



CREATING A GOOD SCHOLARLY PAPER¹

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Scholarly papers differ from other kinds of legal writing in purpose, audience, scope, stance, use of technical materials, and writing process. This handout provides a broad overview of each of these areas and provides tips that can help you succeed as you prepare your scholarly paper.

I. Purpose

A scholarly paper can serve several purposes. Identifying the purpose for your writing at the start will help inform your drafting process. For example, one scholarly paper's purpose might be to criticize or support a recent judicial opinion. Another paper's purpose may be to predict how an area of law will change in light of new developments. Although these papers might be discussing the same substantive area of law, their different purposes will result in different choices about the thesis, audience, scope, stance, and source material.

The following (non-exhaustive) list provides some examples that may help you identify the purpose of your paper:

1. To synthesize a body of law not yet pulled together.
2. To criticize or support a recent judicial opinion.
3. To expand a field of knowledge by offering a new direction for a specific area of law.
4. To dismiss another article by criticizing a theory or argument made by another scholar.
5. To foreshadow or predict developments in the law.
6. To suggest changes in the *status quo* of the law.
7. To make sense out of a confusing array of issues.
8. To propose a plan of action on a legal issue.
9. To provide a reference point on an area of the law.

In addition to these purposes, you may be writing a scholarly paper in response to a particular prompt for a course, to satisfy your journal's note requirement, or (later in your career) to secure tenure or clients. No matter the purpose, your thinking should be original, creative, innovative, and useful.²

¹ Updated by Garrick Donnelly and Katie Parker, 2024. Original handout by Professor Jill J. Ramsfield, 2003.

² To ensure you are putting forward an original argument, you will need to conduct a preemption check on your

II. Audience

Scholars write for multiple audiences. These audiences include a primary audience (those who are required to read your paper, such as your professor or the editors of a particular journal), a target audience (those you are hoping will read your paper after it is published, such as practitioners in a particular field), and secondary audiences (those who come across your paper after it is published).³

Potential audiences include:

- scholars and experts who know this topic very well;
- practitioners looking for innovative arguments;
- judges who need to be brought up-to-date on this topic;
- non-lawyers who want to understand this topic better;
- editors who want excellence in their publication;
- future scholars looking for examples;
- employers looking for original analysis and good writing; and
- professors looking for proficiency in a particular subject area.

Identifying your intended audiences will help inform your decisions about the key features of your paper, including the topic you select, the level of background information you provide, and the tone you use. For example, if you are writing a paper for a law school course, you will need to pick a topic that both meets the requirements of the seminar and is interesting to your professor.⁴ As another example, if you are writing to submit to a particular journal, you will need to consider whether that journal is geared towards a general audience or subject-area experts, as the readers' likely knowledge of your topic will impact the level of background information you include.⁵

Although your writing should be geared toward your chosen audiences, there are some general characteristics about legal readers to keep in mind as you draft. Your audience is likely composed of lawyers and lawyers-in-training, an audience that is analytical, critical, and oftentimes doubting.⁶ As such, it is important to ensure that your reasoning is sound, your claims are well supported, and your argument is clear.⁷

paper topic (discussed more in Section VI. below).

³ See JESSICA WHERRY & KRISTEN MURRAY, SCHOLARLY WRITING: IDEAS, EXAMPLES, AND EXECUTION 10-11 (3rd ed. 2019) (describing primary and secondary audiences).

⁴ See *id.* at 10 (describing the professor grading your paper as the primary audience and stating “you need to know and meet their expectations on everything from arguments and assertions to technical and formatting matters”). For further information about choosing a scholarly paper topic, see [Choosing a Successful Paper Topic](#).

⁵ See, e.g., WHERRY & MURRAY, *supra* note 2, at 88 (describing how you may need to “prune” your background information based on your audience).

⁶ WHERRY & MURRAY, *supra* note 3, at 11.

⁷ *Id.* (describing how legal readers “are easily irritated by unclear thesis statements” and that readers “do not want to do any work to figure out what you are saying”).

III. Scope

Consider the scope of your paper from the outset. Scope refers to the breadth of your paper and is shaped by your purpose and audience.⁸ It is unrealistic to think that one paper can provide an exhaustive overview on any topic, nor should it! Instead, your paper must have a manageable scope in light of both technical constraints (such as page limits) and constraints related to the substance of your paper (the amount of information you need to provide your reader to make a compelling argument).

One of the most important steps in managing the scope of your paper is choosing your paper topic. Review [Choosing a Successful Paper Topic](#) for strategies for narrowing a general topic to a manageable scope. When deciding on the scope of your paper, also consider the amount of time you will have to work on it, any applicable page or word requirements or limits, and the nature of the document (e.g. a seminar paper responding to a specific prompt may have a narrower scope than a journal note that you would like to submit for publication).⁹ Remember that the articles you read in journals may be the product of multiple years, not one semester. Your seminar paper will not be able to cover the same ground, and that is okay.

As you research, write, and re-write, work to focus and crystalize your argument, eventually narrowing down to a core thesis statement.¹⁰ At this editing stage, review your writing with a critical eye to ensure you are not going beyond the scope of your thesis.¹¹ On the flip side, ask whether you have provided sufficient depth to prove your thesis.¹² Ensure that you are addressing necessary counterarguments and describing any limitations to the scope of your analysis.¹³

IV. Stance

Your stance, or your point of view, communicates your message to your reader via voice and tone. To choose your stance, consider your audience and purpose and think about what will most credibly and convincingly accomplish your goals. For example, if your purpose is to propose a legislative reform to address a particular legal issue, you may take on the tone of an advocate, arguing why your intervention is needed. Your reader may need convincing, and as such, you may adopt more persuasive writing techniques. On the other hand, if your purpose is to synthesize a confusing area of law, you may take on the tone of an instructor, adopting a more measured stance. Rather than convincing your reader as to a particular way the law should develop, you are convincing the reader that your account of the law is accurate. Possible stances to consider include critical, supportive, skeptical, concerned, or optimistic. Note that your stance should not come at the cost of being credible to your reader.

⁸ See *Narrowing Scope*, AGNES SCOTT COLLEGE, <https://www.agnesscott.edu/center-for-writing-and-speaking/handouts/narrowing-scope.html> (last visited Mar. 24, 2024).

⁹ See WHERRY & MURRAY, *supra* note 3, at 24-25 (describing strategies to ensure your topic is manageable).

¹⁰ See [Developing a Thesis Statement](#).

¹¹ See WHERRY & MURRAY, *supra* note 3, at 42 (describing considerations for determining whether your thesis has a manageable scope).

¹² See WHERRY & MURRAY, *supra* note 3, at 112-117 (describing strategies to critically evaluate your thesis).

¹³ *Id.* at 119, 133.

In developing your stance, you should also identify whether your argument is descriptive (i.e., characterizing how things are) or normative (i.e., discussing how things ought to be).¹⁴ A doubting reader may not agree with some of your normative positions, so it is helpful to explain your assumptions as you go. For example, in the paper above advocating for a particular legislative reform, you need to explain why the policy outcomes you seek are desirable and provide adequate support for this contention. Even if the reader disagrees with the values underlying your policy objectives, they now have the information they need to follow along with your argument.

V. Use of Technical Materials

A distinctive feature of scholarly writing is its extensive use of footnotes.¹⁵ Footnotes serve several distinct functions in scholarly writing, one of which is attribution.¹⁶ Proper attribution of all borrowed text or ideas to their original sources is imperative to avoid plagiarism.¹⁷ Beyond attribution, scholarly writing uses footnotes to:

- provide authority for all unoriginal propositions;
- expand on authority by offering several other sources;
- add detail for the uninitiated reader;
- provide definitions of terms that might be unusual to some readers; and
- provide the text of a statute being discussed.

Although scholarly writing uses footnotes for a range of purposes, avoid using them to write another, independent paper or to undercut your own arguments.

Familiarize yourself with the latest Bluebook edition and remember that you will be in the white pages, not the blue pages.¹⁸ As you research, be sure to record full citations for each source to avoid losing valuable information as you revise or needing to go back to sources to fill in information at the end. Including pincites—not just general citations—will save you a lot of time and help ensure your argument is adequately attributed and supported.

VI. Process

The following section provides a rough outline of the writing process for a scholarly paper (note, however, that your professor may suggest or require a different progression). The section also provides tips and links to additional resources about each task.¹⁹

¹⁴ See, e.g., *Distinguishing Between Descriptive Versus Normative Statements*, MIAMI UNIVERSITY HOWE WRITING CENTER, <https://miamioh.edu/hcwe/hwc/writing-resources/disciplinary-writing-hwc/philosophy/descriptive-vs-normative/index.html> (last visited Mar. 24, 2024).

¹⁵ ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS: SEMINAR PAPERS, LAW REVIEW NOTES AND LAW REVIEW COMPETITION PAPERS* 7 (3d ed. 2005).

¹⁶ *Id.*

¹⁷ See *id.*

¹⁸ For more on this, see [Differences in Citation in Scholarly and Practitioner Legal Writing](#).

¹⁹ Stages of the writing process adapted from WHERRY & MURRAY, *supra* note 3, at 18.

Stage 1: Planning

Goal: setting yourself up for success

Deliverable: timeline²⁰

Notes:

- Put dates on your calendar for key deliverables, such as paper proposal, outline, first draft, and final draft. Note any extra steps required by your professor, such as conferencing or peer review.
- Aim to get your first draft done early in the semester. If your professor does not provide a deadline for a first draft, *do not* procrastinate until the end of the semester as you will need time to revise. Plan for several redrafts. Work backwards from the deadline, and redraft as many times as you can to be sure you have explored the topic from every angle.

Stage 2: Thinking

Goal: finding an original topic and developing your thesis

Deliverables: paper proposal (if required), preemption check, draft thesis

Relevant handouts: [Choosing a Successful Paper Topic](#); [Developing a Thesis Statement](#); [You Have Your Scholarly Paper Topic, Now Get The Research Done](#)

Notes:

- Review scholarly sources related to topics that interest you. The Library has extensive resources to help you in your exploratory process,²¹ including research guides for particular subject areas²² and tutorials on navigating secondary source repositories.²³ Also consider meeting with your professor, former supervisors, or practitioners for ideas.
- After you have narrowed in on your topic, you must conduct a preemption check to ensure your analysis is novel.²⁴ Preemption occurs where an author has already published an article putting forth your same argument or where the law has changed such that your thesis is no longer applicable.²⁵ The term “preemption check” refers to background research to ensure that your thesis does not fall into either of these categories. You can conduct this check by performing thorough searches across multiple databases.²⁶

²⁰ For sample scholarly paper timeline and checklist, see WHERRY & MURRAY, *supra* note 3, at 13-17.

²¹ See *Research Help*, GEORGETOWN LAW LIBRARY, <https://www.law.georgetown.edu/library/research-help/> (last visited Mar. 24, 2024).

²² *Research Guides, Treatise Finders, & Tutorials*, GEORGETOWN LAW LIBRARY, <https://guides.ll.georgetown.edu/home> (last visited Mar. 24, 2024).

²³ *Secondary Sources Tutorial*, GEORGETOWN LAW LIBRARY, https://guides.ll.georgetown.edu/secondary_tutorial.

²⁴ For tips on how to ensure your analysis is novel, see Eugene Volokh, *Writing a Student Article*, 48 J. LEGAL EDUC. 247 (1998).

²⁵ WHERRY & MURRAY, *supra* note 3, at 44.

²⁶ See “STEP 2: Preemption Check,” *Research Strategies for Seminar Papers*, GEORGETOWN LAW LIBRARY, <https://guides.ll.georgetown.edu/c.php?g=273428&p=1825123> (last visited Mar. 24, 2024).

Stage 3: Preparing

Goals: developing knowledge and creating the structure of your paper

Deliverables: research notes, draft outline

Relevant handouts: [You Have Your Scholarly Paper Topic, Now Get The Research Done](#); [Strategies for Outlining Your Scholarly Paper](#)

Notes:

- Once you have a refined thesis statement, you will need to conduct more detailed research to develop the horizontal knowledge (background information) and the vertical knowledge (in-depth information) you need to support your thesis.²⁷
- Take accurate notes as you read. Note particular terms of art, phrases that help develop your proof or criticism, and arguments that need refutation. Also note page numbers so that you can return to those sources quickly and cite them accurately. Keep developing your thesis as you read and start to write down your reactions to your research.
- Sketch an outline as you take notes. The outline should reflect an accurate picture of your topic and drive your thesis statement. Be sure the outline is logical and wedded to your paper's purpose. You might want to review the outline with your editor or professor.

Stage 4: Executing

Goal: finishing a first draft of your paper (well before the deadline)

Deliverable: first draft

Relevant handouts: [Getting the Most Out of Your First Draft](#); [Introductions and Conclusions for Scholarly Papers](#)

Notes:

- Write, even if you aren't quite sure what you are saying. Sometimes you need to get your ideas down before you are able to articulate your thesis. No one expects your first draft to be perfect and you will spend a bulk of your time revising. Getting pen to paper is a necessary first step.
- Draft well in advance of the first draft deadline. You might start with the Introduction or Conclusion, as these can help shape your argument. Make sure your reader knows the thesis statement, the purpose, and the direction of the paper at the outset. Answer the question, "Why should I read this?"
- Draft in pieces and concentrate fully on each piece. For example, if you have a historical background section, you might want to draft that in one sitting. Or if you are developing your argument, you might want to draft that without stopping. You can then insert footnotes after getting your thoughts down in one place.
- At the same time, don't wait until you have giant chunks of time to write—this window of time may never come! Everyone is different, so you should take note of when you feel most productive and shape your writing schedule accordingly.
- Complete footnotes with your draft. Adding them as an afterthought when the content is no longer fresh in your mind could result in the footnotes being divorced from the paper.

²⁷ See WHERRY & MURRAY, *supra* note 3, at 53-84 (chapter on developing horizontal and vertical knowledge).

Stage 5: Refining

Goal: evaluating and revising your draft

Deliverables: additional drafts with feedback

Relevant handouts: [Checklist for Scholarly Writing](#); [Turning The First Draft Of Your Seminar Paper Into A Final Draft](#); [The Home Stretch: Revising And Polishing The Scholarly Paper](#)

Notes:

- Allocate significant time to revise and then revise again. Revising is what will help you to clarify your argument.
- Seek out feedback on your paper. This feedback may include conferencing with your professor, participating in peer workshops, or coming to the Writing Center.

Stage 6: Finishing

Goal: polishing your paper and preparing for publishing

Deliverable: final draft

Relevant handouts: [The Home Stretch: Revising And Polishing The Scholarly Paper](#); [Tips For Getting Your Scholarly Paper Published](#)

Notes:

- Do a separate read-through just for technical details. Refresh yourself on accurate Bluebook usage, and work backwards through your paper, making sure every citation is accurate and correct.
- Ensure that your paper follows all the formal requirements of your professor and/or the journal for which you are drafting your note.
- If you are looking to turn a seminar paper into a journal note, you may opt to revise the paper more after you get feedback from your professor.

VII. Additional References

- MARY BERNARD RAY & JILL J. RAMSFIELD, *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* (6th ed. 2018) [available at GULC library]
- ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS: SEMINAR PAPERS, LAW REVIEW NOTES AND LAW REVIEW COMPETITION PAPERS* (5th ed. 2017) [available at GULC library]
- JESSICA WHERRY & KRISTEN MURRAY, *SCHOLARLY WRITING: IDEAS, EXAMPLES, AND EXECUTION* (3rd ed. 2019) [available at GULC library]
- EUGENE VOLOKH, *Writing a Student Article*, 48 J. LEGAL EDUC. 247 (1998)