

# Scholarly Methods, Scholarship Topics

Comments for New Legal Scholars  
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## INTRODUCTION

In our session on Scholarship, my task is to offer you some ways to think about the selection of topics, selection of audience, and types of scholarship. Put another way, how do you get ideas for writing and how do you choose among them?

My co-panelists will discuss the process of *delivering* the ideas: getting your embryonic ideas into a written draft, and from there into a publication and out into the world. We're interested here both in career advancement and in putting your ideas out where they can actually change the world.

## MINDSET AND MECHANICS

There is, I believe, a common mindset that is visible in all great scholarship: a level of personal engagement. Call it passion, or joy, or fire, or commitment. But readers can sense when an author cares personally about the topic. Whatever technical tricks we offer today about writing, use this engaged mindset as the measure of success. If your writing habits create this engaged writing mindset, consider them a success.

## THREE COMPONENTS OF PROJECT DESIGN

Project design deserves your separate attention; planning your writing and writing your plan are two distinct things. When it comes to planning, I suggest three different components that you can think about. During the presentation, I will also offer examples of works published in 2007-2008 that show each of these design components working very well.

First there is the topic or **subject matter** of the work. The description of topic for a particular writing project generally starts too broad, and the area for inquiry tightens up along the way. Writers typically start with a general instinct about a fruitful and interesting area to explore (say, the work of the United States Sentencing Commission). Then they select a sub-area or a particular set of questions (say, the implications of classic administrative law doctrines for the work of the Sentencing Commission). Finally, the topic sharpens from an "area" into a thesis.

While the subject matter tends to get narrower and sharper over the life span of a single project, your areas of inquiry tend to become broader and blunter over the course

of a career. In terms of career planning, you should probably lay a few concrete blocks yourself before you step back to notice things about the wall.

Second, think about the **methodology** of your project. Aside from the subject you plan to study, what methods will you use to complete the study? What sort of evidence will you consider relevant?

Some legal scholars use strictly legal methodologies: the reasoning styles, rhetorical devices, and types of evidence that work in courtrooms and in other places where lawyers and judges work. Some use an “intra-legal comparative” method, connecting features of one corner of the legal world to features in some other corner of the legal world.

Inexorably over the generations, legal scholars have employed the methodologies of other disciplines. We are perhaps most familiar with the explicit role of economic tools in legal scholarship. The methods of the historian mesh well with some types of legal scholarship. For a long while, theoretical economic accounts of human and institutional behavior have been important. More recently, empirical econometric tools have also earned a following. Techniques drawn from philosophy – especially moral philosophy and epistemology – have also played prominently over the years. Psychology and “behavioral economics” have gotten a lot of recent attention, and the list is obviously a long one.

My primary point is this: you should give independent thought to the question of methodology. The methods you employ should reflect a *choice*, and hopefully the method(s) will prove to be an interesting and effective match with the subject matter you are engaging. It’s great when your article becomes known not only as an innovation in the subject matter, but also for doing something interesting and worthwhile in terms of methodology.

Third, think about the **audience** for the piece. Are you writing for other law professors? Law students? Practicing lawyers? Judges or legislators or administrators? Most methodologies and most topics can be aimed at multiple audiences. That typically means that you can and should publish the same basic research in different formats to reach those different audiences.

## HOW DO THE COMPONENTS INTERACT?

I will close by addressing several questions about the interaction among these components of project design.

Is there a particular order for making your design choices? That is, do you choose subject matter first, and then method, and then audience? I think not. You could successfully choose a topic first, and then select a methodology and an audience. But you could just as easily start with a methodology and then pick a topic and an audience. The important thing is to examine the fit among the three components.

Can a single work of scholarship reflect more than one topic, or more than one methodology, or more than one audience? Or should you just pick one of each? I will point out examples of articles, published in 2007-2008, that successfully pursue more than one selection for these components. But the great temptation for scholars early in their careers is to try everything at once. So when in doubt, choose fewer rather than more.

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