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Banakar, Reza

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LUND UNIVERSITY

PO Box 117
221 00 Lund
+46 46-222 00 00

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On Socio-Legal Design

Reza Banakar

The idea of method that contains firm, unchanging and absolutely binding principles for conducting the business of science meets considerable difficulty when confirmed with the results of historical research. We find then, that there is not a single rule, however plausible, and however grounded in epistemology, that is not violated at some time or other. It becomes evident that such violations are not accidental events, they are not the results of insufficient knowledge or of inattention which might have been avoided. On the contrary, we see that they are necessary for progress.

Feyerabend, 1993: 14.

1. Introduction

This chapter provides an introduction to research design in sociology of law by describing the stages which jointly shape the process of socio-legal inquiry. It asks if there is a specific way of planning research in sociology of law which distinguishes itself from research design in other social science disciplines. Research design is often used somewhat narrowly to examine the correspondence between our choice of research methods, such as surveys, interviews, discourse analysis or observation, on the one hand, and the type of empirical data which we need for our study, on the other. It ensures that the evidence (the empirical data) we collect allows us to answer the question at the core of our inquiry in a satisfactory fashion. However, this chapter will use a broader understanding of research design to include not only the correspondence between the methods we use and the data we need to answer our research questions, but also the entire structure of our research including our research objectives, literature review, theoretical framework, analysis of the findings and the ethical dimensions of our research.[1] It also includes certain choices we make in the course of our research, such as viewing the relationship between law and society top-down or bottom-up, as part of our overall research design. The chapter begins with briefly discussing law (or the law) as a contested concept with both a narrow and a broad definition, before exploring how top-down and bottom-up approaches influence our overall design. Then, it moves on to discuss socio-legal research design and concludes with a critical assessment of the research potential of the so-called "gap problem" in sociology of law and a discussion on the limitations of traditional methods of research in digital environments which engender new forms of social interaction and (power) relations.

[1] For a similar approach to research design see Braun and Clarke, 2013: 42ff.

2. Law's Shifting Boundaries

It is commonplace that lawyers and sociologists do not always see eye to eye when it comes to describing and analysing the law.[2] Lawyers see the law as a collection of rules, principles and previous decisions which courts recognise as authoritative and use to decide cases brought before them. This law gains its authority from the sovereign, which is why we refer to it here as "state law."[3] It makes officials accountable, places obligations on citizens and punishes those who break its rules, but it also grants them rights to establish relationships, such as marriage, or to draw up wills and contracts, and to terminate them. This understanding of the law informs legal practice, shapes legal education and largely determines the contours of the discipline of legal studies. For legal studies, the question is: how can the law work more effectively and uniformly as a normative system which guides individual behaviour and the conduct of private and public institutions, organisations and associations? Legal scholars, especially those who work within mainstream legal studies and conduct what is called doctrinal research, treat the law as "a sealed system which can be studied through methods which are unique to the 'science of law'" and believe that "legal developments can be interpreted, critiqued and validated by reference to the internal logic of this sealed system" (Vick 2004: 178–9). The sources from which they collect their raw material are limited to "a finite and relatively fixed universe of authoritative texts" such as statutes, legal opinions and legal cases (ibid: 178). Doctrinal scholars search for practical solutions to concrete juridical problems that courts and other legal instances generate, but acknowledge only those solutions which fit into the already existing corpus of legal rules and principles (Smits, 2015: 10). They assume that the law is a rational construct and that all legal rules, decisions and principles can be systematised in a coherent fashion. Thus, they "search for logic and order in the continuous and disorderly flow of cases, legislative instruments and policy documents" (Van Boom et al., 1918: 1). Other legal scholars who are theoretically inclined and work within jurisprudence, try to construct "philosophical foundations for the law as it stands or [to develop] an all-encompassing normative theory of just, fair, efficient or viable law" (ibid.). Both doctrinal studies and legal philosophy involve describing the law, although in the case of the former, descriptions of the law are recursive and self-referential, i.e. on law's terms alone and not in relation to extra-legal societal forces and processes.

If doctrinal studies embody an *internal* view of how the law *ought* to be constructed as a system of legal norms and principles, sociological studies of the law represent an *external* view of how the law *is* de facto generated through social practices and how it operates as a social system. To this end, sociologists use a variety of theoretical perspectives, describing and analysing the law in its societal settings. Donald Black, to give an example, defined law as "governmental social control" (Black, 1976: 2), but he also added that law was a "variable" which differed "from one case to the next. It [was] situational and […] relative" (1989: 6). Black's definition

[2] For a comprehensive discussion see Banakar, 2015.

[3] The role of the sovereign, or the nation state, as the primary source of law has come under increasing scrutiny over the last decades as a result of the intensification of globalization. Globalization transfers many regulatory issues which were previously managed at the level of the nation state to the supranational level (such as the European Union). For a discussion on the impact of globalization on law and legal studies see Michaels, 2013.

captures the top-down exercise of power by officials of the law and governmental agencies. Other sociologists have described the law as a social institution on par with religion, politics and the economy, maintaining that it stabilises societal relations, guarantees expectations of expectations, integrates social subsystems, and upholds democratic values in a modern society (e.g. Parsons, 1962). Yet, others have defined it as a form of domination, which through its monopoly of physical and symbolic violence preserves the status quo with respect to gender roles, ethnicity or social class (for an example see Bourdieu, 1987).

We are, thus, confronted with two different conceptions of the law: one reflecting lawyers' understanding, which regards the law as a tool with which to do things, while the other is the sociologist's conceptualisation of the law as an integral part of the larger societal processes. There is, however, a third way of looking at the role of the law, one which recognises that these two understandings, different as they are, provide valid descriptions of the way law manifests itself at different levels of social reality and, thus, do not necessarily exclude each other. This third way acknowledges that there are issues, such as social order and compliance, which are central to the concerns of both disciplines of law and sociology, although these common concerns are often expressed in different disciplinary terminologies. It is, therefore, to the benefit of sociologists and lawyers to find ways of communicating across disciplinary boundaries and learn from each other, notwithstanding their different perspectives on the law. Sociology of law tries to achieve this by creating an academic space for interdisciplinary exchanges between various conceptions of law and legality; a space which is free from the methodological orthodoxies that define established disciplines. There is, however, still no consensus on whether this interdisciplinary space should become a melting pot for theories and methodologies belonging to various disciplines, or if it should just provide ad hoc encounters between disciplinary perspectives.

Sociology of law concerns itself with the study of law, but unlike legal studies – which defines it narrowly in terms of state law and approaches it either descriptively or normatively – it entertains a much broader understanding of law and legality, which in addition to state law involves informal orderings. Law becomes an empirical entity which mediates between "facts" and "norms," giving rise to juridical experiences of different communities and groups of people (see Gurvitch, 1947). Thus, legislation passed by parliament, decisions of the courts, or actions of police authorities or social workers, are all topics of socio-legal research because they concern the narrow understanding of the law as employed by many lawyers. While practicing lawyers and legal scholars use these normatively, the sociologist treats them as empirical data, as "normative facts," to borrow liberally from Georges Gurvitch (1947: 30), to study the collective juridical experiences of the officials of the law, or to examine how the law works as a system and interacts with the rest of society. In addition, sociology of law studies informal (unofficial) forms of regulation, which can include informal mediation carried out by local communities, the codes of social responsibility which are developed and voluntarily applied by certain international corporations, the Mafia's internal rules, or networks of corruption in some societies. To give a socio-legal example, in his study of migrant workers who live their lives across the national borders of more than one country, Rustam Urinboyev (2017: 74) shows

the emergence of a transnational network with the potential to "produce various 'legal orders' that provide alternative to [state law and a] means for regulating their working life […]". To study informal normative orderings, we need to conduct our research bottom-up, starting with accounts of ordinary people's normative practices and experiences of law and legality. Such studies are common in legal anthropology, which has made use of ethnography to produce a body of research on "law without lawyers, law without sanctions, law without courts, or law without precedent" (Geertz, 1983: 168).

3. Top-Down and Bottom-Up Approaches: Two Ideal Types

"Top-down" and "bottom-up" are often used in methodology debates to describe two distinct approaches to planning and conducting research. Here, we regard them as two "ideal types" of research. Kronman (1983: 7) writes that ideal types are "exaggerated or one-sided descriptions that emphasise particular aspects of what is obviously a richer and more complicated reality, but whose very unreality aids us in disentangling the different elements that existing practices and institutions invariably contain".

Within traditional legal studies, research is conducted top-down, i.e. it starts with the law, legislation, legal rules or legal decisions and examines them using the legal system's standards and principles. Sociology of law, on the other hand, can conduct its studies both top-down or bottom-up. It can start with the law and the legal system and examine their impact on social conditions to evaluate the regulatory success or failure of the law in changing patterns of behaviour as intended by policymakers (also, see part six on the "gap problem"). Alternatively, it can carry out its studies bottom-up, starting with what ordinary people perceive and experience as the law and how they use this understanding to shape their everyday relationships and collective activities. Researchers can, then, work their way up through the legal system to discover how citizens' conceptions and experiences of the law interact with formal legal rules and institutions. It is important to note that top-down and bottom-up describe the standpoint from which researchers view the role of law in society and do not necessarily suggest a complete downward or upward journey. Traditional legal research often starts and concludes its studies with the analysis of the law without attempting to explore how the law impacts on society. Similarly, there are socio-legal inquiries which start with examining one group's legal consciousness or practices without trying to explore if, or how, they interact with legal institutions.

Whether we choose to conduct our research top-down or bottom-up has implications for our research design. Bottom-up studies lead the researcher towards an understanding of the law at the micro level of social organisation. Such studies can be conducted with the help of qualitative research methods, such as ethnography and qualitative interviewing. Theoretically, they tend to employ a broader (often legally pluralistic) concept of law akin to Ehrlich's "living law" (1936), legal cultures or legal consciousness. Top-down studies, on the other hand, can be conducted using either qualitative or quantitative techniques. By adhering to the concept of state law, top-down research runs the risk of taking law's claims in respect to, for example

objectivity, universality, generality and neutrality, for granted and treating issues such as the law's authority and legitimacy as unproblematic, thus neglecting to analyse the dominant power relations that are mediated and maintained through the law and legal institutions. In short, these two approaches conceptualise law's power differently and guide us towards different conceptions of law and legality.

An example of top-down research in sociology of law is found in Louise Munkholm's study of local Italian labour law enforcers known as "law technicians" in the city of Prato, which is known for its textile industry (Munkholm, 2018). Over the last three decades, thousands of Chinese migrants have moved to Prato and started small garment workshops. These Chinese-run businesses often fail to comply with Italian labour law. They employ workers on the basis of unwritten agreements, do not respect the maximum limits on working hours and do not follow the health and safety standards set by Italian labour law. The study uses legal sources and policy documents as well as interviews with technicians to collect its empirical data and account for how labour law is communicated to Chinese businesses. The technicians' work supplements the work of traditional labour law enforcers, but since they have no legal authority of their own, they resort to a new proactive method of regulating Prato's garment industry that communicates and unfold the technicalities of labour law to foreign-owned textile firms. Using "a 30-page questionnaire combined with multilinguistic, multicultural and multidisciplinary skills," they ensure that their employers can no longer argue that they did not know the law (ibid: 558). Thus, the study adopts the standpoint of the policymakers and uses the experiences of technicians to account for how the top-down flow of the labour law can be facilitated and enhanced in the special setting of Prato. The study neither considers power relationships between Italian labour law enforcers, Chinese employers and Chinese workers, nor examines how the Chinese employers and employees experience the Italian labour law or the technicians' interventions.

Focusing on the top-down flow of the law does not necessarily have to be at the expense of neglecting power relations. An example of a top-down research which takes power into consideration is Martin Joormann's doctoral thesis entitled 'Legitimised Refugees' (2019). This study starts by analyzing precedents published by Swedish Migration Court of Appeal (MCA) to explain how decisions to grant or to deny the right to asylum are legitimized through the discourses of the MCA at the level of the legal system, but also in view of the public political discourse on migration. To assist its discourse analysis of precedents, it interviews Swedish judges who preside over MCA to uncover their understanding of the processes through which precedents are generated. The study adopts a critical approach to its subject matter by, for example, considering the power constellations which create its social and legal context of inquiry and by critically examining the claims of the law to legitimacy. It analyses how precedents make use of gender, sexuality, ethnicity, religion and/or class to generate their legitimate legal narratives, and the figure of "the legitimate refugee". This study does not, however, explore how the refugees experience the legal process that is used to decide their fate, or how they make use of the law to promote their case.

Reza Banakar's study of Iranians' driving habits is an example of a bottom-up socio-legal research (Banakar, 2016). The study starts by demonstrating that there is an unusually large discrepancy between Iranians' expectations of how one should behave in traffic and their actual driving behaviour, which displays a widespread disregard for traffic laws. This normative hiatus translates itself empirically into high levels of road traffic accidents, generating thousands of fatalities and serious traffic-related injuries annually.[4] Instead of starting with an analysis of traffic laws and how they are enforced, this study begins by conducting extensive semi-structured interviews with different groups of Iranians asking them to account for their daily experiences of the traffic and road accidents, as well as their attitude to law and law enforcement. In this way, the study explores their attitudes to traffic laws and authorities, on the one hand, and their perception of traffic safety and the rights of others, on the other. The interviews link driving habits to factors ranging from Iranians' excessive sense of individualism to their disrespect for law enforcement and their distrust of authorities. Thus, the study captures an important aspect of Iranian legal culture and political order. What is missing, however, is the experiences of the traffic police and the difficulties they encounter in their daily efforts to enforce traffic laws.

Although these two approaches can be combined, i.e. one can start top-down to study the effects of a law before asking questions about how citizens perceive and employ the same law, in practice, we see a tendency among many studies to limit their scope to one approach. One reason for this is that combining two approaches require collecting different types of empirical data, which takes more time and needs more resources than are available to many researchers. In other cases, it might be caused by researchers' primary objective and interest, i.e. the researcher might not be interested in, or aware of, the significance of, for example, citizens' legal experiences and, therefore, focuses only on official agencies which enforce the law. As noted above, some studies start at one end, either with the law or with everyday legal practices, and stay at that level without looking for the impact of the law on social relations or the interaction between everyday practices and legal institutions. In yet other cases, the decision not to combine the approaches is a function of access to data; for example, the researcher can easily access authorities and study their point of view, but not those who are affected by the law, or vice versa. In these instances, the researcher is aware of the significance of people's perspective on the law and might even theoretically engage with it, although the lack of micro-data restricts the study to the authorities' use of the law.

Top-down and bottom-up studies should be seen as *ideal types*, which means that on closer inspection, most socio-legal research contains elements of both approaches, albeit to different extents. Hildur Fjóla Antonsdóttir's study of how victim-survivors of sexual violence experience their participation in the legal processes starts, for example, with a detailed discussion of the criminal justice processes, where a criminal case is defined as a conflict between the state and the accused, but then goes on to interview victims-survivors to uncover their experiences of participating in the legal processes pertaining to their case. By doing so, it

[4] The World Health Organization's 2013 document 'Global Status Report on Road Safety' ranks Iran in third place, after Thailand and Venezuela, in respect of the number of deaths caused by road accidents.

confronts the claims of the law with the legal experiences of victim-survivors who, as the study shows, are "misframed and misrecognised in the criminal justice process because they are wrongfully denied parity of participation (Antonsdóttir, 2018: 327). Another example is Emily Ryo's study, which at first glance appears as a bottom-up examination of how migrant detainees "perceive obligation to obey the law generally and U.S. immigration authorities in particular" (Ryo, 2017: 100). Although this study uses an "in-person survey" of long-term immigrant detainees in Southern California, i.e. it starts by measuring the attitudes of detainees to immigration enforcement authorities, closer scrutiny reveals that it treats U.S. law as a constant factor and seeks to determine its top-down impact on detainees. Nevertheless, this survey-based study contains elements of both bottom-up and top-down approaches. Ryo's study belongs to the tradition of research on "procedural justice," where the efficacy of top-down regulation, i.e. when laws are translated into people's compliance, is evaluated in terms of the degree to which people perceive that procedures involved in decision making are fair. Studies of procedural justice start with the law and seek how or when people comply by the letter of the law. Although they start top-down, asking how procedural justice effects compliance-related behaviour, they conduct their studies bottom-up by examining people's views about the legitimacy and morality of law and regulation (for a survey study of procedural justice see Murphy et al., 2009).

We can overcome the constraints of top-down and bottom-up studies by starting with identifying the key actors in the context of our research and explore how they interact with each other to create social relations and processes. To give an example, if we are studying how certain disputes are processed by courts, besides judges, court administration, juries (if it is a common law court) and lawyers, we will have to consider witnesses, defendants, plaintiffs and, even at times, journalists who report the case. Each actor category has a particular perspective on the law, i.e. while judges have a top-down understanding of the law, plaintiffs or defendants have a bottom-up perception of it. In addition, each group pursues a certain strategy to reach a specific end. While judges wish to process the case in a legally correct fashion and as speedily as possible, the defence lawyers aim at wining the case and would not hesitate to delay the process if they think it benefits their client. The *interplay* between these perspectives creates the reality of the law in action. By focusing on how different actors' perceptions of the law and their objectives interact with each other to create law's processes, we avoid limiting our study to either a top-down or a bottom-up approach. This should not, however, distract us from considering that different actors have different amount of power and authority and thus influence the context in which these interactions are played out to different degrees.

4. Socio-legal Methodology and Research Design

Different Types of Research

We normally distinguish between three ideal types of legal research: normative, descriptive, and explanatory. Normative research is concerned with *should* or *ought* questions. It uses evaluative standards to establish if a development, an event or a conduct is good or bad, or

alternatively it determines what ought to be done in a situation. Normative research in law is conducted top-down, starting with legal rules or decisions. Descriptive research often starts by asking *what* or *how* things are – it collects and presents relevant "facts" either working top-down or bottom-up – thus describing social phenomena, events and processes. Explanatory research, on the other hand, begins by asking *why* things are as they are, thus exploring *causal* relationships between the key factors of a research problem or seeking a deeper understanding of the underlying mechanisms of social developments. Descriptive research is the foundational basis for all types of research. We cannot ask the "why" question before we have identified and adequately described factors, relationships and mechanisms which constitute our research problem. It is noteworthy that in an academic context, for example, when writing a thesis in sociology of law, descriptive studies do not by themselves fulfil the criteria used to assess good research. Besides having a descriptive section, high-quality socio-legal research includes theory building and analysis which go beyond the mere description of a problem. However, as De Vaus (2001: 2) maintains, we should not forget that "good descriptions provoke the 'why' question of explanatory research". In this section, we are primarily concerned with the second and third approaches, leaving the first (normative) approach to legal philosophers.

Socio-Legal Design

Methodology is the intersection of the methods of inquiry we use to conduct our study and our epistemological assumptions, i.e. what we consider as knowledge and evidence and how we relate that to truth, belief and justification. Research design, as it is used here, refers instead to the entire approach we adopt to plan and carry out our research, from how we articulate our research problem, to how we carry out our literature review, narrow down the scope of our inquiry to formulate research questions, the methods we employ to collect empirical data and, finally, to the theory we use to analyse our data. Can research design be "socio-legal"? Or is there a specific way of designing research which is intrinsically socio-legal? To answer this question, we should briefly consider the different stages which together create a research process.

1. *A research problem (RP)*, or research topic, consists of a social event, process or development which we believe to be important for the society in which we live.[5] It attracts our attention because it has unintended consequences, which are socially disruptive (e.g. it causes public safety violations or infringements of human rights) or because it is transformative of the existing relationships (e.g. the widespread use of social media). Research problems do not have to be concerned with negative social developments such as the rise in criminality or the tendency among certain groups to transgress legal prohibition. They can instead focus on favourable developments, such as the decline in patterns of criminality or asking why some people follow the law even when they know

[5] A research problem can admittedly start with a theoretical question and examine it either theoretically or empirically. This approach is not discussed here for lack of space, and as students are not encouraged to follow this line of inquiry which can be teeming with difficulties.

they do not have to do so. Conformity could be sociologically as intriguing as deviant behaviour.

How we describe our RP, situates us as researchers, by revealing our personal engagement, worldview and our understanding of law in society. For example, starting with a research problem such as the migration crisis in the EU, I might choose to research the rights of asylum seekers entering EU countries, or alternatively study how best the EU can restrict the flow of migrants from Africa and the Middle East. By articulating our RP in a particular way, we can give voice to one group, while silencing another, or we can highlight one dimension of an event at the expense of obscuring the other dimensions. Also, it is at this initial stage that our research adopts a top-down or bottom-up approach. Studying the rights of refugees can be conducted either top-down by examining the existing laws that confer rights of asylum, or bottom-up by interviewing refugees to see how they experience and use their rights. Research into how to restrict the flow of refugees, on the other hand, lends itself more easily to a top-down approach.

Our choice of RP can easily ensure the socio-legal character of our research design by problematizing the interface of social and legal factors or processes, articulating an interest in law (narrowly or broadly defined) or forms of legality.

2. *Literature review (LR)* is the most decisive part of our research (Hart, 2007). It helps us to gain an overview of the previous relevant studies, which are either on the topic of our research or closely related to it either empirically or theoretically. Besides making ourselves familiar with what has already been done on our subject matter, a comprehensive LR will allow us to establish if there is a "knowledge gap" among previous studies, i.e. if there are aspects of our RP which have not been researched previously or has not been adequately studied and analysed. If we identify a knowledge gap, we can use it as a reliable basis for formulating our research question. In this way, not only does LR helps us to avoid reinventing the wheel by reproducing a piece of research which has already been done, but it also helps us to grasp the ongoing debates on the topic of our research. It is, however, quite legitimate to re-examine old questions because the social conditions have changed.

   LR is not a simple summary of previous scholarship, but a critical analysis of the previous studies which captures the central concern, agreements and disagreements among researchers interested in our RP. Moreover, it helps us to learn about the theories and methods that have been used to conduct similar studies. This, in turn, enables us to identify and define our key concepts and reflect on how to develop our own theoretical framework.

   One way to ensure the socio-legal disposition of our research is to review existing socio-legal research of significance to our topic of inquiry. However, good research does not limit itself to any particular discipline and instead collects the best relevant studies irrespective of their disciplinary origins. The strength of socio-legal design lies in its ability

to appreciate and incorporate the insights gained by other disciplines into its own repertoire of knowledge.

3. *Research question (RQ)* or hypothesis is the cornerstone of our research design. Good research requires a carefully formulated question about a clearly demarcated aspect of our RP. In other words, RQ narrows down our scope of research to an area which has not previously been studied or properly analysed. This process is intimately linked to what we described above as conducting a comprehensive LR. Put differently, it is unlikely that anyone can generate an empirically viable RQ, which captures an important and neglected issue, without first carrying out a comprehensive study of previous relevant research and debate. A good RQ shows an awareness of the socio-legal complexity of its specific subject matter. From a theoretical standpoint, it addresses one of the main concerns of socio-legal research, while empirically, it highlights the intricate interactions between societal and legal factors and processes which underpin its subject matter.

   For a study to be socio-legal, we need an RQ which either examines the interface of social and legal phenomena, or explores informal rules, networks and processes which generate a sense of legality for actors and institutions that are involved in their production. The fact that our approach might overlap with research in other disciplines, such as jurisprudence, criminology or political science, is not a problem per se. It only reminds us that socio-legal research is an interdisciplinary field of study. One factor which can occasionally help to distinguish research in sociology of law with a focus on norms of social organisation from, say, research in sociology of organisation, is our choice of theory. Sociology of law has its own theoretical concerns, discourses and traditions such as legal pluralism, legal cultures, legal consciousness or autopoiesis which have been developed specifically to address the study of law in society.

4. *A theoretical (or conceptual) framework (TF)* identifies concepts, factors, processes and relationships which are central to our study. They also include assumptions, expectations and beliefs that implicitly or explicitly inform and guide our study. LR has an important role in constructing our theoretical framework. It helps us to identify our key concepts, define them and explain how they are related to each other in the empirical context of our study. In other words, by describing how our central concepts are interrelated, we construct a preliminary conceptual framework for our study and the basis for developing our theory. It is likely that we shall have to revise our conceptual framework in light of the empirical data we collect. Indeed, such a revision can be part of the outcome of our research.

   What if our research is inductive and atheoretical? Many ethnographic studies or research based on “grounded theory” do not begin by articulating a theoretical framework, but search for an empirically viable one. For example, we might decide to conduct a study of how a group of people living in a neighbourhood manage their internal conflicts by discovering what *they* (rather than the researcher or the authorities) call “law” and how they use it as a tool for dispute resolution. Even in an ethnographic study of this type, we

still need to define and demarcate our field of study, identify our main ideas and clarify them to start with. As Wilson and Chaddha (2009: 557) put it: "the issue is not whether but how theory is used in ethnographic studies". In addition, it is generally agreed that theory "ought to inform the interpretation of ethnographic data" (ibid.).

5. *Research methods (RM)*, such as surveys, observations or interview techniques, are tools for collecting empirical data. They exist to serve the RQ, which implies that the make-up of our inquiry should determine the methods we use. At the same time, choosing a particular technique of research often amounts to selecting a methodological direction for our research. If we choose to conduct our study using a survey, we are adopting a quantitative approach, which means that we believe that we can quantify the problem under study and measure it. This might, in turn, have theoretical implications for the research, which will be designed to search for causal relationships rather than seeking to understand the meanings that social agents attach to their actions.

   The methods of research we choose should allow us to investigate the level of social reality that our research is concerned with (whether macro, messo or micro) and to collect the type of data which can adequately answer our research question. For example, if we are trying to study the rate of litigation in a particular jurisdiction, which would require a macro approach, there is no point in carrying out courtroom observations or conducting open interviews with judges or court clerks. Interviewing judges and the administrative staff allows us to collect data at micro level, but it will not provide us with a reliable statistical basis to describe the rate of litigation at macro level of the legal system (for an example of such a study, see Ginsburg and Hoetker, 2006). Such qualitative interviews might be helpful and give us invaluable insights into what we are studying, but ultimately, the individual members of the judiciary can only tell us about their personal experience of the flow of cases in their own courts and not about the flow of cases across the whole of the legal system. To obtain an overall perspective on the rate of litigation we need instead to access the raw statistics collected by the court administration system and extract the information we need from them. This is an example of a descriptive inquiry which if conducted correctly would normally lead us to ask other questions. Once we have collected information about the rate of litigation in a particular jurisdiction, we might, for example, wonder "why" it has varied during certain periods and if it correlated with other social developments in, for example, the court organisation itself (if the number of judges or lawyers has increased or decreased) or in the economic system (if the economy has improved or deteriorated). To answer the "why" question, we could either conduct interviews with the judiciary and the members of the legal profession to see how they see it or administer a survey questionnaire among these two groups.

6. *Research ethics* (RE) is discussed here in two senses, both of which are vital for conducting good research. First, we must care for the people who participate in our research, protecting them against harm and risk and ensure that our research will not violate their dignity, privacy and personal safety. RE also involves consideration of safety for the researcher;

our research should not put us in the way of harm, whether it is political, physical or psychological harm. In Sweden, research which concerns sensitive issues and involves collecting sensitive data about individual citizens is strictly regulated by law and requires clearance from the Swedish Ethical Review Authority (*Etikprövningsmyndigheten*). Undergraduate and master's research conducted by students are exempt from these clearance requirements. However, research conducted by students must, nonetheless, comply by the rules of good research set out by the Swedish Research Council (see *Vetenskapsrådet*, 2017).

Second, RE urges us to view the totality of our research reflexively by committing ourselves to inquire about how we inquire (Ackerly and True, 2008: 695). This involves researcher reflecting critically on his or her identity, but also recognising the power of epistemology, i.e. questioning the knowledge claims that our research makes and how these claims exercise power over our study by privileging voices of certain groups while ignoring other voices. We discussed aspects of the problem with privileging voices above in connection with the choice of top-down and bottom-up studies. Our knowledge claims can silence and marginalise groups of people on the basis of their gender, sexuality, race, ethnicity or religious beliefs. The researcher may be completely blind to exercising power through his or her epistemology (on decolonising methodologies see Smith, 2010). As Ackerly and True (2008: 696) explain, "the purpose is not to privilege the epistemological standpoint of the most marginalised, but rather to adopt an epistemological perspective that requires the scholar to inform her inquiry with a range of perspectives throughout the research process".

7. *Empirical data (or material)* provides factually based information about our subject matter. Our research design should ensure that 1) this data answers the research question posed at the outset of the study in a satisfactory manner and 2) other researchers should be able to replicate the study to produce similar data. An exception to this rule is ethnographic studies, which involve the participation of the researcher in a particular social field that is defined by time and place and, thus, cannot be replicated in practice (as the field in question no longer exists).

   Mixed methods are increasingly used in social sciences and we should consider how different types of data collection can complement each other. At the design stage, it is easy to become too ambitious by trying to use too many methods. To avoid this, we should work within a strict timeline for our data collection and ask ourselves what is realistically possible to do within the time which is available to us. If we are using interviews, we should consider that besides taking time to arrange and conduct the interviews, we need to transcribe and analyse them, which are often time-consuming processes in themselves. Combining interviews with, for example, surveys or discourse analysis, enriches the empirical basis of our research and raises the level of our analysis, but it must be planned with care within the time frame of our research.

What makes a piece of research in sociology of law socio-legal is not necessarily the type of the empirical data we collect. Our data can include all types of variables, behavioural indicators and assertions of facts about the social world, which have normative or legal implications. What makes a study which is based on data about, for example, cultural behaviour or economic transactions, socio-legal is a combination of other factors such as our RP, RQ and the TF we use to analyse the data.

8. *Data analysis and conclusions*. Our concluding analysis requires the interface of the empirical data and TF. The analysis should not only allow us to answer our RQ, but also to go beyond the initial assumptions of our study and pose new questions. Good research always ends with new, previously "unthought" questions.

These eight stages reflect how our research should be planned in theory. In practice, research consists of several dynamic processes which run simultaneously alongside each other, feed into and modify each other. At times, it might even appear as a messy process which only faintly mirrors the tidiness of the stages described above. There are many reasons for this messiness. Late modern conditions, defined by globalisation and digitalization, can easily give rise to cultural multiplicity, normative indeterminacy, low degrees of trust and high degrees of social flux. In such situations, the social reality we encounter is created by multiple factors which are to various degrees transient or unstable. Imagine we want to study a virtual community, with indistinct boundaries, fluid membership, absence of physical location and scattered across different time zones. This community generates online behaviour which is mediated through a combination of human and non-human assemblages. If we tune our research methods to seek normative regularities over time, or look for core stable categories which affect behaviour in this highly complex, fluid and dynamic community, then we should expect messiness in the research process (we discuss this issue in more detail later).[6] This messiness forces us to reconsider our initial assumptions about existing stable regularities and to rethink how behaviour is formed and changed in highly fluid social contexts.

This general point aside, there are more mundane reasons for messiness in research. Some researchers begin their study before they have thoroughly evaluated all the possible methodological approaches and, therefore, are forced to change course more than once. More importantly, research is a learning process and even when we have considered all our options carefully at the outset, we are still bound to revise our RQ, sometimes several times, as we learn more about our subject matter. As we develop our RQ to better capture the sociological complexity of our RP, we are compelled to reconsider the choices we have already made in respect to methods and theory and to modify, or at times completely change, our design. Besides, messiness can manifest itself at the level of collecting data: normally this stage harbours many surprises for the researcher irrespective of the method we are using. The rate of response to our questionnaires might turn out to be much lower than we expected, or once in the field, we learn that our interviewees are unwilling to talk to us (hence the importance of conducting a pilot study). In an ideal situation, we should eventually reach a stage where these

[6] For a discussion on the role of methods in creating the messiness of social sciences, see Law, 2004.

parallel processes stabilise and come together in a coherent fashion. Our research design should, therefore, have sufficient structure to keep us on track and sufficient flexibility to allow reflexivity in respect to our design that might require making modifications to our TF, RM or RQ.

5. Law is More Than the Law

As explained above, socio-legal research does not have to be about courts, judges, legal cases, or the rate of litigation. It can equally be about informal mechanisms which uphold a form of social order using normative practices and processes. We engage in some of these informal normative practices daily, following norms of conduct which are not mentioned in any law or regulation, without even paying them the slightest attention. To give an example, people tend to form a queue whenever they are seeking to buy the same thing or need to use the same services (this is, admittedly, a cultural trait which does not appear universally). In a study entitled "The Social Norms of Waiting in Line," David Fagundes (2016: 1179) writes that what makes queuing a special social phenomenon is that it takes place at all: "No federal law specifies line protocol or imposes penalties for cutting in… [Nevertheless] we line up and wait, (mostly) nicely." Fagundes' study of people's queuing habits is conducted along the same lines as Robert Ellickson's *Order without Law* (1991) which explored how residents of Shasta County, a rural area in California, resolved a variety of disputes that arose from trespass by cattle and fence-tending. By interviewing with cattlemen, landowners and law enforcement officials, Ellickson demonstrated that "no one in the Shasta County – whether an ordinary person or a legal specialist such as an attorney, or insurance adjuster – possessed a complete working knowledge of the formal trespass rules" (Ellickson, ibid: 49). In the overwhelming majority of cattle-trespass disputes in the Shasta County the neighbours chose to apply the informal norm of *neighbourliness* – which included "a norm against the invocation of formal legal rights" (ibid, 60) – rather than formal legal rules in order to reach a settlement. As a result, Ellickson concluded, "although trespass is frequent, Shasta County's rural residents virtually never file formal trespass actions against one another" (ibid.). Legal rules were not, of course, completely obsolete and were used occasionally, but mostly by outsiders who had recently moved into the Shasta County and were not acquainted with the customary norms of the community there.

Three important aspects of these two studies are: 1) their primary focus is on social norms and practices rather than on legal rules and yet the law is a factor, albeit a backdrop factor, against which the normative force of certain patterns of conduct (such as waiting in a queue or resolving your disputes with your neighbours by using customary norms) are evaluated. 2) They are searching for something which cannot be easily quantified, i.e. turned into entities which lend themselves to exact measurements. To understand why people queue even though there are no formal rules which obliges them to do so, or why ranchers in the Shasta County opt for the norms of their community and not for the legal rules and courts to resolve their disputes, we need to see the world from their standpoint and grasp their conception of social order and their relationships with each other over time. 3) Both studies problematise how the

law diverges from social norms and everyday practices. In the case Shasta County ranchers, the research appears to have been motivated, at least partly, by a discrepancy between the existing laws and social practices of ranchers. Studies of this type have a longstanding history in sociology of law and have been used frequently to explore either the efficacy of laws or the impact of the law and policy on society. This approach is known as the study of the "gap" and takes two forms. First, the discrepancy between official state law and the norms used by ordinary people to decide disputes and organise society (Ellickson's study of the Shasta ranchers exemplifies this category) and the second is the discrepancy between "law in the books" and "law in action" (Nelken, 1981), which is partly the legacy of American legal realism, often associated with the works of Roscoe Pound (Pound, 1910).

6. Stepping Beyond the "Gap"

The so-called "gap problem" or "gap research" has played an important role in determining the initial design and the final outcome of many socio-legal projects. The gap explores how two facets of the law – its *normative* dimension, which consists of the law's claims, ideals and intentions, and its *factual* dimension, which consists of its actual practices and empirically observable impact on society – are produced and reproduced over time. It highlights how "law in the books," or the objectives behind a piece of legislation, diverges from "law in action", or the outcome of the legislation once it is implemented and enforced. The interest in the gap corresponds with the interest in "impact studies". One way to evaluate the impact of a particular legislation or policy on social conditions is to explore the gap between the policymakers' intentions and objectives and the outcome of the law or policy once they are implemented. Impact studies are in turn used for carrying out legal reforms, which make laws and polices more effective. Moreover, they are, as a rule, designed in a top-down fashion.

The gap has been explored in various policy contexts and in different jurisdictions hundreds of times since the 1960s in an attempt to uncover "those factors and circumstances that make it more (or less) likely that law will accomplish some set of presumed goals" (Gould and Barclay, 2012: 324).[7] "Gap research," writes Austin Sarat (1985: 28), "calls for more and/or better law, for law which is thoroughly effective and controlling". The reason it lends itself easily to formulating socio-legal questions is that a discrepancy between the normative and factual facets of the law invariably appears whenever we have policy-oriented legislation. We should, however, note that, at least theoretically speaking, study of the "gap" is exhausted, in the sense that it often leads to "little more than the rediscovery of the existence of informal organisation alongside formal organisation […]" (Nelken, 1981: 44). The other criticism directed at the studies of the "gap" is that they normally assume that the law is a rational formal instrument which can become more effective by taking into account social norms and practices in society where it is put to work (on this point see Gould and Barclay, ibid). In addition, Sarat (ibid) argues that by focusing on law's shortcomings, we misstate or underestimate its overwhelming power and overall effectiveness.

[7] For a recent study from 2014 see Lennart Erlandsson's doctoral thesis regarding the application of the Swedish act concerning Support and service for Persons with Certain Functional Impairments (LSS).

The standard explanation for the gap is that the top-down implementation of law and policy is always dependent on agencies or institutions (such as police, the court system, social welfare agencies or local authorities etc.) which interpret and enforce them. These agencies and institutions possess their own internal social and cultural norms of organisation, which mould and, in some cases, reconstruct the content of laws as they interpret and implement them. Although this theoretical aspect of the gap research is exhausted, it can still be part of our socio-legal research design in so far as it can provide an empirical way of describing and explaining how law works in a changing society. If we decide to focus on the gap, we need to acknowledge that it is a theoretically exhausted area and formulate our RQ in such a way as to seek to go beyond what already exists. Put differently, the aim of our research can no longer be to examine if, or even why, there is a gap. Previous research has explained this point by reference to numerous diverse cases and contexts. Instead, the gap may be treated as the starting point for our design, i.e. we may start by ascertaining the existence of the gap using empirically based evidence, before we try to transcend the standard explanations for it. Moreover, we must avoid making presumptions about the law's rationality, neutrality, autonomy and power and search for questions that take us beyond the claims of the law or the intentions of the legislator. For example, we need to consider that the gap is not necessarily caused by the weakness of the law, but might be an outcome of the way the legal system understands and reconstructs social relations internally. Perhaps we need to ask how the law as a system of discourse recreates images of social relationships which it tries to regulate (for an example of how to go beyond the "gap" question see Dahlstrand, 2019). In short, studies of the gap can and will continue within sociology of law, but those who design them should remember that they need to transcend the standard socio-legal explanations for its existence by seeking new and imaginative theoretical insights. Otherwise, they will be reproducing the wheel.

7. The Impact of Digitalisation

The efficacy of traditional methods of research are increasingly questioned once they are employed in digital milieus such as the social media, which are generated by automated devices (Karpf, 2012: 641). Some argue that these devices and the digital spaces they create "*re-orientate* social research around new objects, populations and techniques of analysis," while others maintain that they yield new forms of data which can be studied with the traditional methods of inquiry that are adapted to digital conditions (Edwards et al., 2013: 245).

The contemporary Internet has become an indispensable part of our research toolkit. All researchers use it and depend on it, albeit in different ways and to different extents. The Internet is, at the same time, a site for conducting research in its own right. It provides online platforms for sociality, such as Facebook, Twitter or Instagram, which implant themselves in all walks of life and become parts of our daily activities and exchanges. These platforms are dependent on the architecture of the Internet and are driven by algorithms, which use vast volumes of data to predict our online actions, provide us with personalised options and in this way direct our choices. Algorithms learn by gathering and analysing data about our online transactions and

conduct, and yet they develop independently of us, creating digital environments that are highly dynamic, transient and fluid. In the process, they configure vast amounts of data, but also generate new data in various forms – including posted discussions, YouTube contents, blogs and so on – which we can study to learn about online behaviour or identify new topics of discussion. There are advantages and disadvantages to the studies of digitally constructed social environments. It is relatively easy and inexpensive to recruit large numbers of participants within a short time using networking websites. Steps such as obtaining participants' consent and data collection can become automated online, making the process less burdensome. However, we need to consider how we study human conduct on social media platforms, which have their own internal methodologies of selection, coordination and presentation, and remember that what we encounter as our online field of research is the outcome of their computational categorization and constructions.

Traditional research methods have been adapted to digital environments and are increasingly used to carry out web-based surveys, online interviewing, online focus groups, digital ethnography and online observation, to name a few. Due to the special characteristics of online environments, researchers who collect social data using the cyberspace have been struggling with the reliability of the data generated through certain social media forums. For example, it can be difficult to ascertain the source of online data with certainty. This problem can apply even to those sites which require registration and have moderators. As Sarah Quinton (2013: 404) points out, one single contributor, who happens to be more active than others and/or use "multiple channels of digitally enabled communication" can easily distort the research data "with their numerous postings or tweets". This, adds Quinton (ibid.), "adversely impacts upon the external validity and thus generalisability of the research data," or cause additional "difficulties in the interpretation of wording and sentiment analysis".

How about the data generated by various digital devices such as search engines, mobile applications or smartphones? Ruppert et al. (2013: 31-2) stress that when we are dealing with digital devices, the data that they produce is "not derived from conscious interventions by knowing researchers". Moreover, their data is not based on sampling methods used in social sciences, but "on the entire systems of records, so that the aggregate is not as important as the individual profile" (ibid: 37). Hence, the need to ask questions about the devices:

> "[W]here and how they happen, who and what they are attached to and the relations they forge, how they get assembled, where they travel, their multiple arrangements and mobilizations, and, of course, their instabilities, durabilities and how they sometimes get disaggregated too" (ibid: 31-2).

From a socio-legal standpoint this development has several important implications: digitalisation engenders not only empirical data based on new types of social interaction, but it also produces new relations of power and social inequalities that require us to rethink our notions of public/private, trust, intimacy, identity and mobility to mention a few. Moreover, it gives rise to new mechanisms of social control and surveillance, which emerge out of

homogeneous network assemblages consisting of social actors and digital devices. The exponential growth of cyberbullying exemplifies some of the novelties of the new technology (see Svensson, and Dahlstrand, 2014). The causes of cyberbullying might indeed be the same as what motivated the offline bullying, i.e. the need of the bully to torment and humiliate another person. Nevertheless, its victimisation effects are different once it is mediated through cyberspace (for a detail discussion see Zande, 2009). By contrast to the perpetrator of face-to-face bullying, who is constrained by time and space, the cyberbully appears omnipresent: he or she no longer needs to find his or her victim physically and, conversely, the victims can no longer hide away physically by avoiding public spaces. Assisted by digital technology which cuts across the traditional public/private divide, the cyberbully is thus capable of inflicting harm at will without time/space restrictions, while at the same time concealing his/her identity behind a shroud of anonymity which the technology offers. Finally, whereas face-to-face bullying, involves a physically strong bully and a weaker person who is victimised, "the technology enables an otherwise powerless child to subject a physically stronger or older child to fear and abuse" (Zande, 2009: 109).

To sum up, conducting research in digital environments, or through digital devices that compile and configure data to create new forms of sociality, requires rethinking the theoretical assumptions which underpin our methods of inquiry. Digital devices have materiality and should be considered as parts of network assemblages involving human and non-human elements. They also exercise normativity and social control, but without involving social awareness.

8. Concluding Remarks: Being Systematic and Flexible

Is there such a thing as socio-legal research design and, if yes, how can we distinguish it from other types of research design used in criminology or political science? At first glance we might answer this question affirmatively by saying that socio-legal research must address law and legality empirically and that is what distinguishes it from other social scientific research which also uses empirical methods to study aspects of law and social control. We could also argue that the "gap problem" can provide us with a sound basis for designing socio-legal research if we use it as a starting point for our research, rather than as an end in itself, i.e. to show once again that the enforcement of the law and the implementation of policies do not take place in a socio-cultural vacuum and are reliant on institutionalised practices external to the law.

A closer look at the research which has been done over the last hundred years reveals that law and legality are contested concepts and by themselves cannot be the defining element of socio-legal design. Indeed, one of the contributions of socio-legal research is found precisely in contesting the boundaries of the law as defined by lawyers and legal scholars and demonstrating that law is not limited to state law, the activities of legal officials or the operations of the legal system. Law is what people attach a sense of legality to; this is a conception of law captured in bottom-up socio-legal research. The fact that, for example, the Swedish state does not recognise Gypsy law as a bona fide legal system, does not discredit the

force of Gypsy courts' legality for those Roma who turn to them to resolve their internal disputes (Nafstad, 2016). Similarly, the fact that the UK law does not recognise the decisions made by Sharia Councils does not stop many Muslims living in the UK from turning to them to resolve their family law disputes.

If there is such a thing as socio-legal design, then, it is found in the combination of three factors: 1) formulating a specific type of research problem that concerns itself with law broadly or narrowly defined, 2) using empirical methods of inquiry, and 3) devising a theoretical framework that conceptualises the law as an integral part of societal processes or focuses on the interaction between legal and social forces. Examples of these theories are found in traditions such as legal pluralism, legal consciousness, legal cultures, autopoiesis and so on. They concern how social and cultural norms and practices interact with legal norms, legal processes or judicial practices, or how the legal consciousness of one group shapes the way they use the law. This is the closest we come to identifying a specific research design for sociology of law. Criminology also finds itself in a similar situation: what distinguishes criminology from mainstream sociology, or sociology of law for that matter, is precisely the way it formulates its research questions in terms of crime, or deviant behaviour, which are then studied empirically and analysed using criminological theories.

The above description of socio-legal design is intentionally construed in an open-ended fashion to allow research to be easily included into the field of socio-legal studies. This open-endedness need not be regarded as a methodological weakness, but instead as sociology of law's interdisciplinary strength (Banakar and Travers, 2005). If this interdisciplinary flexibility is used just to produce a series of disconnected studies, i.e. research which neither builds on each other cumulatively nor engages with each other critically, or to reproduce what is already done, then it becomes a source of intellectual stagnation for the field. When the interdisciplinary flexibility is used imaginatively and innovatively to challenge the existing theories and methods, or to push the boundaries of existing socio-legal knowledge, then it becomes a form of strength. This means that the ability to conduct socio-legal research which is methodologically innovative is, at the end of the day, the most important element of socio-legal design.

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