

The background of the cover is an abstract, colorful composition of flowing, translucent lines in shades of green, blue, and purple. A solid teal rectangular box is positioned in the upper left quadrant, containing the title and editor information in white text. The overall aesthetic is modern and dynamic.

Research Methods for Law

Edited by Mike McConville
and Wing Hong Chui

Second Edition

Research Methods for Law

Second Edition

Edited by Mike McConville and Wing Hong Chui

EDINBURGH
University Press

Edinburgh University Press is one of the leading university presses in the UK. We publish academic books and journals in our selected subject areas across the humanities and social sciences, combining cutting-edge scholarship with high editorial and production values to produce academic works of lasting importance. For more information visit our website: edinburghuniversitypress.com

© editorial matter and organisation Mike McConville and Wing Hong Chui 2007, 2017
© the chapters their several authors 2007, 2017

Edinburgh University Press Ltd
The Tun – Holyrood Road
12 (2f) Jackson's Entry
Edinburgh EH8 8PJ

First edition published in 2007

Typeset in 11/13 Ehrhardt by
Servis Filmsetting Ltd, Stockport, Cheshire,
and printed and bound in Great Britain by
CPI Group (UK) Ltd, Croydon CR0 4YY

A CIP record for this book is available from the British Library

ISBN 978 1 4744 0321 4 (paperback)
ISBN 978 1 4744 0425 9 (webready PDF)
ISBN 978 1 4744 0322 1 (epub)

The right of the contributors to be identified as authors of this work has been asserted in accordance with the Copyright, Designs and Patents Act 1988 and the Copyright and Related Rights Regulations 2003 (SI No. 2498).

Contents

<i>List of Figures and Tables</i>	vii
<i>Preface and Acknowledgements to Second Edition</i>	viii
<i>Preface and Acknowledgements to First Edition</i>	x
Introduction and Overview	1
<i>Mike McConville and Wing Hong Chui</i>	
1. Legal Research as Qualitative Research	18
<i>Ian Dobinson and Francis Johns</i>	
2. Quantitative Legal Research	48
<i>Wing Hong Chui</i>	
3. Doing Ethnographic Research: Lessons from a Case Study	72
<i>Satnam Choongh</i>	
4. Interdisciplinarity in Legal Research	90
<i>Paul Roberts</i>	
5. Integrating Theory and Method in the Comparative Contextual Analysis of Trial Process	134
<i>Mark Findlay and Ralph Henham</i>	
6. Comparative Legal Scholarship	163
<i>Geoffrey Wilson</i>	
7. Research Ethics and Integrity in Socio-legal Studies and Legal Research	180
<i>Mark Israel</i>	

8.	Researching the Landless Movement in Brazil <i>George Meszaros</i>	205
9.	Rejecting the Dominance of Empirical Legal Scholarship – A Better Way of Choosing, Researching and Writing a Scholarly Article <i>Michael Pendleton</i>	231
10.	Researching International Law <i>Stephen Hall</i>	253
11.	Development of Empirical Techniques and Theory <i>Mike McConville</i>	280
	<i>Notes on Contributors</i>	303
	<i>Index</i>	308

Tables and Figures

TABLES

2.1	Core features of qualitative and quantitative methods	51
2.2	A summary of common non-probability sampling	58
2.3	Five major methods of quantitative research	60
2.4	Continuum of quantitative research designs	61
2.5	Advantages and disadvantages of survey methods	63
2.6	Measures of central tendency/Basic descriptive statistics	64
5.1	Instrumental factors in judicial discretionary behaviour	153

FIGURES

2.1	Stages of planning and executing a study	54
2.2	Use of theories in quantitative research	56
4.1	The Eternal Triangle of Intellectual Inquiry	100
5.1	Conceptualising the structuration of trial process	136
5.2	Modelling the relationship between structuration and sentencing decisions	139
5.3	Inductive and deductive parallels	143

Preface and Acknowledgements to Second Edition

The Second Edition of this book seeks to provide law students at all levels with exposure to available methods of research – legalistic, empirical, comparative and theoretical – 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 embracing empirical legal research, international and comparative legal research, as well as doctrinal research. In so doing, a variety of research methodologies adapted from law and social sciences are introduced to investigate legal phenomena such as doing research in the field, criminal justice, international law and intellectual property law. The book has been revised and enlarged with new chapters on interdisciplinarity in legal research and research ethics.

The primary aim of the book remains to provide an introduction to some of the essential methodologies, approaches and tools of research in relation to different fields of law. Each chapter introduces generic research skills by examining qualitative or quantitative methodologies relevant to all areas of legal research or through engagement with a variety of areas such as international law, intellectual property, public law, comparative law and criminal justice which are used to illuminate the application of particular skills. Throughout, attention is paid not only to technical issues but to the responsibilities of the researcher and the moral dimension of research.

We wish to thank all the contributors for their willingness to play a part in putting together this book, and of course, for their excellent work in preparing the chapters. We are indebted to Chuo University for kind permission to reproduce the chapter by Geoffrey Wilson (sadly deceased in 2016). We

are also grateful to Sonia McConville for her help in preparing the script for publication.

We have been very fortunate to have had the support and guidance of John Watson, Ellie Bush and Eddie Clark of Edinburgh University Press, for their commitment to the project and unfailing help at all stages of commissioning and production, and to our copy-editor Anna Stevenson for her attention to detail and tolerance.

We end with our very best wishes to all those who set out to increase understanding of all aspects of social organisation through the demanding route of systematic inquiry.

Mike McConville and Wing Hong Chui

Preface and Acknowledgements to First Edition

Legal research may be carried out for varied reasons. Some use it to identify the sources of law applicable to understanding a legal problem, and then find a solution to the problem that has been identified. It is apparent that practising lawyers are expected to conduct factual and legal research in an effective manner because of the cost implications for their client. Others would use research as a tool to extend our knowledge of aspects of law and the operation of the legal system that are of great interest. Research may also be driven by the policy considerations promoted by bodies such as law reform commissions to investigate social, political and economic implications of current and proposed legislation. Increasingly, students are required to engage in research themselves and no longer have their studies confined to textbooks.

No one denies that research in the real world is of increasing importance and that conducting legal research is a complex business. Nevertheless, how far are law students, graduates, the legal profession and academic lawyers equipped to undertake legal research? How are their research skills comparable to those of researchers with a medical science, social science or humanities background? What pitfalls await the new researcher, and can these be avoided or addressed through careful planning? These are indeed very difficult questions, and it is not the intention of this edited volume to look for a complete answer. Rather, it offers general and practical guidance to those who are interested in learning how to use legal research in order to expand knowledge of legal processes, improve their understanding of specific legal problems and produce findings of significance for society, and it sets out questions that a serious researcher needs to ask before embarking upon any important project.

The primary aim of the book is, then, to introduce some of the essential methodologies, approaches and tools of research in relation to different fields

of law. Each chapter introduces generic research skills by examining qualitative or quantitative methodologies relevant to all areas of legal research or through engagement with a variety of areas such as international law, intellectual property, public law, comparative law and criminal justice which are used to illuminate the application of particular skills. It is hoped that this will be a cutting-edge volume advancing our knowledge of three specific kinds of legal research, including black-letter legal research, empirical research, and international and comparative legal research.

Given the complexities of each of these research methodologies, it is impossible to cover all approaches or methods of research within one text. However, we make it clear in our introductory chapter why some approaches will be elaborated in subsequent chapters, while others will be introduced briefly and readers directed to further reading. The book has been designed to reach a wide audience, including black-letter lawyers, socio-legal researchers and those in related disciplines such as sociology, political science and psychology.

Last but not least, we wish to thank all the contributors for their willingness to play a part in putting together this book and, of course, for their excellent work. We are indebted to Chuo University for kind permission to reproduce the chapter by Geoffrey Wilson. We are also grateful to Eastman Chan at the Chinese University of Hong Kong for her patience in preparing the script for publication; to Alice Chan Ka-yee of the Chinese University of Hong Kong for her technical help and support; the Series Editor of Research Methods for the Arts and Humanities, Gabriele Griffin, for her constructive comments and support in the book project; and to Jackie Jones of Edinburgh University Press for her commitment to the project.

Mike McConville and Wing Hong Chui

Introduction and Overview

Mike McConville and Wing Hong Chui

Legal scholarship has historically followed two broad traditions. The first, commonly called ‘black-letter law’, focuses heavily if not exclusively upon the law itself as an internal self-sustaining set of principles which can be accessed through reading court judgments and statutes with little or no reference to the world outside of the law. Deriving principles and values from decided cases and re-assembling decided cases into a coherent framework in the search for order, rationality and theoretical cohesion has been the fodder of traditional legal scholarship.

A second legal tradition which emerged in the late 1960s is referred to as ‘law in context’. In this approach, the starting point is not law but problems in society which are likely to be generalised or generalisable. Here, law itself becomes problematic both in the sense that it may be a contributor to or the cause of the social problem and in the sense that whilst law may provide a solution or part of a solution, other non-law solutions, including political and social re-arrangement, are not precluded and may indeed be preferred. The law-in-context approach has given an extra dimension to legal studies that has been taken up in every higher education institution.

Apart from these broad traditions, however, legal scholarship has also undergone significant transformations and is facing significant challenges. One is the increasingly global character of legal life. This is seen in the ready access that can now be secured to materials describing and analysing legal systems across the world (previously inaccessible to most researchers) and 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 was considerably larger and less easily navigated.

Additionally, the teaching of law has moved decisively away from a teaching-focused system of rote learning tested through examinations to a learning environment in which students are encouraged to assume more responsibility for their own education and in which research tested through coursework assignments plays a more prominent role. Law students are now more research-based than ever before, and research is an integral part of the undergraduate curriculum, no longer the preserve of postgraduate students. This means, at the least, that legal research and scholarship is much more pervasive, complex and demanding than ever before and those engaging in research have more possible pathways to travel and require a greater range of skills and competences than their law-focused predecessors.

AIMS OF THE BOOK

Every law school offers instruction on legal research to equip students with skills of identifying the sources of law and relevant legal materials, and advanced methodology courses to support not only postgraduate students but also those writing dissertations in later undergraduate years. Undeniably legal research is a complex business, and it ‘is not merely a search for information; it is primarily a struggle of understanding’.¹ Both academic and practising lawyers are required to think deeply about information recovered and discovered and what are the best methods of collecting, analysing, and presenting information and data. In many respects, strong legal research and writing skills are fundamental tools for legal practice and scholarship. Based on his experience as a lawyer and research student, Nicholas Hancox draws attention to the distinctive differences in terms of their perceived use of law and legal research between academics and practising lawyers. Some of the observations are: ‘academic lawyers want to understand the way that law works and how it affects people and organisations, but practitioners are not interested in *why* the law says what it says’; ‘only academic lawyers are interested in how things are done abroad’; ‘academics are often less interested in what they (alone) call black-letter law’; and ‘for academic lawyers, getting published is very important, but practitioners ought never to have time to write books’.² While acknowledging these as his subjective observations, the divide is somehow inevitable because of the different expectations among the two sets of lawyers. It is apparent that scholarly legal research is comprehensive and directed towards conclusions whereas practising lawyers are accountable to their clients who seek their professional advice and knowledge on legal rules, authorities and procedures.

Thus, the way academic and practising lawyers see the meaning of law and legal research is diverse. Nonetheless, in order to advance legal scholarship, students, lawyers and academics are recommended to be open-minded and flexible in terms of choosing the best method of understanding and investigating a matter of concern.³

This edited volume seeks to provide law students at all levels with exposure to available methods of research – legalistic, empirical, comparative and theoretical – 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 as opposed to adopting a narrow parameter of traditional legal research. More specifically, three major types of legal research, namely empirical legal research, international and comparative legal research, and doctrinal research, will be examined in the collection. In so doing, a variety of research methodologies adapted from law and social sciences will be introduced to investigate legal phenomena such as doing research in the field, criminal justice, international law and intellectual property law.⁴

At the outset it should be acknowledged that this collection by no means covers all existing legal methodologies but contains selected examples of research based upon the contributor's research experience.⁵ It puts great 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. One consistent theme highlighted in each chapter 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.⁶

TYPES OF LEGAL RESEARCH

Doctrinal research

A number of titles on legal research are available and have been adopted as textbooks for legal research courses across the world.⁷ Admittedly most of these texts on research methods for law are targeted exclusively at 'black-letter law' rather than non-traditional, interdisciplinary research projects. These texts are able to equip students with basic research skills including the knowledge of the sources of legal authority, locating cases and statutes, the use of indexes and citators, and the use of computer information retrieval systems

such as Westlaw and LexisNexis. In a word, the ‘black-letter law’ approach or doctrinal research relies extensively on using court judgments and statutes to explain law:

Most [law departments/schools] have their own specialized libraries full of raw materials for textual analysis: the law texts, case law, legislation, and, increasingly, materials via the internet. There is no need to go outside and research the material realities of people’s everyday lives.⁸

‘Black-letter’ research aims to systematise, rectify and clarify the law on any particular topic by a distinctive mode of analysis of authoritative texts that consist of primary and secondary sources. One of its assumptions is that ‘the character of legal scholarship is derived from law itself.’⁹ David Stott articulates a range of skills of legal research to be covered and taught in the Legal Practice Course in the United Kingdom. They are as follows:

- to determine the objectives of the lawyer or client
- to identify and analyse factual material
- to identify the legal context in which factual issues arise
- to identify sources for investigating relevant facts
- to determine when further facts are required
- to identify and analyse legal issues
- to apply relevant legal provisions to facts
- to relate the central legal and factual issues to each other
- to identify the legal, factual and other issues presented by documents
- to analyse a client’s instructions and be able to identify legal, factual and other issues presented to them
- to present the results of research in a clear, useful and reliable form.¹⁰

The above list is not exhaustive but summarises the skills component of the methods’ classes mainly for first-year undergraduate students. It is generally agreed that these skills of conducting library legal research and computer legal research must be imparted to law students and new lawyers. Teaching legal research is not always an easy task, especially from the law librarian’s perspective, and training should not solely focus on finding information but should promote students’ understanding of legal doctrine.¹¹ In many respects, as far as law students are concerned, it remains the case that the majority of undergraduate and LL.M-level dissertations are ‘black-letter’ and use interpretative tools or legal reasoning to evaluate legal rules and suggest recommendations for further development of the law.¹²

Empirical legal scholarship/socio-legal studies

In recent years, several commentators have criticised pure doctrinal analysis for its ‘intellectually rigid, inflexible and inward-looking’ approach of understanding law and the operation of the legal system.¹³ There is evidence that law schools in the United Kingdom, the United States and elsewhere are offering new postgraduate programmes (such as socio-legal studies, feminist legal studies, critical legal studies and new approaches to international law) that encourage an interdisciplinary approach to the study of law.¹⁴ A number of legal educators have drawn attention to the emergence of empirical legal research as well as socio-legal research:

British university law schools are undergoing a radical change in the nature of legal research and scholarship. They were once dominated by pure doctrinal analysis but new generations of legal scholars are either abandoning doctrinal work or infusing it with techniques and approaches drawn from the humanities and the social sciences . . . [T]his change will lead to a greater ability to provide law students with a truly liberal education and will also enable the law school to take a much greater part in the intellectual debates to be found elsewhere in the university.¹⁵

The non-doctrinal approaches represent a comparatively new avenue of studying law in the broader social and political context with the use of a range of other methods taken from disciplines in the social sciences and humanities. Socio-legal scholars point to the limitations of doctrinal research as being too narrow in its scope and application of understanding law by reference primarily to case law. This traditional legal method fails to prepare students and legal professionals to attend to non-doctrinal questions.¹⁶ Roger Cotterrell comments:

All the centuries of purely doctrinal writing on law have produced less valuable knowledge about what law is, as a social phenomenon, and what it does than the relatively few decades of work in sophisticated modern empirical socio-legal studies . . .¹⁷

The merits and relevance of using other disciplines such as sociology, political science, economics, psychology, history and feminism as aids to legal research have been widely recognised. Interdisciplinary or socio-legal research broadens legal discourse in terms of its theoretical and conceptual framework which guides the direction of the studies, and its specific research methodologies are able to generate empirical evidence to answer research questions. In the 1960s

and 1970s, legal realists and socio-legal scholars started the law and society movement, and pointed to the importance of understanding the gap between 'law in books' and 'law in action', and the operation of law in society. They were interested in examining the legal system in terms of whether legal reform brings about beneficial social effects and protects the interests of the public.¹⁸ Similarly, in the 1980s, critical legal studies integrated ideas and methods found in disciplines such as sociology, anthropology and literary theory.¹⁹ On the whole, these approaches to legal scholarship not only provided an alternative to the traditional legal analysis but also encouraged lawyers to engage in critical and cutting-edge research to examine the relationship between law and gender, social class, ethnicity, religion and other social relations of power.²⁰ At a more practical level, interdisciplinary legal research offers considerable promise:

In purely pragmatic terms, interdisciplinarity offers an opportunity for product differentiation in an increasingly competitive academic environment: an 'interdisciplinary perspective' may help a researcher place his or her work with a more prestigious academic journal or publishing house. Interdisciplinary research is perceived to be popular with research funding bodies, and for legal academics in particular it provides access to research grants of a magnitude not usually available for 'pure' legal research.²¹

What is more, socio-legal scholarship employs a wide range of applied social science methods including quantitative and qualitative research.²² These methods aim to decipher the workings of legal, social and cultural processes. For instance, Dave Cowan and his colleagues employ a socio-legal analysis to study the role of adjudication or decision-making processes within the local authority in influencing the implementation of homelessness law.²³ Grounded in both quantitative and qualitative data, his research team confirms that despite the implementation of the homelessness law provisions in the Housing Act 1996 local authorities have chosen to exercise discretion in making decisions during the internal review, and obstacles were posed to most aggrieved applicants for reviewing the decisions. Their study demonstrates how hard data were collected to examine how one legal institution operated and whether legal reform achieved its intended outcomes, thereby pointing to further policy and legal reform. It is important to note that empirical legal scholarship is complementary to doctrinal research and both methodologies can be used simultaneously to examine a legal issue, as advocated by academic lawyers.²⁴ Nonetheless, doubts have been cast on whether the present-day law schools put enough emphasis on the social policy of law and provide students with sufficient training on the application of applied social sciences to legal research.

To fill this gap, this book demonstrates that empirical research can transform how law can be understood and studied.

International and comparative legal research

The third type of legal research covered in the book is international and comparative legal research. The reason for its inclusion is mainly because of the increasing influence of international and supra-national legal materials, and the increasing need for legal scholars to refer to materials from a variety of jurisdictions, together with the demands made by contemporary law schools upon their students to engage in critical thinking. This type of research crosses traditional categories of law, integrating public and private international law with domestic law, European law and the comparative method. It aims to facilitate our understanding of the operation of international law and legal systems and its impact on the formulation of public policy in an era of global interdependence.

STRUCTURE OF THE BOOK

The book comprises eleven chapters. Together these chapters cover the most common research methods within law, and use actual research projects as illustrative examples to discuss innovative ideas for conducting legal research. The limitations of each methodology are also highlighted. The pervasive but often neglected issue of research ethics is seen in all chapters but is specifically addressed in Chapter 7. A selected bibliography of relevant research literature is provided as further reading throughout the book.

Chapters 1 to 4 provide an overview of qualitative and quantitative research methods which lay a foundation for fieldwork in the legal arena. In Chapter 1, Ian Dobinson and Francis Johns 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 done falls into, various qualitative approaches should be taken. 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, according to others, that much of the legal research which has been undertaken falls short. This chapter seeks to alert 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 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, whilst 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. Particular 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 ethical issues (discussed in greater detail in Chapter 7) in quantitative research.

Chapter 3 identifies the key characteristics of ethnographic research, and explains how Masters and PhD students can make an invaluable contribution to maintaining this socio-legal tradition. 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 Choongh uses his own experience of conducting research for his DPhil thesis into procedural fairness at police stations to give practical guidance on how and where to interview, how to structure interviews so as to extract the experiences and views of those being studied, and how to observe, record and analyse everyday interaction 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, Roberts explains, 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. As Roberts argues, legal researchers must therefore become proficient interpreters and intelligent consumers of all disciplinary literature 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.

The growing importance of global legal studies is addressed in Chapters 5 and 6. Mark Findlay and Ralph Henham illustrate one way in which complex legal theory may be generated by cross-jurisdictional research. By interrogating fundamental issues of context, comparison, interaction and interpretation, Chapter 5 lays the essential foundations for the theory and methodology of comparative contextual analysis. In this case the chapter analyses criminal trials in different procedural contexts in order to speculate on the possible synthesis of trial decision-making in an international context. The conceptual framework of one case-study analysis provides a set of organising and interpretative constructs which are capable of identifying elements and processes crucial to the application of rules and resources by participants during the course of the criminal trial. The theoretical grounding is developed to recognise structural, organisational and interactive levels of analysis within each chosen context and in so doing provides a suitable framework against which to model the major dimensions of decision-making in the criminal trial. In the end Chapter 5 maps out the importance of theoretical foundations for case-study methodology and subsequent modelling which are recurrent technologies in socio-legal research. The chapter argues for the crucial utility of theory as the foundation phase and prevailing influence for successful research methodology. Much of this remains implicit in legal research and this chapter offers a method for bringing theory to the surface and demonstrating its utility.

Geoffrey Wilson raises fundamental questions as to the purpose and objectives of comparative legal study in Chapter 6. Comparative law has usually been seen as an extension of the study of national law and justified in terms of the benefits it brings to the national legal system. This chapter illustrates how an expanded view of comparativism can open up a range of exciting opportunities for legal researchers. The potential opened up by the Columbia experiment is re-considered in the context of a comparativist approach directed towards dealing with major problems facing individuals and society and making plain the links between law and real life. Beyond this, Chapter 6 considers some of the differences made by the information revolution and possible responses to this through comparative research.

In Chapter 7, Mark Israel discusses an issue that is pervasive to all legal research – research ethics. Legal academics have little tradition of writing about the ethical conduct of research – far less than cognate disciplines such as criminology, for example. Instead, socio-legal scholars have invested more effort in analysing and resisting the encroachment of research ethics governance on their methodologies and subject material. Drawing on both British and more broader international experiences, Israel explores the tensions between

developing ethical practice and meeting regulatory requirements as well as the major ethical issues that have an impact on socio-legal studies, including informed consent, confidentiality, harm and benefit, justice, research integrity and misconduct, conflicts of interest and researcher safety. This chapter considers how researchers might respond to ethical problems that they encounter as well as the demands of research ethics committees, arguing that researchers need to develop their understanding of the conceptual underpinnings to ethical decision-making; an enhanced capacity to recognise actual and prospective ethical challenges; and the tools to negotiate those challenges as they arise – anticipated or otherwise. Together these could offer socio-legal scholars the possibility as individuals and as a scholarly community to shape more effectively the mechanisms by which their research is reviewed. As Mark Israel demonstrates, not only do socio-legal scholars have much to contribute, but they also have much to lose if they continue to defer to other disciplines on matters of research ethics.

In Chapter 8, George Meszaros illustrates important questions relating to researcher identity, assimilation, and the collection and processing of information, as well as how comparative research can combine law, politics and theory whilst overcoming difficult problems of access. Conflict is a central feature of law and thereby of much socio-legal inquiry. This raises important methodological issues for researchers in all parts of the world. However, the juxtaposition of precarious legal institutions alongside massive social pressures so characteristic of developing countries places its own set of demands upon researchers. While issues of researcher identity, identification with research subjects, accessing information, handling information and so on are not unique to developing countries, they are routinely magnified and intensified. High stakes means that the lifeblood of research, the gathering and processing of information, rapidly acquires political overtones. In this chapter, Meszaros addresses these issues against the background of what, at first glance, looks like a worst-case scenario: a research project that looked at different sides of a land conflict in which dozens of people are killed every year. The research, set in Brazil, had to move between militants occupying land, and judges, prosecutors and those in charge of state security who routinely locked them up. While this raised unique difficulties, it also posed the sorts of problems and dilemmas with which researchers in developing countries are routinely faced, and for which aspiring researchers ought to be prepared.

Chapters 9 and 10 give guidance on how to undertake doctrinal research (the staple of many undergraduate research projects) and how to conduct research in the increasingly popular areas of intellectual property and international law. To be more specific, Michael Pendleton, in Chapter 9, expresses concern that contemporary legal research has become predominantly empirical or quantitative. He argues that this global trend is largely dictated by university funding

models which by and large adopt the science model for funding the humanities, social sciences and law. While criticising this development, the author asks: what is traditional non-empirical legal research, what are its merits and how does one go about doing it? Examples of traditional doctrinal legal analysis and criticism are used to illuminate this doctrinal approach.

In Chapter 10, Stephen Hall argues that international law has, for more than a decade, been a significant growth area in legal scholarship. This growth is largely due to the acceleration of international interdependence, usually known as ‘globalisation’, and the new post-Cold War threats to international peace and security. The methodologies for scholarship in this field are unavoidably shaped by the nature of international law’s ‘sources’, which lawyers from other fields frequently find to be notably idiosyncratic, as a result of the fact that they emerge unavoidably from the decentralised and mainly consensual nature of the international legal system. This chapter looks at each of these sources with a view to identifying methodological pitfalls into which inexperienced researchers sometimes fall and the means of avoiding them. It also identifies a non-exhaustive range of broad topics which provide potential for young researchers looking for a fertile area to explore.

The final chapter reviews a thirty-year-long project as it evolved and metamorphosed 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. Here, Mike McConville reviews a variety of approaches that may be taken when conducting research, illustrating basic principles with worked examples. Taking the issue of negotiated justice (the way in which the state attempts to extract guilty pleas from defendants in criminal trials), 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.

FURTHER READING

Doctrinal research

- C. M. Bast and M. Hawkins, *Foundations of Legal Research and Writing* (5th edn) (Clifton Park, NY: Delmar Cengage Learning, 2013).
- C. Chatterjee, *Methods of Research in Law* (2nd edn) (Horsmonden: Old Bailey Press, 2000).

- P. Clinch, *Legal Research: A Practitioner's Handbook* (2nd edn) (London: Wildy, Simmonds & Hill Publishing, 2013).
- G. Holburn, *Butterworths Legal Research Guide* (2nd edn) (London: Butterworths, 2001).
- W. H. Putman, *Legal Research, Analysis, and Writing* (4th edn) (Clifton Park, NY: Delmar Cengage Learning, 2013).
- D. Stott, *Legal Research* (2nd edn) (London: Cavendish Publishing, 1999).
- K. J. Vandevelde, *Thinking Like a Lawyer: An Introduction to Legal Reasoning* (2nd edn) (Boulder, CO: Westview Press, 2011).

Empirical legal scholarship

- C. Bell, 'A Note on Participant Observation' (1969) 3 *Sociology* 417.
- C. M. Campbell and P. Wiles, 'The Study of Law in Society in Britain' (1976) 10 *Law and Society Review* 547–78.
- N. L. Channels, *Social Science Methods in the Legal Process* (Totowa, NJ: Rowman & Littlefield, 1985).
- M. Clarke, 'Survival in the Field: Implications of Personal Experience in Field Work' (1975) 2 *Theory and Society* 95.
- S. Cohen and L. Taylor, 'Prison Research: A Cautionary Tale' (1975) 31 *New Society* 253.
- D. Cope, *Fundamentals of Statistical Analysis* (St Paul, MN: Foundation Press, 2005).
- L. Epstein and A. D. Martin, *An Introduction to Empirical Legal Research* (Oxford: Oxford University Press, 2014).
- M. O. Finkelstein, *Quantitative Methods in Law: Studies in the Application of Mathematical Probability and Statistics to Legal Problems* (New York: Free Press, 1978).
- Journal of Empirical Legal Studies* (Oxford: Blackwell).
- J. H. Schlegel, *American Legal Realism and Empirical Social Science* (Chapel Hill, NC: University of North Carolina Press, 1995).

Socio-legal studies

- R. Banakar and M. Travers (eds), *Theory and Method in Socio-legal Research* (Oxford: Hart Publishing, 2005).
- A. Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-first Century* (Oxford: Hart Publishing, 2003).
- A. Bryman, *Social Research Methods* (4th edn) (Oxford: Oxford University Press, 2012).
- R. Collier, "'We're All Socio-legal Now"? Law Schools and the Knowledge

- Economy – Reflections on the UK Experience' (2004) 26 *Sydney Law Review* 503.
- D. Cowan and D. Wincott (eds), *Exploring the 'Legal' in Socio-Legal Studies* (London: Palgrave Macmillan, 2016).
- D. Freeman (ed.), *Exploring the 'Socio' in Socio-Legal Studies* (Basingstoke: Palgrave Macmillan, 2013).
- D. J. Galligan (ed.), *Socio-legal Studies in Context: The Oxford Centre Past and Present* (Oxford: Blackwell, 1995).
- I. Horowitz (ed.), *The Rise and Fall of Project Camelot* (Cambridge, MA: MIT Press, 1967).
- L. Humphreys, *Tearoom Trade* (London: Duckworth, 1970).
- Journal of Law and Society* (Oxford: Blackwell).
- Law and Society Review* (Oxford: Blackwell).
- P. Thomas, *Socio-legal Studies* (Aldershot: Dartmouth, 1997).
- M. van Hoecke, *Methodologies of Legal Research* (Oxford: Hart Publishing, 2011).
- A. Vidich, J. Bensman and M. Stein (eds), *Reflections on Community Studies* (New York: Wiley, 1964).
- D. Watkins and M. Burton (eds), *Research Methods in Law* (London: Routledge, 2013).

International and comparative legal research

- M. Adams and J. Bornhoff (eds), *Practice and Theory in Comparative Law* (Cambridge: Cambridge University Press, 2014).
- Asian Journal of Comparative Law* (Cambridge: Cambridge University Press).
- U. Drobnig, 'The International Encyclopedia of Comparative Law: Efforts Toward a World Wide Comparison of Law' (1972) 5(2) *Cornell International Law Journal* 113.
- Electronic Journal of Comparative Law* (<http://www.ejcl.org>).
- G. Frankenburg, 'How to Do Projects with Comparative Law – Notes of An Expedition to the Common Core' (2006) 6 *Global Jurist Advances* 1.
- J. Hage, 'Comparative Law as Method and the Method of Comparative Law', Maastricht European Private Law Institute Working Paper No. 2014/11 (23 May 2014) (<http://ssrn.com/abstract=2441090> or <http://dx.doi.org/10.2139/ssrn.2441090>).
- J. Husa, 'Melodies on Comparative Law: A Review Essay' (2005) 74 *Nordic Journal of International Law* 161.
- O. Kahn-Freund, 'Comparative Law as an Academic Subject' (1966) 82 *Law Quarterly Review* 40.
- R. Peerenboom, C. J. Petersen and A. H. Y. Chen, *Human Rights in Asia: A Comparative Legal Study of Twelve Asian Jurisdictions, France and the USA* (London: Routledge, 2006).

- M. Rheinstein, 'Comparative Law – Its Functions, Methods and Usages' (1968) 22 *Arkansas Law Review* 415.
- G. Samuel, *An Introduction to Comparative Law Theory and Method* (Oxford: Hart Publishing, 2014).
- J. Stone, 'The End to Be Served by Comparative Law' (1968) 25 *Tulane Law Review* 325.
- R. Zimmermann and M. Reimann (eds), *The Oxford Handbook of Comparative Law* (Oxford: Oxford University Press, 2006).

Historical research in law

- J. B. Ames, *Lectures on Legal History and Miscellaneous Legal Essays* (Cambridge, MA: Harvard University Press, 1913).
- D. Cairns, *Advocacy and the Making of the Adversarial Criminal Trial 1800–1865* (Oxford: Oxford University Press, 1999).
- D. Ibbetson, 'Historical Research in Law' in M. Tushnet and P. Cane (eds), *The Oxford Handbook of Legal Studies* (Oxford: Oxford University Press, 2005).
- Journal of Legal History* (Abingdon: Taylor & Francis).
- J. Langbein, *The Origins of Adversary Trial* (Oxford: Oxford University Press, 2005).
- Law and History Review* (Chicago, IL: University of Illinois Press).
- Legal History Connections* (Professor Bernard Hibbitts of the University of Pittsburg at <http://law.pitt.edu/people/bernard-j-hibbitts>).
- Legal History & Historical Research* (https://law.hofstra.edu/pdf/Library/library_guide_historicalresearch.pdf).
- F. W. Maitland, *English Law and the Renaissance: With Some Notes* (Cambridge: Cambridge University Press, 1901).
- M. McConville and C. Mirsky, *Jury Trials and Plea Bargaining* (Oxford: Hart Publishing, 2005).
- S. F. C. Milsom, *Historical Foundations of the Common Law* (2nd edn) (London: Butterworths, 1981).
- A. Musson and C. Stebbins (eds), *Making Legal History* (Cambridge: Cambridge University Press, 2012).
- The Legal History Review* (Leiden: Brill).
- I. Ward, *Sex, Crime and Literature in Victorian England* (Oxford: Hart Publishing, 2014).

Feminist legal research

- K. T. Barlett, 'Feminist Legal Methods' (1990) 103 *Harvard Law Review* 829.
- Columbia Journal of Gender and Law* (<http://cjgl.cdrs.columbia.edu>).

- J. Conaghan, 'Reassessing the Feminist Theoretical Project in Law' (2000) 27 *Journal of Law and Society* 351.
- J. Conaghan and Y. Russell, 'Rape Myths, Law and Feminist Research' (2014) 22(1) *Feminist Legal Studies* 25.
Feminist Legal Studies (link.springer.com/journal/10691).
- Harvard Journal of Law and Gender* (www.law.harvard.edu/students/orgs/jlg).
- F. Heidensohn, *Women and Crime* (Basingstoke: Macmillan, 1996).
- S. Hesse-Biber, C. Gilmartin and R. Lydenberg (eds), *Feminist Approaches to Theory and Methodology: An Interdisciplinary Reader* (New York: Oxford University Press, 1999).
- L. Smith, 'What is Feminist Legal Research' in W. Tomm (ed.), *The Effects of Feminist Approaches on Research Methodologies* (Waterloo, ON: Wilfrid University Press for the Calgary Institute for the Humanities, 1989).

NOTES

1. M. J. Lynch, 'An Impossible Task but Everybody Has to Do It – Teaching Legal Research in Law Methods' (1997) 89 *Law Library Journal* 415.
2. N. Hancox, 'What Lawyers Want: Comparing Academics with Practitioners', paper presented at the 7th Annual Conference of the Learning in the Law Conference, 7 January 2005, University of Warwick.
3. T. Hutchinson, *Researching and Writing in Law* (2nd edn) (Pymont, New South Wales: Lawbook Co., 2006) 7.
4. Authors in this edited collection have experience of the type of research on which they write, and they attempt to use various classic and contemporary examples to illustrate their more theoretical discussion and give practical guidance to the reader.
5. For instance, historical research in law and feminist legal methodology is not covered extensively in this edited collection. Readers are recommended to consult texts elsewhere (see a list of further reading at the end of the chapter).
6. D. A. Schon, *The Reflective Practitioner: How Professionals Think in Action* (New York: Basic Books, 1983); J. Mason, *Qualitative Researching* (London: Sage, 2002).
7. See, for example, D. Stott, *Legal Research* (2nd edn) (London: Cavendish, 1999); I. Nemes and G. Coss, *Effective Legal Research* (2nd edn) (Chatswood, New South Wales: Butterworths, 2001); P. Clinch, M. Barber, C. Jackson and N. Wakefield, *Teaching Legal Research* (2nd edn) (Warwick: UK Centre for Legal Education, 2006); T. Hutchinson, *Researching and Writing in Law* (2nd edn) (Pymont, New South Wales:

- Lawbook, 2006). Please also consult the list of further reading at the end of this chapter.
8. P. Hillyard, 'Invoking Indignation: Reflections on Future Directions of Socio-legal Studies', (2002) 29 *Journal of Law and Society* 650.
 9. E. L. Rubin, 'Law and the Methodology of Law' (1997) *Wisconsin Law Review* 525.
 10. D. Stott, *Legal Research* (2nd edn) (London: Cavendish, 1999) 3.
 11. R. K. Mills, 'Legal Research Instruction in Law School, the State of the Art or, Why Law School Graduates Do Not Know How to Find the Law' (1977) 70 *Law Library Journal* 343; D. J. Dunn, 'Why Legal Research Skills Declined, or When Two Rights Make a Wrong' (1993) 85 *Law Library Journal* 49; Lynch, note 1 above, 428.
 12. This observation is based on the editors' extensive teaching experience in different countries, including England, Hong Kong, Australia and the United States.
 13. D. W. Vick, 'Interdisciplinary and the Discipline of Law' (2004) 31 *Journal of Law and Society* 164.
 14. See, for example, R. W. Gordon, 'Lawyers, Scholars, and the "Middle Ground"' (1993) 91 *Michigan Law Review* 2075; R. Banakar and M. Travers (eds), *Theory and Method in Socio-legal Research* (Oxford: Hart Publishing, 2005).
 15. A. Bradney, 'Law as a Parasitic Discipline' (1998) 25 *Journal of Law and Society* 71.
 16. P. Goodrich, 'Of Blackstone's Tower: Metaphors of Distance and Histories of the English Law School' in P. B. H. Birks (edn), *Pressing Problems in Law. What are Law Schools For?* (vol. 2) (Oxford: Oxford University Press, 1996) 59.
 17. R. Cotterrell, *Law's Community: Legal Theory in Sociological Perspective* (Oxford: Oxford University Press, 1995) 296. Also cited in Bradney, note 15 above, 73. However, some scholars hold the view that the identity of legal discipline is under threat because of the increasing number of socio-legal studies which borrow concepts, theories and research methods from non-law disciplines. See, for example, G. Jones, "'Traditional" Legal Scholarship: A Personal View' in Birks, note 16 above, 14.
 18. See, for example, J. H. Schlegel, *American Legal Realism and Empirical Social Science* (Chapel Hill, NC: University of North Carolina Press, 1995); Banakar and Travers, note 14 above.
 19. Vick, note 13 above, 184.
 20. R. Collier, 'The Law School, the Legal Academy and the "Global Knowledge Economy" – Reflections on a Growing Debate: Introduction' (2005) 14 *Social & Legal Studies* 259.
 21. Vick, note 13 above, 171.

22. T. E. George, 'An Empirical Study of Empirical Legal Scholarship: The Top Law Schools' (2006) 81 *Indiana Law Journal* 141; R. Banakar and M. Travers, 'Law, Sociology and Method' in Banakar and Travers, note 14 above, 17.
23. D. Cowan, S. Halliday and C. Hunter, 'Adjudicating the Implementation of Homelessness Law: The Promise of Socio-legal Studies' (2006) 21 *Housing Studies* 382.
24. J. Baldwin and G. Davis, 'Empirical Research in Law' in P. Cane and M. Tushnet (eds), *The Oxford Handbook of Legal Studies* (Oxford: Oxford University Press, 2003) 881.