching before commencing my doctorate full-time. I also had a tight topic refined through numerous discussions

with senior academics.<sup>47</sup> This groundwork proved invaluable when the time came to write: my research base was extensive, and the sage advice I had received returned as a guide throughout the writing.<sup>48</sup>

Most people find a block of uninterrupted time a great assistance in completing a doctorate. There are a number of ways to fund such a period away from teaching. These include: (i) sabbatical leave; (ii) a scholarship to pursue the doctorate abroad; and (iii) a scholarship, such as an Australian Postgraduate Award, to pursue the doctorate in Australia. Scholarships to study abroad are prestigious but include their own pitfalls. A doctorate requires a great deal of solitary work and this can be very difficult away from the support of family and friends. The absence of classes limits opportunities to meet other students. An overseas scholarship which covers tuition and living costs is a great, but not unqualified, privilege.<sup>49</sup> Australian Postgraduate Awards are for only about \$15,000 per annum but, like all scholarships and research funding, are tax free. Accordingly, the income from some casual teaching will attract very little tax and one's net income need not be drastically reduced to pursue a doctorate full-time,<sup>50</sup> provided a scholarship or research funding, and some part-time teaching, are available.<sup>51</sup>

Many people find paying some thought to the process of writing yields rich rewards. Choosing one's habits can be most helpful. My method of writing the thesis was to set myself to start early each day, write until lunchtime, and write at least 1,200 words a day.<sup>52</sup> I subscribe to Abrams' thesis that scholarship is the product of a "methodical routine" not "large leaps of genius and bursts of frantic activity".<sup>53</sup> By promising myself the option of the afternoon off, I was able to get my bottom into the chair early and to stay focused all morning.<sup>54</sup> I would usually have three afternoons off every week and go to the library to do further research on the other two. I found this down-time necessary and that four to five hours per day of concentrated effort was about my limit. With the end in sight, I did write for eight hours a day but this proved unsustainable for lengthy periods. I would typically write for four days a week and revise the product on the fifth. As one can see, at this rate of about 5,000 words per week, a 100,000 word thesis suddenly appears eminently achievable.<sup>55</sup> There are many other possible patterns that support writing and I will not canvass them here. Suffice it to say that most

people find a regular pattern to be a great assistance in getting their bottom into the chair — the essential step without which nothing is written.

To pursue a doctorate? For me, it was the right choice. The metaphor of climbing a high mountain was with me throughout my thesis. I have read that people find themselves climbing high mountains. I did.

## HOW TO WRITE?

There are perhaps many and varied ways to write and one's personality and temperament shape to a large degree how one does it.<sup>56</sup> The systematisation of the various techniques is beyond my training and expertise. This treatment is limited to describing what works for me and some of my colleagues. Those who are comfortable with how they write may like to save some time and **turn** to page 35.

My process of writing begins with research, develops through organising my thoughts, culminates with putting fingers to keyboard and concludes by having my writing reviewed by others. The process will be considered in that order.

### *Research Techniques*

Librarians know a great deal about how to research and are a wonderful resource. In addition, the internet is revolutionising legal research and represents a goldmine for those wise enough to dig into it. These comments will be limited to an approach which takes full use of that rare resource these days — time. My approach is to open a file on a topic immediately upon developing an interest in it. For a minor piece of writing, I usually have a file open for two or three months before starting to write. For a major piece of research, the file might be open for anywhere between six months and a few years before writing commences. In that period, everything I encounter of relevance to the topic is copied and goes in the file.

Serendipity is wonderful. One needs to place oneself in its path. Opening a file and keeping an idea at the forefront of one's mind helps do that. The other step which helps enormously is to visit the library every fortnight and browse through the incoming periodicals and law reports.<sup>57</sup> Most law libraries have racks near the

entrance upon which new periodicals and reports are placed for typically between two and four weeks. Periodic perusals of this material takes less than an hour a fortnight, yet this bower bird tendency serves me well.<sup>58</sup> It is quite remarkable how much catches one's eye over a period of six to twelve months. The last thing I then do, before proceeding to the next stage, is to visit the library and conduct the formal research. The stage is then set to do something with all the information.

### *Organising One's Thoughts*

There are perhaps almost as many ways to collect and order one's thoughts as there are writers. In discussions with some of my colleagues, this emerged as the most difficult stage of writing legal scholarship — worthwhile projects can founder under the sheer weight of ideas and source material.

It also became clear in discussions that the method one uses to marshal one's material and thoughts directly shapes the nature of the final piece. One colleague's method is to take rough notes of the material he reads, prioritise the material in terms of its utility and authority, compile a brief outline and then write the first draft largely from memory with occasional reference to the sources identified as preeminent. He then goes back to his notes, amplifies the draft in light of them and adds in the footnotes. He describes this method as "thinking on paper" and says it entails many drafts. It leads to articles in the style of a learned essay, of which many English writers are good exponents. Such articles tend to be quite focussed and explore one or more ideas without extensive footnotes or quotations from other sources. It is also a method which requires a good memory and a clear vision, upon starting to write, of one's destination — neither of which I always possess.

Another colleague reads the research material, prepares a brief outline, and then quickly writes a very rough first draft. This draft is perhaps one-third of the length of the final version. In effect, this scholar deals with information processing overload by focussing on getting the major ideas and quotations onto paper and leaving matters of language, style and even order of presentation until later. This style again requires multiple drafts.

A third colleague types her outline on the computer, makes brief notes under head heading and records relevant quotations and

sources while reading the research material. She then divides the sources into piles on the desk under each heading and, with reference back to them, proceeds to write.

A fourth colleague puts each proposition and details of its source onto a separate card. He then groups the cards into topics, arranges the cards within each topic, arranges the topics into order and writes the article from them (with appropriate references back to the originals). This highly systematic approach leads, at least in the hands of this scholar, to a relatively polished first draft which typically requires only one revision before submission. It also requires the capacity to postpone writing until one's sources have been systematically summarised. It is the opposite to using writing as a method of thinking on paper and while it may well be faster overall would probably only suit naturally systematic people.

A friend in another discipline uses the computer to create a database into which he enters the principal concepts, key words and potentially useful quotations from each source. He can then search the database and use the computer to assemble related concepts — a quite sophisticated method the use of which may become more widespread, at least for large projects, in the future.

My technique is to read photocopies of my sources, highlight passages of interest and reduce each passage to a few words on a post-it note in the margin. To retain focus, I remind myself the material will be read only once and important points missed will be lost forever.<sup>59</sup> When finished reading, I usually have some idea of what I wish to say. A flip through the post-it notes will serve to identify further the main themes and elucidate directions the writing may take. It is now time to rough out an outline: perhaps eight or ten points. This outline will probably be revised many times but will remain on the desk as a roadmap. I then sort the sources into piles and begin to write. As each idea is incorporated in the text and referenced in a footnote, the relevant post-it note is removed and discarded. When the pile of sources is free of post-it notes, a rough first draft is complete. In my early years of writing, before developing this approach, an article would typically go through ten or so drafts. Now three to four is more typical.

There are doubtless numerous other ways to organise one's sources and thoughts. There appear to be two keys. The first is to have some technique to make the sheer bulk of information manipulable: it seems in this regard that any conscious system is

better than none. The second key is to do as much thinking as one can before starting to write.<sup>60</sup> Everyone with whom I discussed this commented that the clearer their understanding of what they wanted to say, the faster and smoother was their writing.

### *Putting Fingers to Keyboard*

There are three ways to write — by hand, dictation or keyboard. By hand is slow and reordering the text is difficult, although some people find it leads to the most polished first draft. By dictation is quick, but requires a deal of practice to do well and a degree of secretarial support rapidly becoming extinct in our universities. Typing on a computer is almost always the most appropriate for legal scholarship.<sup>61</sup> So you are seated before a computer screen. What next? How does one write? Formal instruction will assist, and for most teachers a writing course will probably prove to be a wise investment of a modest amount of time. However, the best, succinct advice I have ever read in this regard, in all seriousness, is the following:

#### *The Three Steps to Successful Writing*<sup>62</sup>

1. Take off your shoes.
2. Crawl under your desk with a hammer and nails and nail the shoes to the floor.
3. Sit down at the desk, put your feet back into the shoes, and tie up the laces.

I commend these steps to you — a comfortable pair of shoes is best.

The process of writing for me is a paradox — I enjoy it, avoid it and struggle with it. I thrive on the process of creating, of moving words around, of having written. Yet, writing is usually sheer hard work.<sup>63</sup> And the best way in my experience to make this demanding job easier is to accept it is demanding. Accept it is difficult. Accept it will take more time than you plan. In the words of a U.S. sports columnist, who had to write only about baseball and football games, “Writing is easy. I just sit down at the typewriter and open a vein.”<sup>64</sup>

The sports analogy is apt. When writing something lengthy like a major article or a thesis my daily goal has two limbs — to write at least 1,200 words and for at least four and a half hours each day.

Most joggers find the first few kilometres the hardest. It is likewise for me with writing. Starting can be tough but often after writing 700 or 800 words the words are flowing and it feels, on the good days, like someone else is writing through me, like I am being written — a wonderful feeling, the equivalent of the jogger's high. On the bad days writing is four and a half hours of drudgery which ends with the conviction I have written pap — suitable only for the bin. At times, these bad days can stretch into weeks in which an entire thesis chapter, for instance, can be written to a background of self-criticism and a firm belief that I am writing rubbish. Yet upon revision, the product of the bad days cannot be distinguished from the product of the good (which may speak only to the quality of all my writing) and the entire execrable chapter will typically read no worse than the others. The moral of the story is that one's feelings are utterly unreliable in this regard and should never be taken as a reason for not writing.<sup>65</sup>

Finally, there are two essential keys I would offer to good writing. The first is that *size does count*. Short words, short sentences and short paragraphs are best.<sup>66</sup> There is a tendency in academic circles to value a 12,000 word article more highly than an 8,000 word one. This means much academic writing is the opposite of good writing.<sup>67</sup> Many scholars write an 8,000 word article and through their revisions turn it into 12,000 words. Those who are committed to effective and elegant communication write an 8,000 word article and through hard editing turn it into 6,000 words.<sup>68</sup> If you work in a faculty which allocates “research quality points” or assesses publications based on numbers of published pages the wordy approach will be tempting.<sup>69</sup> The lean approach however may force you to refine your thinking and make you a better scholar and teacher.<sup>70</sup>

The second essential key to good writing is encapsulated in the aphorism, “There is no good writing — only good rewriting”.<sup>71</sup> Precious few writers have polished prose fall from their fingertips. For most, hard work and numerous revisions lie behind whatever clear, coherent paragraphs are produced. My rewriting was transformed by the simple discovery that phrases and sentences with which I am having difficulties can usually be cut. The key to rewriting is deletion — less is usually more.

### *The Role of Commentators and Mentors*

My writing has benefited so markedly from the insights and perspectives of others that I now see their involvement as part of the process of its production. Accordingly, if somewhat unusually, I include the review of my writing by others as the final stage of its production. Each of my major pieces has, as a draft, enjoyed the benefit of at least one thorough review by someone else — there is no need to walk the journey alone.<sup>72</sup>

In my limited experience, commentators come from unlikely places. The easiest place to find one is in the office down the hall. A senior academic who can give stylistic and structural advice on a piece of work is a blessing to be treasured.<sup>73</sup> In addition to a review of style and structure, however, one needs an expert on the topic and colleagues are only rarely experts in the narrow field in which one is writing. Expert commentators can come in various ways. When writing one article I telephoned an academic who had delivered a seminar on the topic. She offered to read my piece but never did. However, she also suggested I send the draft to a distinguished former banker in England who had spent his entire career in the field and, in his eighties, had the time, expertise and interest to read it. Bernard Wheble's detailed ten page commentary was masterful. He later reviewed another of my articles and a book chapter. Each benefited enormously from his insights even though our views differed on many issues.

I gave drafts of another article to a colleague and to a practitioner with whom I had worked almost a decade before. My colleague's review was perfunctory. John Greig's review was marvellous. His detailed, incisive comments filled page after page and greatly strengthened the final piece.

Expert commentators can be found by asking around, being willing to ask people one has not met,<sup>74</sup> and being willing to ask twice the number of people from whom one ultimately wants comments.<sup>75</sup> Such commentators have been most valuable to me. Mentors, on the other hand are not valuable, they are priceless, priceless and rare. It requires a well nourished soul to be able to nourish others.<sup>76</sup> For this reason, they are perhaps found most often amongst senior faculty members: one of the easily overlooked graces bestowed by age and long experience. As one of my U.S. mentors said, upon being thanked for a penetrating review of one of my articles,

Don't thank me, in the States this is part of my job description. I've only got five or ten years left at this and part of my job is to ensure the people who come after me will be better at it than I have been.

Mentors can be found.<sup>77</sup> Asking senior people to read and comment upon drafts of your articles is a good place to start. Keeping a good lookout for potential mentors is another. Being a mentor to one younger than you is a third. Mentors take many forms. They may be the person who encourages you in taking on a role you thought beyond you, or who suggests that a certain article deserves to be published abroad, or who introduces you to other academics it is important you meet, or who spends time discussing a difficult principle. They are people who care and who we need if we are to fulfil our potential on this essentially solitary and difficult journey called legal scholarship. As Julius Getman has written: "It is when academics speak about their mentors that expressions of caring, affection, and love are most clearly stated. In such conversations one can understand the values and dreams that have led people into academic life".<sup>78</sup>

Before leaving the issue of how to write, I would like return to the mundane with some tips on the use of computers and footnotes.

### *Tips for Using Computers*

My first and overwhelming recommendation for using computers is back up! This holds true on two levels. When writing I tend to save the material from the screen to the hard disk every five to ten minutes.<sup>79</sup> However, hard disks can fail and computers be stolen, so the second stage is to back up on to floppy disks or to other drives on the network, if these are available. When working on a major project I copy the project on to a floppy at least once, and often twice, a day.<sup>80</sup> Then, once a week, I make another copy on a floppy disk and put it in another place for safe keeping to guard against the risk of fire or theft.<sup>81</sup> This may sound paranoid but desperate pleas appear with some frequency in the newspapers from people whose computers have been lost or stolen. When a computer disappears it is usually the information that is the most valuable. When working on a major project like a thesis or book I find it most helpful to have a directory which contains only the chapters. On a day when I have made minor amendments to five or six chapters, and at week's end when I want to make a new copy, it is then easy to copy the entire directory across to a floppy disk.

The other function I find particularly helpful is the find command which locates specified words each place they have appeared. It is the quickest way to move around within a large document.

### *Footnotes*

My first suggestion on footnotes is to do them as you are writing the first draft and strive to put them in final form the first time.<sup>82</sup> The former stops the identity of sources being forgotten. The latter saves a great deal of time in the long run. Most journals have their own style guides which it is best to follow in formatting footnotes.<sup>83</sup> A book or thesis often offers more choice but bear in mind that sooner or later you will need to compile a bibliography. Footnotes which commence with the authors' surnames followed by the initials or first names are preferable. They can be copied across, as is, into a bibliography and the automatic sort function will swiftly put them into alphabetical order. Footnotes which commence with the author's first names or initials will have to be rearranged or, perish the thought, put into alphabetical order manually. We have now considered how to do this thing called writing; the next step is what to do with it.

### WHERE TO WRITE?

The writer, having writ, yearns to be published. How does one achieve this? Let's look at the journey from manuscript to printed page. The focus is on publication of journal articles in Australia.<sup>84</sup>

Step One is to choose a journal. I expect many new law teachers find this task difficult. I did. Academe is in many ways a status game.<sup>85</sup> Publication in university law journals is well regarded with greater status often attaching to publication in the journals of the older universities. In addition, as an old national journal, the Australian *Law Journal* commands respect. Quixotic editorial decisions by a former editor deterred many academics from publishing in it and some believe the ALJ is too often today written by judges and practitioners for judges and practitioners. Nonetheless, it is probably the most read journal in the country and publication in it still carries significant prestige. Into this schema must also be fitted the entire range of specialist professional journals which Butterworths and LBC Information Services have

commenced publishing in the last eight years.<sup>86</sup> While these journals attract more articles from practitioners than do the university journals, academic writers remain well represented. The difficulty for a new law teacher is deciding upon the academic status of the forum. Within my field, the quality of some of the more established of the specialist journals such as the *Journal of Contract Law* and the *Journal of Banking and Finance Law and Practice* is excellent and ranks with the top tier of university law journals. The academic status of some other professional journals appears problematic.<sup>87</sup> Some of the professional journals have a strong preference for shorter articles<sup>88</sup> but then so do some university law journals<sup>89</sup> and other professional journals are willing to publish lengthy articles which would stretch many university journals.<sup>90</sup> One simply cannot generalise about the willingness of professional journals to publish lengthy pieces or about their academic credibility. Most specialist professional journals are also probably more widely read than university journals and more willing to publish specialised commercial law scholarship (for those in that field). Against these factors must be set the cachet of writing for a university law journal. University law journals use referees more often than the specialist professional journals and publication in a refereed journal is highly regarded.<sup>91</sup> University journals are also seen as the appropriate forum in which to write for other academics and there is a common view that writing primarily for fellow scholars is more prestigious than writing primarily for the profession. Publication in an established university law journal is probably a safer course for the new teacher as there is less scope for any quibbles about the forum although such publication is potentially more political and difficult to obtain than publication in a specialist professional journal.

I would like to be able to say, ignore all this concern about journal status, it is bumpf: publish where you want to and where your work will be read, and trust to the quality of your writing. Unfortunately the people making promotion and appointment decisions will often gauge the quality of your scholarship by its size and place of publication. Use is made of referees' reports to assess quality, but time will always mitigate against the decision-makers having read much, if any, of your work and in favour of their being influenced by where your articles were published.<sup>92</sup> In the end, you will probably face a conflict between the need to publish in high

status journals and the need to get something in print relatively quickly.

In any event, the proliferation of law schools in this country in the past decade, each publishing their own journal, and the discovery by the two major publishing houses of the profitability of niche professional journals, means Australian law school academics whose fields are of interest to the profession enjoy a wide range of publication avenues. It has been calculated that there were eight law journals in Australia in 1960, nine in 1970, fourteen in 1980 and about 50 in 1994.<sup>93</sup> Those academics who write in fields of little interest to the profession may well find publication more difficult. The range of venues is more limited<sup>94</sup> reflecting the origins of Australian legal scholarship in Austinian positivism.<sup>95</sup>

A good place to begin your consideration of possible destinations for a particular article is in your library. Flip through back issues of various journals and check their guidelines for contributors. Often you will quickly get a feel for whether your piece fits the profile of the journal. If you are in doubt whether an article on your topic might appeal to that journal, a brief letter of enquiry to the editor will usually elicit a response, and can be sent a month or so before the piece will be finished. If an article is time sensitive, I have found it effective to write first to the journal enquiring whether they might be interested in such a piece, stating it is time sensitive and asking how long a decision would be likely to take.

Step Two on the journey to publication is to produce a manuscript that looks professional: one and a half or double spaced with wide margins and in a good typeface. The general rule is to use serif fonts (those with the little curly bits and different width curves) for text and sans serif fonts for headings.<sup>96</sup> Spell checking the piece is essential. Having a colleague read it for clarity and correct expression is also an excellent idea.

Step Three is to ensure the manuscript conforms to the style guide of the journal in which publication is sought. As this is a lot of work, I tend to choose my preferred forum before writing and then write in their preferred style.<sup>97</sup> Most journals reproduce their style guide and/or guidelines for contributors at the beginning or end of each copy. For those that don't, you will need to write to the editor for a copy of the style guide and guidelines for contributors.<sup>99</sup>

Step Four is to submit the manuscript with a covering letter addressed to the current editor by name.<sup>99</sup> If you had a cogent reason for choosing that particular journal, mention it in the letter, i.e. state why you **think** this piece suits their journal. Don't submit the manuscript to more than one journal at a time unless the journal accepts multiple submissions (as many U.S. journals do) or unless you are seeking a bad reputation and a short curriculum vitae.<sup>100</sup>

In addition to your manuscript, it is a good practice, as a courtesy, to enclose extra copies for referees with your name and identifying material (such as footnote references to your earlier work) deleted,<sup>101</sup> as well as a copy on disk.<sup>102</sup> Most guidelines for contributors request submission on disk as well as hard copy and specify the word processing software preferred.<sup>103</sup>

Step Five, if necessary, is to follow up. Some publications acknowledge receipt of the manuscript with a letter which indicates when a decision is likely. If that time passes I immediately write a courteous letter of enquiry. If no indication of time is given I will usually write a follow up letter after about two months.<sup>104</sup> Don't let submitted articles languish. A rejection hurts much less after two months than **after** six or nine as it allows the piece to be submitted to another publisher in a timely fashion.<sup>105</sup> Articles can become stale although not as rapidly as one might at first think.<sup>106</sup>

Step Six is to receive a letter of acceptance and celebrate — at least by telling colleagues with whom you are close so they can share your pleasure, and colleagues with whom you are competitive, so you can share their discomfort as they try to smile!<sup>107</sup> Don't be put off if the editors ask for changes either of form or substance; this is a common practice.<sup>108</sup> If the journal provides offprints of your article or extra copies of the volume in which it appears, you might also consider sending these to the people who commented upon drafts of the article and others who might be interested in it.

Step Seven, if the fateful letter rejects your article, is to submit, submit and submit again. Rejection does not mean an article is worthless. It may mean the next issue of the journal is full, or the topic does not suit the intended future profile of the journal, or the journal has published too much in that field recently, or simply that one editor or one referee did not like either what you have written or how you have written it. Whatever rejection means, it does not mean you have been rejected, and it is no reason to give up.<sup>109</sup> If a

rejection comes with detailed referees' comments with which you agree, it is probably wise to rewrite in light of the comments. If you do not agree with the comments, save the time and anguish and submit the article elsewhere. Three or more rejections for similar reasons suggest a rewrite is needed; but otherwise keep the article in the mail. It will find a home.

## CONCLUSION

A common criticism of legal scholarship is that there is simply too much of it — the good gets drowned by the mediocre and the volume of the latter means precious little of either gets read.<sup>110</sup> Certainly, senior academics should harken to King Solomon's injunction:

[N]ot everything that man thinks must he say; not everything he says must he write, but most important not everything that he has written must he publish.<sup>111</sup>

King Solomon's wisdom also applies, but with much less strength, to new law teachers. We all need to start somewhere. The current law is certainly the most accessible and probably the best place for most new teachers to start. The knowledge gained will inform your teaching. The writing skills acquired will equip you for later higher-order tasks. The sheer act of writing will help you to discover your own voice and your areas of greatest interest. Experienced academics should reserve much of their writing for deeply analytical and fundamental scholarship. Those new to this game should just write, and learn from the process. The most oft-stated goal of a legal education is for students to learn to "think like a lawyer". For a phrase used so often there is remarkably little agreement on its meaning. Thomas Reed Powell once famously observed that "if you can think about something which is attached to something else without thinking about what it is attached to, then you have what is called a legal mind".<sup>112</sup> Hopefully, as teachers, we give our students much more than this frightening focus. As scholars, it seems to me, our obligation is to explore the things that the law is attached to and to analyse the consequences of the law upon the attachments.

The potential of legal scholarship in this country has been only partially realised, the potential synergy between bench, bar and academe only partially tapped.<sup>113</sup> This article has set out some

paths which may assist new law teachers to participate in that synergy and in the community of scholars.<sup>114</sup> The challenge before us is to write the deeply analytical and fundamental scholarship that the profession has not the time, temperament or training to write and so play our full role in the shaping of Australia's law and its future lawyers.

\* The original idea for this article came from Robert Abrams' excellent article, *Sing Muse: Legal Scholarship for New Law Teachers* (1987) 37 *J Legal Educ* 1, so it seems only fitting I should borrow part of his title. The first draft of this article was written in 1996 while undertaking a PhD at UNSW. In large measure, if there is much of value here it is attributable to the support I received from UNSW's law faculty generally and Ian Cameron in particular.

\*\* Associate Professor of Law, Bond University. My sincere gratitude to David Dixon, John Gava, Nadja Spiegel, John Wade and the two anonymous referees for their insightful comments upon earlier drafts. The usual acceptance of responsibility applies, i.e. if you disagree with something in this article, please attribute it to my reviewer's comments.

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<sup>1</sup> My early days in academe were fortunate and unusual as guidance about teaching was plentiful and excellent. More conventionally, guidance about scholarship was scarce. Such isolation is a common feature of academe. This article is intended to chip away at such isolation and is thus written in the first person and in a somewhat disclosive style.

<sup>2</sup> I am acutely aware of the risk of filling an article such as this with motherhood statements. As an antidote I have tried mostly to relate my experiences rather than general prescriptions. Having said that, my enjoyment of the process and challenge of writing is not uncommon; see: J Getman, *In the Company of Scholars* (Austin, Texas: University of Texas Press, 1992) 46.

<sup>3</sup> For the prominent role of published scholarship in faculty promotion decisions in Australia, see: R Johnstone, *Evaluating Law Teaching: Towards the Improvement of Teaching or Performance Assessment?* (1990) 2 *Legal Educ Rev* 101, at 113; M Le Brun, & R Johnstone, *The Quiet (R)evolution — Improving Student Learning in Law* (Sydney: Law Book Company Ltd, 1994) 31; Pearce, *intra* note 13, at 322–323; and Weir, *intra* note 19, at 147. The position is the same in the US, where the role of published scholarship in faculty promotions is well established. See Abrams, *intra* note 1, at 11; J Elson, *The Case Against Legal Scholarship or, if the Professor Must Publish, Must the Profession Perish?* (1989) 39 *J Legal Educ* 343; Getman, *supra* note 2, at 40; M Kane, *Some Thoughts on Scholarship for Beginning Teachers* (1987) 37 *J Legal Educ* 14, at 14; M Scordato, *The Dualist Model of Legal Teaching and Scholarship* (1990) 40 *Am UL Rev* 367, at 373; A Soifer, *Musings* (1987) 37 *J Legal Educ* 20, at 21; and D Turner, *Publish or be Damned* (1981) 31 *J Legal Educ* 550.

<sup>4</sup> In a small survey of law students and practitioners in the United States teaching was seen as the only proper function of a law professor. The students and practitioners thought writing and service were not relevant to the professorial function: D McFarland, *Students and Practicing Lawyers Identify the Ideal Law Professor* (1986) 36 *J Legal Educ* 93, at 104–105. It would be fascinating to conduct a similar survey in Australia to assess others' expectations of us.

<sup>5</sup> In John Wade's words, "In the last six years, the interest in teaching and learning theories and practices at Law Schools ... has moved from predictable platitudes to a flurry of activity, research, publication and new practices": J Wade, *Editorial-Tempus Fugit* (1995) 6(1) *Legal Educ Rev*.

<sup>6</sup> Typical criteria appear to require excellence in one of teaching or scholarship and competence in the other and in administration/service.

- <sup>7</sup> Peer assessments of teaching, peer appraisal of teaching materials, student assessments of teaching, assessment by former students now employed, self assessment, edited videotapes of teaching sessions, contributions to teaching interest groups and teaching leadership within and outside the faculty generally being but a few. For important points about peer, student and self assessment, see Le Brun, & Johnstone, *supra* note 3, at 365–372.
- <sup>8</sup> J Gava, *Scholarship and Community* (1995) 16 *Syd L Rev* 443, at 462.
- <sup>9</sup> *Id.*
- <sup>10</sup> In describing the position in the U.S., Abrams writes, “quantity rather than quality of writing carries significantly more weight in tenure decisions”: *supra* note 3, at 12.
- <sup>11</sup> White’s conception of a law school is interesting: “It is as an educational institution that the law school exists first and foremost. Its center is the education of our students [which] requires continuing education on our part ... I do not think of the law school as a think tank on policy questions, or as a research institute for the profession, but as a community of individuals engaged in the process of their own legal education”: J White, *Law Teacher’s Writing* (1993) 91 *Mich L Rev* 1970, at 1974–75. Gava criticises this as self-indulgent if the self-education is directed toward the gratification of the academics involved, as opposed to better serving of our students’ educational needs: Gava, *supra* note 8.
- <sup>12</sup> This represents something of an about-face as I have previously criticised the dual scholar-teacher model as inefficient and ineffective: see R Buckley, *Ten Ways to Enliven Legal Education* (1993) 9 *Queensland U Tech LJ* 131. I still believe excellent teachers who publish little should be able to enjoy full careers with promotion to the highest levels and excellent scholars with little aptitude for teaching should be able to focus more upon scholarship. Interestingly, the Pearce Report recommended that excellent teachers who write little should be able to specialise in teaching, do more of it, and be rewarded for doing so and likewise for excellent scholars with little aptitude for teaching: Commonwealth Tertiary Education Commission, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Pearce Report) (Canberra: AGPS, 1987) 377 and 566. This view has other proponents, see J Murray, *Publish and Perish — by Suffocation* (1975) 27 *J Legal Educ* 566, at 569.
- <sup>13</sup> The conventional view is that scholarship makes better teachers of us (see Pearce Report, *supra* note 12, at 375376); Great Britain, *Report of the Committee on Higher Education* (Robbins Report) (London: HMSO, 1963) Cmnd 2154, at paras 555, 557). Its accuracy, however, was contradicted by some of the Pearce Report’s own findings (Pearce Report at 360) and by a study by Ingrid Moses and Paul Ramsden in 1989 of 890 University and College of Advanced Education faculty members which concluded that: “Teaching and research, far from being complementary activities, appear to be either completely unrelated or to be in conflict with each other. *The most productive researchers have the least favourable attitudes to teaching whilst the least productive are the most committed to teaching*”. See P Ramsden, *Teaching and Research: Are They Complementary?* (1991) Aug 22–28 *Austl Campus Rev Wkly* 14. Gava suggests that if scholarship is redefined to include wide reading, deep thinking and much discussing as well as writing about the law, rather than merely as one’s output of books and articles, much of this conflict may be resolved. Thus defined, good scholarship is a necessary precondition to good teaching. See also the consideration of this issue in D Oliver, *The Integration of Teaching and Research in the Law Department* (1996) 30(2) *L Tchr* 133, at 134–39.
- <sup>14</sup> Le Brun, & Johnstone, *supra* note 3, at 385.
- <sup>15</sup> J Carter, & A Stewart, *Commerce and Conscience: The High Courts’ Developing View of Contract* (1993) 23 *WAustl L Rev* 49.
- <sup>16</sup> I am indebted to John Wade for many of the ideas in this paragraph.
- <sup>17</sup> J Keynes, *The General Theory of Employment, Interest and Money* (London: Macmillan, 1936) 383–384. The counter-argument is that Australia’s dominant

- culture involves the marginalisation of ideas, intellect and the university and that ideas are less influential here than in the England in which Keynes wrote. As university teachers we presumably bear part of the responsibility for this state of affairs as it suggests we have, over generations, failed to “capture” the minds and imaginations of our students.
- 18 In the US and much of continental Europe the practising profession is in the habit of consulting academics: D Weisbrot, *Australian Lawyers* (Melbourne: Longman Cheshire, 1990) 148. The courts in both regions refer to (and cite) articles and texts by academics far more frequently than in Britain or Australia.
- 19 *Id* at 146–148; and see generally, M Weir, *The Dissonance Between Law School Academics and Practitioners — the Why, the How, the Where to Now* (1993) 9 *Queensland U Tech LJ* 143.
- 20 See quotation from White, *supra* note 11.
- 21 In the words of Kane (*supra* note 3, at 19), “a real reward of scholarship is the excitement of being known outside your faculty. You will find that through your writing others get to know you and you can become involved in a sophisticated dialogue with those who are interested in the very subjects dearest to your heart”.
- 22 On the other hand, Julius Getman has ably chronicled the ubiquity of scholarly failure and I commend his book to all new law teachers. Many law teachers who do not write for fear of producing inferior work may, paradoxically, find great comfort in his conclusion that failure is the regular destination of scholarly endeavours: Getman, *supra* note 2, at 25–26, 51–59, 65–72.
- 23 For some descriptions of legal scholarship, see Abrams, *supra* note 3, at 17–19; M Chesterman, & D Weisbrot, *Legal Scholarship in Australia* (1987) 50 *Mod L Rev* 709, at 721–724; Gava, *supra* note 8, at 444 et seq; and K Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure* (1990) 103 *Harv L Rev* 926, at 935–948.
- 24 Lasson, *supra* note 23, at 935.
- 25 *Id.*
- 26 The U.S. definition excludes from scholarship material “published to serve the interests of any client, either paid or pro bono”. Read narrowly this is a sensible exclusion — material *published* to serve such interests should not be treated as scholarship; but it seems in the U.S. this is often broadened to include material brought into existence to serve the interests of a client (even if that client, for instance, was a law reform commission) which appears far from sensible: *id* at 936.
- 27 For one of the best examples of which, see Weisbrot, *supra* note 18.
- 28 Chesterman, & Weisbrot, *supra* note 23, at 724.
- 29 The legal profession is not as a rule reflective and has at times discouraged Australian scholars from empirical research into the profession itself.
- 30 For a consideration of the challenges and potentials of empirical research in law, see Getman, *supra* note 2.
- 31 Even if you already have an LL.M.
- 32 My thanks to David Dixon for this point.
- 33 Getman, *supra* note 2, at X, 54–55.
- 34 Aviam Soifer has written a brief, illuminating article on the theme of choosing to write on topics about which you care deeply: Soifer, *supra* note 3.
- 35 Getman, *supra* note 2, at 45.
- 36 Abrams, *supra* note 3, at 2–3; and Kane, *supra* note 3, at 15–16. Julius Getman believes that if he had begun his academic career at Yale he would not have written as well, or enjoyed the process as much, as he did commencing at Indiana University. The pressure of expectations from teaching at an elite law school would have been counterproductive: Getman, *supra* note 2, at 54, 267–268. The moral is that many of us need to guard against having too high expectations of ourselves.

- 37 I realise, in hindsight, that this was an unusually large response to an article — due entirely to the practicality of the topic rather than the quality of its treatment.
- 38 Detailed case notes of the type which appear in the *Cambridge LJ* and other publications often shape submissions to courts which have to consider the case subsequently and can therefore serve a real purpose in the development of the law.
- 39 1997 Higher Education Financial and Publications Research Data Collection — Specifications for Preparing Returns; available at: <http://www.deetya.gov.au/divisions/hed/research/compidx.htm>. While it is wise to become familiar with these classifications, one should note that they deal only with characteristics of the mode of publication of the scholarship, not the scholarship itself.
- 40 Abrams, *supra* note 3, at 3.
- 41 Soifer has said this far better than I have: “Without passion, excessive production values may yield security — but in a job you do not want”: Soifer, *supra* note 3, at 20).
- 42 If your range extends to inter-disciplinary work, it may be safer, at least early in your career, to write primarily for law journals. Some promotion committees will find the assessment of journals in other disciplines difficult and tend to undervalue them as a result; while other committees will attach greater weight to interdisciplinary publication (but these more enlightened promotion committees will probably be in the minority).
- 43 This is a somewhat problematic question as, given the day to day demands of our calling, an LL.M coupled with an M.Ed. or M.Ed.Stud. would be more applicable and useful qualifications.
- 44 Le Brun, & Johnstone, *supra* note 3, at 384.
- 45 The S.J.D. (Doctor of Juridical Science) is a US-style doctorate consisting of course work and a thesis shorter than that required in the traditional PhD. Each year more faculties offer this degree which may suit the interrelated, interdependent nature of the law better than the traditional PhD. The choice is really yours. Either type of doctorate will typically satisfy the university-wide appointment board staffed with members from other disciplines for which a doctorate has long been the basic qualification for any teaching position. You will probably only get a job at a law faculty which really wants you. The type of doctorate you have won’t alter whether the faculty wants you and it will be the mere fact of the doctorate plus your list of publications which will make you acceptable to the appointments board.
- 46 Admittedly, in a somewhat circumscribed range of universities.
- 47 In the unlikely event that someone is interested, the topic was “The Evolution of the Secondary Market in Discounted Sovereign Debt: 1983 to 1993” — a real conversation stopper at parties.
- 48 In particular, I would like to thank my colleagues Professors John Farrar and George Hinde and Professor Philip Wellons of Harvard Law School.
- 49 Uncovering the scholarships available from foreign universities often requires a great deal of research. In the U.S. in particular, most major law schools offer financial assistance for graduate students. Continental Europe is often overlooked by Australians in favour of the U.K. and U.S. but languages need not be a huge barrier. One is usually able to undertake graduate work in English in Belgium, Denmark and Holland and one may be able to do so in many other countries if the particular supervisor is willing to work in English. Scholarships are readily available if you speak, or are studying, the local language and are also available, if on a more competitive basis, to those without the language. Furthermore, many Continental European universities do not charge fees, even to foreign students (in Germany to do so evidently infringes a provision of the Constitution). Your library, and the scholarships officer of your university, are good places to start to identify likely institutions. It may then be necessary to write to each institution and ask for details of scholarships available. This is a

- slow process but can be very rewarding.
- 50 Bond does not offer sabbaticals, so I funded my time to focus on the PhD with a combination of an Australian Postgraduate Award at the University of New South Wales; some overseas research funding; and some part-time teaching. The keys to any teaching done during such a period is that it must not involve a heavy administrative burden and must be in subjects with which one is familiar. Graduate teaching at Bond and UNSW satisfied these requirements for me as both institutions were very helpful. Tutorials in a well-known subject would likewise have fitted the bill.
- 51 In addition to Australian Postgraduate Awards, funded by the Commonwealth government and administered by the individual universities, many Australian universities offer their own scholarships typically to a similar value. There are also other scholarship schemes — the Scholarships officer at your institution is the best place to start.
- 52 This type of output requires a good research base and a clear focus and direction. I started with a daily target of 1,000 words which was only increased after many months of meeting it. It is better to aim a little low than too high — the satisfaction of achieving one’s daily goal is energising, the disappointment of failing to do so is enervating. After a good run of three or four 2,000 plus word days beware of the trap of rising expectations. The resolution to write 2,000 words per day would guarantee me either failure or exhaustion, and probably both.
- 53 Abrams, *supra* note 3, at 1.
- 54 I don’t wish to give a false impression here. There were periods during the writing of the thesis when my writing slowed or stopped altogether for a variety of reasons and I don’t only work at these times: a portion of this article was written from 1.00 am to 4.00 am when my head was too full of ideas to permit sleep. However, overall I strongly subscribe to Abrams’ thesis that scholarship is the product of a “methodical routine” (Abrams, *supra* note 3, at 1).
- 55 Of course, this gives one only a first draft and, for me, at least another three drafts were required. However for me the great joy of a completed first draft was the knowledge that the project would now be finished — I had come too far to stop.
- 56 Robert Brown has taken insights from one of the leading personality type indicators, Myers-Briggs, and applied them to assisting different personality types with their writing. Blocked or struggling writers may find his work most helpful. See R Brown, *Using Personality Type Insights to Improve Your Writing*, in *Key Skills for Writing and Publishing Research* (Brisbane: Write Way Consulting, 1995) 79.
- 57 When my browsing turns up an article on a topic on which I am intending to write, or on which I have written and am likely one day to revisit, I copy the article and add it to the file on that topic. A good research base often develops surprisingly rapidly.
- 58 This regular practice over three years also assisted greatly with the collection of materials for the doctorate.
- 59 The key for me is to be an active reader. While my body invariably wants to lie on the couch to read the pile of articles, I force myself to sit up and interact with the material. For me, passive reading is inefficient. It helps with understanding the topic, but doesn’t force me to marshal the ideas about which I am going to write. As I am intellectually lazy, I need to force myself to think about the structure and interrelationship of ideas.
- 60 Subject to two provisos: (i) the best antidote to writers block is to commence writing, so if you find yourself stuck, start writing some part of the article, any part; and (ii) I and many others find particularly difficult issues can only be resolved by “thinking on paper”, it is often necessary to write out a line of reasoning to discover its flaws.
- 61 Dictation is probably the most efficient writing technique for the practising profession. Academic writing however is of a different nature (see Getman for a

consideration of the differences between academic and practical research, *supra* note 2, at 22). It usually requires a more careful expression of one's thoughts. It requires consideration of the strengths and weaknesses of each argument (Kane, *supra* note 3, at 15) and a greater attention to detail, particularly to the identification of one's sources. For these reasons, it is probably quickest overall to type one's own scholarship.

- <sup>62</sup> Adapted from RJ Glennon, as quoted in Abrams, *supra* note 3, at 8.
- <sup>63</sup> Soifer, *supra* note 3, at 21.
- <sup>64</sup> If my memory serves, the writer was Red Smith, but I can no longer locate the reference and the quote is too good not to use.
- <sup>65</sup> There are many excellent reasons for not writing — the kids want to play, the dog needs a walk, the cricket or tennis is on the telly, dinner needs to be prepared, washing must be done, bills need to be paid, etc. The one lousy reason for not writing is that one has started and the end product is looking like trash.
- <sup>66</sup> This is, of course, unless one is a particularly talented writer able to manipulate long, complex sentences well.
- <sup>67</sup> In the memorable words of Fred Rodell, “There are two things wrong with almost all legal writing. One is its style. The other is its content”: F Rodell, Goodbye to Law Reviews (1936) 23 *Va L Rev* 38 at 38. See also F Rodell, Goodbye to Law Reviews – Revisited (1962) 48 *Va L Rev* 279.
- <sup>68</sup> On this point and generally on tips for good writing, see J Wallace, Legal drafting for commercial clients (1996) 70 *Austl LJ* 176. With scholarly writing, I usually find so many extra perspectives to consider in subsequent drafts (especially after another person has commented on the piece) that the 8,000 word article having been edited down to 6,000 words grows again to 8,000 or 9,000 words. This is somewhat inevitable and at least is better than the final piece being 10,000 or 11,000 words.
- <sup>69</sup> And I suppose we all work in faculties that do this to some extent.
- <sup>70</sup> The lean approach will also result in more ready publication as editors value good writing and prefer shorter pieces.
- <sup>71</sup> Vicki L Beyer, a former colleague, introduced me to this aphorism, of which she was most fond.
- <sup>72</sup> For the use made of commentators in the US look at the first footnote in almost any US law review article. Abrams considers the risks, to one's self esteem among other things, in having one's writing reviewed by others but still comes down in favour of the practice. See Abrams, *supra* note 3, at 10.
- <sup>73</sup> Professor JA Spanogle, Jr, of George Washington University, with whom I had the privilege of teaching at Bond, served this function for me. His suggestions resulted in a complete rearrangement of the structure of an article. This required four weeks hard work which, in my ignorance, I begrudged. However, the end result was immeasurably stronger and more readable. For the possible downsides of senior colleagues as mentors, see Getman, *supra* note 2, at 265.
- <sup>74</sup> Few people will object to being asked to review a piece of scholarship. The implied compliment is considerable.
- <sup>75</sup> This is because, in my limited experience, up to one-half of commentators who say yes will discover subsequently they lack the time to do so. This is understandable. The pressures of modern life render impotent the best intentions.
- <sup>76</sup> R Blum, *The Book of Runes* 10th Anniversary ed (New York: St Martin's Press, 1993) 97 and especially at 113. Our culture tends to nourish bodies rather better than souls. As authority for this proposition see almost any of the cartoons or poems of Michael Leunig. Actually, if this far into this piece you are still reading footnotes, I should tell you that any collection of Michael Leunig's poetry or cartoons will reward your effort better. In particular, I would recommend *A Bunch of Poesy* and *The Prayer Tree*.
- <sup>77</sup> The essence of a true mentor is their concern with the development of your soul. The form may be the development of your scholarly potential or career but a true

mentor cares even more deeply about your development as a human being. As proof of the breadth of my scholarly research, see: here's Johnny (1996) March Cleo 84 at 87. *Pulp Fiction* (video produced by Miramax Films, Los Angeles, 1994), the movie that reignited John Travolta's career, was directed by Quentin Tarantino. It was put to Travolta: "You've said that you owe Quentin Tarantino. What happens if he decides to collect?" Travolta's reply captures the essence of mentorship: "I know Quentin doesn't feel I owe him anything ... He doesn't want anything back other than my well being, and every time I think about the purity of that it makes me want to cry".

- 78 Getman, *supra* note 2, at 269, see also at 277–78.
- 79 Autosave programs can be set to do this automatically every five or ten minutes. I prefer to do it myself as the saved product is easier to find and the autosaving of a large document with footnotes on display can be time-consuming.
- 80 In Word for Windows on a PC saving onto the a-drive is very slow. It is quicker to close the document and using File Manager copy the file containing the document across to the a-drive.
- 81 For instance, if I am writing at work I'll keep a back-up copy at home, or vice versa. Bear in mind that floppies are an inherently unstable form of preserving documents. I keep two copies on floppy disks of vital things, like my thesis, to protect them and to establish, beyond doubt, my anal retentive nature.
- 82 For this reason, it is best to have selected your preferred destination for the piece before commencing to write, so you can adopt their footnote style. This is only my view, many of my colleagues write their first draft largely from memory and add the footnotes later.
- 83 The use of bibliographic software such as "Endnote" permits the format of references to be changed automatically — an invaluable aide if a piece is rejected and you wish to submit it to another journal with a different footnote format.
- 84 Publication abroad will only become a priority for most writers after a significant track record in Australia. However, it should not be ignored, even by those early in their careers. Overseas publication carries significant prestige within many faculties (an instance of our lingering cultural cringe?). It is also particularly valuable with respect to funding applications to the Australian Research Council as they routinely use an overseas referee.
- 85 The following views on the relative prestige of different journals is unavoidably arbitrarily based, as prestige is, on reputation and impression.
- 86 There has been a veritable explosion in niche professional journals. A walk through the law library of the University of New South Wales revealed the following: *Austl Bus L Rev*; *Austl Disp Resol J*; *Austl J Admin L*; *Austl J Corp L*; *Austl J Lab L*; *Austl Prop LJ*; *Companies & Sec LJ*; *Envtl & Plan LJ*; *Insolvency LJ*, *J Banking & Fin L & Prac*; *J Contract L*; *J Law & Med*; *J Jud Admin*; *Pub L Rev*; *Torts LJ*; *Torts L Rev*, and the *Trade Practices LJ*. The majority of these journals were commenced in 1993 while most of the rest were commenced in 1989–1990. Most are published as a slim volume four times a year. These journals represent a vast market for all academics whose fields are of some interest to the profession.
- 87 This is not a criticism of such journals, some of which have clearly chosen to focus on publishing short readable pieces which inform the profession of recent developments rather than detailed analyses of the law.
- 88 Such as the *Austl Disp Resol J* which prefers articles of about 4,000 words.
- 89 The *UWAustl LR* states in its guidelines to contributors that it prefers articles of 4,000 to 6,000 words.
- 90 For example, see A Finch, *Securitisation* (1995) 6 *J Banking & Fin L & Prac* 247, an article of over 20,000 words.
- 91 On the other hand, the status of the editor is also relevant. I do not know whether Professor John Carter uses referees for the *J Cont L* but surely this is

- unimportant given his expertise as editor and the high standard of the journal.
- <sup>92</sup> In this regard, I should record that publication overseas still attracts greater prestige in most institutions than publication in this country notwithstanding that the foreign journal may be of no greater, or even lesser, quality than its Australian counterpart.
- <sup>93</sup> Gava, *supra* note 8, at 459. These figures do not include law society journals even though Gava acknowledges that they share many of the features of scholarly legal periodicals.
- <sup>94</sup> The *Indigenous L Bull*; *Alternative LJ*; *Alternative Criminology J*; *Austl J Hum Rts* (published by the Australian Human Rights Centre since 1994); *Austl JL & Soc'y* (published by Macquarie Law School); *Gay & Lesbian LJ*; *L Context* (published by La Trobe University Law School); *Sister L* (published by the Enid Russell Society at Murdoch University Law School since October 1996) plus, of course, the university law reviews, are some of the venues open to writers of scholarship which would not be of interest to the professional niche journals.
- <sup>95</sup> Chesterman, & Weisbrot, *supra* note 23, at 714.
- <sup>96</sup> One standard combination is Times New Roman for text and Arial for headings.
- <sup>97</sup> This poses a problem if that journal does not accept the piece. Does one go to all the effort of recasting the footnotes (perhaps even turning them into endnotes) to satisfy the guidelines of the next journal to which the piece is submitted? My view is that it is enough to reassure the editors in the cover letter that you will immediately revise the references if the piece is otherwise acceptable. By doing so you have established that you are sensitive to their needs which should prove sufficient.
- <sup>98</sup> Most U.S. journals apply with religious zeal the comprehensive guidelines of *The Bluebook: A Uniform System of Citation* (Cambridge, Mass: The Harvard Review Association, 1996). This can cause difficulties with the citation of Australian and British authorities in articles published in the U.S. The Bluebook recommends citation forms which do not comply with those required by the law reports. An American editor (especially a student editor) will generally consider themselves bound by the Bluebook and it is probably easiest to accept citations in a form we would consider improper provided they permit location of the source.
- <sup>99</sup> This may require a phone call to ascertain.
- <sup>100</sup> D Dixon, "Publishing", draft comments prepared for the UNSW Law Faculty Research Development Seminar, November 14, 1996. It is, on the other hand, perfectly legitimate to write up a piece of research in different ways for different audiences, for instance, a short piece for a professional journal which focusses on the practical aspects of a topic on which you are writing at length for an academic journal: at 2.
- <sup>101</sup> *Id.*
- <sup>102</sup> It has been suggested to me that one can go through a lot of disks this way. Unless the guidelines for contributors call for a disk, it is adequate to offer to send a copy on disk if the piece is accepted.
- <sup>103</sup> Software is now available which converts documents composed on an Apple computer into PC form and vice versa.
- <sup>104</sup> Some will think this is rather too soon. Three months is more conservative. My preference however is to keep the process moving.
- <sup>105</sup> In one case, a journal's referees had not responded to it after six months. My approach was to withdraw the article and submit it elsewhere where it was accepted within three weeks.
- <sup>106</sup> It is easy to assume an article has gone stale before it has done so. At most, a little rewriting to incorporate a recent decision or to give the piece a new slant is usually all that is required to refresh a manuscript that might have spent a year being considered and rejected by two or three journals. Articles represent so much work that the bottom of the drawer is, in my view and David Dixon's, a

- last resort: Dixon, *supra* note 100, at 2.
- <sup>107</sup> Most journals will ask you to check the page proofs later. If a journal does not ask me to review the page proofs, I usually ask to do so anyway, to ensure my published work is as free of errors as possible.
- <sup>108</sup> You don't have to agree with editors' or referees' comments, but if you don't wish to incorporate some or all of their comments in the article, explain your reasons in a polite letter. Ignoring their comments will only get them offside. See Dixon, *supra* note 100, at 2.
- <sup>109</sup> L Block, *Telling Lies for Fun & Profit — A Manual for Fiction Writers* (New York: Arbor House, 1981) 58.
- <sup>110</sup> In John Gava's words, "Too many articles are being written and too few are being read. What is published is, in the opinion of many, mediocre. The costs, material, psychological and pedagogical, are immense  
... In particular, attention has to be paid to the cause of the ever increasing volume of articles — the publish or perish syndrome": Gava, *supra* note 8, at 472. See also the costs and disadvantages of legal scholarship considered by Gava at 461–463.
- <sup>111</sup> Rav Yisroel Salanter (1810–1883) attributes the saying to Solomon in *Koehles/Ecclesiastes* 202 (Artscroll Tanach Series ed 1976) — cited from Lasson, *supra* note 23, at 926.
- <sup>112</sup> As quoted in T Arnold, Criminal Attempts (1930) 40 *Yale LJ* 53, at 58 and M Ball, *The Word and the Law* (Chicago: The University of Chicago Press, 1993) 160.
- <sup>113</sup> On one aspect of this, see John Wade's comments on judicial plagiarism in *Legal Education in Australia: Anomie, Angst, and Excellence* (1989) 39 *J Legal Educ* 189, at 199–200.
- <sup>114</sup> For those who wish to read more about legal scholarship, I would suggest the following: Abrams, *supra* note 3; Gelan, *supra* note 2 and the Symposium on Legal Education in (1993) 91 *Mich LR* 1921 generally, and, in particular, P Brest, Plus Ca Change (1993) 91 *Mich LR* 1945; JB White, Law Teachers Writing (1993) 91 *Mich LR* 1970 and RW Gordon, Lawyers, Scholars and the Middle Ground (1993) 91 *Mich LR* 2075. Julius Getman's book, in particular, is a most insightful, honest and erudite analysis of scholarship and the scholarly enterprise — I found it inspirational and cannot commend it too highly.