

International Law

Academic year 2019-2020

Research Design and Methodology

DI109 - Printemps - 6 ECTS

Wednesday 10h15 - 12h00

Course Description

The aim of this course is to help students design their studies and identify appropriate methodological tools to implement that design, within the specific context of doctoral studies. To this end, the course leads students to ask themselves meaningful questions about their research and overall work, suggesting insights and ideas to answer these questions, and offers introductory training in a select number of research methods.

Compulsory for first-year PhD students in international law.

> PROFESSOR

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Syllabus

OBJECTIVES AND APPROACH

The core objective of the course is to help students do the best possible PhD, focusing on what can be taught, and learned, early on in the process, during the first year of doctoral studies. This is done in the spirit of preparing the students for a possible academic career, and emphasis will thus be put on creative and independent critical thinking. Acknowledging the fact that the course is offered at an international research institution aiming for academic excellence, the objective will not be to help students find the shortest possible route to completion of the PhD, or to view the PhD as an end in itself; the point is not to 'churn out' graduates. No generic, precise mission statement to be executed mechanically will thus be offered. The objective rather is to show students possibilities in approach, design, and methods; to guide them towards asking themselves the questions about their work that have the greatest multiplying effect while leaving unhelpful questions and concerns aside; to demonstrate the freedom of academic thinking and suggest ways to handle that freedom.

The intellectual approach of the course is based on rough notions of pragmatic philosophy (concepts, theories, accounts are there to achieve something) and phenomenology (accounts of truth or reality are in principle relative and socially constructed, allowing competing, mutually exclusive accounts to coexist). It is disciplinarily open (theories and ideas used to make arguments about international law can originate in any discipline, but can also be self-contained legal notions), dialectic (it sees value in holding opposite ideas in mind and examining how they mutually influence one another), and gradual (it assumes that accounts, including the realisation of legal criteria, are approximations of truth, obtaining by degrees). It is open to disagreement, including with these epistemological premises: it does not advocate for one way of thinking.

The teaching approach of the course will rely significantly on learning-by-doing: most of the questions covered by the course will be presented, discussed in class, and concretely practiced.

Weekly readings and exercises will be posted on the course's Moodle page. Please note that all readings for the course are recommended, not required.

STUDENT EVALUATION

The evaluation method for the course is a take-home paper of roughly 3'000 words (including footnotes, references, and any other text part), due on 5 June 2020. The paper is to deal with the heart of the student's PhD, implementing the learning objectives of this course. The evaluation criteria are those that are likely to be applied to the PhD as a whole: originality, significance, and rigour.

SESSION TOPICS

Note: the order of sessions may vary to accommodate guest speaker availability (see sessions currently numbered 10-14).

Class 1) Wednesday 19 February, 10:15-12:00

PANICKING

Academic thinking is a place of extraordinary, nearly artistic, freedom. That freedom can barely be restricted, through the invocation of a unique 'right' way of doing things, without harming thinking quality and usefulness. In addition, the overall movement in legal research specifically, as remarked by government and funding agency documents, is from a service towards legal practice to a purpose in itself, which may or may not serve legal practice. Legal research is thus a place of *increasing* freedom. Finally, a PhD will in principle be a student's first book-length, multiannual academic work, which is significantly different than the writing of an essay. These factors, and others, mean that the vast majority of PhD students panic at several junctures of their doctoral studies. This session seeks to alleviate some of that feeling, by distinguishing what a PhD student should expect and is ordinary, and thus not a cause for worry, and what should trigger the student into specific action. Both further combine to help plan ahead.

This session will address questions and themes such as:

- *How much work is a PhD?*
- *What hard work can achieve, and what it cannot*
 'Working' does not replace 'thinking'
 The importance of unconscious thinking
- *How much other work can one do during a PhD?*

- *Who is going to tell me what to do? Interacting with a supervisor*
- *Should I panic when:*
 - I'm lost and am X months into the PhD
 - I feel lonely and nobody seems to care about my work
 - I'm told [by X] what I do is plain wrong
 - My argument, outline, approach keeps changing and I'm X months into the PhD
 - The more I read, the less I seem to know and understand
 - I can tell my friends what my PhD is *about*, but I can't say what it says
 - I know everything and have no doubts
 - I lost the simple, comforting beauty of one-sided certitudes I had at the beginning
 - I seem to have writer's block

Recommended readings:

- Caroline Morris, Cian C. Murphy, *Getting a PhD in Law*, (Bloomsbury Publishing), Chapters 1, 5 and 6.
- Robert Berezin, 'Consciousness Encompasses and Reflects Chaos and Order', *Psychology Today*, 2014.
- Helen Sword, *Air and Light and Time and Space: How successful Academics Write*, (Harvard University Press 2017), Chapter 10, The Pleasure. Principle, pp.153-168.
- Desmond Manderson, 'Asking Better Questions: Approaching the Process of Thesis Supervision', (46(3) *Journal of Legal Education* 1996), pp.407-419.
- University of Warwick's blog "PhD life" <https://phdlife.warwick.ac.uk>

Class 2) Wednesday 26 February, 10:15-12:00

ASKING AND ANSWERING

Problems do not pose themselves. Everything we know is an answer to a question. The question frames the knowledge we produce. So what sort of questions should we ask? What sort of questions are the most likely to lead to the most interesting academic knowledge, to the best PhD? Academic studies often, perhaps ideally, take the form of claims, or arguments, or points being made, of theses being defended. What sort of claim, argument, point, thesis can then be made in answer to what sort of question? What is the difference between a PhD talking about something and a PhD saying something, and how can one, if so inclined, shift from one to the other?

This session will address questions and themes such as:

- The importance of asking a precise research question to control the purview of the PhD
- The importance of asking a 'good' research question to not get into trouble later
- Some of the typical difficulties in defining a 'good' research question
- Some of the elements that tend to make research questions better

Recommended readings:

- Dunleavy P., *Authoring a PhD: How to plan, draft, write and finish a doctoral thesis or dissertation* (Palgrave Macmillan, 2003), Chapter 2.

- Andrea Bianchi, On Asking Questions, in Andrea Bianchi (ed), Theory and Philosophy of International Law (2017), pp. ix-xxx.

Class 3+4) Wednesday 4+11 March, 10:15-12:00

THINKING

How do academic lawyers think? Do they ‘think like a lawyer’? Like an academic? What do they think for anyway? To achieve what? Is there a specific way of thinking which is most appropriate for book-length treatments in general and for PhDs in particular? What are the limits to the freedom of academic thinking? What demarcates the freedom of PhD student thinking specifically? And within this freedom, what makes thinking, an argument, a reasoning good? What method, as a way to assist and constrain thinking, is most appropriate for what kind of research? What are the different aesthetics – the principles underlying the work, what is ‘behind the text’ – of international law scholarship? How, in sum, should one think in order to do what?

This session will address questions and themes such as:

- *What is the difference between courtroom thinking and critical thinking?*
- *What kind of communication is academic discussion?*
- *What can the purposes of legal scholarship be?*
 - Can descriptive work be good work?
 - Can I tell the court what it should do?
 - Can a PhD try to save the world?
 - Can I simply try to understand how things work?
- *What makes a theory a good theory?*
- *Am I qualified to do interdisciplinary research?*
- *What research method should I choose?*

Recommended readings:

- Thomas Schultz and Nicolo Ridi, Arbitration Literature, The Oxford Handbook of International Arbitration (Oxford University Press 2020).
- Thomas Schultz, ‘Scholarship as Fun’, (Harvard Journal on the Legal Left 2020).
- Pierre Schlag, ‘The Aesthetics of American law’, (115 (4) Harvard Law Review 2002).

Class 5+6) Wednesday 18+25 March, 10:15-12:00

WRITING

A brilliant academic idea that stays within one’s head is of little use. Ideas need to be communicated, explained, transmitted. This requires clear, precise, understandable writing. Convoluted writing can even be a smokescreen hiding our ideas from ourselves, harming our own thinking. And given the increase in the number of publications, with constant (or indeed decreasing) time for readers, texts that don’t put off readers are far more likely to be read. Writing skills are among the most important of all skills for an academic in law.

This session will address questions and themes such as:

- Structuring:
 - A book-length text
 - A paper
 - A chapter
 - A paragraph
 - A sentence
- Choosing an audience
- Filtering discussions: What stays in the text, what goes out
- Filtering references: What and whom should one cite, to achieve what? Can I make arguments by authority?
- Do they know I know or do I have to show them? Do they actually care?

Recommended readings:

- Paul Samuelson, 'Good Legal Writing: Of Orwell and Window Panes', (46 University of Pittsburgh Law Review 1986) p. 147.
- Helen Sword, *Air and Light and Time and Space: How successful Academics Write*, (Harvard University Press 2017), Part II Artisanal Habits, pp. 57-90 and Chapter 12 Metaphors To Write By.
- Dunleavy P., *Authoring a PhD: How to plan, draft, write and finish a doctoral thesis or dissertation*, (Palgrave Macmillan, 2003), Chapter 1, 4 and 5.
- Watch: US Chief Justice John Roberts on the topic of legal writing <https://www.youtube.com/watch?v=ZlJBzn7rbPE>

Class 7) Wednesday 1 April, 10:15-12:00

EVALUATING

This course is geared towards helping produce the best possible PhDs, and not the elaboration of a recipe for the most efficient completion of minimalist PhDs (which would be possible too). This raises the question of how to evaluate the quality of a PhD: What makes academic work good? What makes a PhD, specifically, good? The approach taken here is that the quality of academic work is neither something that simply lies in the eye of the beholder, in purely subjective 'I like it / I don't like it' fashion, nor is it infallibly measurable according to a clearly defined and universally agreed criterion or set of criteria. Somewhere in the middle criteria do exist which are generally recognised, though with diversity in regard to the meaning they are to be given; they tend to vary depending on the type of legal research; some are more favoured in some circles.

This session will address questions and themes such as:

- The relativity of quality
- How the research question and the claim determine criteria of quality
- The typical prevalence of the criteria of originality, significance, and rigour
- What determines originality?
 - Someone else dealt with the same topic: is the topic 'gone'?
 - Who should the work be original for?
 - No one said it in English/French/X: does it make it original?
 - No one applied conventional theory X to object Y: does it make it original?
- What determines significance?

My work makes an obvious point which no one made before: is it significant?
My work will likely have no impact in practice: can it still be significant?
My work will likely not change our understanding of anything: can it still be significant?
The difference between socially significant and theoretically significant

- What determines rigour?
 - The difference between exhaustiveness and rigour
 - The difference between precision and rigour
 - The difference between painstaking attention to detail and rigour
 - Methodologically specific rigour
- PhD specifics
- How easier it is to criticize than to do

Recommended readings:

- Caroline Morris, Cian C. Murphy, *Getting a PhD in Law*, (Bloomsbury Publishing), Chapter 4.
- Martin Parrington, 'Academic Lawyers and Legal Practice in Britain: A Preliminary Reappraisal', (15(4) *Journal of Law and Society*) 374- 391.
- Mathias M. Siems, 'Legal Originality', (28 (1) *Oxford Journal of Legal Studies* 2008), pp.147-168.
- Paul Chynoweth, 'Legal Research' in *Advanced Research Methods in the Built Environment*.
- Robert C. Berring, 'Legal Research and Legal Concepts: Where form moulds substance' (75(1) *California Law Review* 1987), pp. 15-27.

Class 8) Wednesday 8 April, 10:15-12:00

PUBLISHING

Academia, as a profession, is marked by a 'publish or perish' motto. The insistence on research outputs – academic publications – is overall increasing, as governments, funding agencies, and leading universities want 'more bang for their buck'. Understanding the workings of academic publishing already during doctoral studies can make a significant difference for subsequent academic trajectories. With regard to the PhD itself, publishing during the studies is a tricky asset: if done 'wrong', it distracts and delays; if done 'right', it can crystallise ideas and force progress. And publishing the PhD itself, once completed, is a near requisite for the long-term continuation of academic work.

This session will address questions and themes such as:

- Should one publish during a PhD? If so, what?
- What does it mean to publish a PhD?
- How to choose a journal or publisher
- How to submit a manuscript to a journal or publisher
- Responding to calls for papers
- Diversification or specialism?
- Quantity or quality?

Recommended readings:

- Caroline Morris, Cian C. Murphy, *Getting a PhD in Law*, (Bloomsbury Publishing), Chapter 9.

- Dunleavy P., *Authoring a PhD: How to plan, draft, write and finish a doctoral thesis or dissertation* (Palgrave Macmillan, 2003), Chapter 9.

Class 9) Wednesday 22 April, 10:15-12:00

BECOMING AN ACADEMIC

People who undertake doctoral studies typically like academic work. Some contemplate an academic career. But what is an academic career like? How does one get there? What are the main hurdles to overcome? What is it like once one gets there? And how does the objective of becoming an academic reflect on what should ideally be done in and during the PhD?

This session will address questions and themes such as:

- Examples of academic career trajectories
- Statistics on PhD students becoming professors
- The geographies of academic careers
- The ideal candidate for a tenured academic job
- Experiences from search committees
- How to become an ideal candidate
- How to survive until it happens
- Pre-tenure and post-tenure freedom
- Staying true to yourself
- The two-body problem
- What being a tenured legal academic is really like
- Should PhD students mimic academics?

Recommended readings:

- Odeana R Neal, 'The Making of a Law Teacher', (6 (1) Berkeley Women's Law Journal 1998), p. 128.
- Caroline Morris, Cian C. Murphy, *Getting a PhD in Law*, (Bloomsbury Publishing), Chapter 10.

Class 10) Wednesday 29 April, 10:15-12:00

METHODS INSTRUCTION: BLACK LETTER LAW

Most PhD students in international law will have had extensive training in black letter law; they will know how to find sources, what they mean, what to do with them, and how to formulate black letter law arguments. But a number of methodological moves specific to academic work and to a book-length treatment / PhD can typically be learned in addition to these common skills.

This method instruction session will be based on a presentation by, and discussion with Dr. Elena Cima, Postdoc, Institute of Environmental Sciences, University of Geneva.

Recommended readings:

- Mike McConville and Wing Hong Chui, *Research Methods for Law* (Edinburgh University Press 2017), Introduction and Overview, pp. 1-17.
- Jan M Smits, 'What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research' in Rob van Gestel, Hans-W. Micklitz & Edward L. Rubin (eds.), *Rethinking Legal Scholarship: A Transatlantic Dialogue*, New York [Cambridge University Press] 2017, pp. 207-228.

Class 11) Wednesday 6 May, 10:15-12:00

METHODS INSTRUCTION: QUALITATIVE STUDIES

If you want to include in your PhD an empirical part which does not count or measure anything – in other words, a qualitative study – or indeed if the entire PhD is meant to be a qualitative study of a question relating to international law, what are the key methodological steps to follow? If you want to generalise from an individual observation or from a small number of observations, without following black letter law methods, what can and should be done? How, in sum, do researchers who do qualitative studies go about it?

This method instruction session will be based on a presentation by, and discussion with Dr. Ezgi Yildiz, Postdoc, Graduate Institute, Global Governance Center.

Recommended readings:

- Kristina Simion, 'Qualitative and Quantitative Approaches to Rule of Law Research' (2016).
- Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' (Chapter 38) in *Oxford Handbook of Empirical Legal Research* (eds) Peter Cane, Herbert Kritzer (Oxford University Press 2010).

Class 12) Wednesday 13 May, 10:15-12:00

METHODS INSTRUCTION: QUANTITATIVE STUDIES / STATISTICS

If you want to include in your PhD an empirical part on the observation of a phenomenon through statistical techniques – in other words, a quantitative study – or indeed if the entire PhD is meant to be a quantitative study of a question relating to international law, what are the key methodological steps to follow? If you want to find out how often something really happens, or if you want to provide measurable proof of the link between two types of events, or if you want to show that a generalisation actually checks out systematically in practice, what can and should be done? How, in sum, do researchers who do quantitative studies go about it?

This method instruction session will be based on a presentation by, and discussion with Dr. Umut Yuksel, Postdoc, Graduate Institute, Political Science Department.

Recommended readings:

- Lee Epstein, Andrew D. Martin, 'Quantitative Approaches to Empirical Legal Research' (Chapter 39) in *Oxford Handbook of Empirical Legal Research* (eds) Peter Cane, Herbert Kritzer (Oxford University Press 2010).

Class 13) Wednesday 20 May, 10:15-12:00

METHODS INSTRUCTION: LAW & ECONOMICS / ECONOMIC ANALYSIS

The application of economic theory to questions of international law rules and institutions has become a fairly common approach in the field. It tends to be opposed, beyond black letter law perspectives, to moral or ethical accounts of legal rules and institutions. It is an approach which tends to require or at least benefit from a particular method. In this it is unlike many other approaches to international law, for instance many moral or ethical accounts, which require only the understanding of and positioning within a given theoretical framework, adherence to a certain type of question, the use of a certain type of glasses to look at international law, but not a particular set of methodological tools, only the common method of critical thinking.

This method instruction session will be based on a presentation by, and discussion with, an invited scholar, not necessarily in international law, who specialises in economic analysis.

Recommended readings:

- Richard A. Posner, 'The Economic Approach to Law', (53 Texas Law Review 1975), pp. 757-782.
- Jeffrey L. Dunoff, Joel P. Trachtman, 'Economic Analysis of International Law' (24 Yale Journal of International Law 1999).
- Anne Van Aaken, 'Behavioural International Law and Economics', 55 Harvard International Law Journal 2014).

Class 14) Wednesday 27 May, 10:15-12:00

METHODS INSTRUCTION: CUTTING-EDGE COMPUTATIONAL METHODS

Many of the most cutting-edge research methods in international law are based on the use of computational analysis: computer-generated gathering of information and/or combination of information to show networks, patterns, links, trends, etc. Understanding what these methods can do, and how to use them, allows researchers to think of new research questions or new ways to answer old questions. A PhD using such methods will have a head start on the front of originality simply because of its methodological innovativeness. And in the longer term, given the increase in available data and the development of IT capabilities, including artificial intelligence, these methods are likely to take a growing place in international law scholarship.

This method instruction session will be based on a presentation by, and discussion with Dr. Niccolo Ridi, Lecturer / Assistant Professor, Liverpool Law School.

Recommended readings:

- Wolfgang Alschner, Joost Pauwelyn, Sergio Puig, 'The Data Driven Future of International Economic Law', (20 (2) Journal of International Economic Law 2017), pp. 217-231.
- Yonatan Lupu, Erik Voeten, 'Precedent in International Courts: A Network Analysis of Case Citations by the European Court of Human Rights', (42 (2) British Journal of Political Science 2012), pp. 213-239.

- Harry Surden, 'Artificial Intelligence and Law: An Overview', (35 Georgia State University Law Review 2019), pp. 1306-1337.