

Welcome to the EIPIN Innovation Society Methods 1: Legal Research Methodology

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Feedback on your assignment

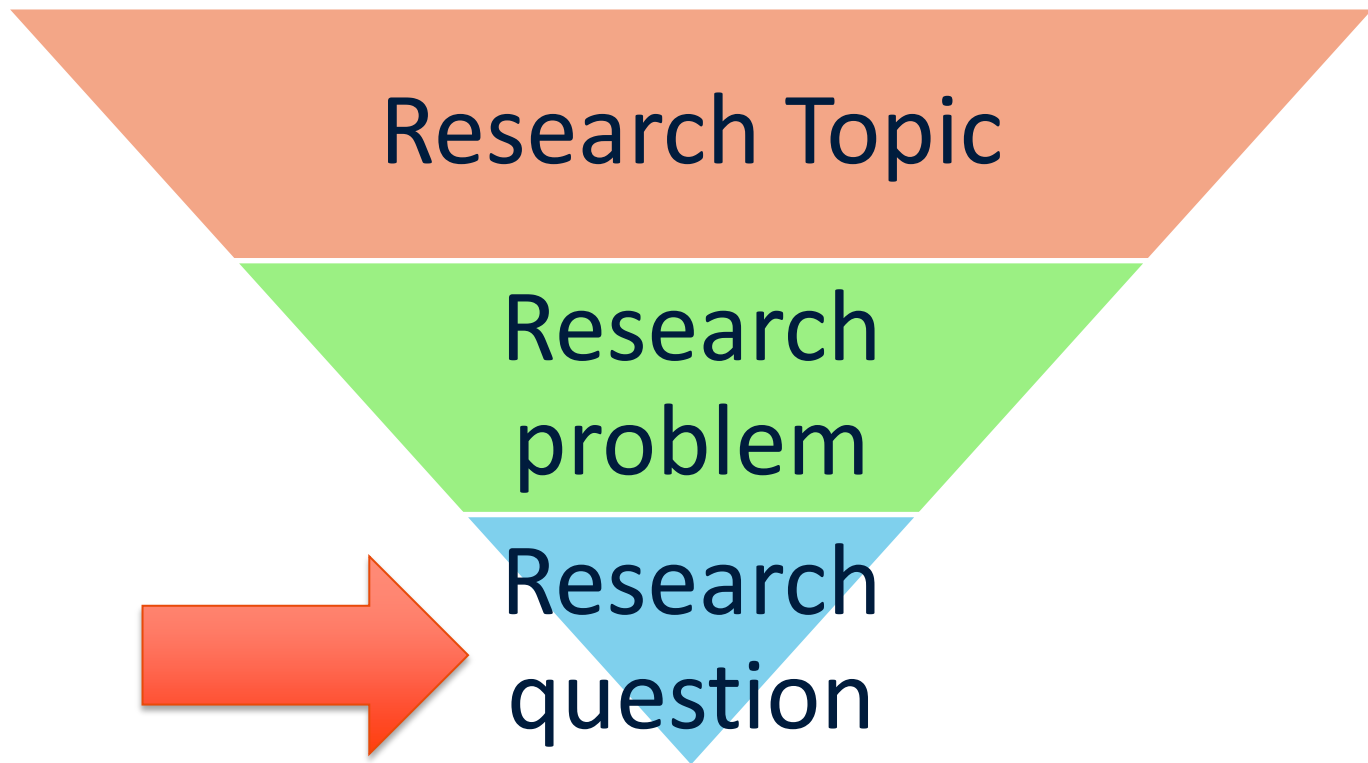
- Division into smaller groups (pairs of two).
- Half an hour per group.
- Each group is divided between Gijs and Bastiaan.
- If you are not assigned to a particular time-slot, feel free to discuss your thoughts with the other PhDs.

Observations on the assignments

- Are there any recurring themes, issues or questions that have emerged across the groups?
- Can we think of any solutions to common issues?

Connecting the two sessions

- Based on yesterday's session, we have reached the following point:



- By this point in your research, you should start to think about *how* you will answer your research question.
- Your research question will directly inform the direction you will take to answer it.
- This crucial step is sometimes referred to as the ‘research design’ (mostly in the field of empirical legal research). Other terms that are used are ‘research methodology’ or ‘research approach’.



Discussion

- What comes to mind when you hear the term 'research design', 'methodology' or 'research approach'?



- Your research design/approach will differ on the type of research you are engaged in.
- When writing your own outline or introductory chapter, it is important that you properly articulate the type of information you need to answer your research question and how you will obtain this information.

Doctrinal Research

Doctrinal Research: Definitions

- Latin noun 'doctrina' → instruction, knowledge or learning
- Definition (Hutchinson/Duncan 2012)
 - Legal concepts and principles of all types — cases, statutes, and rules
 - '[a] synthesis of various rules, principles, norms, interpretive guidelines and values. It explains, makes coherent or justifies a segment of the law as part of a larger system of law. Doctrines can be more or less abstract, binding or non-binding'

Doctrinal Research (2): More Definitions and Typologies

- Doctrinal research — ‘Research which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments.’
- Reform-oriented research — ‘Research which intensively evaluates the adequacy of existing rules and which recommends changes to any rules found wanting.’
- Theoretical research — ‘Research which fosters a more complete understanding of the conceptual bases of legal principles and of the combined effects of a range of rules and procedures that touch on a particular area of activity.’
- Fundamental research — ‘Research designed to secure a deeper understanding of law as a social phenomenon, including research on the historical, philosophical, linguistic, economic, social or political implications of law.’

(Sources: Dennis Pearce, Enid Campbell and Don Harding (‘Pearce Committee’), *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service, 1987) cited in Terry Hutchinson, *Researching and Writing in Law* (Reuters Thomson, 3rd ed, 2010) 7; Consultative Group on Research and Education in Law, *Law and Learning: Report to the Social Sciences and the Humanities Research Council of Canada* (Information Division of the Social Sciences and Humanities Research Council of Canada, 1983) cited in Hutchinson, *Researching and Writing in Law*, above n 66, 8)

Some Inspiration for Selecting a Doctrinal Approach (1)

1. Doctrinal Restatement
 - Organize and reorganize case law into coherent elements, categories, and concepts
 - Acknowledge distinction between settled and emerging law
 - Identify difference between majority and “preferred” or “better” practice - ideally with some explanation for the criteria to be used
2. Recasting Project
 - Gather more than one “line” of cases, across doctrinal fields or categories, and show why they belong together or expose unjustified discrepancies
 - Offer a new framework
3. Policy Analysis,
 - [P]resent a problem; canvass alternatives; propose an evaluative scheme or method; recommend preferred solution
4. Test a proposition
 - Take a widely assumed or commonly known proposition familiar to lawyers or legal theorists
 - Undertake an empirical investigation about its validity or summarize and assess empirical work conducted by others or undertake model-building or summarize and apply model(s) developed by others



Some Inspiration for Selecting a Doctrinal Approach (2)

5. Study, Explain, and Assess Legal Institutions or Systems

- Conduct an historical, anthropological, sociological or economic analysis of the behavior of legal actors of institutions [utilizing empirical or interpretive methods and/or models]
- Offer a normative assessment or agenda for further study

6. Critical Projects

- Expose unstated assumptions, patterns or results, internally inconsistent structures, or other tensions within a body of law or legal practices or institutions
- Highlight the tensions, [and] contradictions ... [and attempt to link them] to larger psychological, social, or philosophic difficulties ...

7. Comparative and Historical Inquiries

- [Describe] an earlier era or contrasting legal regime.
- [Contextualize the selected era or regime utilizing social sciences such as] anthropology or history
- [Illuminate] differences, choices, or continuities when compared with contemporary domestic practice

8. Jurisprudence, Philosophy of Law

- Develop or elaborate a theory that tries to explain how ... law or [areas of law fit] together
- Engage with alternative theories

- Demonstrate the contribution this theory makes to [the resolution of a] doctrinal or practical [problem]



Some Guidelines

Explicitation

Where did I made choices, what did I choose, and why?

Transparency and understandability

Coverage / Completeness

Is my sample representative? Is the selection justifiable?

Do the publications that I use actually contribute to answering my research question??

Objectivity

Is my research free from *bias*?

Did I look at / search for alternatives?

Validity

Is my interpretation (and use) of the sources in agreement with how the source is intended to be interpreted (and used)?

Accurate description, valid interpretation, valid evaluation

Basics and Principles

Principles of Research: Validity + Replicability / Defensibility / Justifiability / Reliability

Validity

- “Am I researching what I aim to research?”
- Accurate description, valid interpretation, valid evaluation
 - E.g. Do my definitions represent its underlying concept?
 - E.g. Is my interpretation (and use) of the sources in agreement with how the source is intended to be interpreted (and used)?

Replicability / Defensibility / Justifiability / Reliability

- If somebody else would conduct the same research, would s/he come to the same conclusions or results?
 - How? Explain
 - Perspective
 - Sources
 - Definitions (e.g. fairness)
 - Interpretation
 - ...

N.B. Evaluation Criterion / Evaluation Framework



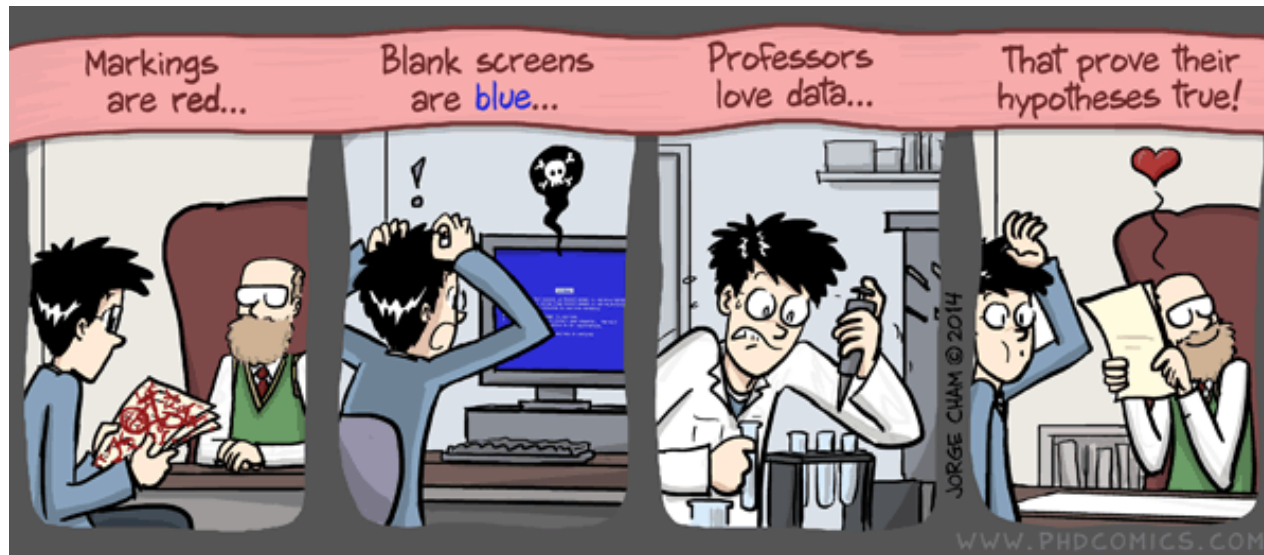
Why This Course? A Small Assignment

Count how many times the players wearing
WHITE pass the ball

[Video](#)

Confirmation Bias / Positive Hypothesis Testing

- Human tendency to consciously or unconsciously confirm own views and beliefs
 - Nickerson 1998; Klayman 1995, 375-376



Examples

- Should the Right to be Forgotten be a Human Right?
- Is the Right to be Forgotten a Human Right?
- Should victims of severe crimes be allowed to offer a Victim Impact Statement?

Verify AND disconfirm

- Consider the opposite / Identify rival explanations, interpretations, arguments, views et cetera
- Research design should be aimed at finding evidence in favor as well as against a prior view, belief, expectation, or hypothesis
- The more you believe or are convinced of something, the more you should look for evidence against that belief or conviction (e.g. hypothesis testing in social sciences)
- Can I be wrong?

Assignment

- How can you be wrong in your research?

Empirical legal research and research designs

- The research design (RD) ensures that the data collected (the evidence) allows for the answer for a research question.
- Thus, it requires us to think about the type of evidence that we need.
- Clear link therefore with the RQ (and theories/literature) since data is needed to answer it.
- Also bridges RQ with data collection methods.

- Designs are not necessarily linked with specific types of data.
- Design informs you on the type of data that will need to answer the RQ.
- As a next step, the research can select between different methods to obtain this data.
- Not all design will always ‘fit’ the research problem that you have developed.
- The RD informs the reader on how the study will proceed in order to answer its research question(s). That is an insight that can also be used for more traditional legal research.

Things to consider when developing your research design

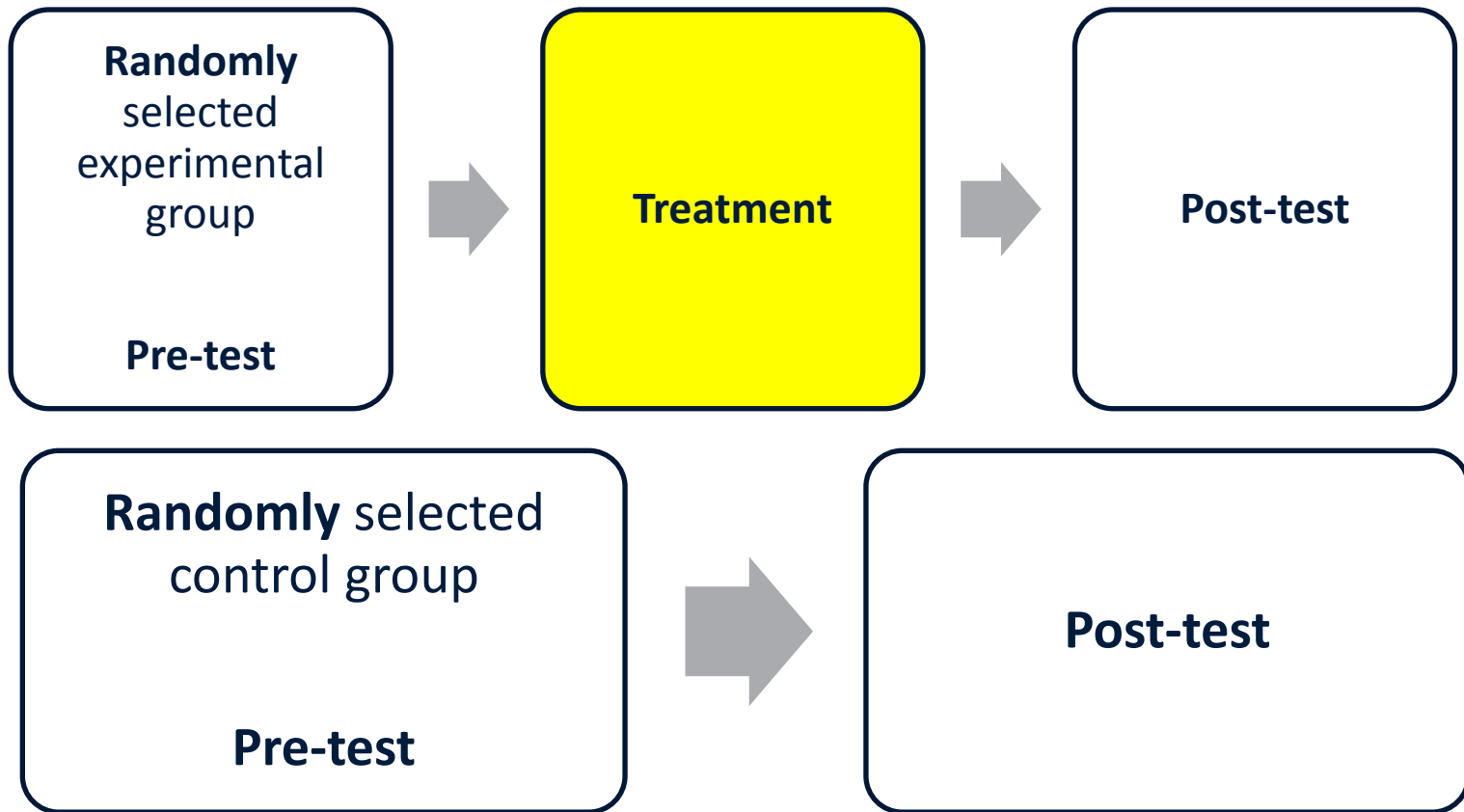
- The various research designs differ on a number of dimensions:
 - Time: what do you want to know? Do you want to know how opinions have changed? That leads you to a different research than when you want to look at how people currently feel/think about something.
 - Difficulty: the more robust RDs tend to be more difficult, as well as time and resource-consuming.
 - **Causality**: but the more robust RDs can be used to make statements on causality.
 - Maybe the skills and background of your supervisor(s)
- These three matters are of influence when deciding on a RD.



Discussion: How to determine the 'effectiveness' of the law/policy?

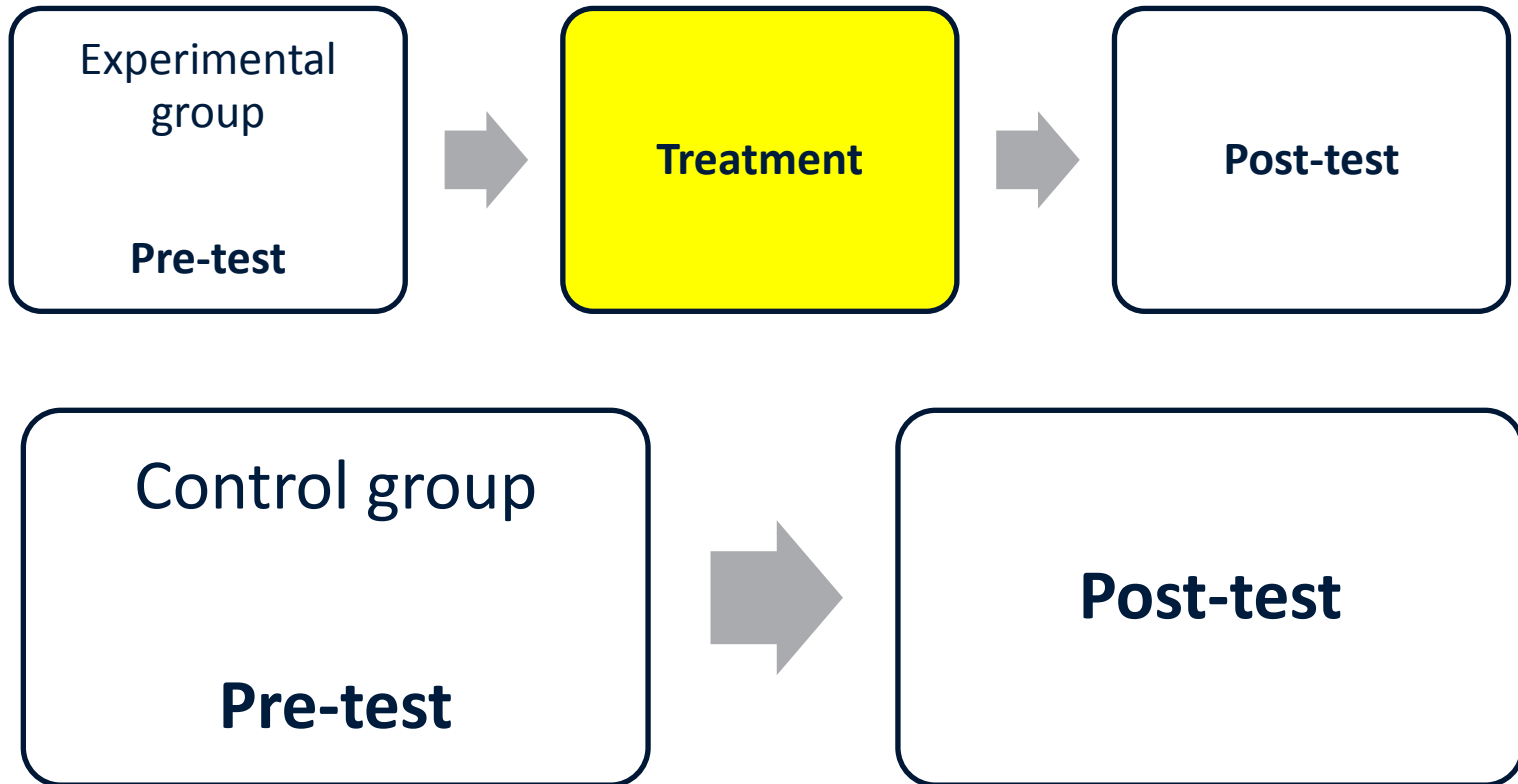
- How should we try to answer that?
- With such a question, there are only a limited number of designs that you can use.

1. Experimental RDs (Randomized Controlled Trial)



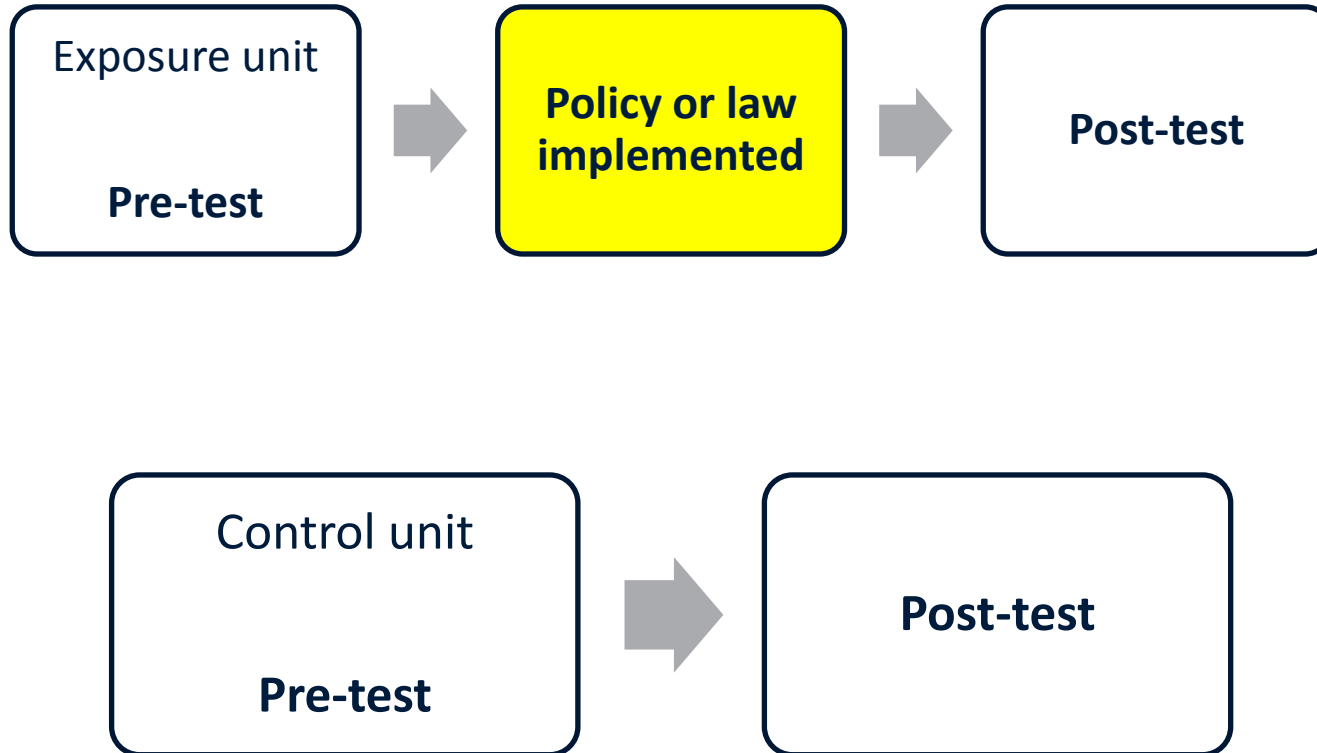
2. Quasi-experimental RDs

Matching



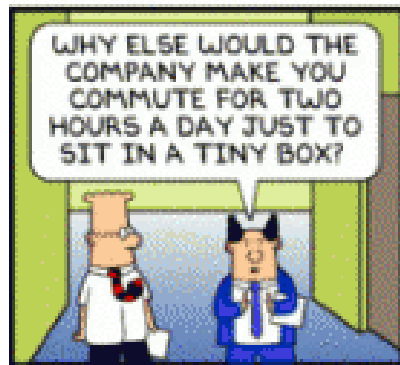
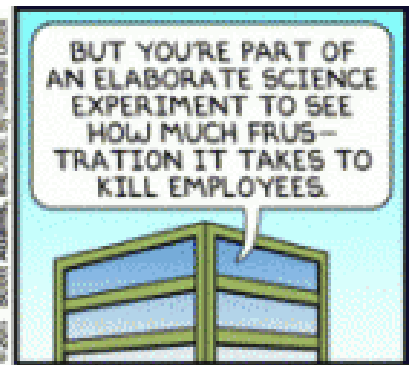
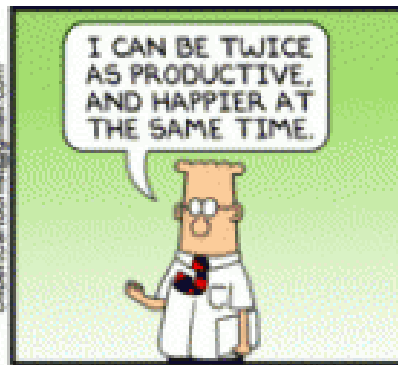
3. An subtype of QEDs: the natural experiment

Similar geographical units



A further example

- Say we pose the following research question: *does the implementation of an e-coach lead to a quicker physical recovery of individuals who are injured in traffic accidents?*
- What should we uncover, at the very least?
 - What the situation was before the implementation of the e-coach (pre-test).
 - What the situation was after the implementation of the e-coach (post-test).
 - Whether and how individuals behaved differently after the implementation, but importantly, also how individual behaved who were not exposed to this intervention (treatment and control groups are needed).
- These matters are needed in order to answer the research question.



Research that focuses on change over time?

- Interested in how the criminal career of Maastricht youth changes over time?
- How should we try to answer that?

The longitudinal research design

- Observational study that collects information on the same sample at repeated intervals (waves) over an extended period of time.
- No manipulation (as opposed to RCTs or QEDs).
- It is a design that allows (or requires) the collection of data at two or more points in time.
- Important issue: decay of the group of respondents.
- Useful if we want to know how views/opinions/lives/careers have changed (pre- and post-measurements needed though).

Research that aims to better understand prevalence, risk factors, perceptions, etc.

- E.g., do lay persons demand a harsher punishment compared to legal professionals?
- How should we try to answer that?



The cross-sectional design

- Also observational in nature.
- It focuses on different population groups at a single point in time (a snapshot).
- Some features:
 - No time dimension.
 - Reliance on existing differences rather than change.
 - Groups are based on existing differences rather than random allocation.
- Thus, the cross-sectional design is used to obtain information from a single group of respondents at a single point in time.

Finally: the case study design

- A design is suitable when conducting research that aims to better understand a phenomenon in its real life context.
- It refers to the investigation of the one or more specific ‘instances of’ something that comprise the cases in the study
- Especially useful for how and why research questions.
- Often associated with qualitative data, but this is not necessary always the case.
- Single and multiple case studies. The latter focuses on the differences within and between cases.
- Cases need to be selected carefully in order to compare contrasting results.
- ≠ a study of case law!



Some more practical matters to consider when thinking about the suitable research design

- The units of analysis: *who* are you making the subject of your analysis and how many subjects/respondents/cases, etc. do you need?
- Do you want to be able to generalize?
- What kind of data (quantitative or qualitative) do you hope to analyse?
- Which skills and resources do you have?
- Ethical issues (informed consent, approval needed).



The next step: data collection (and analysis)

- So, I now have a better idea of *which* kind of information I need to answer my research question and *which* kind of research design would allow me to properly answer the research question.
- A next question would be *how* you will obtain the data/information needed to conduct your research.

- Certain data collection instruments are more common with certain research designs. For instance, interviews are not so common when it comes to RCT.
- Distinction between quantitative and qualitative data:
 - Quantitative: emphasize objective measurements and the statistical, mathematical, or numerical analysis of data. Such data allows generalization across groups of people or the explanation of a particular phenomenon.
 - Qualitative: has an emphasis on the qualities of entities and on processes and meanings that are not experimentally examined. Such data is insightful on how social experience is created and given meaning.

- Think ahead about which kind of data collection instrument would be suitable for your research. But also consider, amongst others:
 - For most interviews and questionnaires, the responses might not be truthful or correct.
 - Ask questions that the respondents can answer (time-issues, their own experiences/perceptions, etc.).
 - Socially desirable answers can be an issue.
 - Also think ahead to the data analysis (skill-wise).

To conclude

- Regardless of whether you follow an empirical or traditional research approach, it is important that you:
 - Carefully consider/articulate *what* kind of information you need and *how* you will obtain it.
 - Explain your approach in detail (separate methodology section).
 - Be honest and transparent about the limitations of your method (there are always limitations).
 - Think about the extent to which you want to be able to generalize and whether your design and data allows this.

Questions?

Discussion: The role of ethics and integrity in the work of the academic

- What do you think of when hearing the terms such as ‘research integrity’ or ‘research ethics?’
- Do you believe such matters are relevant for the legal scholar or even for your own research?

Two issues to consider: ethics and integrity

- Ethics: especially relevant when conducting research that involves other humans (thus, it refers to empirical legal research).
- Integrity: refers to the sound and transparent manner in which the academic in *general* is supposed to conduct him- or herself.

Research ethics

- If you are doing research with other humans, there are a number of matters to consider:
 - How do you gain access to these individuals in an ethically sound manner (e.g., interviewing convicted offenders)?
 - To what extent and how do you inform them on the fact that they are taking part of the research?
Informed consent plays a role here (but when is this issue properly addressed by the researcher?).
 - Can you, and should you, be able to guarantee the anonymity of the respondent, if this is necessary?

Some guidance

- If you are indeed conducting research with humans, it is necessary to discuss with your supervisor how you will conduct yourself.
- Furthermore, it might be necessary to obtain ethical approval beforehand. For Maastricht, the Ethical Review Committee Inner City serves this role, see <http://www.maastrichtuniversity.nl/ercic>.
- Funding agencies are asking, in increased frequency, that such approval is obtained.



Research integrity

- The focus for this session is not on the extreme excesses, e.g., (intentional) plagiarism or even academic fraud.
- Instead, the focus is on the *greyer areas* of doing academic research.
- The dilemma's that emerge from the 'grey area' are likely to be experienced at some point during most academics' careers.
- Some guidance on how to deal with certain issues is given.
- Think also about the concept of 'apply or explain'.



Recurring concepts

- Transparency: academics do not only act in an integrity-sound manner, but are also able to demonstrate that the following aspects were put into practice during the work (can be research or teaching):
 - Honesty and scrupulousness
 - Reliability
 - Verifiability
 - Impartiality
 - Independence
 - Responsibility



Verifiability, impartiality and independence examined in more detail

- *Presented information is verifiable. Whenever research results are published, it is made clear what the data and conclusions are based on, from where they originate and how they can be verified.*
 - Conduct is verifiable when it is possible for others to assess whether it complies with relevant standards
 - The choice of research question, the research set-up, the choice of method and the references to sources used are accurately documented.
 - The quality of data collection, data input, data storage and data processing is closely guarded.
 - Store data for a longer period of time and made available upon request.



Discussion on an verifiability-related dilemma

- *A researcher has performed commissioned research on the basis of an agreement that the results remain confidential for two years. After two years, the researcher publishes the results in a renowned journal. An colleague wishes to access the raw data to verify whether the claims in the article are justified, but the researcher refuses to release the data on the basis of the commission contract. Is this acceptable?*



Impartiality

- Impartiality: *In their scientific or scholarly activities, academic practitioners are led by no other interest than academic interest, and they are always prepared to account for their actions.*
- Some guidelines:
 - Academics do not let personal interest, preference, etc. affect their judgement and decisions.
 - The choice of methods and criteria is made solely to establish facts.
 - Competing viewpoints should be discussed.
 - Academic practitioners avoid exclusively using their own textbooks for courses, in any case at undergraduate level.



Discussion on an impartiality-related dilemma's

- *A researcher is asked for a reference to support a master's student, which the student hopes to use in his effort to obtain a research position at the faculty. The researcher strongly suspects that other candidates have received inflated references. Should he nevertheless offer a thoroughly honest and impartial assessment? How objective should the letter be?*
- *How can researchers ensure impartiality and objective when researcher involves a prior employer (like the European Commission)?*
- *Is it acceptable to mix academics with activism? How can researchers avoid that their ideas on activism (personal ideas) influence the interpretation of their findings?*

Independence:

- *Academic practitioners operate in a context of academic freedom and independence. Where restriction of that freedom cannot be avoided, this is clearly stated.*
 - Academic practitioners are independent when they only allow themselves to be influenced by others' judgements to the degree that such judgements are based on scientific or scholarly authority.
 - The academic practitioner can conduct research without interference by a commissioning party.
 - The relationship between the commissioning party and the performing party is always made explicit.



Again, some dilemma's

- *How much influence may a client have on the research problem statement? Or on the intended approach and method? (When) is he entitled to steer the course of the research? Or of the research reporting?*
- *A particular research project that has been submitted to open tender is amenable to two different research methods. Method A is expensive but very reliable. Method B is much cheaper, yet much less reliable. A researcher is considering submitting a proposal, and judges Method A to be the most appropriate. May he nevertheless choose for in his proposal, in an attempt to increase his chances of winning the commission?*



- Discussion: Any concerns or dilemma's that you would like to present to the group?
- What other solutions might you be able to propose to these or other dilemma's?

To conclude

- The fact is that academics, are likely to encounter dilemma's that can have an influence on the integrity of the research.
- There is no one-size-fits-all solution.
- In addition to being as transparent as possible on any dilemma's one might encounter, a second suggestion is to discuss these concerns with colleagues, to better determine whether the concern is indeed a dilemma and how it might be dealt with.



- Questions?

General Q&A for the training