

Note-taking and Notability: How to Succeed at Legal Doctoral Fieldwork

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Abstract

Fieldwork is the bridge between academia and practice. Often, this bridge is not crossed due to lack of guidance, time and practical experience. Academics are left on their own to guess what would work best. In facilitating this, this article assesses the methods used in a case study of doctoral fieldwork at the European Parliament within the civil service. Findings include identifying optimum methods to plan, develop and execute doctoral fieldwork.

This research is structured in four parts, which covers a literature review on fieldwork in the social sciences, the case study, the methodologies used, and a problem-solving section giving tips to succeed at fieldwork. Findings include a selection of methodologies which include participant observation and note-taking. These methodologies assist in improving skills such as time management, working under high pressure and delivering quality reports with attention to detail, which are fundamental for a successful academic career.

The experience covered in this article will assist academics in designing their fieldworks at all levels of their careers. The methods described are transferrable to fieldworks across legal, political and policy-making institutions.

Introduction

Connecting academia with practice is important for science, as it yields high added value to research. Incorporating practice into research is usually done through fieldwork, where the academic has the chance to test theoretical knowledge in a real-life environment.

A decision to undertake fieldwork involves a series of trade-offs and needs to be thoroughly planned and executed (Bickman and Rog 2009: 4). Advantages of carrying out a fieldwork are collecting new information, testing academic ideas and increasing publication impact. The amount of time and money required is a significant disadvantage. Considering this, it is essential to plan, to foresee every stage and to select the right methodologies in order to maximise chances of success.

Fieldwork is important in law as legal sciences, among else, study the interplay between society's expectations and the political will to respond to these expectations. The law is negotiated, interpreted and reformed in context. As Feldman wrote, "there is an obvious link between legislation as a source of law and the political process which produces legislation" (Feldman 2013: 7). Consequently, academics should remain in contact with the real-life application of the law. The most intense experience is fieldwork, where the researcher explores the 'outer world'.

Despite some efforts, significant gaps remain in literature on legal fieldwork methodology. Thus, legal researchers are left on their own to search for ideas. Acknowledging this gap, this article analyses a case study of legal fieldwork focusing on methodologies. The aim of this article is to provide specific examples on data collection. The article is divided into four sections: a briefing on the distinctiveness of legal fieldwork; a description of the case study; a choice of data collection methodologies, and problem-solving tips.

Literature review

While other areas of social sciences have developed relevant methodologies to carry out their research, law has focused on results instead. This section presents a literature review on social science methodologies for fieldwork. The aim is to find gaps within the study of methodologies in legal fieldwork. The section will look at fieldwork in social sciences and in law, seeking to provide evidence of the literature gap in case studies of legal fieldwork.

Social science fieldwork is defined as “gathering information through direct interaction with people and processes such as interviews, questionnaires or court observation” (City University Law School 2015: 3). Yin and Bickman and Rog have studied fieldwork methodologies in the social sciences in general (Yin 2009). Others have studied applied methodologies in specific fields, such as anthropology and ethnography (Fetterman 2009), geography teaching (Kent, Gilbertson and Hunt 1997) and learning in the workplace (Eraut 2004). However, there are no equivalent studies concerning law.

Legal research has provided a conceptual framework, but it has largely failed to address case studies in the field. This leads to fragmented information and lack of guidance for researchers.

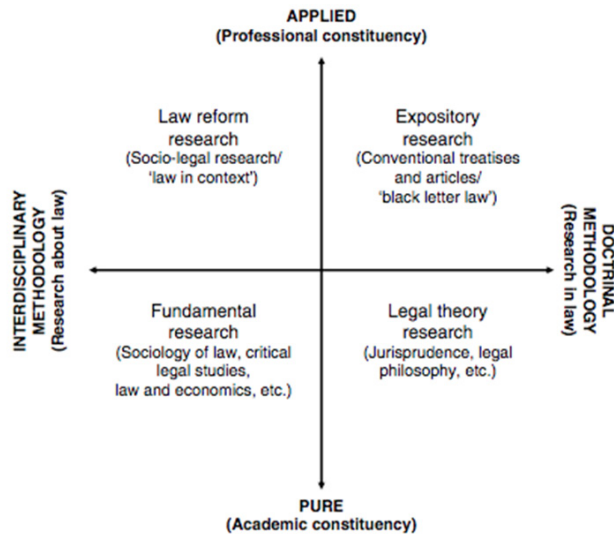
The discussion on legal fieldwork is theoretical. This is covered in three strands. From general to specific, these are ‘law in context’ by Arthurs, ‘empirical legal studies’ and a briefing on legal fieldwork in the field of European Union Law. The next paragraphs cover these three strands.

‘Law in context’ and ‘empirical research’ place a foremost importance to the context of law. Both start from the same position: they assume that context is relevant to their understanding and interpretation. Law is not a rigid text, but a result of the environment in which it is passed and applied. Despite awareness of the importance of practice within academic study, these theories do not have fieldwork as an object of analysis.

The first strand is Arthurs’ ‘law in context’, providing a conceptual framework for legal studies. This framework is

Figure 1. Graphic
representation of
Arthurs' model
(Chynoweth 2008: 29)

represented as a two-dimensional map assessing whether research is pure and whether it is doctrinal or interdisciplinary. The map is shown below.



Applying Arthurs' model, legal fieldwork falls under the tag of 'law reform research' or 'law in context' (Chynoweth 2008: 29). This strand has been described as 'law [providing] the starting point but [...] situated in a broader context, whether social, economic, political or cultural' (Snyder 1994: 198). This entails the study of a legal text within a social context in which it is immersed.

The second strand is empirical legal studies which, within the social sciences, are an area of interdisciplinary study seeking to complement other areas of law and social sciences (Eisenberg 2011: 1719). This is an emerging field, coming into vogue only around the 2000s (Kritzer 2009: 925). It aims at integrating observations into legal research, seeking "to understand and explain how law works in the real world" (Partington 2010: 1003). Empirical legal studies attempt to reconcile the legal academy and the legal profession by readdressing the "ever increasing gap" between them (Nard 1995: 348). Thus, there is commonality of interest between empirical legal studies and legal fieldwork.

The emergence of empirical studies is linked to some extent with that of personal computers, as new technologies facilitate statistical analysis (Eisenberg 2011: 1719). In reality, this means dealing with large sets of data aiming to formulate policy

recommendations. In that sense, the methodology of empirical legal studies, which is again not specifically explained, is not used fully for the analysis of the case study described in this article.

Having said this, it should be noted that testing legal rules in practice constitutes “evaluative research” (Van Hoecke 2013: vi). This research is distinguished from what Mackor calls “normative claims” (Mackor 2013: 69). In brief, evaluative research refers to how rules work in practice for specific cases, whereas normative claims refer to those statements that define the discipline and work under any context.

The disregard of legal scholarship for fieldwork is further confirmed in the third strand: specific studies on methodology. Regarding fieldwork in European Union Law, Cryer et al. argue that “law students in general tend to be less methodologically self-aware, less good at articulating the approach underpinning their projects, than those in other social science disciplines”, often leading to problems (Cryer, Hervey and Sokhi-Bulley 2011: 2). In order to solve these problems and cover literature gaps, they present a collection of methodologies across EU legal studies. Several points are presented, ordered according to different stages of legal research. The points covered are main jurisprudential approaches, legal research methodologies and interdisciplinary research within the classroom. However, comments are short, with no practical evidence, and do not mention fieldwork.

Smith breaks the pattern of disregard to notes about method, providing a brief account on methods used in primary research (Smith 2010). Her primary sources of research were the compilation and study of a high number of documents and a round of interviews with high-level officials. Her methodological note is a complete account of fieldwork management. It discusses the selection of sources, the motivation and the intended result of fieldwork. Additionally, a list of 28 open interview questions and the transcript of one of the interviews is included.

To summarise, legal fieldwork is distinctive and insufficiently explored. Whereas theoretical basis for conducting empirical research in legal studies has been developed in general, specific case studies regarding fieldwork have been overlooked.

Approaches such as 'law in context' and 'empirical legal studies' demonstrate that little attention has been paid to legal fieldwork methodologies. Smith (2010) fills this gap but only partially; his work is interesting but still insufficient to cover such substantial literature gap. A lack of methodological instruction has serious consequences for legal fieldwork. Students are encouraged to undertake fieldwork but are left on their own and with little guidance in preparing for and carrying out fieldwork. For many, it can become daunting to juggle fieldwork and their other teaching and research responsibilities. This may be a reason that discourages scholars from conducting fieldwork.

From this brief literature review, it is possible to conclude that legal scholars have placed their focus on results at the expense of methods. Despite higher awareness of the relevance of context and benefits of fieldwork, hardly anyone explores fieldwork methodology. Integration of practical experiences into legal research bears some relevance in 'law in context' and 'empirical legal studies' with a specific reference to European Union Law, albeit to an insufficient extent so as to guide fieldwork design.

Taking into account the availability of information and theoretical underpinning regarding fieldwork methodology, this article aims to fill a gap by providing a detailed analysis of the fieldwork carried out in the European Parliament.

The case study

The case study of this article is doctoral legal fieldwork in the field of European Union Law carried out in the European Parliament. The Parliament, together with the Council, discusses draft legislation and passes laws, among other tasks. Its directly elected members give voice to the citizens of the 28 Member States.

The research project aims to check whether distribution of law-making between the European Union and its Member States corresponds to what the Law states. Or rather, how the powers of law-making are distributed between the EU and the Member States beyond the text of the Law. In other words, this requires us to check whether the EU legislates only within the limits of its powers or whether it oversteps powers that remain within the

Member States. A theoretical model has been created to analyse this research question. Once created, it was applied to real-life circumstances, seeking to test the reliability of the model.

The fieldwork aimed to complement academic research, provide further evidence and refine results. The fieldwork intended to verify two statements: (i) whether EU law-making procedures provide opportunities for the EU to expand its own competence; (ii) if so, how and why the European Parliament uses those powers? Consequently, the pursued data influences the choice of data collection methods.

The selected object of study was the European Parliament. This is because it is one of the agents that intervene at the last stage of the law-making process, together with the European Council. A traineeship position was requested to gain insider access to daily practice and a specific area of law-making was chosen. The fieldwork had two essential constraints, which were the complexity and rigidity of internal institutional rules and the time limitations. Consequently, good planning is crucial for success. The next sections cover the fieldwork design, covering both planning and execution. The section on planning describes the methods for data collection. The section on execution comments on the problems faced during fieldwork and how to address them.

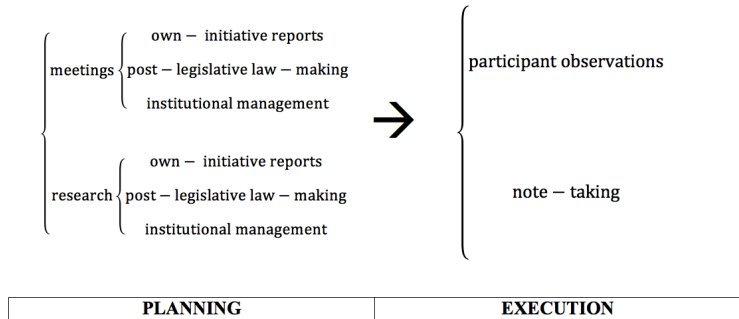
The ideas and methods presented are intended to inspire other researchers planning to undertake fieldwork. The examples shown here are easily transferrable across the social sciences for research in political or legal institutions.

Fieldwork planning

Concerning the fieldwork, it is governed by thorough rules, contains multiple instances of decision-making and processes a high amount of information continuously. The European Parliament, as an institution, is representative of other international institutions concerned with law and policy. Below, there is a detailed explanation of the activities it involves, the topics it deals with and the impact of both activities and topics on research design. Given this, an appropriate selection of fieldwork methodologies was the key for the success of the research.

Figure 2. Graphic summary of the planning and execution stages.

In terms of activities, there were two key variables to define the fieldwork methodologies: (i) meetings and (ii) work-related research. Each one of these activities comprised three topics, which were own-initiative reports, post-legislative law-making and institutional management.



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Figure 2 represents graphically the structure of fieldwork in terms of activities and topics. The paragraphs below provide more details on each of the categories of activity.

Two broad categories of activities were defined: (i) meetings and (ii) research. The category ‘meetings’ included any reunion, regardless of its public or private character, people involved or content. For instance, it included plenary sessions where legislation is voted for, committee sessions which involve discussions on a specific area of law or private meetings between elected members and civil service to discuss next steps regarding a piece of legislation under negotiation. Research was defined as any activity to gather and process information regardless of the purpose. It included writing meeting reports, drafting texts for external communications or delivering targeted research on request of elected members.

Either meetings or research involved work on three different topics or thematic areas. These topics were: (i) own-initiative legislative reports, (ii) post-legislative law-making and (iii) institutional management. The topics are explained below.

The own-initiative legislative reports are statements through which the European Parliament calls for legislative action in a given area or states its position regarding a topic. In this track, the fieldwork consisted of performing targeted research, writing reports and observing meetings between elected

members of the Parliament and civil service.

Post-legislative law-making covered expert meetings with representatives from the main European institutions (i.e. Commission, Parliament and Council). In those meetings, the Commission provides guidance on the implementation and the interpretation of legislation recently approved. There are Commission presentations, followed by rounds of questions and answers from Member States' representatives. The meetings provided opportunities to observe how EU institutions and representatives of Member States interrelate.

Institutional management was the broadest category. This is because it is defined by default, grouping those activities that do not fit under the two other categories. It includes daily reporting on the parliamentary activities. This track involved drafting feedback notes on events of interest for members of the Committee, drafting short articles for external communications and monitor the progress of legislation that were under negotiation.

The preceding paragraphs commented on the activities and the topics that the fieldwork encompassed. Consequently, it was necessary to select methodologies that were suitable to its context. The fieldwork data collection methods were defined in response to the particular demands of the fieldwork. It is therefore suitable to define data collection methods according to the activity or skills involved. This is because there must be a correlation between the activity involved and the method to collect data. In response to planning, a combination of two methods of data collection was chosen for the execution. The next section covers the choices made on methodologies at the execution phase.

Fieldwork execution

The previous sections have covered fieldwork considerations, both general and applied to legal research. Afterwards, the case study was explained at the planning phase. This section presents the methodologies selected for the execution phase and a brief account on the problems found. The next paragraphs explain the problems that the research faced when put into practice and how they were addressed.

The two methods played different roles in each of the ‘meetings’ or ‘research’ categories. Participant observations played a key role, whereas note-taking had an ancillary function. The resulting choices on fieldwork design regarding methodologies are discussed in the following two subsections, covering participant observations and note-taking. Both participant observations and note-taking were combined for each of the fieldwork activities (i.e. meetings and research). However, participant observations played a prominent role in meetings, whereas note-taking was mostly used for research activities.

Participant observations

Participant observations are defined as “qualitative data collection methods [based on] discovering through immersion and participation the hows and whys of human behaviour in a particular context” (Guest, Namey and Mitchell 2013: 75). Participant observations are used across the social sciences with different intensity. They are most popular in anthropology and sociology, as most of their seminal insights are heavily reliant on them (ibid).

Among the main reasons to justify the use of participant observation for the case study, there are the possibilities of ‘opening up the areas of inquiry to collect a wider range of data, gaining intuitive understanding of the meaning of your data and addressing problems that are simply unavailable to other data collection techniques’ (ibid. 80-81). In addition, this led to unexpected positive results, to be discussed in section c on a critical assessment on methods.

In the case study this article explored, they proved useful because the results expected were also based on discovering the how and why of a particular human behaviour. As previously stated, these two questions are: (i) whether EU law-making procedures provide opportunities for the EU to expand its own competence; (ii) if so, how and why the European Parliament uses those powers. The next paragraphs analyse in detail how participant observations were designed.

Participant observations were based on the attending meetings and the observation of their behavioural patterns and decisions taken. These observations were defined on two factors: low

observer-observed interaction and peripheral membership. The low observer-observed interaction implied little to no capacity for the observing researcher to alter the course of events. The peripheral membership was based on the kind of role that the researcher takes, for those cases when her involvement is marginal to the object of observation (Marvasti 2013: 356). As a researcher, the role played in meetings cannot easily deviate from this.

Results from the participant observations were processed through forms. This is a five-page form structured in seven sections. Different types of questions were combined, which include free text, yes/no questions, tables or open spaces for free text or drawing. The decision to combine different kinds of questions was justified as a trade-off for systematic data collection while keeping enough flexibility to adapt to different meetings. A complete account of the questions is shown below.

The form was a standard template containing seven sections. The seven sections covered (i) meeting identification, (ii) actors involved, (iii) agenda, (iv) time management, (v) content discussed and dissertation-specific questions such as (vi) soft law and (vii) public-private partnerships. The next paragraphs present the most useful traits of the form.

The use of forms assisted data collection from participant observations. The form was designed specifically for the case study. It contained seven sections, covering different topics and combining different kinds of questions. A detailed explanation on each one of the sections is covered in the following paragraphs.

Section 1 covered questions on basic identification of the meeting. They enquired on date, time, facilities and provided a free space to draw the layout of the room. A detail on the layout question is reproduced in figure 3. Leaving a blank space to draw the layout of the room proved very useful, because it provided information about the balance of powers among the agents participating and their roles.

1. PLAN OF THE MEETING.
Draw the layout of the meeting room. Indicate the position of the agents
that are present in the meeting.



Figure 3. Outlook of
the question on the
layout of the room.

Section 2 asked about the participants. Special emphasis was placed on the role and responsibilities of the participants. The questions included the following:

- What is the balance between the civil service and elected politicians?
- Do the Members of Parliament and civil service attend personally, or do they send representatives?
- Was any person absent whom you expected to be in the meeting?
- Are there any excused absences? Who?

As a result, three categories were defined: elected Members of Parliament, their assistants or civil servants. The Members of Parliament and civil service attended personally, as they cannot delegate their powers to other persons. Absences varied between meetings, according to the fitting between the topics discussed and the interests and responsibilities of the agents invited.

Section 3 covered questions on agenda-setting. The questions included in the form were as follows:

- Who is in charge of drafting the agenda?
- Is it possible to incorporate new questions in the agenda during the meeting? Indicate, if any.
- Are any preparatory materials made available before the meeting?

Space for open answers was provided for all cases.

The timing was analysed in Section 4. The section included two open-answer questions, which were:

- Does the meeting run out of time?
- Are all items on the agenda discussed? If there are pending questions, how are they dealt with (e.g. postponing or speedy discussion)?

An additional question on ‘are there any interruptions to the meeting?’ was included. The answer was processed through a two-column table, where one column covered the length of the interruption and the other column covered the reason for interruption.

Section 5 covered the content of the participant observations. This is the meeting agenda. This section was set out in bullet points that described default aspects of the meeting. An enquiry on selected aspects was based as yes/no questions. This format allowed fast data collection on the issues raised in the participant observations.

The questions noted were selected on grounds of the content of the doctoral research. They asked whether the meeting agenda included the following items: new legislative proposals, (lack of) legislative competence of the European Parliament, connected areas of competence outside of the expertise of the committee, principles of EU law, intervention of stakeholders (i.e. non-EU institutions) in law-making and agenda of the next meeting. An illustration of the question structure is shown in the figure below:

Were there discussions on:

New legislative proposals	YES/NO
(Lack of) Legislative competence of the European Parliament	YES/NO
Connected areas of competence outside of IMCO	YES/NO
Principles of EU Law	YES/NO
Intervention of Stakeholders (non-EU institutions) in legislation	YES/NO
Agenda of the next meeting	YES/NO

Figure 4. Outlook of the yes/no questions on content.

After that, a blank space was provided for notes. A series of questions with free answers provided opportunities for further development on the questions that had been emphasised in the bullet points.

Section 6 dealt with subject-specific questions related to the academic research. They were enquiries on particular aspects and instruments used in law-making. For each of the sections, the first question received a yes/no answer to whether the specific topic was discussed. The first question for each subject was phrased as 'is there any discussion on [insert topic]?'. The second question for each subject was phrased as 'If 'yes', indicate on what grounds, arguments or principles'. For instance, the question on public-private partnerships would be articulated as follows:

- Is there any discussion on public-private partnerships?
- If 'yes', indicate on what grounds, arguments or principles.

Section 7 focused on one topic of interest. The subject was chosen according to the highest interest for the doctoral research. The topic chosen is soft law. In brief, soft law was defined as those documents of legal character with no binding effect. The questions of section 7 were as follows:

- Are there any mentions of soft law documents?
- Which institution was responsible of writing those documents?
- What role do they play in the discussion (e.g. from interpretative force to occasional reference)?
- In those discussions, what is the importance of the European Parliament's own soft law?

The use of forms for participant observations proved remarkably useful. This is because of its effects before, during and after fieldwork. Before, it provided the opportunity to foresee the information required and how this will feed into the academic research. During the fieldwork, it provided an adaptable guide to process different meetings under a common template. After the fieldwork, it allowed to process the data cumulatively.

Initial considerations on fieldwork planning, methods for data collection and incorporation of results into academic research have been covered in this article. Participant observations in political meetings were the main source of information and this was collected through the use of specific forms. The forms included different kinds of questions, such as yes/no questions, tables, spaces for drawing and blank spaces for

further comments. The use of drawings, tables and tick-boxes proved an efficient and speedy way to collect information in a fast and reliable way. The results were systematic and would later feed easily into the academic research.

Note-taking

Note-taking played an ancillary role in both meetings and research. However, it was mostly used in research activities. This consisted of keeping a diary of new concepts or atypical results. Throughout the fieldwork, note-taking served to keep a record of thoughts, comments from colleagues and ideas for further research. The information collected has proved useful to enhance the understanding of the EU law-making procedures and of the Parliament as a European institution.

Note-taking was adaptable and done whenever it proved convenient. Its flexibility was suitable to compile research activities. As explained previously, these activities were very varied. Consequently, they required an equally flexible approach in data collection methods.

Critical assessment on methods

The fieldwork execution rendered some questions obsolete, affecting only those of introductory character. This was solved by eliminating superfluous questions. The questions affected were Sections 1 and 2 on basic identification of the meeting and the first question of Section 3 regarding who is in charge of drafting the agenda. This is because there are only a limited number of meeting types, the regulation of which is fixed and found in the rules of procedure.

The participant observation forms would benefit from including a question on political groups. It is recommended to include this in section 3 about the meeting description. In turn, this should lead to an improved analysis of answers in sections 6 and 7 on content. Questions could include the political group of the meeting chair or the political group representation at a specific meeting. This would look at possible political biases by providing an extra layer of information on substantive answers.

Additionally, the introduction of forms to process participant observations delivered some unforeseen positive effects. They facilitated immersion in the environment. Having targeted in advance which information is important proved helpful. This is because it helped to know what to ask and whom to ask. They helped to draw the picture of how the institution works at an early stage. As a result, the immersion was smooth and fast. This had unintended positive effects: it facilitated the engagement of other agents with the fieldwork research and renewed the researcher's personal motivation.

Note-taking was flexible, aiming to keep record of all activities and findings. No problems were identified.

Conclusions

Fieldwork enhances the scholarly value of the research by providing opportunities to test academic ideas in a practitioner's context. Although the decision to take fieldwork is personal, the constraints are common across all social sciences. If designed properly, fieldwork can have positive effects on the research at all stages. Consequently, there is ground for research, motivation to share best practices and lessons to be learned. In this context, appropriate planning is essential for successful fieldwork.

Two prominent gaps in the literature have been identified: the distinctiveness of legal fieldwork across the social sciences and the lack of attention to legal fieldwork methodology. Given that the success of fieldwork largely depends on the appropriate choice of data collection methods, it is essential to cover these gaps.

This article tackles these two gaps by analysing an illustration of legal fieldwork at the European Parliament. This has been selected as a representative institution for international organisations involving law and policy making. The article provides a complete account of fieldwork. It is divided into four main sections, which cover the distinctiveness of legal fieldwork, the case study, fieldwork planning and fieldwork execution.

The case study presented is a doctoral fieldwork in Law at the

European Parliament in Brussels. The fieldwork was conducted through work-based research. The note described fieldwork design, data collection methods and the incorporation of results into the academic research.

In terms of planning, the case study was based on two strands of activity: meetings and research. Each of these categories of activity covered three topics, whereas own-initiative reports, post-legislative law-making and institutional management. Identifying the activities involved at the planning phase was essential in determining which fieldwork methodologies to use in the execution phase.

In terms of execution, the chosen methodologies were participant observations and note-taking. The selection of methodologies during execution responded to the data collection needs and activities identified at the planning stage. Both methodologies were combined for meetings and research. However, there was a strong correlation between participant observations for meetings and note-taking for research related activities.

Participant observations were based on attending meetings and observing their behaviour and decisions. They were defined by low observer-observed interaction and peripheral membership. They covered all meetings attended. Participant observations were addressed through the use of forms covering a series of questions of different kinds, such as yes/no questions, multiple choice questions and sections for open-ended comments or drawings. The use of forms provided a speedy familiarisation with the environment, systematic data collection and a smooth incorporation of results into the academic research.

Note-taking facilitated flexible and more accurate data collection, especially in research-related activities. Note-taking had an ancillary function and was based on keeping flexible written records. It served the purpose of recording interesting findings and engaging with the institution.

The participant observation form and the note-taking as methods were designed specifically for the case study considered, in response to the findings in the planning phase. However, their content, looks and structure can be easily adapted to any experience in a legal and/or political institution.

Obsolescence problems were detected when the fieldwork was being carried out. Some introductory questions got redundant, such as those about plan, layout, participants and agenda drafting of meetings. Nevertheless, they yield several advantages, such as speeding up the process of familiarisation with the environment and spurring the engagement of workmates into the academic research.

Further research should aim at publishing other cases of methods used in legal fieldwork. Only once case studies emerge will it be possible to develop a research strand on legal fieldwork.

Although the examples provided are based on legal research, researchers across the social sciences are encouraged to adapt these ideas to their own field. Ultimately, the academic impact of the examples used is designed to build the necessary bridges between academia and professional practice, overcoming the invisible boundaries that separate them.

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