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Combining Methods in Legal Research

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Abstract: Traditional legal research normally employs doctrinal method. This method involves research into the law and legal concepts prominently through the study of legal rules; by analysing court judgments and statutes with little or no reference to the world outside the law. Over the years, doctrinal research continues to be the most widely used method in legal research. However, this is not always the case particularly when legal research engages law as social phenomena. The sociology of law basically studies causal, structural and functional connections between legislation, legal practice, legal research and a number of social factors. Where the existence of law is correlated with social existence, empirical data is usually supplemented to traditional legal research. The use of empirical evidence in this context is considered as producing generally more reliable data. The objective of this study is to assess the application of combining research methods approach in legal education research, based on two broad traditions: doctrinal and socio-legal methods. The study argues that no particular method is privileged over any other. Rather, the choice must be driven by the research questions. The study examines the definition, aims and basic features of each approach. Brief distinction of research concepts used between legal and social science research is also made. The study concludes that due to the wide variety of issues still to be explored within legal research, combination of methods in legal research will therefore be essential in the future.

Key words: Combination methods, doctrinal legal research, empirical, research methods, socio-legal research

INTRODUCTION

Academic research basically involves a systematic and rigorous process of enquiry. The fundamental requirement in this process is to gather relevant and valid data by employing scientific method in orderly manner. Various methods could be used in the data gathering process depending on the type of study, as different methods would be appropriate for addressing different research questions (Bryman, 2009). In deciding the most suitable methods, the coordination of three basic concepts in the research design, namely; epistemology, research methodologies and research methods, will ensure that the whole research process and findings will be satisfactorily justified (Carter and Little, 2007). Since, it is fundamental for legal scholars to keep up to date with changes in the law and relevant knowledge and information, effective skills in legal research are necessary to accomplish this goal. The aim of this study is to appraise the need and use of combined or mixed research methods approach in legal education research in light of two broad traditions of legal research; the doctrinal and socio-legal methods. The study examines the definition, aims and basic features of each approach. A brief distinction of research concepts used between legal and social science research is also discussed. The study concludes that given the wide variety of issues still to be explored within legal education, combined or mixed methods approach will therefore be essential in the future.

Definition of legal research: In general, research involves systematic, thorough and rigorous process of inquiry to answer specific research questions using disciplined methods to increase knowledge. Equally, legal research refers to any systematic study of legal rules, principles, concepts, theories, doctrines, decided cases, legal institutions, legal problems, issues or questions or a combination of some or all of them (Yaqin, 2007; Zahraa, 1998) while social research involves research that draws on the social sciences for conceptual and theoretical inspiration that may be motivated by developments and changes in society (Bryman, 2012).

From this definition per se, whilst it is apparent that legal research shares some common features with non-legal research, it also differs in certain ways. For instance, Samuel (2008) highlighted the difference in the nature of the legal field that, “like traditionalist theology, is a discipline that is governed by the researcherity paradigm and it is this paradigm that restricts it in its capacity to make an epistemological contribution to social science thinking”. Legal research is basically classified into two broad traditions: doctrinal and socio-legal research. Doctrinal research is claimed to be qualitative as it does not involve statistical analysis of the data

(Dobinson and Johns, 2007; Peczenik, 2008) while socio-legal research employs methods taken from other disciplines to generate empirical data to answer research questions and thus it can adopt either qualitative or quantitative research approaches (Mike and Chui, 2007). The different character of legal research compared to social science is discussed further below in terms of the classification of legal research traditions.

Epistemological position: In any legal system, jurisprudence and any form of legal scholarship, there are three elements of epistemology that must be present for the basis of legal knowledge: revelation, observation and reason (Conry and Beck, 1996). Among these, it must be admitted that law relies heavily on the element of revelation where one may obtain knowledge by receiving it from researcherity. This means that legal scholars generally rely on revelation as their basic epistemology by referring to constitutions, statutes and court decisions to determine what the law is. This is akin to positivism stance in the social science research. The underlying assumption of positivism is that social reality can be observed and described from an objective viewpoint without interfering with the phenomena being studied. They contend that objectivity will produce more reliable findings, consistency and repeatability of results (Neuman, 2014) which can be found and tested by scientific standards of verification (Roth and Mehta, 2002).

Similarly, the positivist legal method aims primarily at a structuring of the law using autonomous concepts, following the legal-conceptual path of the historical school of law. Bogdandy (2009) claimed that in order to accomplish such a structuring, law is detached from social reality and tied to legal instruments that flow from the sources of law. In this respect, knowledge of law thus becomes knowledge of the 'source of law' (Samuel, 2003). Legal knowledge may also be created by reasoning. To extend the understanding of what the law is and to forecast what the law ought to be in different situations, legal scholars usually use deductive reasoning (Samuel, 2003). In fact, reason may have been the first epistemology formally applied to law (Conry and Beck, 1996).

New knowledge in law might also be obtained through observation. However, this form of epistemology has only been used by legal scholars very occasionally (Conry and Beck, 1996). Within legal theory, observational epistemology is displayed by American realists who attempted to look beyond positivist rules and employ correspondence theory which proposes that truth is what corresponds to reality. This is consistent with interpretivism position in social science research which emphasize that social reality is not objectively determined but very fluid and socially constructed (Kelliher, 2011). Interpretivism contend that validity or truth cannot be grounded in an objective reality as the knowledge generated in a research process is always negotiated within cultures, social settings and relationships with other people and ethical considerations are involved (Angen, 2000). With regard to legal research, this stance offered a radical departure from the positivism, emphasizing that knowledge of law is what officials do about disputes 'in specific court decisions (i.e., judgments orders and decrees) in specific lawsuits' (Samuel, 2003).

Against this background, there are certain situations where both the positivist legal approach and interpretive traditions may be employed in a single legal research. For instance, in a study to assess the effectiveness of certain law or enforcement of law, the combined approach may be used to get a more reliable and thorough result. This is because positivist legal approach is employed to understand the substantive and procedural law on the issue under study, whilst the interpretive approach will assist in gaining a fuller picture of the problems faced by enforcement researcherities in implementing such law. It is argued that each approach is important in its own right, as discussed below and, therefore, combining the two will produce greater analytic value for the research.

MATERIALS AND METHODS

Doctrinal and socio-legal methods

Doctrinal legal research: Doctrinal research is also referred to as theoretical, pure legal, academic, traditional, conventional and 'black-letter law' and is concerned with the formulation of legal doctrines through the analysis of legal rules (Yaqin, 2007). It emphasizes the conception of law as autonomous with clear boundaries between law and other subjects (Conry and Beck, 1996; Fiona, 2004) through analyzing court judgments and statutes with little or no reference to the world outside the law (Mike and Chui, 2007). Many theories of law, particularly those rooted in legal positivism are influenced by this rule-based approach which often holds that legal rules are constitutive of law and that the force of rules derives in general from their having been enacted by institutions researcherized to make rules (Banakar and Travers, 2005). Bogdandy (2009) stated that the positivist legal method aims primarily at a structuring of the law using autonomous concepts, following the legal-conceptual path of the historical school of law. In order to accomplish such a structuring, law is detached from social reality and tied to legal instruments that flow from the sources of law.

In a similar vein, Fox and Bell (1999) argued that the traditional view of law is to regard law as a set of legal rules derived from cases and statutes which are applied by a judge who acts as a neutral and impartial referee seeking to resolve a dispute. They claimed that although such a definition of law is necessarily limited and does not seem to accord with the reality of law, it has nevertheless been remarkably persuasive. As this approach only concerns a body of rules in deriving a thorough understanding of the law without dealing with human interaction Samuel (2008) affirmed that doctrinal method is therefore normative in character. This means that the validity of doctrinal research must inevitably rest upon a consensus theory of truth, rather than on an appeal to an external reality. In this respect, many academics would regard this approach as rigid, old fashioned or legalistic (Zahraa, 1998). For those from non-legal backgrounds who regard themselves as working within the positivism paradigm inspired by Popper's theory of falsifiability would even view the doctrinal approach as 'unscientific' on the ground that science is said to be about constructing models and testing falsifiable hypotheses (Siems, 2008). In this respect, Fiona (2004) asserted that the narrowness of the doctrinal approach with its belief in law as a self-contained body of rules which has attracted most criticism.

Despite this perception, doctrinal research continues to be the most widely used method in legal research (Huchinson and Duncan, 2012; Bogdandy, 2009; Fiona, 2004; Zahraa, 1998) and indeed, this approach still informs the research of most legal academics in Europe, UK and majority of common law countries. It is argued that one of the reasons behind this is the theory of falsifiability can also be criticized for not necessarily serving as a useful criterion in all scientific fields (Siems, 2008). Furthermore, we must also bear in mind that one of the prominent features of doctrinal approach is that it is more concerned with an accurate and coherent description of the law rather than scientific theories about it. Samuel (2008) maintained that the only alternative epistemological test as to whether law being regarded as a social science, is to associate law with the non-empirical science of mathematics where the test is one of coherence rather than correspondence. Coherence in this sense can clearly be seen in the process of legal reasoning and legal argument, as it requires certain standards of explanation and prediction. Hanson (2003) stated that legal reasoning is often a delicate balance of facts and/or theories and the application of existing rules connected by reasoned comments to persuade others of the validity of adopting the outcome suggested. The validity of law in this sense, therefore, depends on the logical connections internal to the legal system, that is, the internal view of the law.

In many cases, the basis on which validity can be established follows a pattern of syllogism or a deductive-nomological form whose premises are the norms of a legal order and relevant determinations of fact. This approach in fact becomes the dominant style of legal reasoning (Vandevelde, 2011) which has an established structure, consisting of a major premise, a minor premise and a conclusion. The major premise posits a statement that is true of a class of objects, the minor premise characterizes a particular object as belonging to the class and the conclusion asserts that the statement is therefore true of the particular object. On this basis, the court is most concerned with establishing that the conclusion is correct and that the propositions are correct. In Hickman v Peacey [1945] AC 304, 318, Viscount Simon LC made an observation that a court of law is not an institution engaged in establishing an absolute scientific truth but engaged in determining 'what is the proper result to be arrived at, having regard to the evidence before it'. It is argued that just because a logical form is correctly constructed, it does not mean that the conclusion expressed is true. The truth of a conclusion depends upon whether the major and minor premises express statements that are true (Hanson, 2016). In this regard, it is important for legal scholars to synthesize the competing claims of multiple propositions in legal argument so that the final argument will consist of a range of propositions that will invariably be substantiated by evidence (Hanson, 2016). Thus, the reasoning most valued within law demonstrates a consistency of approach and logic as consistency is highly valued.

It is argued that, even though legal sources can be accessed to determine what the law is, the application of the law is contentious. This is particularly true in terms of the enforcement of law. For example, the standardized requirements of the international agreements or conventions such as the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement for example, are implemented according to the interpretation of member states' national law.

However, despite the resemblance to the social sciences interpretive tradition, it is argued that they are in fact different, in the sense that the validity of doctrinal legal research builds on the concept of coherence as discussed earlier, whilst empirical investigation becomes an important requirement in the natural and social sciences research. Urbina (2002) for instance emphasizes that methods based on understanding are much important for legal scholars and thus empirical or formal axiomatic methods are of little or secondary importance for them in general. On the basis of these arguments, it is argued that the doctrinal approach in legal research is having great

significance in assisting legal scholars to clearly understand the substantive law relevant to their research through the analysis of legal rules, court judgments and statutes. By using interpretive methods, they for example may examine the law, its existing measures and procedures in addressing legal problem. This is further done to analyze possible improvements in the current systems. In addition, the interpretivist stance would also be an appropriate theoretical perspective to effectively investigate the complex nature and consequences of legal phenomenon.

RESULTS AND DISCUSSION

Socio-legal research: Even though there is no generally accepted definition of socio-legal studies, the term basically refers to studies of law that relate to social phenomena and adopt methods from the social sciences to obtain some kind of empirical data (Zahraa, 1998; Yaqin, 2007; Mike and Chui, 2007; Chynoweth, 2009). Socio-legal research is claimed to be flowered during the tidal social changes of the 1960s when activist courts were the principal and most visible agents of reform (Loh, 1984). As a result, empirical research becomes centered on the social impact of judicial decisions. The aim of collecting empirical data in this context is to provide vital insights from an external perspective into how the law works in society, thus enabling the researcher to examine the law in question in more appropriate and effective ways. It may also bring to light significant views that are not available in the context of a purely doctrinal approach.

Genn *et al.* (2006) claimed that empirical legal research is valuable in revealing and explaining the practices and procedures of legal, regulatory, redress and dispute resolution systems and the impact of legal phenomena on a range of social institutions, business and citizens. In a situation where law alone may not be an answer to a problem, issue or question, Yaqin (2007) averred that where the true factors for the emergence or existence of a problem or issue are identified by empirical inquiry, law where it is applied and enforced with the necessary will, commitment and appropriate strategies can serve as an effective mechanism of control, regulation, change and reform. This tradition in particular is strong in the field of criminal law and criminology, corporate law and family law which complementing to traditional legal research in order to investigate complexities of law, legal actors and legal activities (Neuman, 2014). In fact, it is argued that a working familiarity with scientific and statistical reasoning is needed in certain areas of litigation and law reform (Loh, 1984).

However, it is worth to note here that the 'socio' in socio-legal studies does not refer to sociology or social sciences but represents 'an interface with a context within which law exists'. The use of social theory for the purpose of analysis in legal research most often tends to address the concerns of law and legal studies (Banakar and Travers, 2005). Thus, it is argued that in legal research context, social science methods have been employed not so much for substantive analysis but as a tool for data collection. For example, in cases involving the violation of Intellectual Property Rights (IPRs), the use of social science research methods in the process of proving evidence in court is becoming more common. This can be seen in trademark infringement cases where some cases in fact have used market research surveys to assess confusion among consumers, though the probative value of this type of evidence remains contentious because of the strict requirements of the legal standards concerning the admissibility of such evidence. In Imperial Group v Philip Morris Limited and Another [1984] RPC 293, the court laid down guidelines for the use of survey evidence as follows:

- Interviewees must be selected to represent a relevant cross-section of the general public with knowledge both of the party's product and the relevant market and unaware of the litigation
- A sample of statistically significant size must be used
- The survey must be conducted fairly
- All the surveys carried out must be disclosed to the other side, including both the number surveyed, the instructions given to interviewees, any coding instructions and the method adopted
- All answers, in exact and verbatim form, must also be disclosed with no confidentiality offered to interviewees
- No leading nor suggestive questions should be used
- A sample initial survey to iron out any problems may be advisable

This denotes that, although survey evidence per se was not highly rated for its evidential value in most cases and the weight to be attached to such evidence is a matter for the court to decide, the court however will admit survey evidence if it meets certain methodological conditions as demonstrated in Reckitt and Coleman Products Limited v Borden Inc. [1990] 1 W.L.R. 491 which followed guidelines a, c, e and f of the Imperial Group case above. The court in Diageo North America Inc v Intercontinental Brands (ICB) Ltd. [2010] EWHC 17 (Ch) further emphasizes that this does not mean the survey has no weight but it means that the survey must be treated with caution.

It is worth to note here the different treatment with regard of type of data in social science and legal research. While both fields have their primary and secondary data sources, any variation in these sources is significant not only because they involve different value and weight for the research but also treated differently in both the social science and legal fields. In social science, "primary data sources" refers to information obtained first-hand by the researcher for the specific purpose of the study and where the researcher has a direct relationship with the subject-matter of the study (Henn, 2006; Teddlie and Tashakkori, 2009). Sources of primary data may include individuals, focus groups, panels of respondents specifically set up by the researcher and from whom opinions may be sought on specific issues or more unobtrusive sources such as dustbins, court records, letters and reports which help in providing a first-hand account of a situation (Henn, 2006; Schutt, 2006). In this regard, primary sources may provide very useful information, especially if the researcher needs to obtain the perceptions, opinions or attitudes of people. "Secondary data sources" in social science parlance refer to the information produced after the event took place which the researcher had not personally witnessed. This may include materials such as statistical bulletins, government publications and data available from previous research, case studies, library records and online data (Henn, 2006; Schutt, 2006). Secondary data in this context may provide further analysis of an existing data set which presents interpretations of, conclusions or knowledge additional to or different from, those presented in the first report on the inquiry as a whole and its main result (Henn, 2006).

Meanwhile for legal research, primary data sources refer to the texts of laws that are produced by the legal process itself and therefore become the researcheritative statements of law (Elias, 2009; Chatterjee, 2000). These may consist of case law and/or legislation. The use of primary sources is very important in situations where the researcher wants to put together an argument that carries legal value in terms of the admissibility of evidence or to know exactly what the law says on the issue being investigated. As researcheritative statements of the law, the courts also give these sources more weight than they do secondary sources and they therefore become obligatory sources for legal research. It is at this point that law is differentiated from other social practices which emphasize empirical data as primary sources whilst legal documents are treated otherwise.

As for secondary data sources in legal research, they refer to the documents that interpret or discuss primary sources. These may include legal writing such as in books, journals, encyclopedias, digests of cases, indexes, official statistics, local or international documents, reports of governments or international bodies and other library-based sources (Yaqin, 2007; Chatterjee, 2000). Secondary sources are useful if the researcher wants to learn how things are generally done or how they are done in other states. This is very helpful in particular to learn the basic application of the law or if the researcher needs to compare how different jurisdictions handle the same issue (Elias, 2009). However, as secondary sources only tell courts what legal scholars say about a legal principle (Elias, 2009), they are therefore only considered as persuasive arguments. With these views in mind, the socio-legal approach in legal research allows a range of the social science methods to be used including the qualitative strategy. In this regard, an interdisciplinary approach may provide a 'space of encounter' at the cross-section of disciplines which offers temporary relief from methodological and theoretical restrictions of established disciplines (Banakar and Travers, 2005).

Combination research methods: There are many different terms used for the combination research approach such as integrating, synthesis, quantitative and qualitative methods, triangulation, multimethod and mixed methodology but that recent writings use the term mixed methods research (Creswell, 2013; Bryman, 2012). Briefly, the core characteristics of mixed methods approach are where a research combines or associates methods, a philosophy and a research design orientation both qualitative and quantitative forms (Creswell and Plano Clark, 2011). Whilst the use of mixed methods is arguable due to different epistemological approaches of quantitative and qualitative method, it is gaining legitimacy within the research community. Commentators argued that the use of multiple and independent methods should, if the same conclusions are reached, result in greater reliability than a single methodological approach to a problem and thus rigor, breadth, complexity, richness and depth are added to the inquiry (Creswell, 2013; Denzin and Lincoln, 2011; Johnson *et al*., 2007; Kelliher, 2011). In addition, Bryman (2009) highlighted that this approach also has freeing the researcher to select whichever methods and data sources that might be reasonably used to explore a research problem in pursuit of rigorous and comprehensive findings.

In legal research, combinations of approaches have also been generally accepted where scholars employed the most relevant methods suitable for the study. While it is well acknowledged that legal doctrine is crucial in interpreting the law or balancing it with other laws or legal principles (Hoecke, 2011), commentators have observed

that this justification may change with corresponding changes in the legal system, doctrine or procedure (Sward, 2005). In fact, the importance and needs for a combination approach in legal research may be inferred from an observation made by Justice Holmes Jr. (1897) that "for the rational study of the law, the black-letter man may be the man of the present but the man of the future is the man of statistics and the master of economics'. In today's context, certain areas of litigation and law reform as mentioned earlier even needs legal practitioners and scholars to be familiar working with scientific and statistical reasoning. The distinctive feature of empirical legal research is the use of systematically collected data, either qualitative or quantitative, to describe or otherwise analyze some legal phenomenon (Cane and Kritzer, 2010). The use of empirical research in legal studies is mostly in the form of gathering data from primary sources such as legislations and case law but, in some cases, field research is also employed. This would likely involve the collection of data or information by using empirical approach in the context of social science research through the use of questionnaires, interviews, surveys and other methods recognized in the relevant field of study.

While this may seem a challenging process for those in legal field since many of the methodologies previously are not taught in legal academic institutions, knowledge and familiarity in interdisciplinary approach will be advantageous not only in presenting the evidence in court but also may produce thorough results in investigating legal issues and legal phenomena. As stressed earlier, the essence of legal reasoning is the establishment of a logical connection between the supporting facts and the conclusions of law of a case. Thus, it is argued that an appreciation for the relationship between law and facts in legal reasoning helps in analyzing the role of empirical inquiry in legal decision-making (Loh, 1984). However, it must be stressed here that combination of methods in legal research is basically intended to achieve a complementary approach rather than being regarded as mutually exclusive. This means, there is no particular method to be claimed as privileged over any other but, the choice must be driven by the research questions.

Commentators have expressed their views on the complementary role of adopting combination of methods in legal research. For instance, Fiona (2004) stated that scepticism about legal positivism does not mean that legal academics using a socio-legal paradigm regard knowledge of the content and techniques of doctrinal law as unimportant. She characterized the dominant mode of academic law as 'concerned both with doctrine and with placing those doctrinal materials in their social context'. In this regard, the precise balance of these factors will lie with individuals; academic lawyers' view of their approach to their discipline is likely to vary, depending upon where they stand on the 'doctrinal-socio-legal-critical legal' spectrum. However, she agreed that the majority of legal scholars were clear that the socio-legal approach to law will certainly become more important in the future in line with Justice Holmes observation as mentioned above.

Likewise, Siems (2008) stressed that legal academics should not rank the different methodologies as they can either choose to be "foxes"; that is, to know many things or "hedgehogs"; that is to know one big thing in conducting research. He identified four ways of 'being original' in legal research by employing different approaches including 'micro-legal questions', 'macro-legal questions', 'scientific legal research' and research in 'non-legal topics' which cover both traditional (doctrinal) and contextual (socio-legal) research. He thus emphasizes the equal value of either employing a variety of methods or to focus on one of them.

CONCLUSION

Data gathering process is a crucial stage for any researchers to ensure they obtained the relevant and valid data to yield a reliable result. For this purpose, researchers may employ various methods that appropriately addressing their research questions and research objectives. This study has argued that different methods sometimes may be used to answer different research questions in a single study. In legal research, combination of methods between doctrinal and socio-legal is basically intended to achieve a complementary approach rather than being regarded as mutually exclusive especially in terms of reducing the chance of bias or limitation that may arise by using a single strategy. In contrast to social science approach, doctrinal method remains to be significant in legal research due to its nature which upheld the use of statute and case law as researcheritative data sources. In view of this, the use of socio-legal method with empirical evidence is usually supplemented to traditional legal research with the intention to generally producing more reliable data. This means, socio-legal method should be considered in responding to the current needs and development of the law as this approach for instance, may inquire into the motivations behind the legislative process or the reason behind a judicial decision that may provide useful information for legal doctrine. The aim is to provide a comprehensive understanding of the subject or the phenomenon and enhance the overall quality of the study and its findings.

SUGGESTIONS

Considering the strength and limitations of each of the methods available, it is suggested that combination of methods in legal research will assist researchers acquiring a new understanding, for instance, of legal problems, the legal provisions of enforcement systems or probably more appropriately captures the dynamics of the legal phenomenon so that they may effectively introduced a new framework to be implemented by the relevant researcherities. Nevertheless, it is argued that since there are a wide variety of issues still to be explored within legal research and the growing interest in empirical legal research means that the importance of combination of methods in legal research has been recognized and will therefore be essential in the future.

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