

Using Case Studies for Research on Judicial Opinions: *Some Preliminary Insights*

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1. Introduction

Judicial opinions are not only central to legal practice and education, but they also play an important role in the scientific reflection on law. However, while judicial opinions are undoubtedly of immense value in legal research, it should be noted that previous studies on judicial opinions have been conducted mainly under a doctrinal approach. Research was carried out to prescribed sets of methods and goals, with established ways of how interpretation, and comparative and historical analyses, should be approached.

The American legal realist movement of the 20th century (amongst their ranks, most notably Jerome Frank and Karl Llewellyn) outlined new *unmasking* research goals to examine judicial opinions. However, they did not propose any new ways to analyse them methodically, nor did their successors. It is only since the 1980s that the legal sciences have developed a growing interest in empirical studies on judicial opinions. The problem is that, in order to expand the scope of research goals in this area, it is necessary to develop specific methodological approaches and research tools. So far, not one published monograph, nor even a review article, deals in any comprehensive way with the methodological issues related to research on judicial opinions. General works on empirical legal research (e.g., Epstein, Martin 2014; Leeuw, Schmeets 2016) are too broad and do not take into account the specifics of judicial opinions. Consequently, there is a pressing need to develop a research methodology for studying judicial opinions that goes beyond both dogmatic analysis and the established positions developed within the philosophy of law and legal theory (e.g., the hermeneutic and argumentative approaches). We also need to ask whether it is possible to adopt or modify methodologies developed within empirically oriented social sciences.

Most social science textbooks devoted to the methodology of empirical research deal with case studies. A case study is a flexible and broad approach, a research strategy (e.g., Creswell 2003: 15; Yin 2014: 5, 20), but certainly not a research technique. The practice of carrying out case studies has undergone many changes over the last hundred years and refers to a higher level of research than just the way in which *data* is collected. There are single case studies, examining only one case, multi-case studies, examining several cases, and comparative case studies

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(e.g., Bartlett, Vavrus 2017), which are a kind of multi-case study whereby each of the examined cases exhibit certain different features that can serve as a basis for comparison. The following considerations will be primarily focused on a single case study, as a starting point.

Although no methodological standpoint is neutral, case studies are often treated as being in clear opposition to a strongly positivist vision of practicing social science. In this vein, case studies, by focusing on small areas and looking at particulars in detail, can provide a way of challenging a view of the social world based on aggregated data. However, as we shall see, the use of case studies in research is far more complex than it seems, and different types of case studies match the non-positivist vision to varying degrees. One of the biggest attractions of using case study research is that, by its very nature, it requires combining a number of different research techniques (an approach commonly recommended in social science research). Conversely, it should also be remembered that case studies are commonly criticised for being unscientific, lacking precision, relying too much on researchers' subjectivity and not having a sufficiently restrictive research framework (see the summary of those critical voices in: Gerring 2007: 6-7 and Flyvbjerg 2006; Argyrou 2017: 103-104). While examining the validity of these criticisms is not the subject of this text, it is important to note that choosing case study research, with its emphasis on knowing more about a smaller area, always involves a trade-off. However, despite this, case studies have become an established practice for research and reflection on methodology within the social sciences.

Within the scope of this inquiry, the key question is whether case study research is appropriate for judicial opinions. The fact that case study research can be carried out in a variety of ways, taking into account the specifics of individual research disciplines, is encouraging. Additionally, the overall preference for qualitative techniques within case study research has barely been explored for empirical studies on judicial opinions. So far, none of the case study research frameworks developed within the social sciences have been applied directly to judicial opinions, although they have been used for some empirical legal research studies (e.g., Leeuw, Schmeets 2016: 112-114; Webley 2016; Mushkat 2017; Argyrou 2017; Miller 2018). Moreover, a review of the legal science literature shows that there are some studies on judicial opinions where the authors have directly referred to their research as case studies. Whether or to what extent those studies correspond exactly to what is defined as a case study within the social sciences will be questioned later in this article. The point here is that this provides positive evidence that case study research for judicial opinions is worth pursuing in more depth. In legal studies, there is also a so-called case method, which serves as a didactic tool (e.g., Yin 2014: 5; Dhar, Dhar 2018). Here, the analysis of specific cases or an individual judicial opinion is carried out for the purpose of teaching law. Although this is different from using case studies as a research methodology, it shares the rationale that a broad, contextual analysis of a given legal case (e.g., case, court opinion) has its distinct advantages. Going further, there are clear similarities between case studies and certain features of the way lawyers analyse and study cases.

Based on the aforementioned findings, case study research would appear to have potential for use with judicial opinions. If this is the case, how and to what extent can case study methodology developed within the social sciences be fruitfully used to examine judicial opinions? By *fruitful*, I mean that it meets the requirements of a case study and that it brings new knowledge about judicial opinions. In order to examine the issues related to the use of case study research on judicial opinions, we must take into account the specifics of both using case studies as a research strategy and judicial opinions as a specific area of research. This article will also consider some previous legal studies on judicial opinions where authors referred to their research directly as case studies. This will raise a question as to what extent these attempts meet the criteria for case studies developed within the social sciences. The presented analyses suggest that plenty of research on judicial opinions conducted in legal academy are only selectively in line with the full-grown case study methodology of the social sciences. Finally, the article is also aimed at encouraging legal researchers to critically and reflectively search for inspiration within the methodologies of the empirical social sciences.

2. Basic Types of Case Study

Characterising case studies is not an easy task. As a starting point, we shall examine the key features of three types of case studies developed within the social sciences (see, e.g., Bartlett, Vavrus 2017: 28-37).

Intensive case studies focus on a small research area (small-N). They are based on a belief that accurate knowledge of a small area is more valuable than *flat* knowledge about the whole. Recalling classic examples, the research object could be, for example, one city, one teenage criminal, two street gangs, or five families. In intensive case studies, selected cases are subjected to an in-depth and comprehensive analysis on the basis of a wide variety of sources. Such studies are carried out *in situ*, in a natural environment, taking into account the local colour. Broad and flexible questions are formulated that often regard the macro-social level (e.g., ‘How does the economic crisis affect families?’). Intensive case studies can be placed within the *soft* positivist paradigm of practicing science: Case findings can usually, to some extent, be generalised to a wider population; the research is relatively highly structured and may include research questions aimed at the development of theory and it may incorporate quantitative as well as qualitative techniques. From the other end of the spectrum, intensive case studies, focusing on a small research area, allow an openness to new hypotheses and questions, as well as appreciating the perspectives of different social actors.

Interpretive case studies stand in stark opposition to the operationalism, positivism and hegemony of quantitative research techniques. They also express fundamental doubts about fitting what is happening *here and now* within a schema of abstract categories and generalities (universalistic theories). Interpretive case

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studies strongly emphasise the idiosyncratic nature of each case and its context ('[the] case itself is of interest'; Stake 1994: 237). This type of a case often relies heavily on qualitative techniques designed for capturing the complexity of the object under study. Diversity within the case is key. The narrow focus within a small research area is aimed at grasping the unique characteristics and conditions of a given phenomenon, not at serving generalisations.

Exploratory case studies are often used to try out an approach, concept, theory or research tool on a given area. The objectives may be *methodological* (checking and improving research tools), *theoretical* (testing or developing a theory or concept in relation to a narrow area) or *cognitive* (learning about a given case through the use of a specific tool). Theoretical and methodological objectives can both be described as *technical*. In this sense, exploratory case studies are *focused*, dealing only with those aspects of the case examined through the chosen testing tool. This highly structured type of research, devoid of any connections with the anti-positivist, interpretive tradition, rarely utilises qualitative techniques. Narrowing the focus of research allows the researcher to apply non-simplistic theoretical or methodological tools within a narrow case. Within these confines, researchers are still required to explore the complexity of the case and show its context from different analytical perspectives, as well as critically reflect on the use of tools and constructs.

The most important differences between the aforementioned three types of case studies relate to (1) whether the research is generalisation oriented or not, (2) whether the research is theory oriented or not, (3) how the research is justified in relation to its focus on a small area, (4) what is the scale of the structuring of research and (5) what are the depth and range of the research techniques considered. Using a case study perspective in research requires clarifying which of these types has been selected and why.

3. The Main Characteristics of Case Study Research

Not all studies focused on small areas are case studies (Gerring 2007: 6); additional conditions must be met. In reconstructing those conditions, it is helpful to recall selected definitions of a case study (see Table 1; emphasis mine). In spite of the differences between these definitions, four interrelated characteristics of case studies can be distinguished, although particular types of case study show certain characteristics to a lesser or greater extent.

Table 1. Selected definitions of case studies

Author/s	Definition
Beverland, Lindgreen 2010: 57	A case study is 'an exploration of a "bounded system" [bounded by time and place] or a case (or multiple cases) over time through detailed, <i>in-depth data collection</i> involving multiple sources of information <i>rich in context</i> '.
Creswell 2013: 97	A case study as a qualitative approach 'explores a <i>real-life</i> , contemporary bounded system (a case) or multiple bounded systems (cases) over time, through <i>detailed, in-depth data collection</i> involving <i>multiple sources of information</i> . . . and reports a case description and case themes'.
Gerring 2007: 20	A case study is an ' <i>intensive study</i> of a single case where the purpose of that study is – at least in part – to shed light in a larger class of cases (a population)'.
Simons 2009: 21	'A case study is an <i>in-depth exploration</i> from <i>multiple perspectives of the complexity and uniqueness</i> of a particular project, policy, institution, programme or system in a " <i>real-life</i> " context'.
Verschuren 2003: 137	'A case study is a <i>research strategy</i> that can be qualified as holistic in nature, following an iterative-parallel way of proceeding, looking at only a few <i>strategically selected cases</i> , observed in their <i>natural context in an open-ended way</i> , explicitly avoiding (all variants of) <i>tunnel vision</i> , making use of analytical comparison of cases or sub-cases, and aimed at description and explanation of complex and entangled group attributes, patterns, structures or processes'.
Yin 2014: 13	'A case study is an <i>empirical inquiry</i> that investigates a contemporary phenomenon within its <i>real-life context</i> , especially when the boundaries between phenomenon and context are not clearly evident'.

(1) In a typical case study, the subject of research is limited to a small, defined area. There may be one case, as in single case studies, or several, as in multiple case studies. The emphasis on *singleness and particularity* is the foundation of this research approach.

The greater the scope and scale of the project, the less justified it is to use case study research and the lower the chance of obtaining satisfactory results. This focus on a specific case has various justifications. There are three that seem most important when describing case studies. In a case of *epistemological justification*, the thought is to *know more about less rather than less about more*. The goal is to study a smaller but well-defined subject more accurately and in greater detail. There is also the notion that small phenomena are best studied in their natural surroundings. When referring to *ontological justification*, the suggestion is that the social world consists of systemically related *localities*. This emphasis on particularity presupposes that each case has important atypical characteristics, happenings, relationships and situations. In turn, according to *pragmatic justification*, in some respects it is easier and more effective to explore a smaller area. Focusing only on a small area allows more time and effort to be devoted to researching the

subject, as well as increases the chances of ending up with results that are not oversimplified. Proponents of case studies emphasise the role of all these justifications, while advocates of intensive and interpretive case studies mainly focus on the first two. It is only for exploratory case studies that pragmatic justifications assume far more importance.

In case study research, the key issue is the choice of the case(s) to be examined. The reasons for isolating a given area as a case will vary, but they should always be clearly articulated and well justified. The literature does not provide any explicit description of what a case is or should be. Most often all that is indicated is that a case should constitute a 'bounded system'. Amongst cases, we can distinguish (see. e.g., Thomas 2011) (1) *typical cases*, where the analysis allows, for example, a contextual and detailed study of a portion of a wider population; (2) *atypical cases*, characterised by certain unique features and/or configurations, as well as a specific relation to an environment and (3) *extreme cases*, which are significantly different from other cases due to some particular and well-defined characteristics.

To better understand what a case study is, it is first necessary to distinguish the object (or analytical framework) from its subject (Wieviorka 1992: 159; Thomas 2011: 512). The subject of a given case could be described as an example, an instance or a representation of what is under investigation. Next, a case study usually implies the existence of something broader (phenomenally or intellectually). The case is always a case of *something wider* – some phenomenon, problem, dilemma or approach – to which it attempts to apply a tool. That is the object (or analytical framework).

(2) A case study focuses on a small area in order for the research to be *intense, in-depth and multifaceted*. Intense means cumulative interest in a small area in the long term, including focusing on details and internal diversity. In-depth studies mean going beyond what is obvious and visible on the surface. Multifaceted is simply examining a case from different angles, using different perspectives and assumptions. With intensive and interpretive case studies, the focus is generally on comprehensive case analyses, while with exploratory case studies, the focus is commonly on the analysis of a single aspect.

(3) One of the main characteristics of a case study is to examine a given case in its *natural environment*. Case studies aim to obtain knowledge that is least distorted by prior conceptualisation and that takes due account of the role of context. The researcher, while focusing on a small area, should have direct access to observe the subject in action, in its unique context. Importantly, in case study research, the context and findings of a given case cannot be separated. The exception is with technical exploratory case studies, where the requirement for examining cases in their natural environments must be relaxed.

(4) Intensive, in-depth and multifaceted analyses require the use of *many diverse sources of information (data) and research techniques*. In a case study, the number and types of techniques should be guided by the complexity of the case being

studied. Each study needs to be evaluated according to its needs; there are no definitive lists. Exploratory case studies are very specific, so the use of research tools will be limited from the outset. Interpretive case studies, on the other hand, are open to the wide use of many different techniques. With intensive and interpretive case studies, qualitative techniques play an important role in capturing the context of a given case. Their use is also justified because the scope of quantitative techniques may be severely limited with small samples. However, this does not exclude using quantitative techniques within case studies. For example, in a classic, pioneering case study regarding industrialisation in the town of Muncie, Indiana, the research was based on in-depth interviews, direct observations, registers of books in library and surveys (Lynd, Lynd 1929/1956: 3).

4. The Main Characteristics of Judicial Opinions

Examining the utility of using the case study methodology developed within the social sciences to examine judicial opinions calls for a deeper understanding of judicial opinions. Surprisingly, they are rarely defined, either in legal acts or in literature. In the most general terms, a judicial opinion is an official document that, in most jurisdictions, is delivered on the basis of legal provisions, is prepared by a judge(s) (most often with the assistance of clerks) and contains considerations that are directly related to the material content of the decision (the judgement). The problem is that this relation to the judgement is complex, multilayered and diverse. It often depends on many factors, including the features of a given legal culture, the functions that judicial opinions fulfil within that particular legal culture (e.g., Wells 1994) or even the personal writing style of a judge (e.g., Posner 1995). All this aside, judicial opinions can be understood as a kind of narrative created by judges. Such a narrative justifies the conducted proceeding and the decision that was made (Kahn 2017). According to J. B. White, the judicial opinion 'explains or justifies the result and, in the process, it connects the case with the cautions, the specific facts with more general concerns' (1995: 1367). In such a context, a judicial opinion is a way of framing a material decision.

In practice, judicial opinions are generally influenced by their institutional nature. Their form, content and the ways in which they were created have to be understood in this context. Many of the often ritualised elements they share are expressions of specific legal cultures, the professional socialisation of judges and the requirements of the legal institution. Moreover, judicial opinions inherit judicial authority. They are related to the exercise of power, and at the same time, form part of the legitimacy of that power (especially with regard to democratic regimes). Arguments within opinions can be targeted in varying degrees towards the parties in a case, other judges, other courts, the legal environment and/or political power holders.

5. Difficulties in Examining Judicial Opinions

Before we go any further, it is worth considering the conditions and limitations in using case study research to examine judicial opinions. The most important causes of general difficulties are as follows:

(1) A judicial opinion is a type of document and so is mostly textual. Certain research techniques, such as in-depth interviews and observations, are obviously not appropriate. However, there are research advantages – the subject is fixed and stable and there are many established tools and methods available for analysing discourse, narratives and text.

(2) Judges tend to not fully express the true reasons behind their opinions (see, e.g., Cohen 2015). This phenomenon, to some extent inherent in the process of delivering judicial opinions, can lead to distortions in reporting. While in itself an important and fascinating research subject, the point to make here is that the specificity of creating judicial opinions makes them very difficult to study. The key reasons for this problem are that judges have to model their reasoning and their chosen form of a narrative within a collective decision-making process. The writing of judicial opinion is also influenced by the judge's evaluation as a decision maker as to how the opinion may be interpreted by other courts. On these grounds, a judge may choose to include selected content because it fits within accepted conventions, deliberately omitting other content that is harder to explain or justify. Moreover, judges are interested in *defending* their judicial opinions and not exposing themselves to negative consequences (e.g., disciplinary proceedings). This can lead to the aforementioned distortions. Last but not the least, there are general (existential) difficulties with articulating decisional premises by discursive, linguistic tools (see Frank 1948; see Stępień 2019). An example of this is where a judge finds it difficult to articulate problems faced when balancing principles and weighing values. More generally, C. M. Oldfather argued that writing judicial opinions might sometimes 'lead thought astray' (2008: 1286). Moreover, the highly ritualised form and content of judicial opinion can also result in a lack of judicial candor (see e.g. Fallon 2017).

(3) Judicial opinions are created *behind closed doors*. As the process is not totally transparent, it is not easy to reconstruct. It can be even further complicated in situations where a panel of judges may agree on the substance of the decision but not on the reasons, so elements of the opinion may be a compromise acceptable to the majority. Any research, including case study research, on how judicial opinions are created that goes beyond their form and content would require access to the decision makers, the clerks and the courts. In practical terms, this can generally be achieved only to a very limited extent.

6. Using Case Studies to Examine Judicial Opinions

Using case study research to examine judicial opinions should take into account the specificity of both the case studies and the judicial opinions. It is important to show all the different roles that judicial opinions can *play* within case study research. The first consideration is how many (and to what extent) of the four features of case studies (see Section 3 above) can be accomplished in studies on judicial opinions. A negative response to any of these would have serious consequences when it comes to using this research perspective. It is also necessary to take into account the different types of case studies and how each of these would suit different aspects of research.

Case Studies Are Not Always Needed and Applicable

Empirical research using judicial opinions as a form of a case study should never be a default methodological choice. With some projects, case studies are not required for the successful implementation of research plans. With others, research configurations may make it impossible to successfully employ case studies to examine judicial opinions.

(1) In general, there is no need to use case studies when research questions can be answered with a purely quantitative approach. For example, issues related to the decision-making process: voting agreement, participation, coalition size, dissenting opinions or the influence of political preferences. The same applies to problems related directly to judicial opinions, such as length of legal opinions, reasoning styles, cognitive complexity of judicial opinions or citations.

Having said this, it still may be possible to use case study research in situations where quantitative techniques are generally used. For instance, a researcher interested in the cognitive complexity of judicial opinions, in a given jurisdiction or type of court, say, could use computational tools to gather qualitative data from hundreds or thousands of opinions. Of course, the issues of cognitive complexity, along with the other aforementioned problems, could also be incorporated into a broader subject, which then becomes the subject of a case study, so extending the scope of the analysis and reaching to other sources of *data*. Another approach could be to design a case study research on the cognitive complexity of judicial opinions of one or many judges (e.g., in the atypical version of a case study, and even in comparative atypical case studies), in which the requirements of this perspective will be met to a large extent. The aim of such studies would be different from that of the approaches using quantitative techniques. For example, focusing attention on a given case will allow the researcher to investigate the factors and conditions determining the (small or large) cognitive complexity of a specific judicial opinion. At a meta level, it would allow to take a fresh look at the results of research on the basis of data aggregation. It is not difficult to notice that both the approaches – based on quantitative techniques and case study research, respec-

tively – can be complementary. Choosing one of them depends on the general preferences, goals and adopted research objectives of the researcher.

(2) Further reflection on using case study research to examine judicial opinions requires mentioning the main features of case studies once again. It is important whether, and if so, to what extent, a research strategy with such defined goals can be applied to judicial opinions. The point here is to look at how case studies are used from the perspective of limitations (and opportunities) inherent in judicial opinions.

A. The emphasis on *particularity* in research on judicial opinions can be considered in at least two dimensions. First, it means focusing on those characteristics of judicial opinions that are difficult to capture when using only quantitative approaches (*particularity as detail*). Second, it is also important to examine how deeply a given opinion is rooted in specific conditions, a specific configuration of elements and a given background (*particularity as uniqueness or idiosyncrasy*). The attention here is on recognising the particularity of a judicial opinion in a given place and time.

It should be stressed that there are major difficulties here when examining judicial opinions. The way opinions are created, their effects on legal institutions and the entire legal system, as well as ritualisation of their forms and content, significantly reduce the possibility of using case study research due to its requirement of *particularity*.

The scale of this restriction varies depending on the type of case study considered. Focusing on a narrow area, a case may play a different role in a case study research plan. For example, supporting generalisations through particular examples, characteristic of intensive case studies, maybe a goal. In turn, employing an interpretive case study, where the particular *case* lies at the heart of inquiry, would not be easy. As documents, judicial opinions do not leave much room for such qualitative studies, unless the scope of research is extended beyond their content (wide case studies). With exploratory studies, focusing on a narrow area allows the researcher to test tools, concepts or theories. The requirement of *particularity* comes down to an accurate identification of the conditions and variables affecting their application to a specific judicial opinion. In exploratory studies, the requirement for particularity is quite easy to obtain.

As an example, consider the article of T. Bench-Capon and H. Prakken, entitled 'A Case Study of Hypothetical and Value-Based Reasoning in the US Supreme-Court cases' (2010). In fact, their work deals with applying selected AI and law tools to a few cases, in particular to a judicial opinion in the *California v. Carney* case, 471 U.S. 386 (1985). This approach is similar to an exploratory case study in its *technical* version. The whole argument is based on a demonstration of how certain tools can be used and what purpose they serve.

B. Another characteristic of a case study – to provide an intense, thorough and comprehensive analysis of a given case – can to some extent be used in research

on judicial opinions. Although analysing just documents limits the scope, text can be examined from different perspectives, through various *cognitive lenses*, and taking into account many of its dimensions (e.g., narrative, cultural, linguistic, rhetorical). Interpretive case studies are the most difficult to use from this perspective. Lack of guidelines and predetermined research structures are serious barriers here. Intensive case studies could be implemented, especially, where the investigation goes beyond the text of judicial opinion itself. However, due to the particularity requirement, by far, the most suitable are exploratory case studies. In the social sciences, studies in which a given case is analysed comprehensively on several levels are very common. This could also be said of case studies in the legal sciences. M. A. Nicholson's research on libel law in England (2000) conforms largely to the classical framework of the legal sciences. The paper concerns the well-known libel suit filed by McDonald's Corporation against environmental activists (*McDonald's Corporation v. Steel & Morris* [1997] EWHC QB 366). The subject of Nicholson's interest is a lawsuit, a case, not the judicial opinion associated with it. A very detailed analysis of the case, along with its context and the judicial opinion delivered in the case, occupies more than 140 pages. The considerations are very broad; they include the history of libel law, along with numerous references to previous court disputes and comparative law issues (including European law). The text also contains many references to the narrative about this case from the popular press. In Nicholson's research, we find no direct references to case studies. This is a perfect example of an intense, in-depth, comprehensive analysis of a given case. Although carried out in accordance with the traditions of the legal sciences, it meets the requirements of intensity and comprehensiveness for case studies within the social sciences.

C. The third characteristic of a case study, conducting research in its natural environment, is not generally easy to attain when examining judicial opinions. There are obvious limitations to *in situ* research of a given judicial opinion, especially when using case studies focused exclusively on judicial opinions (narrow case studies). It only becomes possible when the subject of the study goes beyond judicial opinions. Due to this criterion, it would be difficult to carry out either an intensive or an interpretive case study. Again, exploratory case studies are the easiest to implement.

Another issue that needs to be discussed is the role of context concerning judicial opinions. The *institutional context* can be initially distinguished. Judicial opinions are specific documents, created inside the legal institution and performing a role in its functioning. While it is possible to reconstruct the institutional context, this would require a broad knowledge of law and legal institutions. In contrast, the *context of existing cases* is relatively easy to access and is often explored in the legal sciences. The context of existing cases refers to all judicial opinions to which references are made (explicitly or implicitly) in a given opinion, and which enable the reader to understand the author's reasoning in such an opinion. Finally, we have the *external context* created by the social, cultural economic and political conditions that are necessary to fully understand a judicial opinion. It often serves as

tacit knowledge for those involved in the case (actors). Over time, however, access to this knowledge generally decreases. Such external context may be narrow, closely related to a given case (e.g., political pressure, the situation of the parties), or broad, regarding more general processes at a given place and time (e.g., cultural swings, public opinion). The external context of judicial opinions is available from many sources for research.

The research work of D. L. Threedy (2009) shows that emphasising the broad context of a particular case can become the very goal of research carried out within a case study perspective. Her paper describes the case of *United States v. Hatahley* 351 U.S. 173 (1956), which concerned a group of Navajos Indians. In the described case, Navajos Indians demanded compensation on the basis of the Federal Tort Claims Act in connection with 'the destruction of over one hundred horses and burros' (2009: 3). In her work, Threedy uses 'legal archeology' in order to 'to reconstruct the historical, social, and economic context of the litigation'. So shedding light upon the complex context of that particular case lies at the heart of Threedy's inquiry.

D. The final characteristic of a case study, using many sources of information (*data*) and research techniques, can be widely gained in relation to judicial opinions. Within the social sciences new qualitative tools, such as Critical Analysis, Qualitative Data Analysis and Framing Analysis, and quantitative tools, such as Content Analysis (which also can be used within the qualitative approaches; see Hall, Wright 2008) and Computational Analysis, have been developed specifically for textual studies. Access to other text analysis tools has also improved significantly in recent decades (e.g., QueryTermAnalyzer, OpenNLP, General Architecture for Text Engineering). They can all be equally used for legal studies, including research on judicial opinions.

Currently, there is a wide catalogue of sources of *data* about judicial opinions available to researchers. A great example of using non-obvious sources of *data* is the case study carried out by H. J. Knowles (2012). The subject of Knowles's interest was the famous case regarding the constitutionality of the state statute introducing minimum wages in Washington State, culminating in a precedent ruling – *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). The aim of the study was to look more closely at the plaintiff in this case, Elsie Parrish, and to reconstruct how the whole case was seen by the inhabitants of Washington D.C. Thus, the *external* context of the case was examined along with judicial opinion. The work compares narratives from the judicial opinion with those from the media. In her research, Knowles uses the 'local newspaper, the original court documents, and the information provided by the West Coast Hotel Company'. Note the diverse range of sources, which go far beyond the analysis of the content of the opinion. It should be emphasised that the material Knowles used for her research was applicable even though many years had passed since the case took place in 1937. Although the research techniques developed in the social sciences were not applied methodically for this research, it is difficult to disregard Knowles's effort to be consistent with the *spirit* of case studies.

7. The Subject and Analytical Framework of Case Studies

By carrying out a case study, judicial opinions can be subjected to various research configurations. There are case studies in which judicial opinions are analysed, but the examined case is not directly a judicial opinion. It may be, for example, the judge, or a particular court, lawsuit or dispute. However, such examples are generally marginalised in literature. The reason for this: every judicial opinion is considered a separate document, and so, by definition, is a closed whole. Consequently, it is determined to be a case in itself when considered for case study research.

It can be stated that there are four basic research models that could be applied to judicial opinions (see Table 2). Through the use of the subject (narrow or wide) and the analytical framework (covers only judicial opinions or goes beyond judicial opinions), it can be determined how the different case study research models could fit with different types of research on judicial opinions.

Table 2. Four research models

	Analytical framework of case study covers only judicial opinion	Analytical framework of case study goes beyond judicial opinion
The subject of a case study applies only to a judicial opinion	Model 1 Narrow case studies on judicial opinions	Model 2 Narrow case studies going beyond judicial opinions
The subject of a case study goes beyond a judicial opinion	Model 3 Wide case studies on judicial opinions	Model 4 Wide case studies going beyond judicial opinions

(1) In the first model, both the subject and the analytical framework apply only to judicial opinions. In such *narrow studies on judicial opinions*, all the research is carried out on documents. In general, intensive and interpretive case studies, where the subject does not go beyond the content of a judicial opinion, are difficult to carry out. Exploratory case studies are the most suitable for this model, both in their *technical* and *cognitive* versions, because they do not require diverse *data* collection and allow the researcher to focus on one selected aspect of a given case. Note that a narrow case study on judicial opinions is the closest to research practice developed in the legal sciences. But, in most instances, such endeavours do not meet all the aforementioned characteristics of the case study research developed in the social sciences.

There are some *legal* case studies developed alongside the social sciences that share some of their characteristics of this model. A perfect example is a study by C. Rountree (2001) concerning the ‘strategic representation of motives’ in *Korematsu v. U.S.*, 323 U.S. 214 (1944), which allowed the U.S. government to put Japanese Americans in internment camps during World War II. Although the term *case*

study does not appear in the title or in the text, it has many characteristics of a case study. Rountree analysed both the majority opinion and dissenting opinions in the Korematsu case. The analytical framework is how the relationship between the actors (Japanese Americans) and the scene (America at war) was dealt with in the judicial opinions, and Korematsu was the subject of this case study. Korematsu is seen as an extreme example of where *the scene displaces the actors*. Rountree used a series of soft analyses well practiced in the legal sciences (analysis of previous cases, critical analysis of the literature, reconstruction of the historical background) but complemented by interpretations using Kenneth Burke's literary theory tools. In many ways, his research is a model example of a specific *legal case study*, although it shares some characteristics with narrow case study research on a judicial opinion. It resembles a *cognitive* version of an exploratory case study, where a single concept (i.e., Burke's pentagram) is assigned to the studied case, while taking into account a wide context and many dimensions.

(2) In the second model, *a narrow case study going beyond judicial opinion*, the research deals with judicial opinions but its aim is to find out something about wider phenomena. Without a doubt, judicial opinions contain valuable knowledge about the legal system because they are functionally linked to other elements of the process of applying law. They play an important role in the decision-making process, shaping social consciousness and court communication. Following on from this, it is easy to see how judicial opinions can act as a source of knowledge on wider aspects. However, while there are many ways to learn from judicial opinions, it would be very difficult to design a study that met the requirements of either intensive or interpretive case studies. Exploratory case studies in their *technical* version seem best to fit this model.

H. T. Greely's study 'Quantitative Analysis of a Judicial Career: A Case Study of John John Minor Wisdom' (1996) to some extent fits within the framework of this model. The analytical framework is a judicial career, so ideally we could reformulate the title to something like 'Judge John Minor Wisdom: A Case Study of a Judicial Career' in order to fit with our schema of case studies. With such a specific subject and analytical framework, this research would be very close to meeting the criteria of a case study research. The study was based on a statistical analysis of over 1,400 Wisdom's opinions, looking at use of separate opinions, their length and the use of footnotes and citations to Judge Wisdom's own opinions. Thus, it seems that we are dealing with a case study in which judicial opinions are the sole subject of research, but where the analytical framework extends beyond their content (it concerns a judge's career). After reading the paper, it is obvious that the author had something more in his mind. At the end of the text, Greely clearly indicates that his goal was to make 'a preliminary assessment of the usefulness of these kinds of research techniques' (1996: 101). Thus, a case study of all Judge Wisdom's judicial opinions was designed to learn more about the research tool. It was thought as a test of usefulness of methodological tools. Viewed this way, Greely was very close to carrying out an exploratory case study

in its *technical* version (where *in situ* and multifaceted analyses and taking into account the context are not strict requirements).

(3) Here the subject of a case study extends beyond judicial opinions, but the analytical framework applies only to them (*wide case studies on judicial opinions*). This model has most to offer in terms of conducting research aimed at increasing our understanding of the characteristics of judicial opinions. It has the potential to reveal new findings as it is best suited for pioneering research on judicial opinions. By extending the research subject, a more thorough understanding of judicial opinions may result. It is possible to use intensive case studies here, where the research question is wide. To some extent, interpretive case studies may be used, although there are significant difficulties in accessing sources other than judicial opinions. The use of new text analysis tools creates new possibilities, as do other research techniques like in-depth interviews, biographical studies, passive observation, case file analysis, press analysis and experimental research.

For example, an extremely important and interesting topic in the study of judicial opinions is ghostwriting, or the contribution of clerks in creating judicial opinions. This phenomenon can be examined using quantitative techniques. In order to recognise this issue more accurately when using case studies, a given case has to be examined – it may be a specific opinion (Knowles 2009) or the opinions of a single judge (see Bodwin et al. 2013). However, using the wide model of case studies on judicial opinions enables the research to extend beyond the content of a given opinion(s). A great research tool in ghostwriting studies are interviews with the judges, clerks and other staff. Materials such as diaries, journals and letters may also be available in some instances, although they will generally be hard to access.

To some extent, attempts at using the wide model of case studies on judicial opinions were made by K. Bodwin et al. (2013). The title of their paper suggests that it is ‘a case study of Judge Easterbrook’. However, the analytical framework of their work is the authorship of judicial opinions and the issue of using clerks to write them. The case examined comprises the opinions of U.S. federal court judge Frank Easterbrook, selected due to his reputation for writing most of his opinions by himself, with only limited participation by the clerks. Brown, Rosenthal and Yoon conducted quantitative research on a large sample of Judge Easterbrook’s opinions, alongside quasi-qualitative research, talking with the judge and his clerks. By going beyond the content of judicial opinions, the researchers were able to make new findings regarding the authorship of judicial opinions.

(4) In the last model, the subject of a case study goes beyond judicial opinions and the analytical framework does not apply directly to them (*wide case studies going beyond judicial opinions*). Here, judicial opinions are only an element relevant to the chosen case (which could be a court, a judge, a case or a legal culture). To better illustrate this, we could construct our research to try and answer any of the following questions. How does the court ensure legitimacy of its decisions? How does the court communicate with citizens? What kind of impact does public opin-

ion have on the case? What is the role of clerks in the decision-making process? All of these issues probably require research on judicial opinions, but they also require studies of other objects. Judicial opinions have a great potential of being used within this model. The possibilities for carrying out this type of research are huge. Any of the aforementioned three types of case study research (inclusive, interpretative, exploratory) could be utilised within this model. Note that, because in this research configuration judicial opinions are not the only source of data, numerous research limitations related to the nature of judicial opinions are minimised.

A vivid illustration of such a research strategy in the legal sciences is the work of S. N. Katz on 'the best interests from the child doctrine' (1966). Although the author does not explain how he understands the case study mentioned in the title, it is possible to find some elements of a case study approach here. The case of teenage Laura is widely discussed here, showing numerous problems related to the activities of the institution and the functioning of the child legal doctrine. This case was explicitly described as typical. The analysis is comprehensive – it concerns the activities of one of the care agencies, the impact of different state institutions and the first and second instance judicial processes. A large part of the reflections focuses on judicial opinions related to legal custody over Laura. In this study, the legal doctrine was shown in *action*. The case of Laura was an illustration of the problems and the starting point for a normative proposal regarding the application of this doctrine. In Katz's studies, judicial opinions are an important part of reflection, but not the only one. It is not about generating knowledge about judicial opinions, but about emphasising the problems related to the application of the 'doctrine of the best interest of the child' in courts. In this way Katz's analyses are a perfect example of wide case studies going beyond judicial opinions.

8. Conclusion

In the Introduction, we asked whether case study research can be fruitfully used to examine judicial opinions. The answer is undoubtedly positive, although with many serious and far-reaching reservations. Case studies can bring new, non-trivial threads to the research methodology on judicial opinions. But this does not mean that they are an obvious or default methodological choice. Nor does it mean that such research is easy to apply because every judicial opinion (or the case that it is a part of) immediately becomes the subject of a case study research in itself. A case study is often not an appropriate method to answer many research questions concerning judicial opinions.

A researcher considering the use of a case study to examine judicial opinions must remember that there are three distinct types of case studies and there is no one solution to fit all cases. The specificity of judicial opinions also limits the use of case study research. Some general guidelines for choosing the adequate type of case study might be stressed. Intensive case studies can only be used in situations where they are a part of some wider research. It is, therefore, necessary to formulate a general research question to place judicial opinions within the context of

functioning institutions. This is because of the inherent limitations of in-depth, comprehensive and based on a wide variety of sources analysis of judicial opinions (see Section 5). Next, as was mentioned, the hallmark of interpretive case studies is distrust towards the theory-driven, highly structuralized type of research. The ideal is to be free of any assumptions and conceptual schemata. There are some important limitations of studying judicial opinions in such a way. Thus, interpretive case studies offer limited possibilities and only make sense where research involves an area wider than just judicial opinions. Exploratory case studies correspond most closely to the specifics of judicial opinions and can be widely applied to their research. Such projects will be characterised by their narrow research area and very structured research. That approach seems to be more fruitful when applied to study judicial opinions mainly because of the low range of research techniques considered and clear boundaries of the research.

In summation, judicial opinions can take different roles and occupy different places within a case study research. The four aforementioned models, based on the differences between the object and the analytical framework, allow the researcher to find the right place for them within their research perspective. Making this distinction allows the research to be better organised.

A number of research examples presented within this article have some hallmarks of a case study research. In general, these authors did not articulate their methodological assumptions or justify the choice of a given case study type. Only certain aspects of case study research were explored, and only some ways to collect *data* were used. Despite those deficiencies, the research examples, to some extent, share the basic characteristics of case studies. Against this background, the development of legal case study research has been rather undisciplined and haphazard. Adopting the methodological rigour used in the social sciences seems to be the way to advance its use as a legal research tool.

Authors who state that they are using a case study approach should adopt a set of established criteria for a case study research. So-called naive case studies, those that fail to meet the criteria, arise largely due to lack of methodological awareness, the intuitive nature of naive case studies (which makes it easy to define research as *case study*) or the tradition shaped in the legal sciences. The legal examples quoted in this article are reverse cases, where research on judicial opinions was carried out without any reference to this approach (case studies *de facto*), although many or all of the characteristics of professional case studies are present.

References

- Argyrou, Aikaterini (2017) Making the Case for Case Studies in Empirical Legal Research. *Utrecht Law Review* 3: 95-113.
- Bartlett, Lesley & Frances Vavrus (2017) *Rethinking Case Study Research: A Comparative Approach*. New York: Routledge.
- Bench-Capon, Trevor & Henry Prakken (2010) A Case Study of Hypothetical and Value-based Reasoning in the US Supreme-Court Cases. In Governatori, G. (ed.) *Proceed-*

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- ings of the 2009 Conference on Legal Knowledge and Information Systems: JURIX 2009.* Amsterdam: IOS Press, pp. 11-20.
- Beverland, Michael B. & Adam Lindgreen (2010) What Makes a Good Case Study? A Positivist Review of Qualitative Case Research Published in Industrial Marketing Management, 1971–2006. *Industrial Marketing Management* 39: 56-63.
- Bodwin, Kelly, et al. (2013) A Statistical Approach to Judicial Authorship: A Case Study of Judge Easterbrook. *Advances and Applications in Statistics* 38: 123-148.
- Cohen, Mathilde (2015) When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach. *Washington and Lee Law Review* 72: 483-571.
- Creswell, John, W. (2003) *Research Design: Qualitative, Quantitative and Mixed Methods Approaches (2nd ed.)*. Thousand Oaks, CA: SAGE Publications, Inc.
- Creswell, John W. (2013) *Qualitative Inquiry & Research Design: Choosing Among the Five Approaches*. Thousand Oaks, CA: Sage Publications, Inc.
- Dhar, Upinder & Santosh Dhar (2018) The Case Method in Legal Education. *Asian Journal of Legal Education* 1: 76-87.
- Epstein, Lee & Andrew D. Martin (2014) *An Introduction to Empirical Legal Research*. Oxford: Oxford University Press.
- Fallon, Richard H. (2017) A Theory of Judicial Candor. *Columbia Law Review* 117: 2265-2318.
- Flyvbjerg, Bent (2006) Five Misunderstandings About Case-Study Research. *Qualitative Inquiry* 12: 219-245.
- Frank, Jerome (1948) Say It With Music. *Harvard Law Review* 61: 921-957.
- Gerring, John (2007) *Case Study Research. Principles and Practices*. Cambridge: Cambridge University Press.
- Greely, Henry T. (1996) Quantitative Analysis of a Judicial Career: A Case Study of Judge John Minor Wisdom. *Washington and Lee Law Review* 53: 133-150.
- Hall, Mark A. & Ronald F. Wright (2008) Systematic Content Analysis of Judicial Opinions. *California Law Review* 96: 63-122.
- Kahn, Paul W. (2017) *Making the Case: The Art of the Judicial Opinion*. New Haven, CT: Yale University Press.
- Katz, Sanford N. (1966) Foster Parents Versus Agencies: A Case Study in the Judicial Application of 'The Best Interests of the Child' Doctrine. *Michigan Law Review* 65: 145-170.
- Knowles, Helen J. (2009) Clerkish Control of Recent Supreme Court Opinions? A Case Study of Justice Kennedy's Opinion in *Gonzales v. Carhart*. *Georgetown Journal of Gender and the Law* 10: 63-86.
- Knowles, Helen J. (2012) Omak's Minimum Pay Law *Joan D'Arc: Telling the Local Story of West Coast Hotel v. Parrish (1937)*. *Journal of Supreme Court History* 37: 283-304.
- Leeuw, Fras & Hans Schmeets (2016) *Empirical Legal Research: A Guidance for Lawyers, Legislators and Regulators*. Cheltenham, UK: Edward Elgar Publishing Limited.
- Lynd, Robert S. & Hellen M. Lynd (1929/1956) *Middletown: A Study in Modern American Culture*. San Diego: Harcourt Brace Jovanovich.
- Miller, Lisa L. (2018) The Use of Case Studies in Law and Social Science Research. *Annual Review of Law and Social Science* 14: 381-396.
- Mushkat, Roda (2017) On the Case Study Method in International Legal Research. *Journal for Juridical Science* 2: 143-182.
- Nicholson, Marlene A. (2000) Mclibel: A Case Study in English Defamation Law. *Wisconsin International Law Journal* 18: 1-144.
- Oldfather, Chad M. (2008) Writing, Cognition, and the Nature of the Judicial Function. *Georgetown Law Journal* 96: 1283-1317.
- Posner, Richard A. (1995) Judges' Writing Styles (And Do They Matter?). *University of Chicago Law Review* 62: 1421-1451.

- Rountree, Clarke (2001) Instantiating “the law” and its Dissents in *Korematsu v. United States*: A Dramatistic Analysis of Judicial Discourse. *Quarterly Journal of Speech* 87: 1-24.
- Simons, Helen (2009) *Case Study Research in Practice*. London: Sage.
- Stake, Robert E. (1994) Case Studies. In Denzin, N. K. & Yvonna S. Lincoln (eds.) *Handbook of Qualitative Research*. Thousand Oaks: Sage, pp. 236-247.
- Stępień, Mateusz (2019) Say it with Images: Drawing on Jerome Frank’s Ideas on Judicial Decision Making. *International Journal for the Semiotics of Law* 32(2): 321-334.
- Threedy, Debora (2009) *United States v. Hatahley*: A Legal Archaeology Case Study in Law and Racial Conflict. *American Indian Law Review* 34: 1-75.
- Thomas, Gary (2011) A Typology for the Case Study in Social Science Following a Review of Definition. *Discourse and Structure. Qualitative Inquiry* 17: 511-521.
- Webley, Lisa (2016) Stumbling Blocks in Empirical Legal Research: Case Study Research. *Law and Method* 3: 1-21.
- Wells, Michael (1994) French and American Judicial Opinions. *Yale Journal of International Law* 19: 81-133.
- White, James B. (1995) What’s an Opinion For. *University of Chicago Law Review* 62: 1363-1369.
- Wieviorka, Michel (1992) Case Studies: History or Sociology? In Ragin, Ch. C. & Howard S Becker (eds.) *What is a Case? Exploring the Foundations of Social Inquiry*. Cambridge: Cambridge University Press, pp. 159-172.
- Verschuren, Piet (2003) Case Study as a Research Strategy: Some Ambiguities and Opportunities. *International Journal of Social Research Methodology* 6: 121-139.
- Yin, Robert K. (2014) *Case Study Research Design and Methods (5th ed.)*. Thousand Oaks, CA: Sage Publications, Inc.

Cases cited

- United Kingdom
McDonald’s Corporation v. Steel & Morris [1997] EWHC QB 366
- United States
California v. Carney case, 471 U.S. 386 (1985)
United States v. Hatahley 351 U.S. 173 (1956)
West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937)

