

Qualitative Research in Law and Social Sciences

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Sociological scholarship employs a wide range of qualitative research methods, including ethnographic approaches, interviews, observations, focus groups, textual analysis, archival work, and more. In my experience, researchers who are unfamiliar with qualitative studies sometimes misunderstand what such methods are designed to accomplish. Furthermore, even among researchers who use qualitative methods, there is sometimes a tendency to treat ethnography as either a black box or part of a tool kit, both of which are problematic. I will discuss these issues before describing promising areas of qualitative research.

Both quantitative and qualitative research uses empirical methods to decipher the workings of social, cultural, and legal processes. They differ, however, in how they go about this deciphering. Quantitative research is designed to test hypotheses. Factors to be considered in assessing quantitative research designs include external validity (does a proxy really approximate what it is supposed to?), the construction of the sample, the presence of confounding factors, the appropriateness of the pool from which the sample is drawn, selection effects that may arise in forming a sample, the generalizability of the findings, the falsifiability of the hypothesis to be tested, and the replicability of the study. These factors center on whether or not the “test” conditions -- whether experimental, a survey, or an aggregate data set -- accurately mirror broader reality. A quantitative analysis will only produce valid results if the data are of high quality in the first place.

Qualitative research often attempts to answer a question rather than to test a hypothesis. Instead of devising “test conditions,” qualitative researchers examine on-going social processes, study records or artifacts that shape or are produced by these processes, and talk to people who are engaged in or affected by the processes being studied. Issues to be considered when assessing qualitative research designs include the following: Is the case uniquely appropriate for the study in question? Can the research question be answered with the sort of data that is to be gathered? Is there a broader phenomenon that is being studied through a particular case? Will the study advance theory regarding this phenomenon in particular ways? Is the research question relatively open; that is, are there multiple possible answers to the question? Is it clear that the researcher needs the data in order to answer the research question? Will the data collection be thorough? Will the research process give the researcher the expertise that will make it possible to answer the research question? These issues focus less on the quality of the data per se, and more on the appropriateness of the case and the quality of collection. A high quality study will produce rich and complex (multi-faceted) knowledge of particular phenomena.

Unfortunately, researchers sometimes treat “ethnography” in particular as a self-explanatory process or as part of a tool kit that can be casually deployed. First, it is not

clear that “ethnography” is a single method rather than a type of account or a way of perceiving and representing social and cultural (including legal) phenomena. What makes a project “ethnographic” may be this mode of perception and representation rather than a particular set of activities (e.g., conducting observations, doing interviews). It is possible to produce an ethnographic account without doing fieldwork, as traditionally understood. Second, “ethnography” is sometimes tacked onto a list of research methods, as in “and I will do an ethnography of X,” without an explanation of what such an endeavor entails. Ethnography becomes a black box, a mysterious process, opaque because it is seemingly transparent. Third, ethnography is sometimes treated as a research technique that can be deployed by a researcher at will. In fact, ethnographic research may require forming relationships, becoming part of a research setting, acquiring new forms of expertise, and developing (or suspending) particular ways of seeing. Ethnographic methods can be employed by scholars in numerous disciplines and can be combined with other approaches, but ethnographic research is often only possible with some collaboration from ethnographic subjects (and therefore is not deployed at the sole discretion of a researcher) and can entail complex (and potentially compromising) positionings.

To avoid the “black box” and “tool kit” problems, scholars who are proposing qualitative studies (whether or not these are ethnographic) can elaborate on what they plan to do and why they plan to do it. It is helpful to work up the case(s) to be studied. What unique opportunities does this case present? How do the theoretical issues to be addressed play out within this particular case? If observations are to be conducted, how will these allow the researcher to learn about situations and events that will shed light on the research question posed? For example, to identify the normative orders that influence police control of territory, Steve Herbert (1997), a geographer, went on ride-alongs and observed officers’ exercise of discretion. Similarly, to understand the linguistic strategies of Muslim women who had to testify in a traditionally masculine legal setting, Susan Hirsch (1998), an anthropologist, observed and recorded hearings in an Islamic court in Kenya. If interviews are to be conducted, who will be interviewed, about what topics, and how will the interview data speak to the research question? In my own discipline of anthropology, interviews (and observations) are generally conducted by the researcher (rather than delegated to a research assistant or outsourced to a company) and in a language that both the researcher and the interviewees speak fluently. There is supposed to be an “immediacy” to the research process. Qualitative methods can include the analysis of texts, and when this is the case, it is helpful to explain the sorts of insights that are available from particular sources. For example, to analyze ways that low-level immigration officials understood and applied the Chinese Exclusion Act in the late 1800s, Kitty Calavita (2000), a sociologist, studied correspondence between these officials and their supervisors regarding the correct response in ‘problematic’ or ambiguous cases. Qualitative studies now frequently employ a computer program to code and sort data; however, indicating that such a program is to be used does not adequately describe how data is to be analyzed.

It is difficult for me to specify particularly promising topics for qualitative study in law and social sciences, as there are so many possibilities. I will therefore, of

necessity, be idiosyncratic, and describe some of the topics that I find most interesting. First, a recent convergence between scholars in science and technology studies, law and social sciences, anthropology, and even information technologies directs attention to forms of assessment -- essentially, what we are engaged in here today -- and particularly to ways that law and other forms of knowledge (including the social sciences) derive from similar (even identical?) understandings of truth. Note, for example, the degree to which law and the social sciences use an overlapping vocabulary: evidence, validity, consent, case, evaluation, judging, credibility, identity, proof, bias, to list a few key terms. How are legal and other truth claims produced and assessed? What gaps or disjunctures arise in such processes? How do assessments shift over time, such that claims, activities, and persons that are considered illegitimate are sometimes redefined at subsequent moments -- and vice versa?

Second, qualitative methods may be particularly appropriate for analyzing powerful institutions that produce law and/or quasi-legal agreements, norms, and policies. I have in mind the United Nations, the World Bank, the International Monetary Fund, the European Union, USAID, and other such bodies. Qualitative methods, which have often been used to study particular communities, delimited sites (e.g., a street corner), or bounded groups are also well-suited for identifying reconfigured understandings of persons, states, rights, development, international relations, gender, and law that are being produced through such institutions and their activities.

Third, while doing a literature review for a paper on the remittances that migrants send to relatives in their countries of origin, I was struck by the hidden "qualitative" nature of certain quantitative studies. For example, a 2003 IMF Working Paper by Ralph Chami, Connel Fullenkamp, and Samir Jahjah used IMF and World Bank remittance data on 113 countries from 1970 to 1998 in order to determine whether immigrant remittances were a source of capital for economic development (they concluded that by and large they are not). In order to perform a quantitative analysis, the authors developed a model that reads much like a fictional account. I quote from their paper: "We envision a country made up of a large number of identical two-person families in which one of the members has migrated and is earning an exogenous income in the foreign country.... We refer to this person as the immigrant.... The family member who remains in the home country, whom we refer to as the recipient ... works in the domestic labor market. The recipient is risk averse and works for a risk-neutral firm. Output x in the recipient's country is uncertain" (p. 11). While the authors develop this model -- only a small portion of which I've quoted here -- in order to test relationships between remitting, risk, productivity, and economic growth, it occurs to me that this model is revealing as a piece of qualitative data. This model assumes that immigrants will feel resentful if recipients reduce their labor output due to receiving funds, that remitters are largely altruistic, and that recipients may be able to exploit remitters. In this case, scientific rigor-- a sophisticated analysis of whether relationships between variables were as predicted by the model -- required producing a fictitious "vision" of migration, countries, families, and work. In line with my call for research regarding modes of assessment, it would be interesting to study ways that, whether qualitative or quantitative, scientific analysis (much like legal analysis), sometimes requires at least temporarily considering particular "fictions" to be valid.

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