

Participatory Research: Some Provocations for Doctoral Students in Law

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Participatory research is a challenging but rewarding approach that can greatly enhance a piece of legal research, including doctoral work, when done well. The concept of participatory research is instinctively attractive for many researchers, but one's initial enthusiasm can tend to waiver somewhat when the reality of doing participatory research dawns. As an approach to research, participatory research is time consuming, sometimes difficult, often expensive, and not always entirely successful.² It does not 'suit' all research projects or, indeed, all researchers. Doing it well requires patience, curiosity, sometimes a thick skin, and always an intellectual openness to being persuaded by the views of others, to recognizing authority in experience and 'perspective', and to coming to previously unanticipated conclusions. The purpose of this chapter is not to outline how one does the different possible forms of participatory research that are available.³ Rather, it is to encourage the reader (typically a doctoral student in law) to consider the potential and the pitfalls of participatory research.

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² This is not unique to participatory research by doctoral students. For a little perspective, read the wide range of reflections on experiences (good and bad) of doing socio-legal work, including a lot of participatory research, in Simon Halliday and Patrick Schmidt (eds), *Conducting Law and Society Research: Reflections on Methods and Practices* (Cambridge University Press, 2009).

³ On method there is now a wide range of possible resources for graduate students in law. These include Peter Kane and Herbert Kritzer, *The Oxford Handbook of Empirical Legal Research* (Oxford University Press, 2010); Reza Banaker and Max Travers (eds), *Theory and Method in Socio-Legal Research* (Hart Publishing, 2005); Martha LA Fineman, "Feminist Theory and Law" (1995) 18 *Harvard Journal of Law and Public Policy* 349; Ian Ward, *Introduction to Critical Legal Theory* (Routledge, 2004); Mathias Siems, *Comparative Law* (Cambridge University Press, 2014); as well as the many social sciences and humanities handbooks that are available.

Why do participatory research?

Participatory research can be understood as both an approach and a set of methodological possibilities. Thinking about it as an approach, first, is important as it helps the researcher to decide whether participatory research ‘fits’ with the overall aims and objectives of the research being undertaken.

In my view, participatory research is best done by a researcher who recognizes the value of incorporating the people whose ‘real world’ is being studied into a research project.⁴ This is quite an important cognitive shift for a researcher to make, and is certainly fundamental to being a successful practitioner of participatory research. The recognition that ‘experience matters’ can come from a number of possible starting points. Here I will canvas only three of these, which might arise for doctoral students. There are, of course, many more, but these three are not uncommon across legal research.

The first starting point is quite pragmatic: there are some areas regulated by law (or in which law and legal researchers are interested) where information is so “hard to reach” as to make it almost impossible to research certain questions without engagement. One can, of course, still do legal doctrinal research without such engagement (at least where there are ‘hard laws’ to study), but any research that is interested in effectiveness, implementation, diagnosis of the problem, reform, meaningful comparison, and policy change is likely to need to engage in some way in participatory research in order to be successful. We might think here of two areas, popular among doctoral candidates, in which the challenge of ‘hard to reach’ information tends to arise: security and intelligence, and family law.

⁴ See also Andrew Cornwall and Rachel Jewkes, “What is Participatory Research?” (1005) 41(12) *Soc. Sci. Med.* 1667

Security and intelligence is, of course, a field in which much information about how law actually works and (perhaps more importantly) *whether* it works is held by so-called ‘information monopolies’; it is a field in which secrecy is both a practice and often a necessity. Any researcher who is interested in the real-world workings of things like intelligence oversight, data protection, security services organization, counter-extremism, and counter-terrorism more generally is likely to need to secure the participation of stakeholders in order to get a complete picture. Stakeholders here are widely defined: intelligence and security practitioners, the security industry, policy makers and politicians, NGOs, activists, community and religious leaders, IT specialists, and security professionals might all be potential participants. All will have different pieces of information and different perspectives to bring, and depending on the research question being pursued there might be a need to secure the participation of stakeholders from all or some of these categories, and indeed others! There may also be a need to see these categories as broadly defined. Take the concept of a ‘security professional’, for example. In the counter-terrorism field that is broad indeed: it includes, of course, police officers and counter-terrorism specialists within civilian and military organizations, but it can also include bankers (who have security obligations relating to the disruption of terrorist financing flows), and people who work on airport security and check-in (who have *de facto* passport, visa, and other security-related obligations). Precisely whom one needs to speak to will depend on the project being pursued, but a broad understanding of the possibilities is fundamental.

Another area in which information is hard to reach, albeit often for other reasons, is that of family law. This is because much of family law takes place in private, whether that is in *in camera* courts, or in mediation, or in the everyday choices and familial regulation engaged in by private persons without the formal institutional intervention of the state or of ‘law’ per se. In the family law context, then, some research questions can only be answered in a meaningful and rigorous way if participatory research is engaged in. Take, for example, questions relating to restrictions on testamentary freedom (as much a question of family law as of the law of succession or property law). If one wanted to explore

whether statutory restrictions on testamentary freedom are *necessary* one would need to understand how and why people choose to divide their estates in their wills. This is a question that requires exploration *before law*, i.e. before (in Ireland at least) the law intervenes to ensure that a spouse cannot be disinherited, or that children must be given proper provision.⁵ And so one needs to get the perspectives of people on how and why they divide up their estates in their wills. One might also, perhaps, want to acquire the views of legal professionals who tend to be involved in advising people on the legal possibilities in dividing their estates in order to see how they perceive clients' reactions to being informed of the requirements of the relevant law. A doctrinal analysis of statute can only take one so far in answering questions about testamentary freedom: only engaging with people who do (and who don't) make wills can shed light on what the *actual* decision-making processes around testamentary freedom might be, which can then feed into assessments of whether statutory regulation (i.e. limitation) of testamentary freedom is necessary. The necessary information is 'hard to reach'; participatory research helps us to acquire it.

In some ways this feeds into a second standpoint that might encourage a researcher towards participatory research: the belief that we cannot understand law or make any really meaningful observations about it unless we also understand how it works *in the everyday*: i.e. the socio-legal approach. A commitment to socio-legal research does not necessitate participatory research: socio-legal research is a broad church and there are many ways of engaging in socio-legal study.⁶ What all of these modes of engagement share, however, is a socio-legal commitment to understanding law in context.

That context can come from an interdisciplinary framework, and from finding ways of incorporating the everyday realities of living with, in, under, outside, and

⁵ Succession Act 1965

⁶ See, for example, Reza Banaker and Max Travers (eds), *Theory and Method in Socio-Legal Research* (Hart Publishing, 2005)

against law into the legal query. Fundamental to socio-legal approaches is seeing law as only one of a broader set of social, political and humanities theories and approaches, and the rejection of law's sometimes-assumed particularity, difference, and distinctiveness. It is this that tends to open the socio-legal researcher up to the possibilities of engaging in what might be called typically social science and humanities methodologies such as empiricism, oral history and testimony, statistical analysis, and participatory research. This does not make socio-legal work 'superior' to doctrinal legal research; nor does it make it inferior to or in anyway less 'scholarly' than doctrinal legal research. It simply makes it different.

The third standpoint from which we might draw a realization that we ought to recognise the perspectives of those being studied is a fundamentally critical one that disputes the traditional (and traditionally masculinist) conceptualization of 'authority' in law. As lawyers we are often (or at least, we *were* often) taught that authority resides in a limited repository of sources: positive law ('of course'), parliamentary debate, case law, 'high' debate and 'high' theory (compare, for example, the authority assigned in a typical undergraduate legal education to St Thomas Aquinas or John Finnis with that assigned to Catharine MacKinnon or Judith Butler).

What these structures of thinking and of teaching law implicitly (or, indeed, sometimes explicitly) tell us is that what *doesn't* matter is experience, authenticity, or lived truth. Oliver Wendell Holmes may well have said that "the life of law...has been experience",⁷ but what he meant by that—and he was not alone—is a kind of rarefied experience refracted by professional expertise and, by implication therefrom, class, education, gender, race and socio-economic resources. This maps on to, for example, the enduring nature of "the man on the Clapham omnibus"⁸ and the mythological autonomous liberal white male⁹ as the

⁷ Oliver Wendell Holmes, *The Common Law* (MacMillan & Co, 1881)

⁸ *McQuire v Western Morning News* [1903] 2 K.B. 100, at 109 *per* Collin MR. This continues to be used as shorthand for "the reasonable man" today; see, for example, *Healthcare at Home Limited v*

central subject of law. Critical discourse on law recognizes this for what it is: an exclusionary, explicatory and organizational supra-structure from which typical (considered by law as 'atypical') experiences of power (-lessness), life (and death), resource (poverty), subjectivity (and objectivity) are excluded. The law understood by reference only to its 'classical' constructions is impoverished according to these critical perspectives, and so proposed reforms, claims of meta-juridical principles, or empirical diagnoses accounting only for these classical perspectives are inadequate. The response to this is to recognise as authoritative a far broader range of sources including 'testimony' (not refracted through a juridical process), experience, and voice. Thus, fundamentally critical perspectives (including feminist legal theory, critical race theory, third world perspectives, and post-colonial discourses) often use participatory research methods to enrich—and, arguably, to correct—the narrative from the narrowness of 'traditional' legal research.

None of the foregoing is intended to claim superiority in method, standpoint or outputs for participatory research methods. Rather, it is to say: if any of these starting points resonate with you as a researcher and with your research question, then keep on reading. Participatory research might well be for you.

Which participants?

If the first step in deciding on research method is always to ask 'why might I do my research this way?', then the second is surely to ask 'how can I do my research this way?'. This is always a complex query, reflected in the wide range of aids and guides to methodology now available to the typical graduate student. The 'how?' question inevitably has different elements to it, but before going into a key one of these as it relates to participatory research ('which participants?'), I

Common Services Agency Limited v Common Services Agency [2014] UKSC 40, *per* Reed L.J. at [1]-[4]

⁹ See Martha LA Fineman, "The Vulnerable Subject: Anchoring Equality in the Human Condition" (2008) 29(1) *Yale Journal of Law & Feminism* 1 for a critique and alternative construction.

want to reassure you that the answer to the 'how?' question will never be perfect.

It is in the nature of all research that we make mistakes:¹⁰ we go down pathways of enquiry that prove unfruitful or ill-advised, we misconstrue our own research questions, we get distracted by interesting but ultimately irrelevant findings (the key, by the way, to managing this is an 'interesting stuff for after the PhD' folder on your desktop...), and we throw out almost as many words as we keep. In designing the methodology for your PhD you will make mistakes: this is perfectly normal. However, the added dimension to bear in mind when doing participatory research is that one must strive to minimize these mistakes and not to involve participants until the method is fairly settled. There are two reasons for this.

First, the participants in your research are giving of their time and resources to engage in *your* research. Not wasting their time by being insufficiently prepared is fundamentally a matter of esteem. This is all the more so when one realizes that we are often engaging with participants in order to get to their experiences: we are asking them deeply personal, revelatory, sometimes upsetting questions that can expose the participant's vulnerability in a way that disempowers. Before asking someone else to engage in the performative activities of telling, being heard, and then being 'retold' as a research finding or part of a data set we must be sure we need the information for which we are asking. This is, of course, part of the reason why university ethics processes (which you must ensure you engage with before you do *any* participatory research) are often so onerous. The 'system' is designed to make sure that we ask people to reveal only what we really need from them for the purposes of our research.

Secondly, the researcher rarely if ever gets a second 'bite of the cherry' with a research participant (with obvious exceptions in longitudinal studies, for

¹⁰ Think, for example, of the classic form of exploring an idea, often resulting in the discovery of category, cognitive and other mistakes: the essay (*essayer*). The classical exemplar is the essays of Michel de Montaigne (*Essais* (1570-1592)).

example). The stakeholder is likely to only be interviewed once; the focus group dynamic cannot be recreated to follow up on a point you missed the first time; a community consultation meeting cannot be recalled because you discover later that it would have been really useful to ask different or additional questions. The researcher cannot risk losing the participant by being underprepared. Thus, while methodological adjustments are not at all unusual, all possible steps should be taken to avoid them vis-à-vis the participants in your research themselves.

And so this brings us to the core concern of this part of the chapter: which participants will you involve?

Deciding on this is a key stage in the research design process, which is usefully approached by starting with three key questions:

1. What do I need to know?
2. What do I want to achieve?
3. Who has the relevant *power* by reference to questions (1) and (2) above?

Starting with these questions allows the researcher to think about where *power* (as it matters within their project) lies. In this respect, power has to be seen in a broad and often informal sense. Power is knowledge, influence, experience, ability to bring about change, ability to recruit other participants to the project and so on. Identifying participants through paying attention to power is entirely appropriate to participatory research, which at its best distributes power among the researcher and the participants.¹¹

These are a couple of ways of thinking about identifying potential participants through the prism of power, not all of which will be appropriate to all research contexts. Arnstein tells us to think about who has power when important

¹¹ Probst & Haggmann, “Understanding Participatory Research in the Context of Natural Resource Management” (2003) Agricultural Research and Extension Network (AgREN) Paper No. 130. [online] URL: http://www.odi.org.uk/networks/agren/papers/agrenpaper_130.pdf

decisions are being made, and then argues that the method of involving these people in the research can take the form of placation, consultation, informing, delegating power, ceding control, or creating a partnership.¹² In truth, Arnstein's construction reflects the fact that participatory research sometimes comes from a somewhat cynical or instrumental motivation. This may be more common in research projects intended to, for example, consider major infrastructural changes in which community 'buy in' is required (these are some of the earlier kinds of contexts for participatory research 'in the real world'), but academic research in law is perhaps less likely to 'need' participation in this way. More common at the doctoral level, perhaps is an approach to participatory research that aligns more with Biggs' construction: contractual, consultative, collaborative, and collegial.¹³

Knowing what you want (and need) from your participants is key to identifying which participants you want in your research. Thinking about power and purpose as outlined above can help us to make sure that we do that. The processes of selection and recruitment of participants then follows, and this is often very challenging. There are various different approaches to recruitment that might be taken and outlining them is not the purpose of this chapter. However, what matters (especially from the point of view of establishing the appropriateness of your approach at the *viva voce* examination) is that approach you take *makes sense* by reference to the purposes of your participatory research *per se* and the types of participants you need to fulfill those purposes.

What form of participation?

Having decided that you want to do participatory research, and having identified which participants you want to recruit, you must then decide on what form (or

¹² Sherry Arnstein, "A Ladder of Citizen Participation" (1969) 35(4) *Journal of the American Planning Association* 216

¹³ Biggs, *Resource-poor farmer participation in research: a synthesis of experiences from national agricultural research systems*. OFCOR, Comparative Study No. 3 (International Service for National Agricultural Research, 1989)

forms) of participation will be used in your project. In this respect it is wise to think about what forms of participation are most sensible by reference to both the participants you will recruit *and* the function of the participation. It is trite to remark that not all forms of participation will be appropriate for all participants. Children or people for whom communication is challenging will need a different participatory format to, for example, high-level experts in the field for whom no conventionally-understood communication challenges arise. So, too, might status be an appropriate consideration. There are some people who, by virtue of their status, cannot reasonably be expected to participate in, for example, a focus group. In a project about 'leadership', for example, one might secure the participation of people as diverse as heads of state and leaders of local GAA clubs. While the Chairman of the local juvenile GAA club might be reasonably invited to participate in a focus group, one wonders whether the President of Ireland would be? In these matters a little common sense, personal judgement, and consultation with your doctoral supervisor go a long way.

The range of possible participatory methods is vast, particularly where one takes to heart the observation drawn from socio-legal studies that humanities and social sciences methodologies and approaches can be applied to legal enquiry. When we cast the net widely, we see that methods as diverse as surveys, interviews, walking,¹⁴ music-making, art and ethnography all present as possibilities. What they all have in common is that they require training, care, precision, and preparation. The purpose of this chapter is not to regurgitate the vast literatures on the technicalities of different methodological approaches. Rather, I want to suggest something that may at first seem obvious but is in fact vital and often overlooked: the method(s) of participation you engage with should be chosen because they best suit the purposes of participation in the particular project you are engaged in, and the characteristics, resources and availability of the participants. There is no one right way to do participatory research: there is only the appropriate way to do it for your project. That should

¹⁴ Yes, really. See Kate Moles, "A Walk in Thirdspace, Place, Methods and Walking" (2008) 13(4) *Sociological Research Online* 2. Available at <http://www.socresonline.org.uk/13/4/2.html>

then be executed according to best methodological practice and the highest possible standards of ethics for that particular approach.

The said, it may be instructive to briefly consider what, from my experience of supervising and examining doctoral research, seem to be three commonly used methods of participatory research used in legal research by reference to common motivations for engaging in participatory research at all. The three common forms are interviews, focus groups, and surveys or questionnaires. As the chart below indicates, the researcher gets to different things from each of these methods, although the observations below are also variable depending on things such as the quantity of participants, quality of research instrument used, and motivations of the participants.

	Interview	Focus Group	Survey/ Questionnaire
Reaching 'personal' information	✓	✓	✓
Acquiring 'hard to reach' information	✓	✓	
Enhancing depth of knowledge	✓	✓	
Determining importance of issues	✓	✓	✓
Acquiring generalizable information			✓
Enhancing originality	✓	✓	✓

Reaching 'personal' information

There are some things that people may not want to be in the public domain because they are sensitive or personal to them, but which are important to your research question. An example is the sexual orientation of politicians, which an individual politician may not want to be known publically but which may be

important to a project about perceived legitimacy and representativeness in parliamentary democracy.

Sensitive information may be 'reachable' through participatory research by using any one of interviews, focus groups, or surveys and questionnaires, although not all such information will emerge in every one of these circumstances. Let us return to the example of sexual orientation. Whether a parliamentarian 'reveals' her sexual orientation in any one of these given scenarios will very much depend on the circumstances.

With all of these approaches the participant is likely to need first to be convinced that information about her sexual orientation is *material* to your research project: in other words, gathering this sensitive information is not gratuitous but rather is connected to the enquiry with which you are concerned.

The regulation of your project will also be important to the participant. Here we might think about what kinds of systems are in place to store and protect the data that you acquire. Will the information be securely stored? If so, for how long? Will it then be destroyed, and if so who by? Is the process anonymous? If not anonymous, is it confidential? (Remembering, of course, that anonymity and confidentiality are not the same thing). Can you, as a researcher, be trusted not to 'leak' the information? Again, all of these regulatory matters will be germane in each of the scenarios of interview, focus group, and survey or questionnaire and this underlines the importance of explaining clearly, honestly, and comprehensively what will be done with the data gathered by the researcher.

Finally, the particular dynamics of the method as experienced by the participant will make a difference. If you use a survey or questionnaire the politician, in our example, might feel able to 'trust' the system of data collection more or less depending on things as diverse as whether you ask for her email address to submit an online questionnaire ('can this be traced back to me?'), how you have structured the questionnaire ('does this person seem like a credible researcher?'), the rules as to anonymity or confidentiality you have outlined in

the information and consent sheets, and the extent to which the participant maintains a right to withdraw from the project. In a focus group it may well depend on who else is in that focus group, and *their* trustworthiness in the eyes of the participant. Interviews offer a whole other scale of possibility, not only in the potential to ‘follow up’ on questions but also in the ability to use environment in order to trigger questions, follow ups, or conversation points that can build trust and engagement (e.g. family photos in offices or homes, where interviews sometimes take place).

Thus, all three modes can be situations in which sensitive information can be reached, but the range of elements that go into creating the right environment for participants to reveal it is vast. All of these things should be taken into account when deciding on method.

Acquiring ‘hard to reach’ information

Not all information is available in the public domain, sometimes because of the sensitive nature of the information in question. Things like numbers of covert surveillance operations being undertaken on suspected terrorists in any given city at a particular point in time are an example. Where the right participants can be recruited, participatory research offers a pathway to acquiring such information. Here, however, surveys or questionnaires seem less likely to be successful than interviews or focus groups. This is largely because the bonds of trust required for the participant to disclose the information cannot really be developed through a survey or questionnaire. Instead the perceived trustworthiness of the researcher, which is a subjective judgement that can be ascertained by the participant through personal interaction, is more likely to arise in interview and focus group situations. The ‘entry questions’ that you ask—often ‘softer’ questions—and the tone of the interview or focus group that you set by your introduction, preparation, explanation of the project, and overall appearance of ‘competence’ are important here. So too is intellectual agility: can you, as a researcher, see ‘openings’ in the discussion to ask questions that might lead to this information? Are you sufficiently well read in the area to be able to pick up on ‘cues’ within answers and discussions that suggest natural ‘question

points' to enter into these areas of conversation? In a focus group, have you gathered together appropriate participants in the same focus group, or have you created a mixture of people in which the hard to reach information will not be disclosed because of insufficient homogeneity? If you were researching security oversight, for example, would you put intelligence officers, pacifist politicians who are vociferous critics of the intelligence services, and rights-oriented NGOs in the same focus group? If you did, what would you think the potential for acquiring 'hard to reach' information would be?

Enhancing depth of knowledge

All three of these popular approaches to participatory research are extremely useful when one wants to enhance the depth of one's knowledge. Here we might think, particularly, of the step change in knowing what the law *is* (which we can ascertain from desk research) and knowing how the law *works* (which we can ascertain from participatory research). Shifting from a formal to a rounded knowledge base in this way is an exercise in deepening knowledge, and participatory research is very useful from this perspective. However, participatory research should not be used to deepen knowledge where that knowledge is available through other forms like, for example, doing better or more extensive desk research. There are two reasons. First, participants will be annoyed to be asked to tell you what you should be able to find out for yourself and their buy-in to you and your research will likely be eradicated. Second, participatory research gives you *perspectives* whereas if you seek knowledge that is verifiable (e.g. what the law on income tax in the Czech Republic is) then it must be acquired in a manner that lends itself to objective verification, or 'fact checking' to use a simpler term.

Determining importance of issues

It is a truism that sometimes the things we think are really important on a review of the traditional legal sources are actually not particularly important 'in the real world', and that which *is* important cannot always be discerned from traditional legal research. To say that something is not important in the world of the practitioner, or the person experiencing law, is not to say that it is

unimportant from a doctrinal point of view, or that it is undeserving of study. But it *is* a finding that can raise lots of issues for exploration within a research project. Similarly, determining the importance of issues can lead to unanticipated discoveries, which it also a finding that opens up multiple research possibilities. All three of the popular methods outlined above can allow for ascertaining the relative importance of issues, although where a questionnaire or survey is used it is important to ensure that your list of issues always includes an ‘other’ option and asks the participant to expand on this. Otherwise you greatly reduce the possibility of discovering unanticipated knowledge.

Acquiring generalizable information

As already mentioned, participatory research often produces perspectives of the particular research participants so that generalizability can be difficult. This is not a reason not to do participatory research; it is, rather, a warning about the kinds of claims that one might make and claim are underpinned by the findings of participatory research. Unless surveys and questionnaires are done on a very large scale (either in terms of absolute numbers or in terms of the proportion of the target group of participants who take part), for example, their findings should be qualified by reference to the number of participants. So, survey and questionnaire data may be generalizable, although it often is not at doctoral level because students are necessarily working within short time frames and with limited resources. Interviews and focus groups will almost never lead to generalizable information. This does not make their findings less valuable—remember the reflections above about authority and recognizing the authority of experience and perspective—but as already noted it does necessitate care in how those findings are expressed.

Conclusion

Originality is, of course, the Holy Grail of doctoral students. That the candidate has made an original contribution to knowledge is, at core, the basic requirement for being awarded the degree for which you have studied for at least (and often far more than) three years. Originality is also achievable in many means: there is no one right way to establish it. Certainly a well-constructed, curious, intelligent

research question that pushes the boundaries of existing knowledge is more or less essential, but so is how one pursues the fundamental task of the PhD: pursuing that question through a well designed research project. In doing that, your choice of methodological approach is important, and participatory research can be an excellent framework for the acquisition of original knowledge, which is then processed, considered, analyzed and marshaled into an argument that constitutes an original contribution to knowledge. Participatory research can lend a new kind of authority to assumed knowledge, present real world heterodoxies to doctrinal orthodoxy, enrich a set of findings, and greatly enhance the originality and practicability of research findings. However, all of this can only be achieved if two conditions are met: (i) the research enquiry justifies the methodology, and (ii) the researcher engages seriously and carefully with the process and the participants.