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Law Students Taking Control of Their own Learning

Dr Barbara Lee

Taking on a dissertation offers a real chance for a student to determine the development of a research interest area and to fully engage in independent learning. This paper considers the stages students go through, taking on the risks and pleasures of determining and pursuing a research goal, and the particular distinguishing traits of legal discourse which inform the way the analysis and writing will be structured.

Starting Out

Undertaking a dissertation gives the student a chance to negotiate an area of personal study and, so, shape their curriculum. The interest in the topic area acts as an important motivator to the student in making time each week to progress their research interest further. However, many students find it hard to actually settle on an area that they would like to study and one of the principal concerns of students thinking of dissertation is that they may make a 'wrong' choice and settle on an area that will not produce sufficient material. By contrast, experienced researchers know their subject area and will find ideas for further exploration come readily to them. They have knowledge of the literature, will have update services set to send weekly bulletins and so are well equipped to search the literature and evaluate the validity of their ideas for new work.

This leads us to the first conundrum, the potential supervisor may have many ideas for potential topic areas whilst the student feels unsure and ill-equipped to choose the topic area. However, if the student is to really control the work and move into independent learning, it is an important first step to choose an area that will interest them, rather than adopt an area to fit in with the potential supervisor. Conversely, if there is no guidance given to the student,

there is a risk that the subject chosen will in many cases be determined by whatever is current in the news at the time the selection is made, thereby overlooking those areas which would far more easily open up to intelligent searching in the literature.

To illustrate this danger, consider the following. Law dissertations classically fall into one of three potential types:

- black letter law (studies which focus on the analysis of primary legal materials)
- a comparative legal study
- a socio-legal study.

The nature of a law degree is such that most students spend considerable time reading and discussing case law and statute law. The two commercial online legal databases used by law students have introduced features such as natural language searching to make the database more intuitive for the user, and facilitate research by providing case analysis and the provision to save research trails. Yet, each year only a few students in this university will choose a black letter law topic for dissertation. Out of 41 law students on the full dissertation route this year, nine chose black letter topics, two have selected to do a comparative law study, but 29 students have chosen to do a socio-legal study. This is not a national phenomenon; anecdotal evidence from one Russell group university shows that students in that university are far more likely to choose a black letter law topic for dissertation.

Are socio-legal studies more popular with our students because of the variety of option choice we give them, the way students select dissertation topics or because students lack the confidence to take on a dissertation based on the use of primary material? As part of a wider study I carried out in 2003, I asked students in their third year about their attitude to case law. Whilst over 90% students asserted that they generally understood case law, less than 60% agreed with the statement, 'I confidently understand and read case law', and only 42% agreed that they 'enjoyed reading cases'. Whilst this is a small sample

of one cohort, it, nevertheless, illustrates that undergraduate students have a wide range of material in books and online resources that they can use to gain knowledge of case law and statute law at one remove, so that actually getting into the practice of reading the primary material is missed. It is notable that students who engage in mooting, where they must select a small core set of cases to use and argue from, become far more confident in using primary material from that point onwards. Similarly, each year some students will show independence in the way they approach research from the start by, for instance, using academic journal material to help them structure their understanding of case and statute law. Developing as an independent researcher has to, therefore, build from the first year as these core skills need time and opportunities to develop.

The course team can help students to broaden their outlook in choosing topics for dissertations by offering to engage them in a one-to-one discussion and working-up of ideas. However, if the student has not taken opportunities in the first two years of study to build up their core skills in dealing with primary materials, their choice of topics will be more limited. It may also, therefore, be a good time to encourage students to carry out some reading into critical analysis, the weighing of relevancy, credibility, etc in constructing arguments. I have found that working through Anderson and Twining's¹ modification of the Wigmore Chart Method is very useful in encouraging students to consider how chains of argument may be built and linked together which then supports the process of reasoning inherent in constructing the dissertation.

It is good practice to encourage a student from the start to build up an ongoing bibliography of all work found, which in time will be refined into the bibliography for the final submission. This encourages the keeping of full references which can save a lot of time later. It is also useful for the supervisor to review the bibliography with the student as way of measuring progress in research and potential gaps in

¹ T. Anderson, D Schum & W. Twining, *Analysis of Evidence*, 2nd edn (Cambridge University Press, 1991). A more undergraduate friendly version of the chart may be found in S Hanson, *Legal Method and Reasoning*, 2nd edn (Cavendish Publishing: London, 2003).

research skills, for example, in searching for journals, which, if remedied early in the process, can prevent a potential block in achieving a solidly-evidenced piece of work.

a) Engaging in Research: a tame or wicked problem

b) Researching and writing a dissertation is often presented as a linear process. But, is this reasonable representation? The reality is that research can open out and be hard to confine, it may continue to spiral out into new interests even as the student enters writing up and it may equally hit a dead end, which is difficult to resolve. So is it helpful to say to a student that one simply needs to 'focus' to manage the research process?

Rittel and Webber² created the concept of the tame and wicked problem to challenge designers to recognise that process of design is rarely linear. I would argue their ideas are equally applicable to doing research. Not all of the 10 criteria for identifying a *wicked problem* may apply. However, considering four of the frustrations they identify will show how well this concept applies to the new researcher and, therefore, the fallacy in representing research as a linear process:

There is no Definitive Formulation of a Wicked Problem

At the beginning of dissertation work students have considerable difficulty in defining what exactly the extent or focus of the research is going to be. Ask a student to give you a title and they often flounder. More usefully, one can usually encourage the student to establish a working hypothesis, which will enable them to, then, identify some parameters to their initial literature searching. Even so, the initial experience of starting to research the subject area is often marked by students feeling overwhelmed by the amount of information available and the work, eventually submitted, will often have gone through a whole process of rethinking and reformulating ideas along the way.

² H Rittel & M Webber, 'Dilemmas in a General Theory of Planning', (1973)(4) Policy Sciences, 155-169.

Wicked Problems Have no Stopping Rules

How does a new researcher determine when they have ‘enough’ research to stop? Identifying key writers in a field, finding that the authors being read are now tending to repeat the same arguments, etc, are all part of finding completeness in the research process. However, the more the research area is fast developing, the more new writers may emerge in the field during the time the student writes the dissertation and, so, these tests will not work. There is also the danger that students will find new questions that appear more interesting than their original ideas and their work will start to distort as they try to pack these ideas in.

Encouraging a student to keep a research diary, which charts their decisions and search strategies, can be a useful tool in trying to keep the research process under control. Asking students to email a fortnightly update on where the research is going encourages the student to engage in regular personal reflection on how they are managing the research process. Even a simple issue such as having a box file, labelled ‘things that are interesting, but which I cannot currently use’, into which interesting but off-the-point work can be kept, can all help students to impose a ‘stopping rule’ on their research.

Solutions to Wicked Problems are not True or False, but Better or Worse

Law deals with real world issues; so, a student, who sets out feeling there should be an answer to an issue, is likely to find himself or herself being sucked into differing viewpoints, alternative strategies with both predicted and unexpected consequences. The law tends to produce solutions which are better or worse rather than true or false. The likelihood is that any new initiative will have both successes and points of failure. It is more relevant whether it has to some extent improved the situation for those it is designed to help than asking whether it is a correct or ‘true’ solution. It is, therefore, an essential task of supervision to lead students towards a more critical viewpoint,

where they become open to alternative constructions of the problem, and towards using the literature to developing a methodology with a clear analytic framework to help avoid falling into a simplistic critique.

Every Wicked Problem can be Considered to be a Symptom of Another [Wicked] Problem

This frustration, particularly, affects students doing socio-legal topics. Where the Government seeks solutions to problems in society through legal and regulatory measures, it is often the case that progress is affected or even hampered by the way the identified issue will interconnect with other potential problems. For example, a minister in the Home Office, reading the research showing links between the slide into criminal behaviour and a child being excluded from school, might reasonably see that decisions on exclusion need tighter management to make exclusion harder. However, this may then lead to increasing discipline issues in school and pressure on the Government from parents and the teachers' unions. Legal problems are not 'tame' in that they do not have easily researched and managed solutions. Even where solutions appear obvious, there may be resourcing issues of finding qualified workers, finance, etc. Students need to talk through the links that require exploration and the limits they will place on considering the full range of social and legal issues which touch on the problem they are researching.

Making Progress in a Non-Linear Fashion

Some students will find forming a linear construction for the final format of their dissertation more difficult than others. However, at some point students have to settle the chapter structure and consider how the core themes will progress through the argument. At this point it is helpful if the supervisor considers a key concept within neuro-linguistic programming,³ that we use language to order our thoughts but that we experience the world through all our senses.

³ R Bandler & J Grinder, *Frogs into Princes* (Eden Grove Editions: Utah, 1990), one of the numerous books the authors have written on the concept of neuro-linguistic programming.

Students have preferences in the way they use their senses to organise their thinking. For some students mind mapping is a liberating tool, encouraging creative thinking in which the object is to allow ideas to flow and to see how relationships may be formed between different areas of the work. In planning terms, as the information is now gathered together in a concise format easy to recall, so organising the material and ideas into clusters should be simplified. Other students may find physically organising their photocopies and printouts into groupings connects them more directly to organising their work.

It is interesting that, in the year we introduced oral review as an interim part of the assessment process, there was a direct increase in marks at the end of the year, and that generally the process continues to foster a strengthened connection between the student and their work. It may simply be that the process of requiring a student to be physically present to explain and defend their work, encourages students to work harder than when work is simply handed over for assessment in written form. However, many students have reported that it is the process itself which causes new connections to form in their thoughts. In talking the student can be more open to visualising their work than when gazing at the blinking cursor on their computer monitor. It is noticeable that many students gaze upwards during the oral review, which, in the theory of neuro-linguistic programming, would tend to evidence that they are accessing visually constructed and remembered images.⁴ We encourage students to record the process and this can also be a useful tool in supervision. If you are going to ask a student to talk about their research and how they see it progressing, get them to record their response and then listen to it later and transpose it into a mind map. Doing this encourages students to experiment with using their auditory and visual senses to help them order their thoughts.

⁴ Ibid, p 25.

However, it is important that we do not turn our backs on the part writing can play in focussing and reformulating ideas.⁵ The process of writing is a cognitive process and, so, can encourage the making of causal connections. Encouraging students to write short pieces of work and bring them for discussion helps build students' connection to their work.

The risks inherent in leaving writing up as a process, only to be started once all research is gathered in, must also be considered. Not only is the student likely to experience that new ideas and connections occur once they start writing and so return to research, it can also be a strategy that leads to prevarication and continuation of the research process as students face the challenge of having to write 12,000 words *ab initio*. Krause's⁶ research shows that students see the knowledge and skills gap between themselves and the academic as immense. This becomes particularly acute when students feel themselves in a position of failing to progress in their writing. Students in this situation often avoid their supervisor. We all need to be sensitive to the leap of faith students make in showing their work to us and opening themselves to criticism in a one-to-one situation. We need to encourage students to give us work to read as early in the supervisory process as possible and look to create a positive discussion. In this way a positive working relationship is created so that the experience of the supervisor is used to scaffold and support the student's learning and the student's fear of negative judgment recedes.

The whole process of writing appears to need to be demystified. Murray⁷ challenges the commonly voiced concept that writing can only occur when there is the space and time to fully engage in writing

⁵ M Scardamalia & C Bereiter, 'Development of dialectical processes in composition', in D Olson, N Torrance & A Hildyard (eds), *Literacy, Language & Learning* (Cambridge University Press: New York, 1985).

⁶ K L Krause, 'The University Essay Writing Experience: a pathway for academic integration during transition', (2001) 20(2) *Higher Education Research & Development* 147-168.

⁷ R Murray, 'Integrating teaching and research through writing development for students and staff', (2001) 2(1) *Active Learning in Higher Education*, 31-45.

at length and argues instead that we should ‘write as we go’. Her success in encouraging both academics and students into research is based on demonstrating that a spare 15 minutes, whether in a break before class or waiting for a train, can always be used profitably for writing. This brings us back to the idea of a research diary, that is, of keeping a notebook for both tracking and writing about the research, using it to rough out a paragraph or two in a spare minute, or refining something written earlier, so capturing the connections between ideas the student has at that time.

Another mechanism for promoting the habit of writing when thoughts occur is to encourage students into the habit of producing a short précis of a piece of research that they have just read. The advent of material being available to download and photocopy has led to some students moving away from note taking. However, when they return to the previously read document, the fact that it is covered in highlighter is of little help in getting them to reconnect with their memory of the piece and its key points. They have lost what Minnis⁸ describes as the ‘virtual text’, which we mentally construct as we read. However, if they have, at the time of reading, reconfigured the work into their own words in a short note, they have not only captured their thoughts but, as Scardamalia and Bereiter⁹ would argue, they have also engaged in a cognitive process which will more strongly connect them to the work when they return to it.

Students Forming a Writing Identity

In a study, reviewing the writing of experienced academics, Bazerman¹⁰ argued that in all forms of academic writing are four common elements which need to be managed by the writer. These are the object under study, the literature of the field, the anticipated

⁸ M Minnis, ‘Toward a definition of law school readiness’ in V John-Stiener, C P Panofsky & L W Smith (eds), *Sociocultural Approaches to Language and Literacy* (Cambridge University Press: US).

⁹ Above at 5.

¹⁰ C Bazerman, *Shaping Written Knowledge* (University of Wisconsin Press, 1988).

audience and the author's own self. In much of the writing for assessment previously done by the student the object under study and even elements of the literature will have been pre-determined by the academic setting the assessment. As this process is so controlled, students often do not consider, prior to writing up a dissertation, either how they create an identity in their writing or configure the idea of an audience for their work. Ivanic argues¹¹ that, whether consciously or unconsciously, the student will convey an impression of him/herself to the reader as they manage the process of interpreting the texts and considering what is required. In taking on a more major and independently-managed piece of work, students may need guidance in how to manage that impression.

It is important at an early stage of writing up to create a chance for supervisor and student to discuss the whole issue of the student's writing identity and the concept of who they are writing for. How, for instance, should the work be introduced? The student needs to consider that readers of the work will all be law academics, who may or may not specialise in the area under study. It is necessary, therefore, to consider how to put the work into an appropriate context so that all readers can access the argument and evidence, introduced by the work. As the student starts to produce chapters, do they evidence that they understand the need to take the reader with them through the argument by visibly 'signposting' the beginning of a new area of discussion and generally making the structure of the work clear to the reader?

The student, also, has to clearly maintain the object of study as a focus in their writing and use the literature they have gathered from their research to evidence their argument. Issues, such as introducing a quotation and setting it in context or deciding the extent to which an author's work needs discussion before getting to the point the student wants to draw out, are all elements of technique which can be refined and improved. Academic legal discourse is generally written in an impersonal manner, and students may find it hard to manoeuvre the elements of their argument, finding that using phrases such as 'one

¹¹ R Ivanic, *Writing and Identity* (John Benjamins: Amsterdam/Philadelphia, 1998).

might argue' does not fit within their normal linguistic register. Students will, therefore, go through a process of deciding how they will configure the demands of the discourse within their own ideas of how to write. Sometimes it will be necessary to indicate that a preferred style of writing will not fit with the discursual norms. The use of the vernacular and of exclamations marks are obvious examples to discourage, but some students may have an issue such as making a far higher use of descriptive words than the supervisor finds appropriate. Such issues need more careful management as they connect to the emotional relationship the student may have with the work.

Constructing the Argument

It is a feature of legal studies that a reasonable proportion of the work students do for assessment is in the form of writing the answer to a hypothetical problem. These problems often provide the student with a structure for the written answer in that, when the problem is taken apart and analysed, it will reveal a framework with a clear set of points to discuss. By contrast, dissertation writing puts the student into a situation where they must form the structure of the work themselves and make and evidence their argument from the research they have gathered. If the student has any tendency to write descriptively, the demands of dissertation will put that weakness under stress.

I have often heard colleagues refer to such concepts as a 'golden thread' running through and linking the argument from one end of the piece to the other. This concept links back to Bazerman's 'object under study',¹² being the item which the writer keeps in focus throughout the work. Turner identifies that lecturers can readily define the idea of structure as being able to 'afford the reader consistency of gaze, as it were and enable a steady walk through the

¹² See Bazerman, *op cit.*

argumentation’¹³ but also points out that a lack of skills in argument and structuring written work are the most common reasons for which students receive critical feedback.

How, then, should concepts of dissertation structure and argument be more clearly explained to students? The first point to recognise is that, to structure an argument, there has to be both a top-level structure, which informs the general ordering of the work between and within chapters, and a bottom-up structure, by which an argument is built within and between the paragraphs.

There is a considerable discourse on the concept of argument. I will use the work of Kaufer and Geisler¹⁴ to illustrate the idea of organising the argument through a top-level structure. They present that the principal object of the argument will proceed along the ‘main path’, but that the writer will also need to manage the use of ‘faulty and return paths’ to move off into and consider secondary arguments before returning to the main theme. Whilst the language may not be fully helpful, it identifies the need to be clear within writing as to why any issue will be discussed and then linking that discussion back into the main theme of the argument.

When constructing a chapter, therefore, the student needs to identify the core theme they wish to develop. They, then, need to select the evidence they will use to build up this theme and distinguish the evidence they will use to debate any flaws or criticisms to be made of this viewpoint. They, then, need to consider how to organise and progress the discussion. Does a topic need some explanation before another point can be developed, is there any natural order, a chronological one that will help the structure become clearly identifiable? They must, also, consider how to manage the diversion from the main direction of the chapter into areas of dispute and how

¹³ J Turner, ‘Academic Literacy and the Discourse of Transparency’, in C Jones, J Turner & B Street (eds), *Students Writing in the University, Cultural & Epistemological Issues* (John Benjamins: Amsterdam & Philadelphia, 1999), p 156.

¹⁴ D S Kaufer & C Geisler, ‘A Scheme for Representing Written Argument’, (1995) 15 *Journal of Advanced Composition*, 107-122

they will manage to feedback the conclusion of each subsection into the chapter as it progresses.

The student should now have a plan for the chapter and a set of subheadings. How they build up the chapter at paragraph level is, however, the determining issue in influencing whether the work becomes a developing argument or a primarily descriptive piece of work. Toulmin¹⁵ demonstrates that, in a legal argument, each phrase in the writing can serve a different and interlinked function to build a clear and reasoned argument. Mitchell and Riddle¹⁶ have described this type of argument as ‘since, then, because’ as it illustrates that any claim the writer makes must both be linked to the evidence which supports it and to the other sections which will build up the argument as a whole. Colomb and Williams¹⁷ contend that any writing, which aims to make an argument based on the evidence of findings, must build the case up paragraph by paragraph, showing each element of the process of reasoning and its supporting research.

Every piece of writing will have sections of description which help the reader contextualise the work. The issue for the student is to have only as much descriptive text as is strictly necessary to introduce the argument. In reading the work through they need to consider at the bottom of each page if the argument is progressing point by point, through reasoning and evidence.

This brings us to the final issue, which is that writing up the dissertation is not a one-stop endeavour and will need to be revisited, ideas reconsidered and re-ordered and sizeable chunks of work rewritten. At one level this is a liberating idea, leaving the student open to making new and better connections within the piece of work. A student, who allows time to rewrite, will most often be able to

¹⁵ S E Toulmin, *The Uses of Argument* (University Press: Cambridge, 1958).

¹⁶ S Mitchell & M Riddle, *Improving the Quality of Argument in Higher Education: Final Report*, (Middlesex University: London, 2000).

¹⁷ G Colomb & J Williams, ‘Perceiving Structure in Professional Prose’, in L Odell & D Goswami (eds), *Writing in Non-academic Settings* (Guildford Press: New York: 1985).

produce an increase of a whole grade in their mark, making this a worthwhile activity. However, if a student's previous idea of going through their work has been largely restricted to the use of spell and grammar checking, they may not realise the need to plan in time to work on clarifying and improving the organisation of the final piece.

In a law dissertation, then, the forming of coherent arguments means that the processes of writing and research intertwine and thread through the dissertation process from beginning to end. A student, who understands that writing an argument can be worked on and significantly improved, will form a strong connection with their work. Similarly, students will often describe having found a set of key pieces of work to evidence the core central point they need to make as 'lucky'; yet, a little questioning will usually reveal that they are interested in their research and think about it on a regular basis, so allowing their understanding to evolve and creating new ideas for searches. The combination of taking a structured approach to research but making time to stop and reflect on the findings is at the heart of being able to create and manage a research agenda. Allowing time to consider how connections may be built and gaps exploited is also at the heart of writing a structured argument.

Conclusion

Good research writing is intellectually demanding and cognitively complex. In this piece I have charted a whole range of issues that students need to manage to successfully formulate an idea, carry out research and write up a dissertation in law. Starting from their first year of study, they need to engage in the discourse of law, become familiar with the legal databases and start to understand how to make sense of the primary sources. This will be made easier if the student widens their reading from the text book and into core academic journals, which can help both unlock and contextualise how to interpret and make sense of primary materials for themselves.

The dissertation student needs to take the responsibility for shaping and managing their research but also to form a working relationship with their supervisor so that issues to do with the sufficiency of the

research completed, frustrations in the research process and in writing up, can all be freely discussed. Equally, as supervisors, we need to encourage the thought that the law creates *wicked problems* and, so, the student is engaging in a critical debate to shape a better if not necessarily true solution.

Writing needs to be seen as an ongoing process, a way of connecting with one's research ideas, but other non-linear methods may be needed to break out of patterns of formulating ideas that are not working, such as recorded discussion and mind mapping. Just as writing may be 'little and often', it also needs to be 'read and revised'. Structure can be planned but writing causes us to make new connections in our thought processes and, so, there is a need to revisit and reconsider the ordering of the argument.

Finally, it needs to be recognised that how evidence is used in argument differs between discourses. In academic legal discourse the need to craft a carefully constructed and evidenced argument is paramount and the student needs to engage in a continuing dialogue in which the evidence is turned over and examined, testing for any gaps or flaws to exploit and investigate. The submission of a proficiently researched and argued dissertation, in which the core arguments are skilfully synthesised and evidenced, is a considerable achievement, of which a student should feel duly proud.