Legal Scholarship
For
Professor Burke’s Seminars

The Role of the Legal Scholar

To critically examine existing practices and propose better ways of doing or analyzing things.
Types of Legal Scholarship

- Case Cruncher (Duncan)
- Law Reform (Buckles)
- Legislative Note (Kettles)
- Interdisciplinary (Chandler)
- Legal History (Joyce)
- Comparative (Curran)
- Casenote (Reeder)

Case Cruncher (Duncan)

- Analyzes case law in an area that is confused, in conflict, or in transition.
- Makes claims that doctrine is antiquated or incoherent and needs to be reshaped.
- Often offers a solution to the conflict or problem.
Law Reform
(Buckles)

- Argues that a legal rule is bad, has evil consequences, is inequitable or unfair.
- Shows how to change the rule to avoid these problems.

Legislative Note
(Kettles)

- Analyzes proposed or recently enacted legislation.
- Often analyzes the legislation section by section, offering comments, criticisms, and sometimes suggestion for improvement.
Interdisciplinary
(Chandler)

• Shows how insights from another field can enable law to deal better with problems.
• Sociology, psychology, economics, etc.

Legal History
(Joyce)

Describes the origins and development of a legal rules or institution, perhaps shedding light on its current operations or shortcomings.
Comparative
(Curran)

- Explicitly makes comparison between or among different legal systems.
- Focuses on differences and similarities, and perhaps gives reasons for the differences and similarities or analyzes the significance for the cultures being studied.
- May show that other legal systems treat a problem more effectively, equitably, or humanely than the U.S. system does.

Casenote
(Reeder)

Examines a recent decision, together with its antecedents, deficiencies, and likely consequences.
Finding a Problem/Topic

• Cases read for class
• Class discussions
• Questions in casebooks after each case
• Recent Supreme Court decisions
• Faculty members

Finding a Problem/Topic cont’d

• Practicing lawyers
• Newspapers
• Westlaw Bulletin and Westlaw Topical Highlights
• http://www.lawtopic.org
What Does Your Professor Want?

Characteristics

Good legal scholarship should make
1. a claim that is
2. novel,
3. nonobvious,
4. useful, and
5. sound.

Good legal scholarship is well-written and well organized.
The Claim
Your Basic Thesis

**Descriptive:** Telling readers something that they did not know about the world: what courts have done, how a legal rule changes people’s behavior, or why a rule has developed in a particular way.

**Prescriptive:** Suggesting what should be done. Criticizing judicial opinions, proposing how legal decision-makers should solve a problem.

Novelty

- Add to the body of professional knowledge.
- Say something new to those who work in the field.
- Preemption. Must review the literature to make sure that you are writing something with a suggestion, slant, idea, or analysis that has not appeared before.
Nonobviousness

• Add some twist that most observers would not have thought of. Think creatively.
• Do not just apply settled law or well-established arguments to slightly new facts.

Utility

• Make as useful as possible for those interested in this area of law.
• Focus on issues left open.
• Apply your argument to other jurisdictions.
• Incorporate prescriptions with your descriptive findings.
• Consider making a more politically feasible proposal.
Soundness

• Test your proposal on different cases or facts to determine if your proposal achieves the desired goals under all circumstances.

• Acknowledge the weaknesses of your proposal and use them to refine the proposal.

Structure of the Paper

I. Introduction
II. Background
III. Analysis
IV. Conclusion
Introduction

- Describes or summarizes the subject matter.
- Frames the issue.
- Plainly states the thesis.
- Provides a roadmap for the rest of the paper.
  - Part I sets out X
  - Part II analyzes X and concludes Y

Background

- Factual
- Legal
- Methodological
- Specific
- Necessary to advance thesis
Analysis

• Focal point of paper.
• Original and closely reasoned.
• Building up to a convincing conclusion.

Footnotes

• Used extensively.
• Documenting the text – providing the authority and bibliography
• Avoiding plagiarism – attributing the borrowed text and ideas to their original sources
• Textual – allowing the writer to express ideas that do not fit neatly in the straight and narrow path of traditional legal reasoning
Legal Authorities: Research

- Casebooks, Hornbooks, and Encyclopedias (in the beginning)
- Statutes
  - U.S. Code
  - Texas statutes
  - http://www.capitol.state.tx.us/
- Regulations
  - Code of Federal Regulations (C.F.R.)
  - Federal Register

Legal Authorities: Research

- Cases
- Proposed Legislation
  - http://thomas.loc.gov
  - http://www.capitol.state.tx.us/
- Law Review Articles
- Newspaper and Magazine Articles
Sources on Writing

- Eugene Volokh, Academic Legal Writing. 2d ed. (Foundation Press 2005).
- http://www.bartleby.com/usage/

Ask Your Professor What She Wants
How You Will Be Graded?

• Carefully read the syllabus and any materials provided concerning requirements.
• If you have questions about or are unsure of how to meet the requirements, ask me.

How You Will Be Graded?

• Included in your final grade will be the quality of--
  • your first draft,
  • revisions to reflect my comments on your outline and first draft,
  • compliance with citation and other formats, and
  • your class participation.
Meet All Requirements

• Make sure that your paper will satisfy the requirements of your particular LL.M. program.
  • Page length – 40 or 60 pages
  • Grade needed – “B” or “C”
  • Etc.
• Though it is called a “thesis”, it should be in the format of a law review article.

Observe All Deadlines

• I will lower your grade for late assignments.
• I will be very unhappy with late assignments.