

## Methodology of Legal Research: Challenges and Opportunities

Philip Langbroek, Kees van den Bos, Marc Simon Thomas, Michael Milo, Wibbo van Rossum\*

### 1. Introduction

The position of legal studies has increasingly become part of a debate among legal scholars and their university colleagues in disciplines like economics, sociology, political sciences, psychology, history and linguistics. Furthermore, many academic lawyers have decoupled themselves from their 'traditional' role of analysing and commenting on case law and draft legislation, including efforts to make the legal system consistent from a bird's eye-view.<sup>1</sup> This shift has gone hand in hand with internationalisation, Europeanisation and globalisation processes over the last 30 years. Where law as a discipline developed into a national discipline particularly in the 19th century,<sup>2</sup> it has loosened its ties from national legal debates in recent years. Of course, there are many academic lawyers who still hold on to the national context of administrative, civil and criminal law, with a focus on commenting on it and using their national language. Nevertheless, the legal scholars' playing field as well as the rules of the game, the methodology, have both changed tremendously, and that change has triggered a long overdue debate about methodology in legal studies.<sup>3</sup> With this special issue of the *Utrecht Law Review*, we contribute to this debate.

Traditional legal scholarship – systematically organised in legal domains such as constitutional law, administrative law, criminal law, private law and procedural law – is seen to be about commenting on (draft) rules, on case law, and on developments in the national jurisdictions as well as in international legal domains. Legal debates concern the best ways to draft legislation, and how legal rules should be applied in concrete cases, for example from the perspective of unity of law and legal certainty. Academic comments on case law are a point of reference for practitioners, both explaining what a judgment does not explicitly say and commenting on the choices made by the courts, for example through comparing the judgment and its reasoning with earlier decisions in case law and scholarly debate. A little apart from ongoing topical, contemporary debates, is the domain of legal historians, who are thought of as studying the law no longer in force, or, in the words of Glenn, to study dead law.<sup>4</sup>

The subjects of legal research are many. A precondition for legal research in any form has become that the researcher should not only have knowledge about the traditional elements of the law, but also about the quickly changing societal, political, economic and technological contexts and, possibly, other aspects of

---

\* Philip Langbroek (p.m.langbroek@uu.nl), Professor of Justice Administration and Judicial Organisation, Utrecht University School of Law; Kees van den Bos, (k.vandenbos@uu.nl), Professor of Social Psychology Including the Social Psychology of Organizations and Professor of Empirical Legal Science, Utrecht University School of Law; Marc Simon Thomas (M.A.SimonThomas@uu.nl), Assistant Professor, Utrecht University School of Law; Michael Milo (j.m.milo@uu.nl), Associate Professor, Utrecht University School of Law; Wibbo van Rossum (vanrossum@law.eur.nl), Associate Professor, Erasmus School of Law (the Netherlands).

1 C. Stolker, 'Ja, geleerd zijn jullie wel! Over de status van de rechtswetenschap', (2003) 11 *Nederlands Juristenblad*, pp. 766-778; C.H. van Rhee, 'Geen rechtsgeleerdheid, maar rechtswetenschap!', 2004 *RM Themis*, no. 4, pp. 196 et seq.; J.M. Smits, *Omstreden rechtswetenschap. Over aard, methode en organisatie van de juridische discipline* (2009); J.M. Smits, *The Mind and Method of the Legal Academic* (2013).

2 Grotius's *Institutions of the Law of Holland [Inleiding tot de Hollandsche Regts-geleerdheid]* were published in 1631.

3 See the magnificent volume by K. Riesenhuber (ed.), *European Legal Methodology* (2017).

4 P. Glenn, 'Legal families and legal traditions', in M. Reimann & R. Zimmermann (eds.), *Oxford Handbook of Comparative Law* (2008), p. 427.

relevance. Drafting new rules for court proceedings, as in the current Quality and Innovation project of the judiciary in the Netherlands, only makes sense if one has a thorough knowledge of the practices of court proceedings, of the courts' case management, of how advocates participate in proceedings, of the role of information and communication technology (ICT), of the obstacles faced by ordinary persons accessing court proceedings and so on. This applies to virtually all subjects of law. And the best lawyers are those who combine the best memory and understanding of legislation and case law with the best knowledge of its application in society.

In traditional legal research, authoritative texts like legislation, case law and doctrinal literature are considered the main formal sources of information for understanding positive law. Building on this information legal scholars organise, analyse and re-present this information in such a way as to persuade their colleagues, legislators, judges and practitioners to follow their line of thought. Giving advice on how the legal system may be enhanced, by creating new rules to protect privacy in relation to modern ICT for example, or how judicial competences should be applied (e.g., in a context of in-court mediation) can be considered a typical mission for academic lawyers.

When lawyers analyse a legal problem from a traditional perspective, they usually try to solve the problem by careful analysis and (re)construction of concepts in relation to a specific context. This is usually done by referring to academic publications, scholarly comments, case law and legislation, and by referring to the outcomes of studies in other disciplines. From legal analysis, it is quite common for lawyers to come up with conclusions that entail advice on how to improve the law. The advice may be directed at the legislator, at judges, at practising lawyers or at all of them. The quality of legal research is gauged by the quality of the conceptual analysis, the quality of the reasoning and the rhetoric, and last, but not least, the quality of the references in the text. However, in traditional legal research, academic lawyers usually do not refer to any methodology at all.

Increasingly, traditional legal research is confronted with the challenge of making its methodology explicit and even of rethinking it. Academics of different disciplines point at the lack of reflection on methodological considerations in most traditional legal research designs as they compare this with what is common in their own disciplines. In many academic legal publications, research design and accounts of methods used are not discussed in detail. Usually, validity issues are ignored altogether. The question then becomes how legal research methodologically evolves, what steps should be part of it, and why, and what constitutes the validity of legal research.

The necessity to develop legal research methodologies comes to the surface where lawyers try to cooperate with academics from different disciplines. It also becomes visible when lawyers try to compete for research funds with academics from disciplines other than law. Where, in the social sciences, methods of empirical research are part of everyday academic life, such an ongoing debate is absent in most law schools.

The Montaigne Centre for Judicial Administration and Conflict Resolution<sup>5</sup> of Utrecht University School of Law has deliberately set out to stimulate the development of this debate. We know we are not alone in this. We are aware of the journal, *Law and Method*,<sup>6</sup> and of the books and publications by Jan Smits of Maastricht Law School,<sup>7</sup> of Carel Stolker of Leiden Law School,<sup>8</sup> the collection edited by Bart van Klink & Sanne Taekema<sup>9</sup> and, of course, the book by Frans Leeuw & Hans Schmeets on empirical legal research.<sup>10</sup> This debate is necessary as lawyers also participate in efforts to develop interdisciplinary research projects in various societal fields and fields of public policy.

We see two lines of development for this debate. The first line of development is the exchange between scholars in law and scholars in the social sciences about their respective methods. This basically is an intellectual debate where lawyers can explain how they develop legal norms as guidance for human behaviour and where social scientists explain what methods they use in order to understand and explain

5 <<https://www.uu.nl/en/research/montaigne-centre-for-judicial-administration-and-conflict-resolution>>.

6 <<http://www.lawandmethod.nl>>.

7 J.M. Smits, *The Mind and Method of the Legal Academic* (2012).

8 C.J.J.M. Stolker, *Rethinking the Law School. Education, Research, Outreach and Governance* (2014).

9 B. van Klink & S. Taekema (eds.), *Law and Method: Interdisciplinary Research into Law* (2011).

10 F.L. Leeuw & H. Schmeets, *Empirical Legal Research. A guidance book for lawyers, legislators and regulators* (2016).

different aspects of how human beings think and behave. This debate will face important challenges, in part because the social and behavioural sciences are disciplines that have their origin (in part) in law, like for example law and public administration,<sup>11</sup> but have grown apart worldwide. Experience teaches us that scholars in the different disciplines in the social sciences have their own methodological preferences and conventions. Psychologists, for example, in general prefer experiments over other methods, whereas public administration scholars tend more towards the opinion that qualitative empirical research and quantitative approaches should be combined with literature review, in a mixed methods approach.

The second line of development is an ongoing debate between traditional academic lawyers and legal researchers on the methods for legal analysis and legal research. This ‘internal’ debate on methodology becomes even more fruitful when a legal scholar starts to make comparisons with other jurisdictions, or considers past law as a still valid part of positive law.<sup>12</sup> What to date has been seen as ‘traditional legal methodology’ will show itself as not having been self-evident at all. Legal scholars of a century ago were convinced that the law was not to be found primarily in black-letter law, but in the courts or in society; judges needed to argue freely, not be restrained by authority. The French *école de libre recherche scientifique*,<sup>13</sup> the *Freirechtsbewegung*<sup>14</sup> or the *legal realists*<sup>15</sup> in no way demonstrated a failure but, on the contrary, a highly valuable constructive contribution as social scientists *avant la lettre* to law as an academic discipline.<sup>16</sup>

Even a conceptual study into a specific legal term, like for example the ‘undertaking’ in a European legal context, or the concept of ‘interested party’ in procedural law can explain the different steps through which the meaning of such a concept can be analysed and developed in different societal contexts. The meaning of an ‘undertaking’ was established first and foremost in early modern practice – not in the scholarly domain. But it was received e.g., in the works of Grotius, and later found its way into various other authoritative legal texts. In so far, also in classical approaches to legal studies, interactions between scholars and practice have been at the basis of the development of the law.

Of course, our intention is that our methodological debate permeates through the introductory courses in the study of law, and that it will not remain exclusively in the legal research masters courses. Eventually, we expect these debates to reinforce the position of legal studies in contemporary academia.

This special issue has been deliberately organised as an exchange of experiences in methods for legal studies, and we have sought to establish an open perspective, deliberately not stating a preferred method. We believe that research questions, aims and contexts require flexibility in choosing and applying a methodology in legal studies. We have not tried to set up a debate between qualitative and quantitative empirical researchers about what method is best in an absolute sense. Sometimes, a highly theoretical, conceptual study is indicated, and in another context where a researcher wants to test causality in relations between variables, in order to explain, for example, the factors that make people trust judges, a quantitative empirical approach is appropriate. The contributions that we publish in this issue show that there is a hopeful perspective for legal studies. They open the possibility to engage in exchanges with scholars of different disciplines about the best methods for legal research. A welcome side effect may be that traditional legal scholars, who actually contribute to the development of meanings in the implementation of the law – and while doing so have no problem at all in (re)formulating legal norms – also start to exchange knowledge with behavioural social disciplines. Prescribing human behaviour and explaining human behaviour may contribute to better law. Maybe in the future legal scholars may become the methodological mavericks, because they allow for much more tolerance in methodological diversity than, for example, economists, scholars of public

11 D. Dragos & P. Langbroek, ‘Law and Public Administration: a Love-Hate Relationship?’, in E. Ongaro & S. van Thiel (eds.), *The Palgrave Handbook of Public Administration and Management in Europe* (2017), chapter 54.

12 See Glenn, *supra* note 4. J.M. Kelly, *A short history of western legal theory* (1992), p. xi. D. Klippel, *Juristische Zeitgeschichte. Die Bedeutung der Rechtsgeschichte für die Zivilrechtswissenschaft* (1985), *passim*. In the Netherlands, on the absence of ‘pastness’, see J.M. Milo, ‘Hang naar Heden’, (2017) *Ars Aequi*, March, pp. 240-249.

13 F. Geny, *Méthode d'interprétation et sources en droit privé positif: essai critique* (1899); and *Science Et Technique En Droit Privé Positif: Nouvelle Contribution à la Critique de la Méthode Juridique* (1913).

14 For example, Hermann Kantorowicz and Ernst Fuchs. See: Gnaeus Flavius (= Hermann U. Kantorowicz), *Der Kampf um die Rechtswissenschaft* (1906).

15 K.N. Llewellyn & E.A. Hoebel, *The Cheyenne Way. Conflict and Case Law in Primitive Jurisprudence* (1941).

16 And see in the Netherlands, e.g., I.H. Heijmans’ inaugural lecture at the University of Amsterdam, ‘Recht der werkelijkheid’ (1910).

administration and social psychologists who are somehow much more fixed in their traditions or paradigms than scholars of law.

Thus, the idea is explicitly *not* to create a separate methodological debate, with methodologists as owners of this debate. No, the idea is much more explicitly to stimulate an ongoing exchange between scholars in legal studies. Accordingly, as part of the MONTAIGNE Centre's methodology project, we organised a conference on 17 February 2017, as a meeting of scholars with a record in various kinds of legal research, from history of law, via interpretation as a construction of meaning, methods of qualitative empirical explanations of legal constructs, and via endeavours to develop quantitative methods to reveal how first instance courts use a supreme court's case law, to explanations of qualitative research methods and so called 'triangulation' with the methods of a social psychological approach of procedural justice research. We believe most of the spectrum of legal research methods has been covered here.

Below we summarise the contributions to this journal issue, clustered in accordance with the main subjects which they address in the methodological debates in legal studies.

## 2. Research programme and methodological strategy

In the articles published in this issue, there is one which needs your first and foremost attention, and that is the report on a questionnaire amongst scholars in law about the quality of research publications and the quality of legal research by Willem van Boom & Rob van Gestel.<sup>17</sup> This is important, as regards content, as they reveal that there is no common understanding of what good legal research is. Without such a standard, review of the quality of submitted papers or research reports becomes a random business with outcomes that can mainly be predicted by the choice of reviewers. But there is another reason that also makes it imperative to start building a common understanding amongst scholars in law about quality of legal research and of publications. If we understand the relationship between the academic shop floor (you and us) and faculty and university management in terms of political accountabilities of central university management, there may be a risk that academic performance will be measured by managerial standards that are alien to legal scholarship. Thus, as the authors show the differences in preferences of legal scholars when it comes to definitions of legal academic quality work, they also refer to university administrators starting to fill out quality standards by managerial criteria. In this regard, this special issue of the *Utrecht Law Review* is already late in calling for action from the bottom up: it is time for our faculties and research directors to combine forces and develop quality standards for research and for publications that fit the special dynamics of legal research.

Adding to the reasoning of Van Boom & Van Gestel is the contribution of Frans Leeuw.<sup>18</sup> He discusses American Legal Realism both as a research programme and as a movement to support the New Deal politics of the 1930s. It appears not to have been a real research programme, but rather an empirical approach to law that wanted to inform politicians on how law works in society. Therefore, a number of scholars became part of the New Deal polity affiliated to the Roosevelt administration. Leeuw suggests that this brain drain from scholarship to practice may have prevented Legal Realism from becoming a real research programme, what would nowadays be labelled 'knowledge diffusion, utilisation and valorisation'. The New Legal Realism looks beyond courts, judges and formal legal systems; it also looks into the meaning of law for people in everyday life. Furthermore, it has an open attitude to a diversity of methods. Leeuw criticises this (the Big Tent approach) as too open: what is necessary in legal research are clear guidelines on what type of problem or research question can best be answered by what research method. He also warns against too much attention being directed to knowledge transfer (to policymakers). Research takes time, and knowledge is based on research. Therefore, developing a legal realist research programme and monitoring its progress

---

17 W. van Boom & R. van Gestel, 'Evaluating the Quality of Dutch Academic Legal Publications: Results from a Survey', (2017) 13 *Utrecht Law Review*, no. 3, <<http://doi.org/10.18352/ulr.404>>, pp. 9-27.

18 F.L. Leeuw, 'American Legal Realism: Research Programme and Policy Impact', (2017) 13 *Utrecht Law Review*, no. 3, <<http://doi.org/10.18352/ulr.412>>, pp. 28-40.

in terms of additions to knowledge is crucial for those who want to combine empirical and doctrinal approaches in legal research.

Not entirely separate from this broad perspective on the role of methodologies in legal studies with a view to academic organisation and research programming, are the contributions with a historical, legal perspective. They reveal the important function of reading and interpreting ancient texts.

### 3. History as an inspiration of current legal research

René Brouwer has written an essay about the position of law as a discipline and lawyers as experts since antiquity, and about their role in universities.<sup>19</sup> As he makes clear, reading early legal documents based on original Roman sources was at the basis of law colleges, an idea that spread throughout Europe having been the cornerstone of the 11th century beginning of universities in Bologna. He also explained that the Norman way of adjudication, as established in England, was much more based on their own rules and precedent by then, and knowing the law of the land was a matter of professional expertise. The idea of a codex – a written account of existing law – was very much a Roman idea that remained on the continent. Furthermore, Brouwer explains the position of law as an academic discipline between the sciences and the humanities. There he first describes it as a discipline that mirrors the role of interpretation in the humanities. Law uses interpretation from the perspective that the law is a system of law, which is imposed, and the rules of which have to be applied in specific cases and therefore need interpretation. And second he describes its philosophical relation with the sciences, and positions law next to the sciences, as a discipline striving for wisdom based on understanding human nature. From this position it is unthinkable to disavow law as an academic discipline, especially where law has different methods of research at its disposal.

Daphne Penna shows us how the study of medieval documents can reveal the legal relation between Byzantium and several Italian city-states.<sup>20</sup> First of all, she shows how our idea of law has been influenced by the legal relations dealing with the trades between those cities and Byzantium, allowing even foreign judges to adjudicate affairs in the other states' jurisdictions. The legal affairs dealing with those trades are at the basis of our idea of *Ius Commune* and, therefore, it makes sense to go back to those original sources and study them. That is not easy, even though there are on-line data bases containing these documents, because to do so one has to be able to read Greek and Latin, and solve countless interpretational puzzles. There is nothing new in the actual method she applied, but taking a new perspective can be innovative as well, as she showed in this case. The information gathered can be transferred and used in current European debates, as the current political constellation has been preceded by others where states and businesses interacted and also were bound by law.

Thus, it shows, first, that law traditionally had a strong position alongside the sciences that should not get lost. And second, it shows that understanding the use of law of the past, cannot be done without classical research methods, namely, reading and interpretation of texts. In connection with the latter, we present below both an analysis of the way a meaning has been constructed and a methodology to undertake a quantitative analysis of the effectiveness of the authoritativeness of judgments of a highest court.

### 4. Comparative law

Peter Sparkes has shared his experience in comparative law with us in a project on the protection of immovables – 'Real Property and Conveyancing in Europe'.<sup>21</sup> He describes the problems that come with (national) questionnaires in an international comparative law project. Paramount in his experience are the

19 R. Brouwer, 'The Study of Law as an Academic Discipline', (2017) 13 *Utrecht Law Review*, no. 3, <<http://doi.org/10.18352/ulr.405>>, pp. 41-48.

20 D. Penna, 'Odd Topics, Old Methods and the Cradle of the *Ius Commune*: Byzantine Law and the Italian City-States', (2017) 13 *Utrecht Law Review*, no. 3, <<http://doi.org/10.18352/ulr.403>>, pp. 49-55.

21 P. Sparkes, 'Drafting (and Redrafting) Comparative Property Questionnaires', (2017) 13 *Utrecht Law Review*, no. 3, <<http://doi.org/10.18352/ulr.415>>, pp. 142-152.



interests of the selected countries and the reporters, as well as other problems concerning the translation of concepts and the concept of facts. Further problems are related to terminology – especially in the European lingua franca which is English – as can be illustrated by the term ‘real property’ – a questionable term in the UK from a legal perspective. Between the lines, he refers to the fact that this illustrates the need for academic lawyers involved in such a project to be trained in English law, regardless of Brexit. When it comes to a comparison, he favours a functional approach to the concepts in the different legal systems. Last but not least, he elaborates on how to guide such a project considering the differences in national legal traditions and methodologies that emanate from such a project. He concludes that it is not possible to draft a satisfactory questionnaire until one knows all the answers.

He thus shows how important the organization of such a comparative project is and that the participating researchers need to keep on exchanging views concerning the concepts that emerge while answering questionnaires for comparative purposes.

## 5. Interpretation: constructing meaning and analysing numbers

Paul van den Hoven explains the choices which lawyers and legal academics make when they construct the interpretation of a concept, like, for example, the issue as to whether a tomato should be classified as a vegetable or as a fruit.<sup>22</sup> He asserts that conceptualising verbal meaning demands the making of choices that concern method. According to him, this is about classification, about views on issues of facts and about the interpretation of legal sources. For judges, classification is not detecting a relation between concepts, but deciding or even establishing a relation between terms. It comes down to the question as to who has the authority to decide. Facts, Van den Hoven explains, are usually parts of reality, but in law they are that which precedes legal effect. He shows that the terms *fact*, *evidence*, *proof*, *true*, *false*, *correct*, *incorrect*, *alleged* are not well defined; because law defines these terms in an ideological way, which usually is incompatible with reality itself. Also, if it comes to the interpretation of a legal term, the choice of analysis is merely a rhetorical construction for the judge. For the legal scholar this also means that interpretational choices, as a matter of method, are connected with eventual outcomes that could have been slightly different if different interpretational choices had been made.

Matthias Van der Haegen goes way beyond interpretation as a human rhetoric thought construction, where he seeks interpretation not merely as an analysis of a single case, but the effects of case law of the Belgian Court of Cassation on the case law of the appeal courts and first instance courts of that country.<sup>23</sup> In order to overcome the difficulty of reading all this case law himself, he uses a machine to read the case law and to see how these two assemblies of case law are connected. In order to identify the influence of the highest court, he tries to make the machine find implicit citations in the case law of the first instance courts. This allows him to test hypotheses about the occurrence of implicit citations of the Court of Cassation’s judgments in appeal court case law and first instance court case law, by applying advanced statistical analyses. Thus, he makes a strong point for quantitative empirical research methods in order to study how important judicial institutions relate to each other as to content, and thus showing, or not, patterns in accordance with the ideological hierarchy in the courts’ judgments. In any event, he shows that much more is possible in studying case law than the systematisation studies in classic legal research.

Both contributions, by means of conceptual and quantitative approaches respectively, show how meaning has come about, and what effects an authoritative meaning has on its addressees. The acceptance of meanings by judicial players in a legal system, however, does not reveal how the law works in practice. Qualitative empirical approaches to law have been discussed in detail to understand the position of victims

22 P. van den Hoven, ‘Analysing Discursive Practices in Legal Research: How a Single Remark Implies a Paradigm’, (2017) 13 *Utrecht Law Review*, no. 3, <<http://doi.org/10.18352/ulr.407>>, pp. 56-64.

23 M. Van der Haegen, ‘Building a Legal Citation Network: The Influence of the Court of Cassation on the Lower Judiciary’, (2017) 13 *Utrecht Law Review*, no. 3, <<http://doi.org/10.18352/ulr.406>>, pp. 65-76.

in criminal proceedings and in order to understand the effects of legal arrangements for stakeholders in social enterprises.

## 6. Qualitative empirical approaches

Renée Kool, Jessy Emaus & Daan van Uhm delve into the debate about the relation between legal research methods and methods from other disciplines, predominantly the social sciences.<sup>24</sup> They consider several ways for cooperation. For example, academic lawyers can use the results of research in other disciplines, and they can also cooperate with people from other disciplines. The increasingly instrumental approaches in law ask for a rethink of the methods in legal research. A question then surfaces as to how empirical results can be translated into empirical advice. For their research on the position of victims in criminal proceedings, they applied triangulation, as a mixture of data, methods and researchers. They explain that this triangulation enhances the validity of the research outcome. It also requires that researchers of different disciplines learn to understand each other.

Aikaterini Argyrou discusses the complementarity of doctrinal legal research (internal perspective) and empirical legal research methods (external perspective), as the law in the books and the law in action.<sup>25</sup> Qualitative empirical research can inform how the law is applied in practice. This opens up possibilities, for example, for legal evaluation research. She labels qualitative empirical research as interpretivist and constructivist, and quantitative empirical research as positivist, and continues to explain how case study research, as qualitative empirical research, fits legal research. For her, case studies are able to describe, understand and explain certain phenomena. This may be also fitting for a triangulation approach, meaning a combination of different standpoints and different types of data, in order to find out the most consistent structures or explanations. The disadvantages of case studies, according to Argyrou, are the risk of researcher bias, the limited generalisability of research outcomes, and the time it takes to learn a new approach or understand a new societal field. However, both internal and external validity may be reinforced by triangulation of data sources, methods and theories. Thus she makes a case for qualitative empirical research methods in legal studies, provided that methodological rigour is consistently applied by the researcher.

These two contributions make a very strong case for rigorous qualitative empirical research methods with a plea for triangulation in order to reinforce internal and external validity of such legal research. These are contributions that fit the realist paradigm. This cannot be said of the two last approaches in this special issue, because they reach for but do not touch the legal consequences of their studies. The social psychologists from whom legal researchers can learn so much for their methodologies, hesitate to tread with their knowledge into the legal domain. Even so, we can say that Tom Tyler (see below) very clearly shows the way to go.

## 7. Quantitative empirical approaches

Liesbeth Hulst, Kees van den Bos, Arno Akkermans & Allan Lind, developed a field experiment in order to find out how the absence or presence of a need to make sense of a situation over which they have little control, affects litigants' perception of how they are treated by judges and their trust in judges.<sup>26</sup> This need to make sense is related to inhibited behaviour in such situations and this inhibition was manipulated. The two experiments that they report were conducted in the context of bankruptcy hearings and in the context of criminal court hearings. Results showed that the absence versus presence of psychological processes of

24 R. Kool et al., 'The Victim's Right to Intervene as an Injured Party in Criminal Proceedings: A Multidimensional and Interdisciplinary Assessment of Current Dutch Legal Practice', (2017) 13 *Utrecht Law Review*, no. 3, <<http://doi.org/10.18352/ulr.408>>, pp. 77-94.

25 A. Argyrou, 'Making the Case for Case Studies in Empirical Legal Research', (2017) 13 *Utrecht Law Review*, no. 3, <<http://doi.org/10.18352/ulr.409>>, pp. 95-113.

26 L. Hulst et al., 'On Why Procedural Justice Matters in Court Hearings: Experimental Evidence that Behavioral Disinhibition Weakens the Association between Procedural Justice and Evaluations of Judges', (2017) 13 *Utrecht Law Review*, no. 3, <<http://doi.org/10.18352/ulr.413>>, pp. 114-129.

'behavioural inhibition' makes a large difference for the association between perceived procedural justice and trust in judges, and between perceived procedural justice and legitimacy of judges. In both experiments, perceived procedural justice did not have any reliable effect on trust in judges and legitimacy of judges among those participants who were primed with having fewer behavioural inhibitions than they would normally have in public situations such as court hearings. The authors relate the methodology of this field experiment to recent discussions about the robustness of empirical findings from experiments conducted in the psychology laboratory. The authors do not seek to link their research to normative approaches to law (or law in the books). This is fine, of course, as the study is clearly relevant for understanding how legitimacy of and trust in judges are related to perceptions of litigants, but the article does not discuss the role of empirical psychological research in law as a normative discipline. Future research and conceptual thinking will be needed to explore this matter.

Tom Tyler focuses on the relationship between empirical findings and normative law, among other things.<sup>27</sup> In doing so, he favours evidence-informed law. Better facts and better law lead to more justice. The empirical method, like, for example, actuarial risk calculations, can predict human behaviour better than intuitive hunches, and can inform law. However, a lot of those calculations lack explanatory power, because they are not theory based. Tyler parallels institutional designs and their influence on human behaviour for the legal system with organisational designs and their influence on human behaviour and discusses research that shows what factors influence human behaviour in organisations, and especially compliance with central norms and values. Placing that parallel in a Weberian context, Tyler draws our attention to the circumstance that compliance is not necessarily only based on gains and losses when not obeying the law; there is also the possibility of compliance based on shared values and consent, hence an explanation based on values and not on instruments, i.e. 'carrots and sticks'. In other words, threats with punishment do deter people from immoral or illegal behaviour, but consent to values expressed in law and cooperation with authorities and common aims are much more important explanatory factors as to why people obey the law. Obeying the law predominantly is associated with shared values, trust in authorities and legitimacy of authorities. As quantitative empirical research is the way to inform legal decision makers, both the issues of internal and external validity of such research are relevant for future debates about methods as well as the circumstance that most data that are currently collected by authorities are focused only on deterrence. Thus, Tyler makes a statement as to what research relevant for law should do: analyse what legal rules and what actions of authorities based in law do work, and explain why, preferably by a positivist, quantitative empirical approach. And he shows why it is better to follow a value-based approach alongside an instrumental approach to law.

## 8. Conclusion

In conclusion, we have presented ten contributions to an ongoing methodological debate on legal research. The Montaigne Centre of Utrecht University School of Law has organised this debate, but it does not own it. We hope that everybody conducting legal research will be able to make good use of this special issue and will be able to assess and discuss the right method for answering their research questions, and continue sharing their experiences. ■

---

27 T.R. Tyler, 'Methodology in Legal Research', (2017) 13 *Utrecht Law Review*, no. 3, <<http://doi.org/10.18352/ulr.410>>, pp. 130-141.