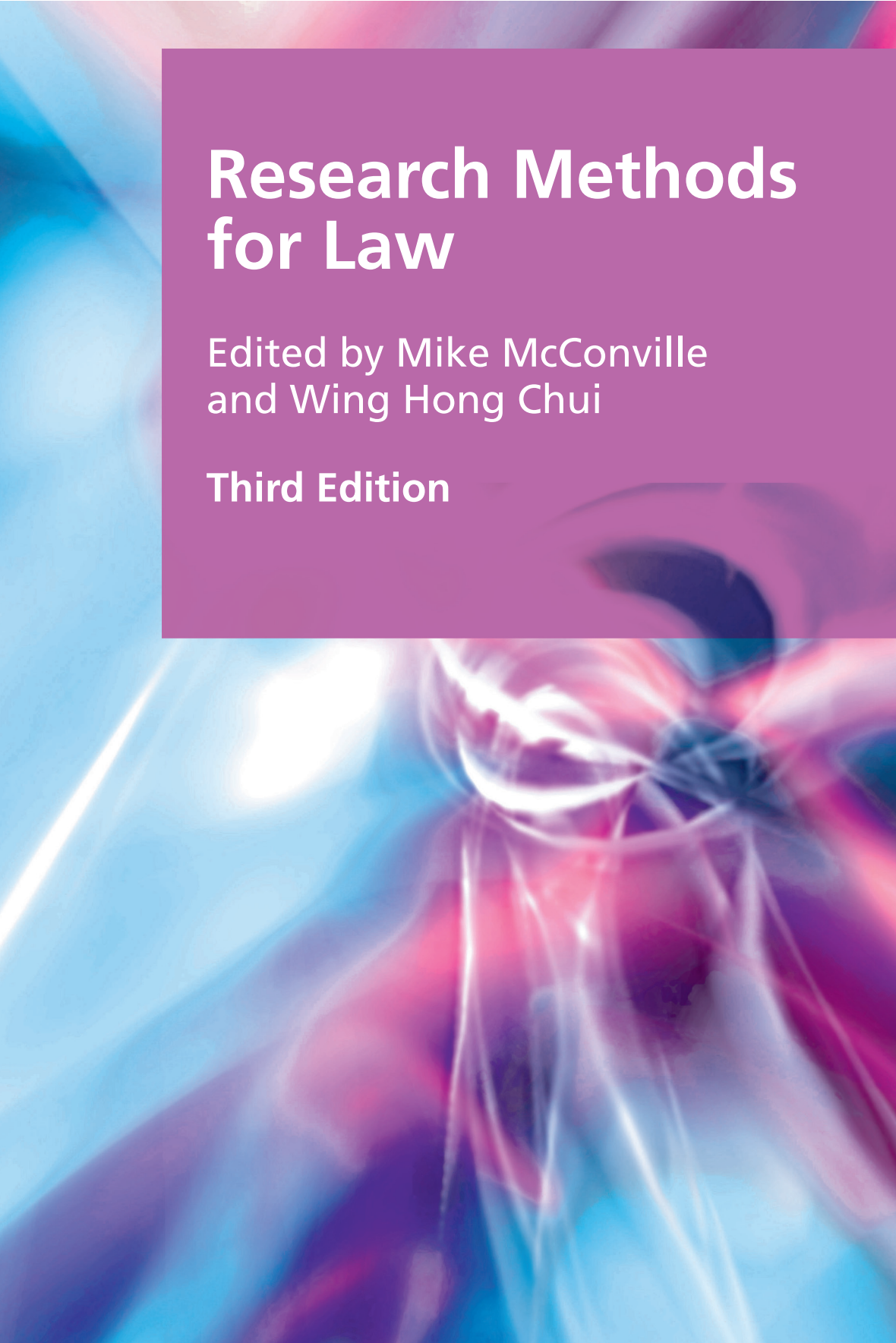

Research Methods for Law

Edited by Mike McConville and Wing Hong Chui

Third Edition

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Introduction and Overview

Mike McConville and Wing Hong Chui

We are delighted to introduce this third edition of our *Research Methods for Law*. While our work has proved immensely popular, this current volume, as readers will see, represents a radical departure from earlier editions. We have sought to respond to the dynamic landscape of legal research and to the challenges confronting young researchers in a rapidly changing world. We have taken up helpful suggestions from colleagues and reviewers across the globe who have used previous editions as teaching aids not only in law but also in criminology, forensic science, history, politics, psychology, sociology and social welfare. As before, this edition is grounded in the lived experience of scholars who have engaged in advanced research and reflected on their participation in these diverse, demanding but fulfilling endeavours.

In very recent years, legal and social science scholarship has undergone remarkable transformations and with this has come significant challenges. The most radical change is the increasingly global character of human existence and with it of academic life. This is seen, for example, in the availability of materials describing and analysing legal systems across the world (previously inaccessible to most researchers) requiring, at the least, that research and scholarship pay attention to alternative perspectives and consider their relevance to the local situation. Additionally, it is now inescapable that trans-jurisdictional instruments, such as Conventions relating to human rights, increasingly penetrate domestic legal systems and stimulate those responsible for operating or interrogating national systems to have regard to wider considerations than was possible when the world appeared considerably larger and less easily navigated. Moreover, academic discourse has increasingly engaged in questioning its own underpinnings and theoretical foundations, concerns which are voiced in many

of the contributions. And beyond all of this, is the extraordinary expansion of new technology and its unavoidable intrusion into everyday life as harvesting of data, language processing and artificial intelligence become virtual and more than virtual realities.

Reflecting this transformation, academic departments have moved away from a teaching-focused system of rote memorisation tested through examinations to a genuine *learning environment* in which students are encouraged to assume greater responsibility for their own education and in which research tested through coursework assignments plays a more prominent role. Research is now an integral part of the undergraduate curriculum, no longer the preserve of postgraduate students. This means, at the least, that research and scholarship are much more pervasive, complex and demanding than ever before and those engaging in research have more possible pathways to travel requiring in turn a greater range of skills and competences than their more narrowly focused predecessors.

This edited volume seeks to provide students at all levels with exposure to available methods of research – legalistic, empirical, comparative and theoretical – in the context of this changing environment, in an accessible, grounded but demanding and hopefully inspirational way, thereby enabling them to pursue research from a variety of perspectives, as they will be expected to engage in during their studies. It offers a pluralistic view of methodological issues and research techniques covering both traditional areas and those emerging as past wisdom is challenged and new technologies become more pervasive. As well as offering guidance on general methodological approaches, the book also offers a focus on specific areas rarely covered in research guides but of increasing interest to students: continental legal systems, Islamic law, race, gender, BRICS, the 'virtual world', artificial intelligence.

Reflecting this, our contributors are drawn from a wide spectrum, echoing its global identity and outreach. At the heart of this volume are their *experiences* as well as their *approaches* to research. The basic idea is that those intending to embark upon a research project or career will benefit from the life stories of those who have already made a significant impact in their fields in terms of pioneering an area of inquiry or carrying the ideas of others forward in interesting ways.

Despite its diversity, this collection by no means covers all existing legal or social science methodologies but contains selected examples of research based upon each contributor's experience. It puts emphasis on the reasons for the choice of research methods, the importance of practical research experience and an examination of dilemmas and problems encountered during the research process. At all stages, guidance and encouragement are offered to future researchers.

One consistent theme highlighted is that while there are procedures or steps to be followed when embarking upon a research project, the researcher is reminded of the need to be reflective and reflexive during the research process and to question whether the chosen methodology is the most appropriate for researching the chosen topic. At all stages, from inception to execution and reporting, the centrality of ethical standards is underlined.

STRUCTURE OF THE BOOK

The book comprises twelve substantive chapters. Together these cover the most common research methods and use actual research projects in distinct areas as illustrative examples to discuss innovative ideas for conducting research. The limitations of each methodology are also highlighted. Throughout, readers will see that all approaches have limitations and all areas are subject to debate and disputation, itself an essential element if knowledge is to progress. A selected bibliography of relevant research literature is provided as further reading throughout the book.

In **Chapter 1**, **Ian Dobinson** and **Francis Johns**, in differentiating doctrinal and non-doctrinal research, define qualitative legal research as simply non-numerical and contrast it as such with quantitative (numerical) research. Four broad divisions are identified: doctrinal, problem, policy and law reform. Regardless of which division or combination of divisions the research falls into, various qualitative approaches should be taken. It is suggested that the researcher's aim should be to reach certain conclusions (or inferences) based on what is found. In this sense, legal research is no different from other forms of academic or scholarly research and rigorous empirical methods should be used. Using such empirical methods, however, requires a level of academic thoroughness and it is here that much of the legal research which has been undertaken falls short. This chapter alerts the would-be legal researcher to such issues and, consequentially, by reference to research examples, how best to undertake qualitative legal research in a more robust and structured manner. The chapter also warns of the risk of search engine algorithms or AI misinterpreting the intentions of an online researcher. The account is replete with detailed guidance and worked examples.

The principal task of **Chapter 2** is to examine the nature and applications of quantitative research methods in socio-legal studies. **Wing Hong Chui** begins with an overview of the aims and core features of quantitative methods, while contrasting these with qualitative methods. The role of theory in quantitative research is examined. A range of research designs such as measurements of concepts and sampling strategies available for empirical research are also

described. Illustrated with examples from classic and contemporary quantitative studies, the chapter then focuses on main data collection techniques such as surveys, experiments and secondary data analysis. Emphasis is placed on unpacking the rationales, strengths and weaknesses of each technique. This chapter ends with a discussion of quantitative data analysis and a review of some of the ethical issues in quantitative research.

In **Chapter 3, Satnam Choongh** identifies key characteristics of ethnographic research, its historical foundations and its overall purpose. Valuable insights are provided into the role of theory in qualitative research, the difficulties of formulating research questions and the multifaceted nature of gaining and maintaining access. Satnam covers the ethical dilemmas that can arise when conducting ethnographic research, and the challenges that arise when analysing, interpreting and writing up ethnographic data. This general overview is placed in the context of his own experience of conducting research into procedural fairness at police stations. Satnam provides practical guidance on how and where to interview, how to structure interviews that will extract the experiences and views of those being studied and how to observe, record and analyse everyday interactions and occurrences in a manner which provides legal and sociological insight.

In **Chapter 4, Paul Roberts** explores the meaning and value of interdisciplinarity in legal research. It begins with definitional questions concerning the boundaries and constitution of law as a discipline, then opens out into a more general discussion of the criteria of methodologically sound research. A generic reasoning protocol – the Eternal Triangle of Intellectual Inquiry (ET) – is introduced and expounded. The chapter emphasises the importance for legal researchers of 'thinking methodologically', even in relation to traditional forms of doctrinal legal scholarship. Thinking methodologically means carefully formulating research questions and choosing a suitable method or combination of methods capable of generating relevant data to answer those questions. This is a dynamic, iterative process. Legal researchers must therefore become proficient interpreters and intelligent consumers of all disciplinary literatures and research data bearing on their inquiries, whichever methods individual researchers themselves employ. For PhD students and academic researchers, this will often (though not invariably) entail interdisciplinary scholarship. The chapter concludes with three case studies drawn from the author's own criminal justice research, illustrating productive interdisciplinary interfaces between law and philosophy, law and sociology/socio-legal studies, and law and science. Readers are invited to extrapolate methodological hints, tips and tried-and-tested strategies and techniques to their own research problems and questions.

In **Chapter 5**, **Thomas Weigend** provides an introduction to researching the European continental legal system using the example of Germany. The chapter begins by outlining the advantages that comparative research can bring to the researcher both in terms of their intellectual development and in practical terms both in formulating and resolving problems previously considered local/national and in offering policy solutions which cross boundaries. Emphasis is given to the normative and cultural contexts which require consideration, arguments for undertaking research in continental jurisdictions are canvassed and consideration is given to the different methodological approaches that must be taken into account. Beyond this, in a worked example of the detail that must be confronted in comparative research, Thomas offers a thorough and valuable account of the sources and structures of German criminal procedure and criminal law and the principles and rules underpinning them.

In **Chapter 6**, **Haider Ala Hamoudi** shows the manner in which differing methods of research into Islamic law parallel different conceptions of what Islamic law is. Haider does this by identifying the three main lines upon which Islamic law scholars divide in approaching the field. The first is between those who adopt an internal point of view, and accept the doctrinal and methodological coherence of Islamic law on its own terms, and those who view it externally, and thus contextualise its rulings using the tools of their own respective disciplines. The second division is between those who study the premodern period, where juristic opinion was the pith and pit of Islamic law, and those most concerned with Islamic law in modernity, where the role of the state in defining the law is much more pronounced. Finally, there is the division between those who think of Islamic law as they do state law – as a system of rules imposed by an external force, and enforced as such – and those who view it as an idealised system of rules that reflect a manifestation of Divine Will. Scholars invariably are forced to make decisions on how to study the field along these axes, and their research methods will shift accordingly.

In **Chapter 7**, **George Mészáros** analyses research and BRICS. This chapter invites young researchers to explore some challenges associated with BRICS research from a methodological and theoretical perspective. This includes issues of researcher identity; 'outsider' status; language limitations; source dependency; access; socio-legal approaches; internet research; comparative, desk-based and primary research; and even lessons of failure (a BRICS-related project that never got off the ground). Special consideration is given to framing, normativity and method. Framing begins with assumptions behind the term BRICS itself, which readers are urged to look beyond as a unit of analysis. The chapter examines the temptations (and potential pitfalls) of overly narrow comparative legal texts-based research, before moving on to a case study (the

experience of BRICS in relation to corruption, law and growth), which underlines the value of grasping law in its wider social setting. That case is used for practical purposes to underline the value of hunches in the development of broader research hypotheses. The chapter also considers some assumptions (positive and negative) about researching BRICS in English and questions this raises about researcher positionality, source dependency and source integrity. Awareness of these assumptions, attendant risks and available choices helps drive better research design/implementation thereby enhancing internal coherence and external plausibility.

In **Chapter 8**, **Foluke Adebisi** critically engages with the relationship between race, racism and legal research, through the past and present, while also providing some suggestions for future development. The chapter opens by defining key terms and with a brief discussion of the history and significance of these terms. It then considers some key issues that legal scholars should reflect on when their research engages with the relationship between law, race and exploitative colonial logics. This consideration is aimed at highlighting the ways in which law's power can influence research on racialised populations. This section also considers how research agendas and practices within universities and law schools impact legal research into questions of race. Finally, this chapter explores the concept of 'decolonising research'. This final section is a reflection on the ways that law schools have responded to the absences of race within research as the contemporary result of harmful histories. It also provides some key questions legal scholars should be asking themselves if they want to produce legal research that makes an intellectually sound and rigorous account of the impact of racialisation and empire on their scholarship.

In **Chapter 9**, **Emma Milne and Hannah Bows** provide an introduction to some of the research methods and approaches used in the study of law and gender, as conceptualised in its widest sense. As they argue, it is impossible to think about approaching the law from a gendered perspective without considering the role of feminism and feminist analysis of not only the law, but also of the concept and creation of knowledge in general, and the research methods used in obtaining and developing that knowledge. Consequently, the chapter analyses the maleness of law and legal institutions by assessing the foundations on which legal thoughts and principles are based and uncovering the patriarchal nature of that foundational knowledge. In doing so, the chapter explains why the law is gendered and why it is important for us to approach our scholarship with a commitment to disavowing the idea that the law as currently conceptualised, constructed and implemented is neutral and objective. Following this, the chapter considers how to approach research from a gendered perspective, including the methods, approaches and principles needed, specifically drawing on Katherine T. Bartlett's approaches to conducting feminist legal research.

In **Chapter 10, Rebecca Helm and Emily Spearing** consider how legal research can best engage with the challenges and opportunities of the virtual world. They suggest that the novelty of these challenges and opportunities, alongside their diverse potential impacts, necessitates research that has particular characteristics. First, they suggest that research must be problem-based rather than discipline-based since understanding virtual innovation and its likely impact requires knowledge from across disciplines, and effectively engaging with virtual innovation often requires the application of law from a range of fields. Second, they suggest that research must be evidence-based rather than purely theoretical since the novelty of virtual innovation means that the application of common-sense reasoning has the potential to be ineffective and precarious. Finally, they suggest that research must span multiple jurisdictions due to both the potential for the effects of virtual innovation to be felt beyond traditional jurisdictional boundaries and the potential for learning from the practice of other jurisdictions as innovation rapidly evolves. Helm and Spearing illustrate ways in which research with these characteristics can be conducted, and how and why this research is both necessary and fruitful, through two illustrative case studies, one focusing on the regulation of virtual innovation (specifically in the context of regulating virtual misinformation) and one focusing on the utilisation of virtual innovation (specifically in the context of utilising virtual courts).

In **Chapter 11, Mark Findlay** examines research methods in the metaverse. He raises novel and complex questions about this new entrant into the law dynamic and legal discourse. How do you research law where there is no time and space, no jurisdiction and no state? Some say that law in the virtual is the same as law anywhere because even if you transit from realspace you continue to live and breathe there. Using the absence of private property and property rights in the virtual, this chapter challenges such assumptions and encourages a critical, multi-disciplinary approach to understanding *new law*. If the metaverse is to be more than another marketplace mimicking commodification (and the commodification of law) then in what way can notions such as entitlement, communitarian consensus and good faith ensure order in digital spaces assisted by *new law*? Is law the new code and vice versa? The chapter provokes novel research thinking about the relationship between law, virtual realities and digital transformation.

Finally, in **Chapter 12, Mike McConville** reviews elements of a forty-year-long project as it evolved to bring out many of the threads linking the other contributions and to provide a guide to the challenges and possibilities of legal research. The chapter illustrates the importance to the researcher of continually interrogating his or her own views and perspectives as a central responsibility. The chapter reviews a variety of approaches that may be taken when conducting

research, illustrating basic principles with worked examples. Taking the issue of negotiated justice or plea bargaining (the way in which the state attempts to extract guilty pleas from defendants in criminal cases), the chapter traces the evolution in approach from 'revelatory' research to meta-theory grounded in detailed data collection. The narrative picks up issues in other chapters and looks at comparativism, 'top-down' and 'bottom-up' theory building, issues of access, assimilation and researcher identity, as well as the ethics and politics of research. Throughout, the prospective researcher is reminded of the unqualified ethical obligation to respect respondents and report faithfully on all aspects of the research for the benefit of future researchers.