



Introduction. Empirical research with judicial professionals and courts: Methods and practices

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Abstract

The articles in this special issue focus on the methodological and practical challenges of undertaking empirical research in judicial and/or court settings. They arose from a workshop at the International Institute for the Sociology of Law held on 23-24 June 2022 which discussed the empirical strategies to access and conduct research with judicial officers and the research methods and kinds of data used, including interviews, surveys, court observations, administrative data, documents, and photographs. The articles draw on the experiences of socio-legal researchers within the field, address the importance of linkages with the justice system and discuss a range of socio-legal insights, methodological approaches and methods from disciplines such as anthropology, law, political science, psychology and sociology.

Key words

Empirical research; methodologies; socio-legal studies

Resumen

Los artículos de este número especial se centran en los retos metodológicos y prácticos que plantea la realización de investigaciones empíricas en el ámbito judicial y/o de los tribunales. Surgieron de un seminario del Instituto Internacional de Sociología

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Jurídica celebrado los días 23 y 24 de junio de 2022, en el que se debatieron las estrategias empíricas para acceder a los funcionarios judiciales y llevar a cabo investigaciones con ellos, así como los métodos de investigación y los tipos de datos utilizados, como entrevistas, encuestas, observaciones en los tribunales, datos administrativos, documentos y fotografías. Los artículos se basan en las experiencias de los investigadores sociojurídicos en este campo, abordan la importancia de los vínculos con el sistema judicial y analizan una serie de perspectivas sociojurídicas, enfoques metodológicos y métodos procedentes de disciplinas como la antropología, el derecho, las ciencias políticas, la psicología y la sociología.

Palabras clave

Investigación empírica; metodologías; estudios sociojurídicos

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1. Introduction

The special issue presents a collective inquiry into the research design and methods involved in studying judges, courts, judicial professionals, and others in and around courts. It draws on the experiences of socio-legal researchers within the field and discusses a range of socio-legal insights, methodological approaches and methods from disciplines such as anthropology, law, political science, psychology and sociology. The articles published here result from papers presented at the International Institute for the Sociology of Law in Oñati Workshop on “Empirical research with judicial professionals and courts: Methods and practices” held on 23-24 June 2022. The workshop was organised by Paula Casaleiro and João Paulo Dias (University of Coimbra, Portugal) and Sharyn Roach Anleu (Flinders University, Australia). There were 17 participants from eight countries (Argentina, Australia, France, Portugal, Slovenia, Sweden, United Kingdom, and the United States), most of whom participated in person in Oñati, while others were able to join us online.

The workshop created an opportunity to take time out of our embeddedness in research to be reflexive about our research projects, the strengths and limitations of different collected or produced data, and the role of gatekeepers and other constraints on access to the judiciary and its work. It focussed on different research experiences and sought to contribute to the progress of socio-legal research. Most papers adopted an autoethnographic methodology, relying on the researcher’s personal experiences to describe and critique the practices of judicial research (Cook 2014, Adams *et al.* 2015).

Each of the contributions illustrates the methodological and practical challenges of undertaking empirical research in judicial and/or court settings and constitutes an effort to address them from a wide array of disciplinary fields and socio-legal/social science data collection or construction techniques, including ethnographic methods, interviews, language processing techniques, online and paper surveys, written judgments, photography, or field diaries, among others. The research projects were undertaken either alone or within research groups and entailed different kinds of collaboration with courts and other judicial institutions. The articles can be grouped into two main themes: (i) those that refer to the research design, considering the empirical strategies to access and conduct research with judicial officers, and (ii) those that discuss the advantages and limitations of secondary data and other pre-existing data such as decided cases (transcripts) and photographs of court buildings.

2. Research design: Setting the scene

In past decades, socio-legal scholars have described judicial professionals as difficult populations for empirical research. Some researchers describe the judiciary as “a ‘hard-to-reach’ group” due to obstacles presented by gatekeepers (Cowan *et al.* 2006, 546), the judiciary’s “high status and professional remoteness” (Dobbin *et al.* 2001, 287) its concerns about confidentiality of responses and protection of anonymity (Hunter *et al.* 2008, 87). Problems of access, time constraints and perceived utility of socio-legal and social science research, in general, have proved to be significant challenges for designing research involving courts and directly seeking information from judicial officers.

Dias *et al.* (2023) and Roach Anleu and Mack (2023) show the relevance of partnerships with courts and judicial organisations to facilitate access to this ‘difficult population’,

through the example of the Permanent Observatory for Justice (Observatório Permanente da Justiça [OPJ], Portugal) and a large multi-year, national empirical research project (Australia). Dias *et al.* (2023) highlight that since the foundation of the OPJ, the involvement of legal and judicial professionals and the collaboration of judicial and political institutions have proved to be key features in building a trusting environment, with fruitful results based on access to relevant sources of information.

Roach Anleu and Mack (2023) trace the biography of a research project which commenced in 2000 and entailed extensive engagement with professional associations, courts, judicial officers, court administrators and other staff, as well as government departments, at inter-personal and organisational levels. This involvement engendered mutual trust through careful explanations of, and scrupulous attention to, confidentiality and anonymity for participants, and a commitment to voluntary participation. However, it is important to recognise that, there may have been some unique and non-replicable elements of that research. Mulcahy and Tsalapantanis (2023) caution against presenting a rosy picture of working with judges as positive outcomes and successful collaboration will not be experienced by all who embark on similar projects.

Furthermore, as mentioned by Dias *et al.* (2023), regular cooperation with judicial actors and professionals is an added value to accomplish the research objectives and obtain better and more far-reaching results. Nevertheless, this proximity entails several risks, and they canvass issues of trust, rapport, buy in, judicial values, and reflexivity regarding the relationship of the researcher to the research setting. Mulcahy and Tsalapantanis's (2023) article addresses the ways in which working with judicial and justice policymakers can undermine the researcher's agency or independence, arguing that in some instances this may generate new insights and offer opportunities to challenge dominant discourses within government or policy. Their article suggests that different types of research relationships are possible that can be characterised as akin to handmaidens, partners or go-betweens. Similarly, Appleby and Roberts's (2023) article discusses the different roles the Chief Justice (or head of jurisdiction more generally) plays in relation to the study of judges, including as gatekeeper, provider of research, responder to research, and commissioner of research. They offer a critical view of the advantages and limitations of the relationship with the institutional gatekeepers in designing and implementing research projects.

It is important to note that within the different legal and judicial systems, there is a wide diversity of judicial management models, judicial organisation and judicial professionals. Members of judicial professions do not hold the same titles in all countries, and their roles and status can vary considerably from one legal system to another (Casaleiro *et al.* 2021). Hannaford-Agor (2023) presents some of the challenges and limitations raised by multi-jurisdictional research, namely collecting comparable data across different sites. Based on the experience of researching state and local trial courts in the United States, her article points out the need to be aware of structures, practices, and terminology across multiple jurisdictions, since organizational, procedural, cultural and local factors can directly (and indirectly) affect the research and analysis.

3. Different kinds of data: Primary, secondary and indirect data

Socio-legal researchers often rely on secondary, unobtrusive data, such as court statistics and administrative data (Opeskin 2013), and on documents such as cases, biographies, and other publicly available or accessible material, including photographs, paintings, and architecture (Mulcahy 2011, Roberts 2014, Moran 2015). Secondary data can be a viable alternative when surveys, interviews, or observations are not feasible due to access limitations and due to funding constraints (see Dias *et al.* 2023 and Roach Anleu and Mack 2023 on difficulties related to the lack of funds to support data collection).

Articles by Cahill-O’Callaghan and Opeskin examine the use of two different kinds of secondary data: judicial decisions and administrative data. Cahill-O’Callaghan (2023) argues that cases and judicial decisions provide relevant insights into the judicial institution and the culture that shapes decision-making, considering the institutional, procedural and individual constraints on who can speak to a judge and what a judge can or wishes to say. Opeskin (2023) in turn highlights the advantages of administrative data, such as the dataset uniqueness, accessibility, affordability and timeliness, while recognising its limitations and the challenges posed to judicial research, depending on the data source and quality.

Although many studies of judicial professionals and courts rely on secondary or indirect data, socio-legal researchers recognise the need to employ a wide variety of methods in studying judicial and legal phenomena (Banakar and Travers 2005). An increasing number of studies obtain data directly from judicial actors and use multiple research methods, such as interviews, surveys, and observations and stress the importance of rethinking the prevailing approaches and methodological designs.

Mark’s (2023) article draws attention to the limits of relying on written opinions and records of judges’ votes to explore the underlying decisional dynamics of policy design and implementation. She argues that it requires collecting information on actors’ perceptions, including their understanding of their role in decision-making processes and their interpretation of local contexts, to gain a deeper understanding. Additionally, the article provides evidence of the challenges and benefits of conducting technology-mediated interviews with an elite sample.

Amietta and Barrera’s article discusses an ethnographic research project on the introduction of jury trials and lay participation in Argentina, a research field that has been dominated by an interest in the decision-making processes of juries and statistical studies of decisions and post-trial surveys, or in-depth analyses of simulated trials. They argue that the situated and contextual approach of ethnographic research is relevant for jury research, shedding light on how material and temporal constraints fulfil the legal mandate of incorporating lay decision-makers and reshape and (re)create bureaucratic structures and roles. They argue that the jury has become a spectral presence that alters a myriad of existing practices, characters and responsibilities in the criminal justice of Buenos Aires that goes well beyond their verdicts.

Weill’s (2023) article presents an ethnographic research project on French terror trials, which aims to “re-localize” studies of counter-terrorism laws within their geographical context and analyse the trans/national dynamics from within, using a bottom-up approach, as performed and shaped within the judicial scene at the local level. The article

proposes to analyse terrorism logics – exception, rule of law, emergency – beyond the dichotomies. It examines how they are reflected, represented and negotiated, from within courtrooms. The analysis is based on the practice, the routine and the evolution of the judicial process and the performance of law, where a variety of actors and policies modulate these concepts through accommodation, innovation or struggle. Looking at the narratives, interactions and empirical context of judicial practice allows a more nuanced understanding of how the law is made by the different protagonists, who operate within a specific court context.

This special issue illustrates the diversity of socio-legal research in terms of the methods used, disciplinary contribution and topics of inquiry. Socio-legal research does not have to be about courts, legal cases, or the rate of litigation (Banakar 2019), it can also be about emotions, working conditions and court architecture. Hunter's article (2023) discusses the conception, methodology and findings of a study of judicial officers' psychological wellbeing, through an on-line survey. It calls attention to the challenges of investigating a sensitive topic within a group already known to be a 'hard-to-reach' group with deep concerns about the confidentiality of responses (Hunter *et al.* 2008, 87). Recognising the fear of stigma and discrimination regarding psychological distress, the article addresses strategies the researchers adopted to build legitimacy and trust in the judiciary when designing the survey (drafting a survey to "create little possibility of inadvertent identification") and reporting the findings (limiting the initial reporting to the quantitative aspects of the study). Another good example is Branco's article (2023) which elaborates on the methodological and practical issues raised by a novel research project examining courthouse spaces, places and architecture. She demonstrates the ways attention to courthouse architecture can be nested within broader themes, such as access to justice, and intersects with the specificity of the family and children jurisdiction. The article highlights the importance of using mixed methods, interviews, focus groups, surveys and visits (with photographic records), and demonstrates how different types of data collection complement each other.

In closing, we would like to express our deep gratitude to Malen Gordoia, and the IISL Workshop Coordination Team, who so expertly organised the workshop, making all the necessary local arrangements and liaising continuously with all the participants. We appreciate the hospitality of the Institute and enjoyed the food, wine, chocolate and countryside of Oñati. A huge thank you to Leire Kortabarria for her careful and professional work producing this special issue. Her attention to detail and management of the process of paper submission, reviews, revisions, editing and transformation of papers to articles are outstanding. The comments and suggestions of the reviewers on the papers have been very helpful and we appreciate their effort. Finally, we thank all the participants of the workshop and their willingness to share their research experiences and challenges. We hope that this special issue will become a valuable resource for scholars and students who undertake research of any kind involving judicial professionals and their courts.

References

- Adams, T., Jones, S.H., and Ellis, C., 2015. *Autoethnography: Understanding Qualitative Research*. Oxford University Press.
- Amietta, S.A., and Barrera, L., 2023. "It's in the Law". An Ethnographic Account of the Effects of the Introduction of Lay Participation on Judicial Bureaucracies. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1793>
- Appleby, G., and Roberts, H., 2023. Studying judges: The role of the Chief Justice, and other institutional actors. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1713>
- Banakar, R., 2019. *On Socio-Legal Design* [online]. 2 October. Available at: <http://dx.doi.org/10.2139/ssrn.3463028>
- Banakar, R., and Travers, M., eds., 2005. *Theory and Method in Socio-Legal Research*. Oxford: Hart.
- Branco, P., 2023. Analysing courthouses' spaces, places and architecture: some methodological outlines. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1692>
- Cahill-O'Callaghan, R., 2023. When you cannot ask the judge: Using the case to explore judicial culture. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1745>
- Casaleiro, P., Relvas, A.P., and Dias, J.P., 2021. A Critical Review of Judicial Professionals Working Conditions' Studies. *International Journal for Court Administration* [online], 12(1), 2–28. Available at: <https://doi.org/10.36745/ijca.334>
- Cook, P.S., 2014. "To actually be sociological": Autoethnography as an assessment and learning tool. *Journal of Sociology* [online], 50(3), 269–282. Available at: <http://dx.doi.org/10.1177/1440783312451780>
- Cowan, D., et al., 2006. District Judges and Possession Proceedings. *Journal of Law and Society* 33(4), 547–71.
- Dias, J.P., Conceição, G., and Henriques, M., 2023. Conducting socio-legal research in Portugal: from the experience of the Permanent Observatory for Justice to the study of working conditions in courts. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: [10.35295/osls.iisl.1735](https://doi.org/10.35295/osls.iisl.1735)
- Dobbin, S.A., et al., 2001, Surveying Difficult Populations: Lessons Learned from a National Survey of State Trial Court Judges. *Justice System Journal*, 22(3), 287–307.
- Hannaford-Agor, P., 2023. "How exactly is it done here?" Conducting cross-jurisdictional research with judges and court staff. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1702>
- Hunter, C., Nixon, J., and Blandy, S., 2008. Researching the Judiciary: Exploring the Invisible in Judicial Decision Making. *Journal of Law and Society*, 35(s1), 76–90.
- Hunter, J., 2023. Two tiers of judicial officers. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1755>
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- Mark, A., 2023. Perceptions of administrative policymaking authority: evidence from interviews in three state court systems. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1706>
- Moran, L.J., 2015. Judicial pictures as legal life-writing data and a research method. *Journal of Law and Society* 42, 74–101.
- Mulcahy, L., 2011. *Legal Architecture: Justice, Due Process and the Place of Law*. London: Routledge.
- Mulcahy, L., and Tsalapatani, A., 2023. Handmaidens, partners or go-betweens: Reflections on the push and pull of the judicial and justice policy audience. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1707>
- Opeskin, B., 2013. The State of the Judicature: A Statistical Profile of Australian Courts and Judges. *Sydney Law Review*, 35, 489–517.
- Opeskin, B., 2023. Lazy data? Using administrative records in research on judicial systems. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1624>
- Roach Anleu, S., and Mack, K., 2023. Empirical Research with Judicial Officers: The Biography of a Research Project. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1726>
- Roberts, H., 2014. Telling a history of Australian women judges through courts' ceremonial archives. *Australian Feminist Law Journal*, 40, 147–162.
- Weill, S., 2023. Engaging with court research: The case of French terror trials. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1732>
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