Qualitative Methods for Law and Society Research—An EUI Research Guide

This research guide is intended as a starting point for doctoral researchers in the EUI Department of Law who plan to (or hope to) draw on socio-political, anthropological or historical methodologies as part of their dissertation research. Ultimately, the methods, methodology, and the boundaries of the research project are produced dynamically by the researcher, so this is no more than a starting point, a set of suggestions rather than a book of recipes. All sources listed are available either through the EUI library or free online.

1 Aims and Limitations

A Stress on Methodologies: While this research guide includes references to sources that attempt a synthetic overview of “law and society” as an academic discipline, and others which provide a provisional “canon” of socio-legal research, the key aim lies in providing an orientation to the possible forms of socio-legal research and the tools that can be deployed in conducting such research, not in summarizing, synthesizing or cataloguing the content of existing knowledge about the interaction between “law” and its others.

A Foundation in “Law and Society:” This guide is, second of all, limited in its disciplinary scope: while it provides references drawn broadly from interdisciplinary legal scholarship, it is organized primarily around “law and society” as a scholarly practice. One result of this disciplinary partiality is that examples are weighted heavily in favour of research written in English from the Anglo-American, common-law tradition. A further result of this bias is that the guide provides an especially shallow treatment of law and economics, feminist legal theory, and critical race theory, and

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1 This document was originally constructed by Liam McHugh-Russell, under contract with Professors Claire Kilpatrick and Nehal Bhuta of the EUI, and Tobias Kelly of University of Edinburgh School of Social and Political Science. It draws freely from their Seminar in Qualitative Methods for Law and Society Research, EUI, Winter 2016. Machteld Nijsten provided invaluable assistance in locating and contextualizing available resource in the EUI library collections. Peter Kennealy assisted with EUI resources on social research methods. Special thanks are due to Genevieve Painter and Emma Nyhan, who went above and beyond in providing advice and suggestions on both the content and design of the document. Helpful advice was received from numerous sources, especially from Elena Brodela. In addition to sources linked or listed here, the development of this guide drew on the following course syllabi: Calvin Morrill, Seminar in the Ethnography of Institutions, UC Berkeley, Fall 2010; Susan Coutin, Contemporary Issues in Law and Society, UC Irvine, Winter 2009; Lauren Edelman and Calvin Morrill, Research Methods For Socio-Legal Studies, UC Berkeley, Spring 2010; Kristin Luker, Research Methods for Socio-Legal Studies, UC Berkeley, Umut Oszu, Introduction to Socio-Legal Studies and Legal Theory, University of Manitoba, Winter 2016; Susan Coutin, Contemporary Issues in Law and Society, UC Berkeley, Winter 2009; Calvin Morrill, Seminar in the Ethnography of Institutions, UC Berkeley, Fall 2010; Pepper Culpepper and Ulrich Krotz, Introduction to Qualitative Methods, EUI, Fall 2015; Charles Paul Hoffman, Canadian Legal History, McGill Faculty of Law, Winter 2013.
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includes only minimal references to broad traditions of scholarship under the various “law ands” including law and literature, law and culture, legal anthropology and, perhaps most glaringly, law and philosophy. This last exclusion is tied to the third feature of this research guide, which is...

A Focus on Empirical Methods: Insofar as it draws on legal texts, legal research is empirical. Nonetheless, the empirical label is usually reserved for research that relies on methods and methodologies drawn from the social sciences—either as applied to legal materials themselves, or as applied to actors in their interaction with a legal system, legal order or “law” as broadly understood. Beyond the Anglo-American tradition of law and philosophy, there is a very deep literature that attempts to situate law and legal phenomena within strains of social theory broadly understood. While questions of theory necessarily interact with methods of gathering and analyzing data, the focus here is on exploring and situating those aspects and types of research which are unlikely to be familiar to students steeped in reflective, doctrinal, philosophical methods of legal analysis.

A Primary Concern with Qualitative Methods: Users of this document should be aware of the rather shallow treatment that this document gives to the possibilities, pitfalls, challenges and choices entailed in applying statistical techniques to questions of law, regulation, justice and social order. While it gives proper place to inference in accordance with its Law and Society credentials, it also prioritizes methodological issues connected to interpretation, context, meaning, culture and narrative.

2 Some Starting Coordinates...

2.1 ..on “Law & Society”
Sarat, Austin, ed. The Blackwell Companion to Law and Society (Malden, MA: Blackwell Pub, 2004). [chapters provide synthetic reviews of issues that have been addressed and remain in debate across a broad swath of legal subject areas, theoretical perspectives and disciplinary debates]

Stewart Macaulay, Lawrence Friedman, and Elizabeth Mertz. 2007. Law in Action: A Socio-Legal Reader. New York: Foundation Press. [a collected canon of US Law & Society research] See also:

- Seron, Carroll, Susan Bibler Coutin & Pauline White Meeusen. “Is There a Canon of Law and Society?” (2013) 9:1 Annual Review of Law and Social Science 287. [Seron et al answer “yes,” and what they find looks largely like the sources collected in Macaulay, Friedman and Mertz]
Travers, M. 2010. *Understanding Law and Society* (London: Routledge, 2010) [introductory undergraduate textbook, organized in accordance with the major sociological traditions as they apply to law, and drawing heavily on UK research]


Darian-Smith, Eve. *Laws and Societies in Global Contexts: Contemporary Approaches* (New York: Cambridge University Press, 2013). [credibly argues that Law & Society scholarship has been dominated by concerns of the relationship between single nation-states and their legal orders, especially in the US context; offers excerpts and synthetic review on a variety of questions of international, transnational and global relations between “laws” and “societies”]

### 2.2 ...on Socio-Legal Methodology


- Each of these edited collections asks a group of researchers, each well-versed in a different tradition of legal research (doctrinal research, socio-legal studies, empirical legal research, “legal research in the humanities,” legal history, comparative law and critical legal methods). In Watkins and Burton, the contributions each reflect on a single topic, namely “lay decision makers in the legal system.” Both provide an excellent starting point for thinking about the diversity of frames, tools and interests that researchers can bring to law and legal issues.


- includes interviews with the authors of over 20 highly influential books and articles from the (primarily US-based) law and society tradition, reflecting on the process of designing, conducting, and writing up their projects, and an introduction a refreshingly frank exploration of the role of serendipity and revision in the research process


- longer contributions explicitly defend and exemplify a number of methods and methodologies in socio-legal research, and the editors’ notably strong introductory chapters provide short, lucid overviews of the issues revealed by contrasting the approaches of the contributing authors


2.3 ...on Social Research
Bryman, Alan. Social Research Methods, 4th ed (Oxford: Oxford University Press, 2012). [provides a comprehensive review of issues and practices for a diversity of both qualitative and quantitative methods; a useful reference for options and issues to consider]


Luker, Kristin. 2008. Salsa Dancing into the Social Dances: Research in an Aid of Info Glut. Cambridge, MA: Harvard University Press. [a short and friendly guide for crafting a research project, written by a sociologist who is cross-appointed to a socio-legal studies program, who clearly has sympathy for those who feel uncomfortable or frustrated with canonical methods]

3 EUI Resources

3.1 Seminars
The EUI department of Social and Political Sciences offers seminars every year on both qualitative and quantitative methods. While participation by researchers outside the SPS department is limited, the syllabi are an excellent starting point for clear credible sources on issues facing social science researchers, and socio-legal researchers in particular.

3.2 EUI Library—Relevant Law Resources
A search in the EUI library classic catalogue under the following subject headings may be a useful place to start:

- Books in the law section of the library are organized by Steiner Number. You may find some of the following useful:
  - BEa9 is the number for the over 500 books in Law and Society, Sociology of Law, Law and Culture and related topics
  - Bs9 deals with various aspects of legal theory
  - BFa9: law and anthropology
- The library has many paper and electronic versions from the following book series
  - Oñati international series in law and society
3.3 EUI Library—Social Science Methods

- **001.42** [Research Methods]
- **300.72** [Social Science Research]
- 300.723 [Social Science Methods]
- **320.072** [Political Science—Research Methods]
- **501** [Philosophy of Science]
- **808.02** [Academic Writing]

3.4 Socio-legal Journals

Munger suggests that there are over 40 law and society journals; a keyword search of the EUI library comes up with 42. The following are particularly noteworthy:

- **Annual Review of Law and Social Science**: Offers very useful syntheses on a number of topic areas and methodological approaches
- **Law & Society Review**: Journal of the US-based *Law and Society Association,* and one of the oldest socio-legal journals
- **Journal of Law and Society**: Journal of the UK-based *Socio-Legal Studies Association*
- **Law & Social Inquiry**: Published by the American bar Foundation
- **Law, Culture and the Humanities**: Journal of a breakaway group from the Law and Society Association, focused on interpretive, constitutive and idiographic research
- **Journal of Empirical Legal Studies**: Journal of another LSA breakaway group (*Society for Empirical Legal Studies*), primarily focused on quantitative studies of legal decision-making

4 Additional Resources

Beyond the introductory sources listed above or the samples and examples set out below, the following provide
UCLA Law offers a searchable database of Empirical Legal Studies
The US Law and Society Association’s online list of law and society websites, associations, institutions and research projects
The Empirical Legal Studies blog
Tobias Kelly’s collection of reading lists and course syllabi on socio-legal topics at his website
Law & Humanities, Daniel Solove’s collection of articles, books, websites, journals and course readings lists
  o the Law and Humanities Blog that he co-hosts with Christine Corcos
The Oxford Centre for Socio-Legal Studies Graduate Program Handbook includes the syllabus of an in-depth course on Theory and Method in Socio-Legal Research

5 Overarching Issues

5.1 What is Socio-Legal Research For?

5.1.1 Use of Social Science by Courts and Legislators
Elizabeth Mertz, ed. The Role of Social Science in Law (Aldershot, England: Ashgate, 2008). [provides numerous examples and links to strands of research on this question]

5.2 Evaluating Scholarship: Validity, Authority, Science

5.2.1 Varieties of Positivism


5.2.2 A Legal Science?


5.2.3 Beyond Positivism


5.2.4 The Normative Dimension
Nonet, Philippe. 1976. ‘For Jurisprudential Sociology’, Law and Society Review 10 [sociology of law can and should address legal questions, not only sociological ones]

Fischman, Joshua B. “Reuniting Is and Ought in Empirical Legal Scholarship” (2013) 162 U Pa L Rev 117. [research on law in action too seldom says enough about the normative links between findings and proposed reform]


Orford, Anne. “On International Legal Method” (2013) 1:1 London Review of International Law 166. [it is appropriate that the jurist and the historian might choose different contexts for the interpretation of historical materials]
5.3 Quantitative versus Qualitative?
David Collier, Jason Seawright. “Qualitative versus Quantitative: What Might This Distinction Mean?” (2003) 1 Qualitative Methods: Newsletter of the APSA Organized Section on Qualitative Methods. [variety of factors used to draw distinction between quantitative and qualitative]


Mark C. Suchman & Elizabeth Mertz, “Toward a New Legal Empiricism: Empirical Legal Studies and New Legal Realism” (2010) 6 Annual Review of Law and Social Science 555. [on the contested valence of “empirical” and the politics of the quantitative v qualitative divide in the socio-legal context]


5.4 The Stakes of Interdisciplinary Study of Law

Tomlins, Christopher. “Framing the Field of Law’s Disciplinary Encounters: A Historical Narrative” (2000) 34:4 Law and Society Review 911. [historicizing the line between law and social science]


Marianne Constable, “On Not Leaving Law to the Lawyers,” in Law in the Liberal Arts, ed. Austin Sarat (2005) [law is too discursive to leave to social scientists]

5.5 Role of Critique


6 Methods—Collecting and Creating Data
The boundary between method and methodology is notoriously permeable, and the separation of the two here is only heuristic. Observing research sites, conducting interviews, and plumbing archives will always depend on some methodological apparatus; the process of aggregating and analysing data, by contrast, will depend not only on the nature of your sources, but on the details of how you have gathered them. Nonetheless, no matter how you plan to integrate the resulting data into your findings, there is a set of inquiries which are likely to arise when confronting real people, activities in progress, and documentary records outside traditional legal sources—and this section is intended to provide a window into those issues.

6.1 Ethics
In some sense, all legal research raises questions about the interaction between a researcher’s own socio-political commitments, their integrity as an academic, and the impact that their research is likely to have on its subjects and target audiences. Nonetheless, research that entails interaction with people, private records and institutional practices raises ethical issues that are seldom at issue in “desk research,” and may furthermore give rise to formal or even legal responsibilities.

6.1.1 The Procedural Tradition—Protecting Research Subjects
UK Economic and Social Research Council, Framework for Research Ethics. See also

- ESRC, Ethics Core Principles
- ESRC, Ethics Case Studies
- UK, Ethics Guide Book

Socio-Legal Studies Association (UK), Statement of Principles of Ethical Research Practice


6.1.2 Limits of Existing Ethics Rules

Richard A. Leo, “Trial and Tribulations: Courts, Ethnography, and the Need for an Evidentiary Privilege for Academic Researchers.” The American Sociologist 26, 1 (Spring, 1995): 113-134. [Confidential data, research subject privacy] See also:


6.1.3 Beyond the Procedural Paradigm


6.2 Action Research
On the reasons for and complexities of conducting engaged research, participatory research, or “action research” one good place to start is the Action-Based Research Methods website

6.3 Ethnographic Fieldwork
[See further sources in “Ethnography” below]


6.3.1 Access

6.3.2 Taking Notes

6.4 Interviews

6.4.1 Styles of Interview
McCracken, Grant David. The Long Interview, Qualitative research methods v. 13 (Newbury Park, Calif: SAGE, 1988).

6.4.2 Choosing Respondents

6.4.3 Interview Issues
Vähäsantanen, Katja and Saarinen, Jaana. 2013. The power dance in the research interview: Manifesting power and powerlessness. Qualitative Research 13/5: 493-510.

### 6.5 Analysing Ethnographic and Interview Data


#### 6.5.1 Qualitative Analysis Software


### 6.6 Archives and Artifacts


#### 6.6.1 Archives and Law


Merry, Sally Engle. “Kapi’olani at the Brink: Dilemmas of Historical Ethnography in 19th-Century Hawai‘i” (2003) 30:1 American Ethnologist 44.
6.6.2 Managing Archival Sources

- Emily Kadens, "Working in Archives #2: Advanced Preparation," Legal History Blog

6.6.3 Using Technology

University of Illinois at Urbana-Champaign (University Library), Using Digital Tools for Archival Research

- Dan Royles, Digital Workflows for the Archives, chronicle.com
- Elena Razlogova, DIY Image Management with Zotero, Perspectives ON History, October 2012 historians.org

7 From Method to Methodologies—Theory, Analysis, Synthesis

7.1 Ethnography—Generally


7.1.1 Varieties of Ethnography


7.1.2 Ethnography and Law


7.2 Grounded Theory


- See also: Bryant, Antony & Kathy Charmaz, eds. The SAGE Handbook of Grounded Theory (London: SAGE, 2007).

7.2.1 Grounded Theory—Legal Applications

Grounded theory is not a particularly prevalent methodological tool in socio-legal research. Nonetheless, there are examples:


7.2.2 Situational Analysis


7.3 Content Analysis


7.3.1 Content Analysis—Socio-Legal Applications


7.4 Discourse


7.4.1 Discourse Analysis in Legal Settings


Harcourt, Bernard E. “Measured Interpretation: Introducing the Method of Correspondence Analysis to Legal Studies” (2002) 2002 U Ill L Rev 979. [proposing correspondence analysis as a potentially more rigorous measurement of legally-salient discourse]

7.4.2 Framing


7.4.3 Narrative


7.4.4 Systems Theory—Legal Orders as Communicative Systems

Febbrajo, Alberto & Gorm Harste, eds. Law and Intersystemic Communication: Understanding Structural Coupling, Studies in the sociology of law (Farnham, Surrey: Ashgate, 2012).


7.5 Putting Language in Question


7.6 Case Studies


7.6.1 Choosing Cases

7.6.2 Case Studies in Legal Research

7.6.3 Process Tracing


7.7 Comparative Methods

Ragin, Charles C. The Comparative Method: Moving Beyond Qualitative and Quantitative Strategies (Berkeley: University of California Press, 2014), ch. 3, “Case-Oriented Comparative Methods.”

7.7.1 Comparative Law as Empirical Research


7.7.2 Comparative Method in Socio-Legal Research

7.8 History


7.8.1  Genealogy


7.8.2  Intellectual History

Skinner, Quentin. “Meaning and Understanding in the History of Ideas” (1969) 8:1 History and Theory 3


7.8.3  The Use of History in Adjudication


7.8.4  Approaches to Legal History


7.8.5 The Consequences of “Context”—The Case of International Law
Koskenniemi, Martti “Vitoria and Us” (2014) 2014:22 Rg Rechtsgeschichte - Legal History 119


7.9 Actor Network Theory /Science and Technology Studies


7.9.1 Documents and Materiality


7.9.2 Law as Technique and Object


8 Selected Approaches to Socio-Legal Issues

8.1 Legal Pluralism
8.2 Time, Space, Place

8.3 The Legal Field


8.4 Law and Culture


8.5 Critical Legal Studies


8.6 Feminist Legal Theory


8.7 Critical Race Theory


8.8 Queer Legal Theory


8.9 Legal Consciousness

8.10 Economic Sociology of Law


8.11 Legal Transplants


8.12 Legal Indicators
8.13 Transnational Law


8.14 New Legal Realism


9 Selected Socio-Legal Research in Specific Legal Subject Areas
The readers and sources listed in section 2 above will have numerous sources on particular legal subject areas; the suggestions listed above are in addition to sources considered to be canonical circa 2005. Nonetheless, it is far from comprehensive or unbiased.

9.1 Anti-Discrimination/Equality


9.2 Constitutions

9.3 Corporations
9.4 **European Union Law**


9.5 **Family**


9.6 **Finance**

9.7 **Gender and Sexuality**


9.8 **Human Rights**


9.9 **Indigenous Sovereignty/Indigenous Rights**


**9.10 Insolvency**


**9.11 Intellectual Property**


**9.12 International Law**


**9.13 International Criminal Law**


**9.14 Labour Law**


9.15 Law and Development


9.16 Mental Health Law
There is really nowhere better to start than the syllabus of Bartlett and Munro’s course on Mental Health Law, available through Tobias Kelly’s website, [here](#) and [here](#).

9.17 Property


9.18 Regulation

9.19 Rule of Law

9.20 Social movements


9.21 Tort and Non-Contractual Obligations


9.22 Trade