

# Archetypal Legal Scholarship: A Field Guide, 2d. Edition

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“It has been my pleasure to be a sounding board and advisor to many people who consider becoming law professors and yet it has not always been easy to introduce people considering their own research projects to reflect on how their ideas connect with the varieties of legal scholarship. One day I decided to write up a ‘field guide,’ meant to be rather like the guides to birds that offer pictures and descriptions to assist the casual or serious birdwatcher. After sharing it and revising it, I have learned that this ‘guide’ now travels underground and electronically, so I thought it time to give it an official publication, and the Journal’s editors kindly agreed. The explosion of interdisciplinary research in law contributes to the variety of legal scholarship. So does the contrast between ‘inside’ and ‘outside’ thinking in law schools where we try both to equip people for practice and effectiveness within existing institutions and for roles as critics, institutional reformers, and scholars who may explain and analyze in terms quite different from those in the minds of actors operating within existing legal systems. So here with an invitation for supplements, critiques, and revisions is my Archetypal Legal Scholarship: A Field Guide.”

So began the first published version of this guide, published after several years of underground distribution. Now taught in law school workshops on scholarship and shared across faculty and students, this guide deserves to be updated. With enlarged categories, additional and more recent examples, and further thoughts about the writing process, the guide now has a co-author, who has used it for years in advising students.

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**I. Doctrinal restatement**, e.g., Robert Clark, *Corporate Law*,<sup>1</sup> Laurence Tribe, *Constitutional Law*;<sup>2</sup> Yoram Dinstein, *War, Aggression and Self-Defence*;<sup>3</sup> Cohen's *Handbook of Federal Indian Law*;<sup>4</sup> and Erwin Chemerinsky, *Federal Jurisdiction*.<sup>5</sup>

- a. Organize and reorganize case law into coherent elements, categories, and concepts;
- b. Acknowledge distinction between settled and emerging law;
- c. Identify difference between majority and “preferred” or “better” practice—ideally with some explanation for the criteria to be used.

**II. Recasting project**, e.g., Charles Reich, “The New Property;”<sup>6</sup> L.L. Fuller & William R. Perdue, Jr., “Reliance Interest in Property;”<sup>7</sup> Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy;”<sup>8</sup> Guido Calabresi & A. Douglas Melamed, “Property Rules, Liability Rules, and Inalienability: One View of the Cathedral;”<sup>9</sup> Melissa Murray, “Marriage As Punishment;”<sup>10</sup> and Michael Coenen, “Rules Against Rulification.”<sup>11</sup>

- a. Gather more than one “line” of cases across doctrinal fields, categories, or historical developments, and show why they belong together or expose unjustified discrepancies;
- b. Offer a new framework or paradigm that can recognize past, present, and future material.

**III. Policy analysis**, e.g., Elizabeth Bartholet, *Nobody's Children: Abuse and Neglect, Foster Drift, and the Alternative of Adoption*;<sup>12</sup> Jeff Sovern, “Opting in, Opting Out, or No Options At All: The Fight for Control of Personal Information;”<sup>13</sup> Russell Korobkin, “Bounded Rationality and Unconscionability: A Behavioral

1 ROBERT CHARLES CLARK, *CORPORATE LAW* (1986).

2 LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* (3d ed. 2000).

3 YORAM DINSTEIN, *WAR, AGGRESSION AND SELF-DEFENCE* (5th ed. 2000).

4 COHEN'S *HANDBOOK OF FEDERAL INDIAN LAW* (Nell Jessup Newton ed. 2019).

5 ERWIN CHEMERINSKY, *FEDERAL JURISDICTION* (8th ed. 2020).

6 Charles Reich, *The New Property*, 73 *YALE L.J.* 733 (1964).

7 L.L. Fuller & William R. Perdue, Jr., *Reliance Interest in Property*, 46 *YALE L.J.* 52 (1936).

8 Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 *HARV. L. REV.* 193 (1890).

9 Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 *HARV. L. REV.* 1089 (1972).

10 Melissa Murray, *Marriage as Punishment*, 112 *COLUM. L. REV.* 1 (2012).

11 Michael Coenen, *Rules Against Rulification*, 124 *YALE L.J.* 576 (2014).

12 ELIZABETH BARTHOLET, *NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ALTERNATIVE OF ADOPTION* (2000).

13 Jeff Sovern, *Opting in, Opting Out, or No Options at All: The Fight for Control of Personal Information*, 74 *WASH. L. REV.* 1033 (1999).

Approach to Policing Form Contracts;”<sup>14</sup> Roderick Hills, Jr., “Is Federalism Good for Localism? The Localist Case for Federalist Regimes;”<sup>15</sup> William W. Fisher III, *Promises to Keep: Technology, Law, and the Future of Entertainment*;<sup>16</sup> and Ashley Deeks, “The Judicial Demand for Explainable Artificial Intelligence.”<sup>17</sup>

- a. Usual structure: present a problem; canvass alternatives; propose an evaluative scheme or method; recommend preferred solution;
- b. Attribute problem to: distance between goal and implementation; conflict with a powerfully competing goal; the lack of fit between legal rules or practices when compared with changing social, economic, biological, or technical circumstances; or mistaken assumptions as demonstrated by historical review, economic model, psychological research, or evidence from other fields;
- c. Not a brief: include fair analysis of a range of alternatives and alternative criteria; offer useful analyses even for people who do not agree with the assumptions, methodology, or conclusion.

**IV. Test a proposition about society, the economy, technological developments, or about human beings/human behavior that is used by lawyers or assumed in legal sources, e.g., Robert Ellickson, *Order Without Law: How Neighbors Settle Disputes*;<sup>18</sup> Robert H. Mnookin and Lewis Kornhauser, “Bargaining in the Shadow of the Law;”<sup>19</sup> Lucian Bebchuk and Alma Cohen, “The Costs of Entrenched Boards;”<sup>20</sup> Andrea Roth, “Machine Testimony;”<sup>21</sup> and Da Lin, “Beyond Beholden.”<sup>22</sup>**

- a. Take a widely assumed or commonly known proposition familiar to lawyers or legal theorists;
- b. Undertake an empirical investigation about its validity or summarize and assess empirical work conducted by others or undertake model-building or summarize and apply model(s) developed by others;
- c. Digest the findings for legal audiences.

14 Russell Korobkin, *Bounded Rationality and Unconscionability: A Behavioral Approach to Policing Form Contracts*, 70 U. CHI. L. REV. 1203 (2003).

15 Roderick Hills, Jr., *Is Federalism Good for Localism? The Localist Case for Federalist Regimes*, 21 J. L. & POLICY 187 (2005).

16 WILLIAM W. FISHER III, *PROMISES TO KEEP: TECHNOLOGY, LAW, AND THE FUTURE OF ENTERTAINMENT* (1st ed. 2004).

17 Ashley Deeks, *The Judicial Demand for Explainable Artificial Intelligence*, 119 COLUM. L. REV. 1829 (2019).

18 ROBERT ELICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1994).

19 Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law*, 88 YALE L. J. 950 (1979).

20 Lucien Bebchuk & Alma Cohen, *The Costs of Entrenched Boards*, 78 J. FINANCIAL ECONOMICS 409 (2005).

21 Andrea Roth, *Machine Testimony*, 126 YALE L. J. 1972 (2017).

22 Da Lin, *Beyond Beholden*, 44 J. CORP. L. 515 (2018-19).

**V. Study, explain, and assess legal institutions (including courts, agencies, law schools), systems, or institutional actors (including end users—litigants, subjects of enforcement—affected by law),** e.g., Abram Chayes, “The Role of the Judge in Public Law Litigation;”<sup>23</sup> Marc Galanter, “Why the ‘Haves’ Come out Ahead;”<sup>24</sup> Richard Lempert, “A Classic at 25: Reflections of Galanter’s ‘Haves’ Article and Work It Has Inspired;”<sup>25</sup> George L. Priest & Benjamin Klein, “The Selection of Disputes for Litigation;”<sup>26</sup> Judith Resnik, “Managerial Judges;”<sup>27</sup> Patricia Ewick & Susan Silbey, *The Common Place of Law: Stories From Everyday Life*;<sup>28</sup> David B. Wilkins & Mitu G. Gulati, “Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms;”<sup>29</sup> John F. Manning, “What Divides Textualists from Purposivists;”<sup>30</sup> Muneer Ahmad, “Interpreting Communities: Lawyering Across Language Difference;”<sup>31</sup> Elizabeth Mertz, “Inside the Law School Classroom: Toward a New Legal Realist Pedagogy;”<sup>32</sup> D. James Greiner & Cassandra Wolos Pattanayak, “Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?”<sup>33</sup> Anna E. Carpenter, “The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact;”<sup>34</sup> Jeffrey L. Fisher, “A Clinic’s Place in the Supreme Court Bar;”<sup>35</sup> Jack Balkin,

23 Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281 (1976).

24 Marc Galanter, *Why the “Haves” Come out Ahead*, 9 L. & SOC’Y REV. 95 (1974).

25 Richard Lempert, *A Classic at 25: Reflections of Galanter’s “Haves” Article and Work It Has Inspired*, 33 LAW & SOCIETY REV. 1099 (1999).

26 George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL. STUD. 1 (1984).

27 Judith Resnik, *Managerial Judges*, 96 HARV. L. REV. 374 (1982).

28 PATRICIA EWICK & SUSAN SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* (1st ed. 1998).

29 David B. Wilkins & Mitu G. Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581 (1998).

30 John F. Manning, *What Divides Textualists from Purposivists*, 106 COLUM. L. REV. 1 (2006).

31 Muneer Ahman, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999 (2007).

32 Elizabeth Mertz, *Inside the Law School Classroom: Toward a New Legal Realist Pedagogy*, 60 VAND. L. REV. 483 (2007).

33 D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L. J. 2118 (2012).

34 Anna E. Carpenter, *The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact*, 20 CLINICAL L. REV. 39 (2013).

35 Jeffrey L. Fisher, *A Clinic’s Place in the Supreme Court Bar*, 65 STAN. L. REV. 137 (2013).

*Living Originalism*;<sup>36</sup> Bert Huang & Tejas N. Narechania, “Judicial Priorities;”<sup>37</sup> William Baude & Stephen E. Sachs, “The Law of Interpretation;”<sup>38</sup> Andrew D. Bradt, “A Radical Proposal’: The Multidistrict Litigation Act Of 1968;”<sup>39</sup> Issa Kohler-Hausmann, *Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing*;<sup>40</sup> Donna Shestowksy, “Inside the Mind of a Client: An Analysis of Litigants’ Decision Criteria for Choosing Procedures;”<sup>41</sup> Richard H. Fallon, Jr., “The Statutory Interpretation Muddle;”<sup>42</sup> Lauren Sudeall & Ruth Richardson, “Unfamiliar Justice: Indigent Criminal Defendants’ Experiences with Civil Legal Needs;”<sup>43</sup> Matthew D. Cain, Sean J. Griffith, Robert J. Jackson, Jr., & Steven Davidoff Solomon, “Does Revlon Matter: An Empirical and Theoretical Study;”<sup>44</sup> Kevin Tobia, Brian G. Slocum, & Victoria Nourse, “Statutory Interpretation From the Outside;”<sup>45</sup> and Nicole Summers, “Civil Probation.”<sup>46</sup>

- a. Offer historical, anthropological, sociological, or economic analysis of the behavior of legal actors or institutions, often exposing complexity, gaps between theories and practice, dynamics, and layers of meaning and effects;
- b. Use, elucidate, or assess empirical methods and/or models;
- c. Offer a normative assessment or agenda for further study.

**VI. Critical projects**, e.g., Duncan Kennedy, “Form and Substance in Private Law Adjudication;”<sup>47</sup> Robert Cover, “Supreme Court-1982 Foreword: Nomos and Narrative;”<sup>48</sup> Kimberlé Crenshaw, “Race, Reform,

36 Jack Balkin, *LIVING ORIGINALISM* (Harvard Univ. Press. 2019).

37 Bert Huang & Tejas N. Narechania, *Judicial Priorities*, 163 U. PA. L. REV. 1719 (2015).

38 William Baude & Stephen E. Sachs, *The Law of Interpretation*, 130 HARV. L. REV. 1079 (2017).

39 Andrew D. Bradt, “A Radical Proposal:” *The Multidistrict Litigation Act Of 1968*, 165 U. PA. L. REV. 831 (2017).

40 ISSA KOHLER-HAUSMANN, *MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING* (2018).

41 Donna Shestowksy, *Inside the Mind of a Client: An Analysis of Litigants’ Decision Criteria for Choosing Procedures*, 36 CONFLICT RESOLUTION QUARTERLY 69 (2018).

42 Richard H. Fallon, Jr., *The Statutory Interpretation Muddle*, 114 NW. L. REV. 269 (2019).

43 Lauren Sudeall & Ruth Richardson, *Unfamiliar Justice: Indigent Criminal Defendants’ Experiences with Civil Legal Needs*, 52 U. CAL. DAVIS L. REV. 2105 (2019).

44 Matthew D. Cain, et al., *Does Revlon Matter? An Empirical and Theoretical Study*, 108 CAL. L. REV. 1683 (2020).

45 Kevin Tobia, Brian G. Slocum, & Victoria Nourse, *Statutory Interpretation From the Outside*, 122 COLUM. L. REV. 213 (2022).

46 Nicole Summers, *Civil Probation*, 75 STAN. L. REV. 847 (2023).

47 Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976).

48 Robert Cover, *Supreme Court—1982 Foreword: Nomos and Narrative*, 97 HARV. L. REV. 1 (1984).

and Retrenchment: Transformation and Legitimation in Antidiscrimination Law;<sup>49</sup> David Shapiro, *Federalism: A Dialogue*;<sup>50</sup> Randy E. Barnett, “The Misconceived Assumption About Constitutional Assumptions;”<sup>51</sup> Libby Adler, *Gay Priori: A Queer Critical Legal Studies Approach to Law Reform*;<sup>52</sup> Benjamin Levin, “What’s Wrong with Police Unions;”<sup>53</sup> Jamie Abrams, “Feminism’s Transformation of Legal Education and Unfinished Agenda;”<sup>54</sup> and Jamelia Morgan, “Rethinking Disorderly Conduct.”<sup>55</sup>

- a. Expose unstated assumptions, patterns, or results, internally inconsistent structures or other tensions within a body of law or legal practices or institutions;
- b. Highlight the tensions, contradictions, or paradoxes behind the surface of law or legal practices; sometimes they are not resolved but instead linked to larger psychological, social, or philosophic difficulties and political or normative efforts.

**VII. Comparative and historical inquiries**, e.g., Mary Ann Glendon, *Abortion and Divorce in Western Law*;<sup>56</sup> Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence*;<sup>57</sup> William Forbath, “The Shaping of the American Labor Movement;”<sup>58</sup> Anne Fleming, “The Rise and Fall of Unconscionability as the ‘Law of the Poor;”<sup>59</sup> Nikolas Bowie, “Why the Constitution Was Written Down;”<sup>60</sup> and Jennifer M. Chacón, “Immigration and Race.”<sup>61</sup>

49 Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

50 DAVID SHAPIRO, *FEDERALISM: A DIALOGUE* (1st ed. 1995).

51 Randy E. Barnett, *The Misconceived Assumption About Constitutional Assumptions*, 103 NW. U. L. REV. 615, 615-61 (2009).

52 LIBBY ADLER, *GAY PRIORI: A QUEER CRITICAL LEGAL STUDIES APPROACH TO LAW REFORM* (2018).

53 Benjamin Levin, *What’s Wrong with Police Unions*, 120 COLUM. L. REV. 1333 (2020).

54 Jamie Abrams, *Feminism’s Transformation of Legal Education and Unfinished Agenda*, in *THE OXFORD HANDBOOK OF FEMINISM AND LAW IN THE UNITED STATES* (Deborah L. Brake, et al., eds., 2021).

55 Jamelia Morgan, *Rethinking Disorderly Conduct*, 109 CAL. L. REV. 1637 (2021).

56 MARY ANN GLENDON, *ABORTION AND DIVORCE IN WESTERN LAW* (1989).

57 BRUCE H. MANN, *REPUBLIC OF DEBTORS: BANKRUPTCY IN THE AGE OF AMERICAN INDEPENDENCE* (2009).

58 William Forbath, *The Shaping of the American Labor Movement*, 102 HARV. L. REV. 1109 (1989).

59 Anne Fleming, *The Rise and Fall of Unconscionability as the “Law of the Poor,”* 102 GEO. L. J. 1383, 1383-1441 (2014).

60 Nikolas Bowie, *Why the Constitution Was Written Down*, 71 STAN. L. REV. 1397 (2019).

61 Jennifer M. Chacón, *Immigration and Race*, in *THE OXFORD HANDBOOK OF RACE AND LAW IN THE UNITED STATES* (Devon Carbado, Emily Houh & Khiara M. Bridges eds., 2022).

- a. Offer a rich description of an earlier era or contrasting legal regime;
- b. Satisfy the criteria within the fields of anthropology or history in use of sources (including archival and primary), triangulation, and contextualization;
- c. Suggest how this study illuminates differences, choices, or continuities when compared with contemporary domestic practice.
- d. Present insight into the interactions across legal institutions or across law and society.

**VIII. Jurisprudence, philosophy of law, and connecting philosophy and law**, e.g., Ronald Dworkin, *Law's Empire*;<sup>62</sup> Catharine MacKinnon, "Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence";<sup>63</sup> Richard A. Posner, *The Problematics of Moral and Legal Theory*;<sup>64</sup> Seanna Shiffrin, "Speech, Death, and Double Effect";<sup>65</sup> Scott. A. Hershovitz, "Tort as a Substitute for Revenge";<sup>66</sup> Deborah Hellman, "A Theory of Bribery";<sup>67</sup> and Benjamin Eidelson, "Respect, Individualism, and Colorblindness."<sup>68</sup>

- a. Develop or elaborate a theory that tries to explain how all of law or chief portions of it hang together;
- b. Engage with alternative theories;
- c. Demonstrate the contribution this theory makes to a conceptual puzzle or set of doctrinal or practical problems;
- d. Advance view of justice or analysis of what norms law should pursue.

**IX. Combinations.** Some works combine elements from more than one category, e.g., Cass Sunstein, "Interest Groups in American Public Law";<sup>69</sup> Derrick Bell, Jr., "Brown v. Board of Education and the Interest-Convergence Dilemma";<sup>70</sup> Lani Guinier, "The Triumph of Tokenism";<sup>71</sup> Frank H. Easterbrook

62 RONALD DWORKIN, *LAW'S EMPIRE* (1986).

63 Catharine MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 *SIGNS* 635 (1983).

64 RICHARD A. POSNER, *THE PROBLEMATICS OF MORAL AND LEGAL THEORY* (2002).

65 Seanna Shiffrin, *Speech, Death, and Double Effect*, 78 *N.Y.U. L. REV.* 1135 (2003).

66 Scott. A. Hershovitz, *Tort as a Substitute for Revenge*, in *PHILOSOPHICAL FOUNDATIONS OF THE LAW OF TORTS*, (JOHN F.K. OBERDIEK, ED., 2014).

67 Deborah Hellman, *A Theory of Bribery*, 38 *CARDOZO L. REV.* 1947 (2017).

68 Benjamin Eidelson, *Respect, Individualism, and Colorblindness*, 129 *YALE L. J.* 1600 (2020).

69 Cass Sunstein, *Interest Groups in American Public Law*, 38 *STAN. L. REV.* 29 (1985).

70 Derrick Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 *HARV. L. REV.* 518 (1980).

71 Lani Guinier, *The Triumph of Tokenism*, 89 *MICH. L. REV.* 1077 (1991).

& Daniel R. Fischel, “Voting in Corporate Law;”<sup>72</sup> Ian Haney Lopez, *White by Law: The Legal Construction of Race*;<sup>73</sup> and Carol Sanger, *About Abortion: Terminating Pregnancy in 21<sup>st</sup> Century America*.<sup>74</sup>

### Getting Started

How do you start on a project? In advising students, we have suggested the following. First, be excited about your idea. You can’t write a good paper unless you care about your research question. Spend time thinking about the question itself. What makes you mad? What needs to change? The beauty of being a legal scholar, as Martha has said, is getting to own your own mind. Once you’ve identified your motivating question, write a concise paragraph about it, explaining the question as if you were talking to your grandmother. Identify the idea or the problem and explain your argument, without including a literature review or introductory wind-up. What’s the elevator pitch? Share that pitch with mentors and colleagues as you begin to develop your argument and situate it in the literature.

### Genre

Projects differ in scope, size, and timeliness. When writing up the one paragraph of your idea, you should consider the form that idea will ultimately take. In this guide, we have cited books and articles as exemplars of each category. With innovations in communications, scholarly debates are also taking place in new settings beyond books and journals, especially when relevant to topics of immediate concern. Examples of scholarly blogposts and podcasts on legal doctrine and scholarship include Martin S. Lederman, “Understanding OLC Torture Memos;”<sup>75</sup> varied authors, The COVID-19 Blog Project<sup>76</sup>; Leah Litman, Melissa Murray, and Kate Shaw, “How the 303 Creative Case Threatens to Roll Back the 21<sup>st</sup> Century,” *Strict Scrutiny* (podcast).<sup>77</sup>

### Audiences

As a scholar, you may find that your audience includes other scholars, judges, practitioners, law students, or the public at large, or, more likely, some combination thereof. As you situate your contribution in the literature, think

72 Frank H. Easterbrook & Daniel R. Fischel, *Voting in Corporate Law*, 26 J. L & ECON. 395 (1983).

73 IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (rev. ed. 2006).

74 CAROL SANGER, *ABOUT ABORTION: TERMINATING PREGNANCY IN 21<sup>ST</sup> CENTURY AMERICA* (2017).

75 Martin S. Lederman, *Understanding OLC Torture Memos*, BALKINIZATION (Jan. 7, 2005), <https://balkin.blogspot.com/2005/01/understanding-olc-torture-memos-part-i.html>.

76 *Category: COVID and the Law blog*, HARVARD LAW BLOG, <https://blog.petrieflom.law.harvard.edu/category/covid-and-the-law/>.

77 Leah Litman, et al., *Strict Scrutiny: How the 303 Creative Case Threatens to Roll Back the 21<sup>st</sup> Century*, CROOKED MEDIA (Dec. 12, 2022), <https://crooked.com/podcast/how-the-303-creative-case-threatens-to-roll-back-the-21st-century/>.

about whom you want to reach and use framing, vocabulary, and explanations appropriate to those audiences. A prospective legal academic may find it helpful to think about the diversity of hiring committees and also to demonstrate more than one approach or tool while anticipating and responding to likely counterarguments.

### Methodology

Legal scholarship draws on a number of methodological influences; as you work on your piece, consider which ones make sense for you. Are you engaged in empirical work (qualitative or quantitative)? Are you working entirely or largely with judge-made doctrines? Drawing on philosophical frameworks? Using historical research methods? Some combination? Being mindful and even explicit about your chosen method can assist readers and also remind the author to consider what is left out, what counterarguments to engage, and what to acknowledge but locate outside the scope of the project.

### Additional Scholarly Writing Resources

A growing number of helpful guides to and discussions of scholarly legal writing include the following: Eugene Volokh, “Writing a Student Article;”<sup>78</sup> Joshua B. Fischman, “Reuniting ‘Is’ and ‘Ought’ in Empirical Legal Scholarship;”<sup>79</sup> Danielle K. Citron & Robin West, “*On Legal Scholarship*;”<sup>80</sup> Cass Sunstein, “In Praise of Books and Law Reviews (and Jargon-Filled Academic Writing);”<sup>81</sup> and Katerina Linos & Melissa Carlson, “Qualitative Methods for Law Review Writing.”<sup>82</sup>

When deciding on a topic, consider what you care about—what will sustain your interest through many stages of work—and consider both existing types of scholarship and innovations that could belong in the next edition of the field guide.

78 Eugene Volokh, *Writing a Student Article*, 48 J. LEGAL ED. 247, 269 (1998).

79 Joshua B. Fischman, *Reuniting ‘Is’ and ‘Ought’ in Empirical Legal Scholarship*, 162 U. PA. L. REV. 117 (2013).

80 Danielle K. Citron & Robin West, *On Legal Scholarship*, in *Current Issues in LEGAL EDUCATION* (2014).

81 Cass Sunstein, *In Praise of Books and Law Reviews (and Jargon-Filled Academic Writing)*, 114 MICH. L. REV. 833 (2016).

82 Katerina Linos & Melissa Carlson, *Qualitative Methods for Law Review Writing*, 84 U. CHICAGO L. REV. 213 (2017).