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Empirical research on law and society: [book review essay]

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BOOK REVIEW ESSAY

Empirical research on law and society

Advanced Introduction to Empirical Legal Research

HERBERT M. KRITZER

Cheltenham: Edward Elgar, 2021, 168 pp., £16.45

Research Handbook on the Sociology of Law

EDITED BY JIŘÍ PŘIBÁŇ

Cheltenham: Edward Elgar, 2020, 416 pp., £185.00

The Routledge Handbook of Law and Society

EDITED BY MARIANA VALVERDE, KAMARI M. CLARKE, EVE DARIAN

SMITH, AND PRABHA KOTISWARAN

London: Routledge, 2021, 274 pp., £152.00

1 INTRODUCTION

Reflections on social and societal issues pertaining to law have been circulating for decades, if not hundreds of years. These reflections take place within fields including, but not limited to, the sociology of law, the social psychology of law, and other social and behavioural sciences. The relevance of studying the relationship between law and society is evident. After all, law ultimately is related to what is happening in society, forms the backbone of society's

structure, and can play an important role in promoting societal changes (as has been the case in recent climate justice trials, for example).

Investigating the relationship between law and society is often done by means of empirical legal research, which can be defined as the systematic collection of quantitative and/or qualitative data based on observations of what is going on in the legal world.¹ Thus, rather than focusing on law in the books, empirical legal research focuses on law in action, often by means of research methods derived from the social and behavioural sciences.

In this review essay, we emphasize the value of combining the empirical study of law and society with theoretical thinking and normative approaches to law. Furthermore, we explain the importance of making sure that empirical legal research is preferably connected to issues of legal content, with the researcher's scientific interests in substantive issues often providing the point of departure for the research project. Moreover, we discuss the value of adopting a mixed-methods approach when studying law and society empirically. We do so prompted by the recent publication of three books on empirical legal research, the sociology of law, and law and society. We reflect on the important insights that they provide as well as on what they do not cover, discussing them within a more general framework of why books on socio-legal themes and methods have become increasingly popular. In these ways, the current review essay reflects on empirical legal research on law and society more widely.

2 FROM THE SOCIOLOGY OF LAW TO EMPIRICAL LEGAL RESEARCH

Research on law and society is central to the sociology of law. After all, legal sociologists focus on the relationship between law and society and on law's societal meaning. As such, they study how societal changes affect the law and, vice versa, how the law affects society. In

¹ K. van den Bos, *Empirical Legal Research: A Primer* (2020).

the field of legal sociology, law is broadly defined as encompassing both official or state law and unofficial or non-state law. Although its roots go back much further, the sociology of law genuinely began to thrive in the 1960s and 1970s, and has since become an established academic discipline.²

Empirical legal research, too, has roots that go back a long way. In addition to legal sociology, empirical legal research is closely connected to other social and behavioural sciences, such as psychology, anthropology, and economics. In recent years, empirical and interdisciplinary approaches to law seem to have become increasingly popular at law schools around the globe.³ For example, in the Netherlands, there has been growing attention to empirical legal research among legal scholars,⁴ and various law schools have made it one of their focal points.⁵ Thus, empirical legal research can be considered an important aspect of the contemporary science of law.

We argue that, when combined with normative approaches to law as well as careful theoretical thinking and sufficient attention to issues of content, this may be a good thing. After all, insights obtained by empirical legal research can enrich the law and legal science as well as strengthen the societal relevance of social science disciplines.⁶ As we explain in more detail elsewhere,⁷ we think that empirical legal research can be of particular value if empirical findings are connected to the normative domain of law by reflecting on them from a normative perspective. In any case, empirical legal researchers need to observe the distinction

² M. Hertogh and H. Weyers, 'Recht van onderop: het perspectief van de rechtssociologie' in *Recht van onderop: Antwoorden uit de Rechtsociologie*, eds. M. Hertogh and H. Weyers (2011) 11.

³ Van den Bos, op. cit., n. 1.

⁴ H. A. M. Grootelaar, 'Empirische rechtswetenschap: fad, feud or fellowship?' (2017) 38 *Recht der Werkelijkheid* 3.

⁵ L. F. M. Ansems, *Procedural Justice on Trial: A Critical Test of Perceived Procedural Justice from the Perspective of Criminal Defendants* (2021).

⁶ K. van den Bos, 'Social Psychology and Law: Basic Social Psychological Principles in Legal Contexts' in *Social Psychology: Handbook of Basic Principles*, eds P. A. M. van Lange et al. (2021, 3rd edn) 513.

⁷ Ansems, op. cit., n. 5.

between facts and values, or between ‘is’ and ‘ought’,⁸ and thus avoid treating empirical findings as if they directly yield normative conclusions. In line with this, Geeraets and Veraart state that ‘empirical research *can* enrich legal scholarship, provided that empirical results are not too easily or too quickly translated into proposals for legal reform, but rather become part of a hermeneutical discussion about norms which is specific to legal scholarship’.⁹ Indeed, combining descriptive and prescriptive approaches and thus adopting a hybrid perspective may yield the most interesting insights into the research issue at hand.¹⁰

We would also like to draw attention to the importance of combining empirical legal research with careful theoretical thinking. One of the reasons that this is important is that, for many legal or legally related subjects, it can be difficult to collect data of good quality (whether by means of qualitative or quantitative methods). These difficulties can pertain to getting access to relevant and sufficiently large samples or to the reliability of research participants’ self-reports, for example.¹¹ Thus, careful theoretical thinking can fill some of the gaps left by empirical legal research.

Another reason for combining empirical legal research with theoretical thinking is that scientific research endeavours are often at least in part directed towards the development of theory. Many studies start with a theoretical framework from which they derive hypotheses. These hypotheses are then tested empirically, the results are interpreted, and the findings are fed back into the theoretical framework. In this way, existing theoretical insights can be refined, complemented, or questioned. Alternatively, researchers may operate more inductively and ground their theories on their data rather than deriving hypotheses from

⁸ D. Hume et al., *The Complete Works and Correspondence of David Hume* (1995), at <<https://www.worldcat.org/title/complete-works-and-correspondence-of-david-hume-electronic-edition/oclc/826456756>>.

⁹ V. Geeraets and W. Veraart, ‘What Is Wrong with Empirical-Legal Research into Victimhood? A Critical Analysis of the Ordered Apology and the Victim Impact Statement’ (2021) 41 *Oxford J. of Legal Studies* 59, at 79.

¹⁰ K. P. Tobia, ‘How People Judge What Is Reasonable’ (2018) 70 *Alabama Law Rev.* 293.

¹¹ K. van den Bos, *Why People Radicalize: How Unfairness Judgments Are Used to Fuel Radical Beliefs, Extremist Behaviors, and Terrorism* (2018).

existing theories.¹² In both cases, theoretical thinking plays an important role in the research process.¹³

Related to this connection between empirical research and theory, we argue that empirical legal research always needs to be about issues of content. These often concern topics within the field of the sociology of law, such as the expected or real societal effects of a piece of legislation, the role that public servants play in the creation or execution of certain laws, or people's attitudes towards the law.¹⁴ Such issues of content form the point of departure of the research. Thus, the empirical legal researcher's scientific interest in substantive issues provides the basis for formulating and delineating research questions as well as developing the research design. In fact, these issues of content guide the entire research process, including collecting and analysing data and writing the research report. In this way, researchers can make sure that their studies actually provide answers to the substantive questions with which they began.¹⁵

Focusing on issues of content also means that research questions determine the design of the study and the methods to be used as much as possible, rather than practical issues or personal preferences. This is important to keep in mind, because the field of empirical legal research involves different methodological orientations. For example, empirical legal research projects can incorporate social psychology, a discipline that has traditionally focused on laboratory experiments and tends to be quite sceptical of non-experimental research designs because of their difficulties with regard to establishing causal relationships.¹⁶ Some empirical legal studies use field experiments, which combine causal control with a focus on real-world

¹² H. R. Boeije, *Analysis in Qualitative Research* (2010); C. Willig, *Introducing Qualitative Research in Psychology* (2013).

¹³ See also T. Proulx and R. D. Morey, 'Beyond Statistical Ritual: Theory in Psychological Science' (2021) 16 *Perspectives on Psychological Science* 671.

¹⁴ See for example Hertogh and Weyers, op. cit., n. 2.

¹⁵ Van den Bos, op. cit., n. 1.

¹⁶ Id.; T. R. Tyler and E. A. Lind, 'A Relational Model of Authority in Groups' in *Advances in Experimental Social Psychology*, ed. M. P. Zanna (1992) 115.

settings.¹⁷ Empirical legal research can also use other kinds of methods, such as quantitative surveys, qualitative interviews (with individual participants or with focus groups), observations, and archival and case file analyses.

In empirical legal research, combining qualitative and quantitative methods and thus adopting a mixed-methods approach¹⁸ may often yield the most interesting insights into the research issue at hand. Thus, empirical legal researchers can adopt different kinds of methods in a single study or across a number of related studies. By doing so, they can assess whether findings obtained through one method are also shown when a different method is used. If initial findings are subsequently corroborated by one or more different methods, one gains confidence in their validity.¹⁹ This relates to the fact that every method has its own strengths and weaknesses, such as in terms of internal and external validity.²⁰ Thus, combining different kinds of methods in empirical legal research enables researchers to both utilize the strengths of individual methods and counterbalance their limitations.²¹

In summary, we think that the current interest among legal scholars in empirical legal research is to be welcomed, especially when empirical research is combined with normative reflections and careful theoretical thinking as well as adequate attention to issues of content and different methodological approaches. These matters can also be recognized in the recent books by Kritzer, Přibáň, and Valverde and colleagues. For example, Kritzer discusses the value of combining qualitative and quantitative research methods; the research handbook edited by Přibáň contains contributions that address the distinction between ‘is’ and ‘ought’; and the first part of the handbook edited by Valverde and colleagues outlines relevant theoretical perspectives for studying law and society. All three books, albeit with different

¹⁷ K. van den Bos and L. Hulst, ‘On Experiments in Empirical Legal Research’ (2016) 2016 *Law and Method* 1.

¹⁸ A. Bryman, *Social Research Methods* (2016). See also the Kritzer book under review.

¹⁹ J. Robbennolt, ‘Evaluating Empirical Research Methods: Using Empirical Research in Law and Policy’ (2002) 81 *Nebraska Law Rev.* 777.

²⁰ Van den Bos, op. cit., n. 1.

²¹ Ansems, op. cit., n. 5.

levels of detail, pay attention to issues of content by discussing substantive research themes. In what follows, we review these books and reflect on what they do and do not cover. In doing so, we connect our reflections to an explanation of why an increasing number of books like these seem to be being published and how this reflects on the general state of contemporary law and society research.

3 THE THREE BOOKS UNDER REVIEW

3.1 Advanced Introduction to Empirical Legal Research

In contrast to the handbooks edited by Přibáň and Valverde and colleagues, which are collections of chapters by various authors, Kritzer's book offers a concise introduction to empirical legal research. The book is divided into three parts: (1) a definition of empirical legal research and an overview of its history, (2) methodological issues, and (3) substantive examples of empirical legal research. Thus, Kritzer pays attention to issues of methodology as well as substance, and provides readers with insight into the historical development of empirical legal research. In doing so, he covers many important aspects of empirical research in a very limited amount of space.

Kritzer defines empirical legal research as 'research that employs systematic methods of collecting information to examine, in some way, legal phenomena' (p. 3). In this definition, empirical legal research 'is not limited to the empirical study of the law itself but extends to actors, institutions, and processes related to or interacting with the law' (p. 3). Taking this definition as a point of departure, the book subsequently outlines the history of empirical legal research. Kritzer describes how such research genuinely began to take off in the 1920s and

tracks its subsequent development, paying explicit attention to the important role that information technology has played in this regard.

The methodological part of the book starts with a discussion of preliminary issues, such as the division between quantitative and qualitative methods, the ways in which these can be fruitfully combined, the stage of defining the research question, and errors that can be made in research endeavours. Kritzer then addresses the stages of data collection and data analysis respectively, with separate discussions of qualitative and quantitative research. Thus, he first discusses the use of experimental methods, surveys, administrative data, and quantitative observation as well as qualitative interviews and qualitative observation to collect data. Kritzer then explains important aspects of data analysis, focusing on the inferences that can be drawn from data, different types of samples, hypothesis testing, levels of measurement, and univariate and multivariate analysis in the context of quantitative research, and coding, grounded theory, and identifying and matching patterns in the context of qualitative analysis.

In the final part of the book, Kritzer provides substantive examples of empirical legal research, focusing on (1) law's institutions, (2) law's people, and (3) law's subjects. He provides brief summaries of a diverse set of focal points within these research areas, ranging from courts and constitutions to judges, juries, and lawyers as well as business organizations and individuals. More specifically, this part of the book addresses research on issues such as court organization, the development of constitutions, judicial decision making, the sociology of the legal profession, and compliance with the law.

In summary, Kritzer's book provides a neat and helpful overview of the meaning and history of empirical legal research, the ways in which this type of research can be conducted, and the substantive insights that it can yield. As noted by Kritzer himself, the book is intended to help readers to comprehend literature on empirical legal research rather than to conduct this type of research themselves, which would require consulting other texts on empirical legal

research or social science methods and teaming up with experienced social scientists. Indeed, it cannot be characterized as a condensed²² or extensive textbook that instructs readers on how to undertake empirical legal research.²³ Rather, the value of Kritzer's book is that it provides a highly readable and succinct yet thorough introduction to empirical legal research, its methods, and its outputs.

3.2 Research Handbook on the Sociology of Law

The research handbook edited by Přibáň takes a different approach. It provides in-depth insight into the domain of the sociology of law through contributions by various authors who are experts in their respective research areas. As noted by Přibáň, the aim was to bring together a diverse set of authors in terms of age, academic position, and country of academic affiliation (see also the handbook edited by Valverde and colleagues). The range of topics discussed is diverse too, making the book a highly valuable resource for readers who want to familiarize themselves with the field of legal sociology and particular research themes within it.

Like Kritzer's book, the handbook is split into three parts. The first part addresses legal sociology's relation to other disciplines including legal theory, legal history, and legal anthropology – some of which are proximate (such as legal anthropology) and some of which are slightly more distant (such as science). As a result, readers gain deeper insight into the specific field of legal sociology as well as its commonalities with related disciplines.

The second part of the book offers legal sociological perspectives on particular research themes, focusing on the sociology of the rule of law, the sociology of legal culture, the sociology of the legal system, and the sociology of legal professions, among other things.

²² See for example Van den Bos, op. cit., n. 1.

²³ See for example R. M. Lawless et al., *Empirical Methods in Law* (2010).

The contributions in this part address typical sociology of law topics, such as the concepts of living law and legal consciousness and hegemony. Together, these chapters shed light on the sociological concept of law and the legal system and provide enhanced insight into the themes with which the field of legal sociology engages.

The third and final part of the book approaches various subdisciplines of law from a sociological angle, covering both public law and private law as well as traditional legal domains and contemporary legal issues. More specifically, contributions include discussions on the sociology of contract and property law, family law, constitutional law, criminal law, and artificial intelligence. These discussions can be very helpful for both readers who are eager to get a general overview of legal sociology's sites of engagement and readers who are interested in legal sociological perspectives on their specific area of law.

Combined, the three parts of the handbook address a wide range of concepts and research themes within the domain of legal sociology. In this sense Přibáň's handbook resembles the seminal *Oxford Handbook of Empirical Legal Research* edited by Cane and Kritzer.²⁴ The latter focuses on empirical legal research, however, whereas the handbook edited by Přibáň concentrates more explicitly on the sociology of law. By addressing the field's connections to related disciplines, its conceptions of law and the legal system, and its perspectives on particular areas of law, Přibáň's handbook provides a rich overview of the state of the art in legal sociology.

3.3 *The Routledge Handbook of Law and Society*

Valverde and colleagues have also compiled a multi-contributor handbook. Theirs, however, is more concise than Přibáň's and adopts a more critical stance towards the field of law and

²⁴ P. Cane and H. M. Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (2010).

society, as is apparent from the title of the editors' introductory chapter ('Contested Laws, Contested Societies'). In line with this critical approach, the handbook aims to be of value for activists and advocates as well as students and scholars. The editors express their support for social justice movements and note their 'shared post-colonial, anti-racist, and feminist perspectives' (p. 5).

The critical perspective adopted in this handbook is to a large extent encapsulated in questions about 'the what, which, why, and who of law' (p. 4). Thus, the editors aim to provide a platform for rethinking and reflecting on such issues as what law is and who has the power to decide on law, against a background of the contested legitimacy of state law and the possibility of different legal systems operating alongside each other. The book also pays attention to the power relations embedded in the law and, despite discussing many legally relevant topics, avoids law's traditional categories. In these ways, the handbook complements previous research within the domain of law and society, which also shows great concern for social justice yet often focuses on the law of the state rather than on alternative conceptions of law, as pointed out by the editors.

The handbook is divided into two parts. The first part outlines contemporary perspectives on and approaches to the study of law and society, such as critical legal studies, critical race theory, feminism, Indigenous law, liberalism, post-colonial legal studies, and queer theory. The second part of the book sheds light on the sites of engagement of law and society research and consists of a large number of short chapters on concrete research topics. As is the case with the books by Kritzer and Přibáň, the topics addressed are highly diverse, ranging from animals, capitalism, and censorship to food justice, genocide, labour, and sovereignty. Several of the contributions focus on particularly urgent contemporary challenges, such as artificial intelligence, immigration, and climate justice.

Valverde and colleagues succeed in their aim to bring socio-legal research up to date with issues that are important in contemporary societies around the globe. They do so by drawing together contributions from authors from the Global South as well as the Global North, by addressing many currently critical topics, and by paying explicit attention to the plurality of law and legal meaning and the current threats that this poses to the legitimacy of state law. The book thus presents a timely overview of law and society research, in terms of both the perspectives from which the relationship between law and society can be studied and the themes that law and society scholarship addresses.

4 WHAT THESE BOOKS DISCUSS AND DO NOT DISCUSS

The books by Kritzer, Přibáň, and Valverde and colleagues provide a valuable resource for educators, students, scholars, and practitioners interested in empirical legal research on law and society. As the books each emphasize different aspects of such research, they complement each other well. Kritzer presents a succinct introduction to empirical legal research and discusses its meaning and backgrounds, important methodological issues, and substantive examples of empirical legal research projects. Meanwhile, the handbook edited by Přibáň focuses more explicitly on the sociology of law and offers an in-depth discussion of its disciplinary boundaries, legal sociological conceptions of law and the legal system, and the sociology of legal subdisciplines. Finally, the handbook edited by Valverde and colleagues provides a global and critical review of the field of law and society, focusing on perspectives and approaches within law and society research as well as concrete research themes that often relate to contemporary challenges.

We note that none of these books are intended as textbooks that instruct law students and legal researchers on how to conduct empirical legal research on law and society and that

provide sufficient tools for setting up one's own research project. This is not to criticize Kritzer, Priban, and Valverde and colleagues, as there are other books that fulfil this function.²⁵ The value of the three books under review lies in their rich discussions of the backgrounds, approaches, and substantive issues within the field. However, we do think that there is a continuing interest in such textbooks, in addition to handbooks that provide an overview of the state of the art of empirical law and society research. After all, the growing number of books on the field is likely related to increasing levels of attention on this kind of research, which may make law students and legal scholars keen to learn how to conduct such studies themselves and how to interpret studies conducted by others. Textbooks can play an important role in this regard, we would argue, because in addition to education and collaboration with experts (as also described by Kritzer), empirical legal research involves learning by doing. Learning how to conduct empirical legal research by applying empirical methods in one's own research projects also ensures that these projects are sufficiently connected to issues of content.²⁶

Why, we might ask, is empirical research on law and society, though far from new, now attracting greater attention among legal scholars? One plausible explanation is that we live in an increasingly complex world with societal problems and issues that require an interdisciplinary approach. This calls for legal scholars and professionals who not only have deep roots in law but are also able to look beyond the boundaries of the legal discipline and possess some knowledge of other fields, including the social sciences.²⁷ In line with this, law and legal scholarship have been characterized as relatively (so not completely) autonomous,

²⁵ See for example Lawless et al., op. cit., n. 23; Van den Bos, op. cit., n. 1.

²⁶ Van den Bos, op. cit., n. 6; Van den Bos, op. cit., n. 11.

²⁷ E. Mak, *The T-Shaped Lawyer and Beyond: Rethinking Legal Professionalism and Legal Education for Contemporary Societies* (2017).

and the importance of being aware of law's connections to other domains has been emphasized.²⁸

Thus, to enhance our understanding of current questions and problems relating to the relationship between law and society, there is a continuing need for empirical legal research. This entails a continuing demand for publications on the perspectives and approaches that one can adopt when conducting this kind of research and the substantive insights that these may yield. The books by Kritzer, Přibáň, and Valverde and colleagues fulfil an important role in this regard, making them valuable additions to the bookshelves of those who aim to familiarize themselves with empirical legal research to better understand contemporary issues pertaining to the domain of law and society.

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²⁸ H. S. Taekema, 'Relative Autonomy: A Characterisation of the Discipline of Law' in *Law and Method: On Interdisciplinary Research into Law*, eds B. van Klink and S. Taekema (2011) 33.