

Court Files as Data in Sociological Family Research: Methodology and Methods for a Little-Tapped Kind of Data Material

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Abstract: In methodical terms, court files have barely been developed as data material for qualitative social research. In the present paper, we explore the methodology and methods associated with court files as data employed in sociological family research. Based on a survey of 70 divorce and guardianship files from the years 1976 to 2019, we discuss *three methodological key areas* in research with family court files: 1. We examine epistemological aspects from the perspective of a praxeological sociology of the family; 2. we analyze gatekeeping processes and other aspects of research practice with regard to field access and data collection; and 3. we review the unit of analysis of court files. Proceeding from this discussion, we propose a *new methodical approach* for the qualitative analysis of records in sociological family research: the *multiple case study from a praxeological discourse-analytical perspective*, by means of which court files can be explored as an intersection between law and the family. In analytical terms, we ask *by, with and for whom* family court files are produced. The proposed methodical approach makes it possible to consider family court files as both *produced by* and *themselves producing a process of undoing family*. We finally advocate a pragmatically oriented methodological approach. The diversity of qualitative methodology can thus become a seminal basis for the further development of court files as a data source.

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1. Introduction

Process-produced data sources are frequently put to use in such disciplines as historical and organizational research, legal studies, and criminology (LEUSCHNER & HÜNEKE, 2016; TAEGER, 2002; WERNER, 2020). By contrast, these data sources have so far been applied relatively rarely in qualitative sociological research. In particular, the analysis of court and administrative files—documents that are characterized by the form of files and are embedded in institutional and hierarchical structures (NOETZEL, KRUMM & WESTLE, 2018)—offers potentials that have been seldom employed in sociology (e.g., DAHLVIK, 2018; FRIEDRICH & FRANZHELD, 2020; MAZZURANA, 2018; OWENS & FORD, 2019; POHN-WEIDINGER, 2017; SCHEFFER, 2007, 2010; SKARPELIS, 2020; TOLASCH, 2016; WOLFF, 2011). [1]

Methodical considerations of record analysis, however, remain largely scarce even in such disciplines as criminology, in which such documents are a frequently used data source (LEUSCHNER & HÜNEKE, 2016). The authors of German-language handbooks dealing with qualitative methods in sociology and the social sciences have approached file processing under the headings of *Aktenanalyse* [record analysis] or *Dokumentenanalyse* [document analysis] (LAMNEK & KRELL, 2016; MAYRING, 2016; NOETZEL et al., 2018), described as a singular method with a focus on content analysis (LEHMANN & KLUG, 2019). For example, it has been recommended that the analysis of documents may prove especially rewarding in cases in which "data from primary collections are lacking, or such data are to be complemented for reasons of epistemological interest, or other accesses to the field are impeded" (SALHEISER, 2019, p.1121).¹ Other researchers more clearly emphasized the access to data than a method, such as CLOATRE and COWAN (2019) and WOLFF (2010) who reflected on documents and files, as well as the thorough analysis of artifacts authored by LUEGER und FROSCHAUER (2018). These publications have in common that the methodical approach is described as based on the material and its properties, as process-produced, and as distinct from the collection of primary data. [2]

A dominance of language-related data, such as those emerging from interviews, has become apparent in the tradition of qualitative social research (WOLFF, 2010), which also affects the discussion of methods and theory. For this reason, a methodical treatise on *interview analysis* is barely conceivable. In analyses of records and documents, differences in analytical emphases correspondingly result from divergent theoretical approaches. The methodical consequences of such emphases may well be more differentiated than would be considered in the sense of general *record* or *document analyses*. [3]

While court file analyses have gained sociological attention especially as analyses of process-produced data, collecting such data continues to be a little-acknowledged part of methodological and methodical procedures. The approach in which process-produced data are generated, selected and collected requires

1 All translations from non-English texts are ours.

specific reflection, as such an approach calls for a variety of interventions into the data material, as shown in the following. LUEGER and FROSCHAUER (2018) stated that artifacts have so far been barely considered in sociological theory building and that researchers have given less attention to their inherent logic (see also LUEGER, 2010). [4]

Proceeding from the research requirements described above, we scrutinize the key issues emerging from the elicitation and analysis of court files as related to methodology and methods. In the study underlying this work, we addressed the issue as to how familial connections are produced and negotiated in court and what forms of *undoing family* (JURCZYK, 2020a) are constituted in family law procedures. We therefore explicitly refer to family court files in our methodological considerations (Section 4). In the following, we first present studies based on file analyses as well as the theoretical and methodical approaches involved (Section 2) and describe the methodology (Section 3). We then present the key results of our research: First, we explore crucial methodological aspects with regard to *epistemology*, as well as the *availability* and *unit of analysis* of divorce and guardianship files² in an attempt to render them fruitful for further research. Second, we present a methodical approach developed in the framework of our study (Section 5): We specifically addressed theoretical premises which we translated methodically into the *multiple case study from a praxeological discourse-analytical perspective*. The key questions in our analytical framework are *by*, *with* and *for whom* family court files are produced. This novel approach is applied with respect to divorce files and a catalog of concrete questions is proposed as applied to the data material. The questions are tailored to analyze family and legal practices, as well as the discourses embedded therein, and can be transferred to the analysis of files from various other (legal) contexts. We finally advocate a pragmatically oriented methodological approach to court files (Section 6). [5]

2. Qualitative File Analysis: Methodical and Methodological Approaches

As process-produced data, files are a solid and self-evident data source in such disciplines as historical research and criminology (TAEGER, 2002). In the discussion surrounding sociological methods, they are still seen less as a distinct type of data, accompanied by a corresponding variation of methods, than as more or less exotic material processed as a supplement to other data sources (see HILDENBRAND, 2005 for details on methods in family research). [6]

As to the social sciences, the reduction of files as a source of the representation of social reality—in our case, family life—has frequently been argued not to be useful. This is because written discourse is to be primarily interpreted as the participants' argumentation in a procedure, which is instrumentalized by and for a given proceeding and which is organized by the legal context. The background of this interpretation was the important epistemological reflection as to the extent to

2 The guardianship file comprises the entire court record, including issues of custody, contact, and alimony payment.

which segments of social reality are found in files (SKARPELIS, 2020; WOLFF, 2010). Before addressing this issue, our question is: What are the gains of incorporating files as a data source into research? [7]

Court files represent decisions that have important social consequences. By analyzing family court files in sociological family research—and observing legislation as generated by "technologies of culture" (VISMANN, 2011, p.309), such as files—it becomes clear that we obtain insights into a reality intersubjectively created by individual, collective and institutional actors. This reality is central for the formation, preservation and further development of family models. As an innovative and so far rarely researched kind of data material in family sociology, court files and their detailed analyses can provide important insights into the negotiation of normative family concepts as well their social, institutional and historical prerequisites. [8]

Now, what are the possibilities of analyzing discourses and practices in court, which are reproduced in the files, of accounting for the distinctiveness of the data, and of utilizing their epistemic potentials? Even though methodical contributions to qualitative file analysis remain rare in the social sciences, we broadly build on available methodical arguments: In the following, we first explicate the methodical approaches and their theoretical premises as found in applied social science research. Second, we elucidate their methodical and theoretical characteristics in order to illustrate current qualitative approaches. [9]

With regard to the qualitative analysis of files, an ethnomethodological perspective was frequently resorted to in the past. Its tradition was considered to reflect theoretically substantiated document analysis (FLICK, 2005; WOLFF, 2010). Research mostly involving fieldwork and combining file analyses with participant observation and/or interviews came into being (DAHLVIK, 2014, 2016, 2018; POHN-WEIDINGER, 2017; SCHEFFER, 2001, 2007, 2010) with the access of institutional ethnography (CAMPBELL, 2016; SMITH, 2005) initially established in North America. The most important starting point for these analyses was how texts (from bureaucratic contexts) coordinate the everyday lives of subjects who are addressed and, as it were, are affected by these texts (DOLL & WALBY, 2019). In her empirical research, DAHLVIK (2014) elaborated the purely qualitative approach of *process-oriented reconstructive file analysis* as a derivative of *process-oriented file analysis*, in which elements of qualitative and quantitative content analysis are combined. In this reconstructive approach, DAHLVIK was methodically guided by artifact analysis (FROSCHAUER, 2009). She conceived the files both as artifacts and, following LATOUR (2008), as actants of a network (DAHLVIK 2018). In terms of methods, LUEGER and FROSCHAUER (2018) set concrete analytical levels for artifacts. While their approach is thus equally applicable to files, a text-analytical complement has proven useful in this connection (e.g., DAHLVIK, 2014, 2018). The approach to files as artifacts makes it feasible to conceive them in their materiality as a "black box" (CLOATRE & COWAN, 2019, p.437), around which new research questions can be formulated. In the sense of a materiality theory perspective, TAYLOR and FAIRCHILD (2020) developed the characteristics of a post-humanistic institutional

ethnography, with which researchers can focus on a decentration of human actors. This served to unite two important methodological perspectives with regard to files as materiality. WOLFF (2011) also considered his research to be enriched by ethnographic findings (see also BÄR, 2000 and KOCH, PIÑEIRO & PASCHE, 2019 for organizational ethnographies), yet he still referred to a conversation-analytical procedure for text analysis (WOLFF & MÜLLER, 1995; WOLFF & SALOMON, 2019). As a decidedly methodical approach, SCHEFFER's "trans-sequential" analysis (2015, 2018) is a substantiated variant which allows legal proceedings and their "objects in the making" (SCHEFFER, 2015, p.227)—such as files—to be conceived in a praxeological framework. [10]

In particular, court files have so far been used as a primary data source in discourse-analytical investigations. Here, the analysis has built on the sociology of knowledge approach to discourse (SKAD) (KELLER, 2011a), with which the "typical contents" (MAZZURANA, 2018, p.85) of files is to be worked out. The focus is on the contentual structuring of discourse found in the files. The researchers also made power relationships visible with an analysis focused on the prerogative and content of interpretation (see also SHUY, 2015 for methods). SCHUTTER (2011) and TOLASCH (2016) complemented SKAD by amplifying their analyses with interpretive suggestions and techniques of legitimization in legal discourse (see also SCHWAB-TRAPP, 2006), as well as hermeneutical sequence analysis adapted from DREYFUß and RABINOW (1994 [1982]). FRIEDRICH and FRANZHELD (2020) carried out a reconstructive file analysis of records from a youth welfare office in the framework of reconstructive family and couple research (FUNCKE, 2020). Their work was based on the analysis of "detectable, objective data on family constellations" (FRIEDRICH & FRANZHELD, 2020, p.291) and a sequence analysis of protocols in the given files. In particular, their research emphasized the applicability of case logic to (family) research with files. [11]

Predominantly, these research investigations have in common that they were methodically based on the logic of case studies (see also NOETZEL et al., 2018 on document-analytical case studies from a political science perspective). In terms of theory, and depending on their analytical focus, they have been seen to oscillate between praxeological, discourse-analytical and hermeneutical approaches. Two decisive tendencies can be identified in this connection: 1. By means of ethnographic and/or praxeological approaches, researchers ask questions as to how files and the documents those files contain come about. 2. The researchers mostly work from a discourse-analytical perspective in investigations into interpretive patterns, which are more strongly focused on the contents of files. These two theoretical tendencies also guide our study. [12]

3. Methodical Approach

The methodological and methodical results described in the following are based on an interdisciplinary study *Doing Divorce: Scheidungsprozesse vom 18. Jahrhundert bis zur Gegenwart* [Doing Divorce: Divorce Proceedings From the 18th Century Until Today]. Together with historians and legal scholars, we, a team of sociologists, explored how divorces and their consequences have been and continue to be negotiated in court. Our focus was on the process of *undoing family* (JURCZYK, 2020a) in court: Based on divorce and guardianship files, we analyzed court hearings on marital and familial processes of living together and drifting apart in the framework of divorce proceedings, as well as subsequent acts of reorganizing family relationships. [13]

Based on the field access to, as well as selection, assessment and analysis of 45 Austrian divorce and 25 guardianship files dating back to the years 1976 to 2019, we report and reflect on the methodological results of our work with these particularly sensitive data. The files were selected from available volumes of the *Familien- und erbrechtliche Entscheidungen* [Family and inheritance law rulings] annual series covering precedent-setting decisions in Austrian family law since 1945 (e.g., GITSCHTHALER, 2020). The focus of sampling was on the years following the most substantial family law reforms since the mid-1970s in this country (and in Germany) (for details of the concrete approach and its rationale, see Sections 4.2 and 4.3). In our sampling, we were guided by the Grounded Theory principle of the minimum and maximum contrasting of cases in theoretical sampling (GLASER & STRAUSS, 1967). With theoretical sampling, we followed the strategy of selecting cases over the research process according to whether they support, expand and deepen the analytical results, or otherwise let the results seem inconsistent, rather than selecting the cases in the research planning phase (see also BREUER, MUCKEL & DIERIS, 2019). We documented the assessment of the 70 files with memos and research diaries. The approach developed in the study was theoretically inspired by available research and resulted from the ambition to develop a qualitative methodical approach to court files, which would serve to take both the generative context and contentual body of the data into account. [14]

The 70 court files finally gathered from 45 Austrian court archives comprise 50 to approx. 2,000 pages each. Due to its generative and development context, the data material is inevitably linked to specific processes within the legal system (e.g., sequences of courts³, file layouts, legal situations). Our research was done in Austria and thus in the German-language legal context. Due to the shared history of National Socialism in Austria and Germany, legislation pertaining to marriage, divorce and custody in these countries continues until today to be grounded on quite identical legal bases. Still, national-level reforms have since been implemented in major aspects, including the abrogation of the fault principle in German divorce cases (FLOßMANN, 2008). [15]

3 Stages of appeal apply to the review of court rulings by next-higher authorities, e.g., first instance: district court, second instance: state court, third instance: Supreme Court.

In family research, most precisely, there has been a persistent call for intensified inter- and transdisciplinary research—both from a legal-research perspective (SCHEIWE, 2018; SCHWAB, 2016) and a sociological perspective (JURCZYK, 2020a; VASKOVICS & HUININK, 2016). In accord with the literature and the experience gained in our study, it has become clear that intensive methodical involvement is a key prerequisite of both work with little-researched data and interdisciplinary collaboration. [16]

In the following, we therefore illuminate the methodological aspects which we dealt with in assessing and processing the file data as the most important data source in our research. We then proceed to contribute to a clearer determination of qualitative file analysis: Theoretically following the methodical pathways to German-language qualitative file analysis, we develop a methodical access by means of a multiple case study of family court files based on a praxeological and discourse-analytical approach. [17]

4. Assessing Court Files as Data in the Sociology of the Family: Key Methodological Aspects

Collecting and processing court file data makes it possible to deal with three key areas in methodology: We discuss *epistemological aspects* with reference to the sociologically little-applied data material of court files (Section 4.1). Since the knowledge gain from court files has frequently been negotiated in the social science literature as compared to primary data, we address this distinction more precisely and examine it from a praxeological perspective on family court files. We then discuss the *availability* of court files as social science data, which includes assessment, sample selection and field access (Section 4.2). Building on these two considerations, we define a *unit of analysis* that is epistemologically adequate and available in terms of research practice (Section 4.3). [18]

4.1 Aspects of epistemology: The nature of the data

In the social science literature, the potential gain in knowledge from court files has mostly been compared to the gain in knowledge from primary data. For example, empirical researchers in law have tended to consider files to be complete data in the sense of an unabbreviated rendition of relevant proceedings and that those files also reflect such proceedings better than do interrogations (LEUSCHNER & HÜNEKE, 2016). In turn, the information content of such documents has been regarded more critically in social science research (HOFFMANN, 2018; SKARPELIS, 2020). Although potentially rich possibilities of knowledge have been seen by means of document analyses, they have always been considered as strongly linked to their generative context. Therefore, it has frequently been recommended to complement document analysis with interviews on document preparation (WOLFF 2010) or other data sources or to triangulate these tools (ACKEL-EISENACH & MÜLLER, 2012; BÄR, 2000). This also reflects the fact that interviews are still predominantly seen as the ideal way to generate data in the social sciences (SALHEISER, 2019). [19]

With regard to the knowledge gain from process-produced data such as court files, two strands of argument can currently be identified in the literature on social science methods: On the one hand, such data have often been considered as developing without researchers' interventions, and thus as largely free from reactivity, which was frequently interpreted to be advantageous (ACKEL-EISENACH & MÜLLER, 2012; SALHEISER, 2019). On the other hand, the data were argued to have been generated in a legal context and thus not with reference to the research question, but rather "as remnants of administrative action" (FLECK, 2017, p.331) with limited explanatory power. These lines of reasoning have in common that process-produced data and primary data are clearly distinguished. [20]

From a praxeological perspective, in which court files result from various practices, this distinction proves to be conditionally useful. As practices are "conceived [as a combination of] speech acts (sayings) [...], physical movements (doings) and a handling of things facilitated by an association between socialized bodies and material artifacts" (HILLEBRANDT, 2015, p.16), they are volatile data material. Assuming that past practices can only be assessed by the traces they leave, family court files critically represent the "nexuses of doings and sayings" (SCHATZKI, 2002, p.88) of familial and legal practices. Practices generated by various actors, and thus social realities, are what is described. Therefore, court files are "institutionalized traces" (WOLFF, 2010, p.503) of past processes of *undoing family*, which can be ascertained with these written practices. [21]

Involving concrete research practice as a performative act (SCHÄFER & DANIEL, 2015), it becomes even more explicit that the distinction between primary data, which are only generated with reference to a research question, and process-produced data makes little sense from a praxeological perspective: Court files can only become part of a social science sample by means of researchers' active sampling strategies. Since process-produced data, as traces of "doings and sayings" (SCHATZKI, 2002, p.88), are first to be actively qualified as data, they cannot come about fully independently from researchers. If a research process is open in terms of basic qualitative principles and guided by research questions (HOFFMANN-RIEM, 1980), it becomes clear that sampling requires clear confines and often adaptations within the research process. This is especially true for process-produced documents which would inherently be available in abundance. Court files contain a considerable number of documents, including instruments of law to initiate, intervene into and conclude proceedings (e.g., lawsuits, testimonies, expert opinions, parties' responses, sentences). The heterogeneity of the documents in court files shows the contained speaking positions to be classifiable in merely interpretive terms. Thus, their explanatory power as data material and those speaking positions cannot be evaluated without researchers' considerations. In this connection, it is important to take account of the inherent logics of the various fields, in which the experts, judges, lawyers, parties to the dispute and researchers from diverse disciplines are embedded. In order to make these actors describable in terms of epistemology, the data in our study was discussed and processed in interdisciplinary analytical meetings with lawyers, historians and sociologists. We argue that the aspect of interdisciplinarity

is vital, as irritations may emerge from inherent disciplinary and professional logics, whereby apparent implicitness could be challenged. [22]

Finally, the limitations that need to be set in accessing the data substantially affect data and sample quality. They do not arise independently from researchers, as any limitation or expansion of the sample and any classification of a speaking position requires active intervention into the sample, i.e., into what is classified as data. Moreover, the kind of knowledge gain from court files as data depends on the form in which the files are available to social researchers. Preparing samples and accessing data are particularly strongly interlinked in the case of court files, as they depend on formal approvals of access to documents, on cooperativeness on the part of judicial officers, and on the destruction of files in court. [23]

In the present project, the file sample was prepared on the basis of proceedings recorded in the *Familien- und erbrechtliche Entscheidungen* collection, which serves to guide judges through future procedures. The recorded rulings are thus juridically preselected: They were found to be precedent-setting by the editors of the collection and are subject to a certain social desirability in the legal context. As our theoretical approach permitted us to consider family and law as an interlaced practice (see Section 5), this access offered the possibility to gain insight into the practices considered as legally meaningful, desirable and precedent-setting. This needs to be reflected upon with regard to the sample⁴. For example, only non-anonymized data were collected, as anonymization would not have been possible for the court officials due to the necessary amount of work involved. Since the documents were preferably to be analyzed in their originality (WOLFF, 2010), this circumstance is a gain in knowledge from the data. However, it became clear that the data were not always ascertained in a field assessable to social researchers and that data collection thus follows a different logic than the implementation of interviews. [24]

For logical reasons, it should thus be largely clarified before the assessment whether and how a planned sample is or is not available and which epistemological implications are involved. In the following, we address the issue of availability in more detail, both in terms of reflecting on data generation and of describing court file assessment as a path so far rarely taken in sociology. [25]

4 The reference numbers of proceedings to be assessed are required in order to submit authorization requests. Such references make it possible to identify files with unique combinations of numbers and letters and are not published for all implemented court proceedings. *De facto*, access via the *Familien- und erbrechtliche Entscheidungen* collection was the only way to have a historical Austria-wide sample authorized, in which the final rulings of various instances are taken into consideration.

4.2 Aspects of research practice: Data availability

The availability of court files as data is one of the most substantial issues of research practice in the juridical field. Covering the past thirty years⁵, these files are present on a large scale, yet they are subject to strict data protection regulations, as they contain individual-related data and are thus inaccessible to the public. In planning the assessment, it became clear that files appear to be "a concealed reality to be kept a secret (commonly and initially, from the extra-institutional world)" (MUCKEL, 2000, §17). Two obstacles are to be overcome on the way to accessing files: formal authorization and informal forms of *gatekeeping*, as detailed in the following. [26]

The data protection rules governing family law proceedings in Austria prescribe that only the given litigants, their representatives, and the administrative staff are authorized to access and copy the resp. divorce and guardianship files without a separate approval (Art. 219, Section 1, ZPO⁶). Third parties may only be granted access with both parties' consent (Art. 219, Section 2, ZPO). Beyond that, it is possible to apply for permission at the appropriate government department to access and copy files for scientific purposes. Therefore, there are only two possibilities for social researchers to be granted access to these individual-related data: 1. access via the parties involved in or having concluded a proceeding, or 2. an official approval which can be granted following an access and copy application forwarded to the appropriate Austrian federal ministry (Art. 219, ZPO, Section 4 and Art. 22, AußStrG⁷). Apart from the fact that consent on the part of both parties in litigious proceedings is often difficult to obtain, there is also an ethical dilemma: Should only one of the two parties endorse access, then the researchers are not granted official access, but only informed consent to access the parties' files. In the event that the researchers are granted access from the ministry, then informed consent is not obtainable from the involved actors for reasons of data protection. This also explains the particular sensitivity of the data, which must be taken account of in terms of research ethics and a prudent warranty of data protection. [27]

In the present study, we chose the latter option and the Austrian Ministry of Justice was asked for and granted approval. This approach proved to be beneficial for assessing large samples—especially with historical backgrounds—whereas applying for the resp. files was only possible by indicating the precise reference numbers accessed through the collection of *Ehe- und Familienrechtliche Entscheidungen* [Marriage and Family Law Rulings]. From four time periods, and according to the most important family law reforms, we selected

5 According to Art. 174 of the *Geschäftsordnung* (GEO) *für die Gerichte der I. und II. Instanz* [Rules of Procedure for Courts of First and Second Instance], i.e., the authorities responsible for the first and second procedural stages), first- and second-instance litigious files are to be stored for thirty years and appeals court files for ten years. According to Art. 19 of the *Oberster-Gerichtshof-Gesetz* (OGHG) [Austrian Supreme Court Act], third-instance files are to be permanently repositied.

6 ZPO: *Zivilprozessordnung* [Civil Proceedings Rules].

7 AußStrG: *Außerstreitgesetz* [Non-Contentious Proceedings Act]; amongst others, this act regulates inspection into case files.

the proceedings the rulings of which made reference to custody and divorce. Sampling was guided by the minimum and maximum contrasting of the cases in the sense of theoretical sampling (GLASER & STRAUSS, 1967). On the one hand, contrasting was carried out by selecting files from different periods of family law (overall period under review: 1976 to 2019). In doing so, divorces were assessed from the period shortly after the legally based patriarchal family model was eliminated as well as two to three decades thereafter. On the other hand, theoretical sampling was implemented in the course of the analysis along the lines of various dimensions. An important criterion of contrasting was the comparison of individual examples of marital misconduct over time. For example, while violence in the form of a slap in the face was considered a justifiable reaction to insufficient alimony in marriage—and thus not as a matrimonial offense—any form of physical violence was defined as marital misconduct by the early 2000s. Moreover, the number and ages of children in need of care, the duration of marriage, and the extent of gainful activity proved to be significant dimensions of contrasting. [28]

The appropriate ministry informed us in advance that approval of the application to access and copy files chiefly depended on whether the burden caused by the amount of work would be acceptable to individual courts. For this reason, we spread the sample over several courts. As all documents pertaining to the appellate instances and bodies of a civil procedure are finally returned to the court of first instance to be archived, our sample covered 45 courts throughout Austria. We reached out to several district courts for up to five files. [29]

Basically, our assessments were to be carried out in the knowledge that in spite of a given approval, it is at the individual chief court clerks' discretion whether researchers are or are not granted access to files. We thus encountered various forms of *gatekeeping* even after approval, ranging from supportive reactions to rejection. We were granted access to the files in all cases of inquiry, yet some courts informed us unambiguously that support for our project was not within their jurisdiction, as our inquiries were considered an unwelcome additional burden to the staff. The research diaries reflect the impression of a regimented hierarchy at the Austrian courts, the organizational structure of which caused uncertainty among the inspectors responsible for access. This was particularly the case when our project team was not yet fully aware of the basic conditions of a given local assessment. [30]

The responsible staff frequently checked with their chief clerks or judges. In some cases, our experience at other courts was taken as a reference point as to whether, for instance, we were or were not entitled to make copies free of charge. Although the copying costs were clearly regulated in the approvals and would have exceeded our project budget substantially (€ 0.33 per page), we finally were able to make the copies free of charge at almost all courts. In cases of uncertainty regarding the conditions of assessment in the district and state courts, we reported on the assessment at the Supreme Court, which had been concluded at the very beginning of the study. Consideration of hierarchies in the juridical field and/or between the courts proved to be a key strategy in our

assessments. As the files in our sample were spread among the archives of 45 courts of first instance, this was an important question that needed to be sorted out repeatedly. In one case, the regulations even varied between the departments of a single court. [31]

In the sense of a comprehensive, Austria-wide assessment, the sample contained a proportion of files from different federal states. Therefore, many files were dispersed among geographically remote regions across the country. Here, the director of a particularly cooperative court enabled us to have the files sent to the court at which the assessment was possible without incurring traveling expenses. In principle, all files were accessible within the legally regulated retention period (Art. 174, GEO, Art. 19, OGHG). In only one case, an official was embarrassed to have to inform us by phone that two of the three requested files had probably and unintentionally been destroyed together with other civil case files. [32]

In summary, the assessment at the courts was surprising in that the legally clearly regulated processes (e.g., costs for photocopying) allowed for an unexpected scope of discretion in practical implementations. From our perspective, such processes were frequently circumvented without complications (e.g., storage and file destruction) and were thus subject to informal *gatekeeping*. To move effectively within this hierarchy proved to be a learning process to us as researchers. It became clear that in the course of data ascertainment, and in spite of granted approval, archivists and other (often involuntarily) responsible officials stood between our team and the archived files. With FLECK, we thus share the experience that officials in (court) archives act as gatekeepers and frequently "operate the way their collective interpretation of their role suggests" (2017, p.340). [33]

4.3 Aspects of the unit of analysis: Legal and sociological perspectives on cases

Decisions are to be made regarding the unit of analysis starting from considerations of the gain in knowledge generated from court files and the availability of corresponding data. Based on previous research, there are principally two possibilities in this connection: to integrate one or several types of documents—such as decrees of divorce (MAZZURANA, 2018), police protocols (FOLEY, 2017), forensic expert reports (WOLFF, 2011), and instructions to witnesses (WOLFF & MÜLLER, 1995)—or to integrate complete files (DAHLVIK, 2018; FRIEDRICH & FRANZHELD, 2020; POHN-WEIDINGER, 2017). On the one hand, this decision evidently depends on the research question: For instance, whether a complete guardianship file as one single case or rather custody applications as cases are analyzed across all files in the sample will have to be decided upon in view of the research question and the speaking positions drawn upon to answer that question and expected to be identified in the documents. On the other hand, methodical deliberations on the unit of analysis are strongly linked to the availability of the individual documents: For legal reasons, and due to the

30-year retention period⁸, divorce files issued before 1990 must only contain the rulings. As the actual retention period practice in the courts can deviate from this specification, we were also able to assess complete files from earlier periods. In principle, we realized that it is only possible to evaluate the data by directly accessing the material, since its form, quality and quantity are only appraisable with difficulty beforehand. At any rate, it is especially important to reflect on the realization of the unit of analysis in working with little-studied data. Our study emphasized the particular suitability of case studies in examining files. Conceptual clarifications are required in dealing with what a case to be analyzed is and which place it should occupy in a case study. As was shown, these clarifications overlap in the social science and legal context, yet their meanings are not fully congruent. [34]

In the framework of a social science case study, a case may be circumscribed by two dimensions: as a case found empirically or as a case that is a theoretical construct, the data of which are collected with a specific research interest in mind (SCHWANDT & GATES, 2018). By contrast, cases and case files are referred to in legal terms when all the documents of a case (e.g., a divorce proceeding) are collected in one file. Apart from case files, there are also factual files that include all documents pertaining to a specific process (e.g., the reorganization of a department) (LEUSCHNER & HÜNEKE, 2016). [35]

Case files are organized according to the same procedures (i.e., knowledge gain via the involved actors' history starts with the lawsuit and in most cases ends with a court of final appeal ruling, at the latest. In litigious divorce proceedings, the petition for divorce is the starting point of a case file⁹. At the beginning of the proceeding, a possible subsequent countersuit is administrated as a case *sui generis*, which is only consolidated with the original lawsuit and continued in the course of the proceeding. The same applies to guardianship proceedings¹⁰. In this regard, however, our data showed that some proceedings may span entire childhoods: In one case, 17 years had passed after the guardianship authority approved of the divorce settlement in 1989 until the ruling regarding alimonies was issued in 2006 (Case 37). Cases in the legal sense are correspondingly comprehensive by way of the principle of completeness, which is linked to the control functions of files (MUCKEL, 1997). In order to bring the case file into agreement with the unit of analysis, stringent selection criteria are to be additionally identified with regard to the documents included in the text analysis. The question as to what kind of files proceedings in the legal context develop

8 The retention periods for court files in Austria are regulated by Art. 174, GEO. In Germany, the retention period of files pertaining to family matters, children's rights and marital matters is defined by the *Schriftgutaufbewahrungsverordnung* (SchrAV) [Document Retention Act] and varies between five years (e.g., in matters of protection against violence) and 120 years (e.g., in separation of property). Details on the storage of the various types of files are described in the annex to the SchrAV.

9 The present Austrian divorce law is unique in the German-language context in that it allows for culpability assessments in divorce, see Art. 49, *Ehegesetz* [Marriage Act] (MARSCHALL, 2012). Such assessments serve to determine the spouses' shares of culpability with regard to the breakdown of marriage.

10 Due to the similarity of family law, e.g., in Germany, the layout of guardianship proceedings is applicable to other regional contexts.

into, and finally are available as data material, is preferably to be factored into planning the sample and/or the resulting unit of analysis. Moreover, this question requires openness and flexibility throughout the research process. [36]

Therefore, the logic of the legal case has an impact on which unit of analysis can be defined in the social science sense: In sociological terms, it would be sensible to define all legally available documents pertaining to a couple seeking divorce as a unit of analysis in examining a case of divorce. However, due to what is seen as a case in legal terms, this would only be possible with elaborate efforts: In divorce cases, the files contain the rulings of all instances regarding the divorce, yet not the documents of potentially associated guardianship or property division proceedings which are defined and heard as cases *sui generis*. We collected all documents pertaining to the divorce and guardianship proceedings in the sample from the associated instances (first-, second- and third-instance appeals). Repeatedly, the documents contained references to other proceedings of the involved actors, and it would have been possible to have other proceedings of this kind approved and assessed (e.g., injunctions, property division and false-testimony proceedings, etc.). Still, we did without such action as the data basis proved to be far more ample than initially anticipated due to the related appeal hearings and recourses. This gave us sufficient resources to process files from various years. For the incorporated divorce proceedings, the unit of analysis in our study was thus focused on proceedings intended to clarify issues of culpability and marital dissolution. As to the guardianship proceedings in our sample, the unit of analysis was limited to singletons' (or several siblings') guardianship files. A single file in our sample thus corresponded to a single empirical unit, i.e., a single court file. [37]

After discussing the epistemological questions regarding court files, the issues of court file availability, and units of analysis arising from our research questions, we now discuss the methodical approach of our project in the following section(s). This approach can be described as a multiple case study from a praxeological, discourse-analytical perspective. We draw on prominent theoretical approaches, elaborate a novel methodical approach, and incorporate analytical questions into the methodical discussion. [38]

5. The Method of the Multiple Case Study: A Praxeological Discourse-Analytical Perspective

The approaches of qualitative file analysis described in Section 2 are altogether informed by praxeology or discourse analysis, upon which we draw in terms of theory. As concrete methodical debates are still rare, particularly in the German-speaking area, it is our intention to present the methodical approach of *the multiple case study from a praxeological discourse-analytical perspective* on family court files. We introduce analytical questions directed to the cases in the framework of a multiple case study: On the one hand, family court files are consulted as a production effort and thus as a representation of practices—family and law—which are interlaced within those files. On the other hand, our content-related focus is on relevant discourses. [39]

According to YIN (1984), the methodical approach by means of case studies is useful if 1. a contemporary phenomenon is to be explored, in which 2. the borderlines between that phenomenon and its context are ambiguous. In order to 3. meaningfully circumscribe case studies, collecting diverse data sources is considered to be a necessary precondition. Therefore, this approach proves particularly useful, as divorce and guardianship proceedings are contemporary phenomena, the contexts of which are located between legal and familial practices, which in turn finds its expression in utterly different data sources (e.g., witness statements, expert assessments, rulings, lawsuits) in the court files. In this regard, we do not circumscribe cases in terms of actors (e.g., those entitled to custody or willing to divorce), but rather by way of individual divorce or guardianship proceedings and the involved instances of appeal. [40]

The method of the *multiple case study* (YIN, 2018) has a crucial advantage in that it facilitates comparisons between empirically identified cases, which in a preceding step had been analytically processed as complete cases. Such comparisons are done at a second analytical level, and the individual cases are thus the evident base of the results. This also implies flexibility in terms of presenting the results, as they can more easily be described as comparisons of cases. Frequently applied with case studies, the narrative presentation of results becomes an additional option. By allowing for this second step of analysis, the narrative case studies do not stand alone once the research process is concluded and can more easily be compared. Levels of comparison must already be found in analyzing the cases and later become helpful in presenting the results. Regardless of the narrative form of the cases, the results can thus be illustrated by means of sporadic citations from the underlying cases or facilitate skim-reading and comparing the multiple case study in the sense of a question-and-answer presentation of those results (ibid.). [41]

With reference to the cases, on the one hand, it should principally be considered that divorce and guardianship files as individual cases do not draw a likeness of a reality assumed to be objective. Instead, they contain a specific perspective that various actors only produce for the purpose of divorce in court. In this sense, the court files are conceived as "institutionalized traces" (WOLFF, 2010, p.503), from which "conclusions can legitimately be drawn about the activities, intentions and considerations [...] of the organizations they represent" (ibid.). On the other hand, they are also part of the familial reality (ARNI, 2004), which in turn requires a production practice (FINCH, 2007; JURCZYK, 2014). This practice is expressed in *doing* and/or *undoing family* "which comprises the practices of neutralization and dissolution as well as the creation [of family]" (JURCZYK, 2020b, p.10). Through the individual case, law and the family are conceived as interwoven in the praxeological sense. In the sense of *doing* and *undoing*, the family is not only *done* and *created* by family members, but by institutions such as family law, courts and associated actors alike. Divorce and guardianship proceedings can also be seen as a discursive field, as courts and documents produced in the form of files are sites of communication, at which various parties argue in order to address "claims to validity having become problematical" (HABERMAS, 1973, p.214) by means of changes in family relationships. [42]

We thus propose to consider family law documents as a production practice of *doing or undoing family* in the framework of a praxeologically "flat ontology" (SCHATZKI, 2016, p.30). In the framework of such an ontology, however, law is not simply the context, but a constituent of familial practices (see also JURCZYK, 2020a): In this connection, practices extend "only [over] one level" (SCHATZKI 2016, p.33) and are seen as "an open, spatiotemporally distributed aggregate of doing and speaking [...], which generates, utilizes and alters, is directed at or is inseparably connected to material arrangements" (ibid.). Material arrangements, such as family law documents and/or files, serve to angle and facilitate practices. Files gain access into court practices, in which they facilitate allocations and rulings regarding familial practices (MUCKEL, 1997). In this regard, the courts rely on the legitimacy of their rulings, while aligning their intra- and extra-organizational action with social expectations by perceiving and interpreting such expectations (ALEMANN, 2019). Files are thus assigned a key role, as they have important control functions in the institutional logic of judicature: The institutions control those involved as a "case," superiors control file managers, and supervisory instances, such as the next higher recourse courts in the stages of appeal, control the institutions (MUCKEL, 1997). The kind of familial practice that is facilitated or circumscribed, and the extent to which law conversely becomes applicable to familial practice and legitimizable, reveals itself as the area of tension realized in and becoming accessible by means of family court files. [43]

The opening paragraph of divorce suits, in which selected frameworks of marriage are described in a strongly standardized and formularized fashion, is an example of the intersection between law and familial practice. The initial passage always contains the same information:

"The parties contracted marriage on [day.month.year] at the registry office of [place], [number in the family register]. The marriage gave birth to [number of children] children by the names of [names and dates of birth]. The spouses had not concluded a marriage contract. Their last common residence was [address], for which reason the court appealed to has jurisdiction. The spouses are [nationality] citizens and [both] are [religious confession]" (Case no. 10). [44]

Here, it is shown which information of familial practice requires attribution and classification by court—which lawyers bring in beforehand—but also which aspects are not taken into consideration. For instance, only children "born in marriage" (including those of full age) are referred to, including children legitimized by their parents' subsequent marriage in Austria, yet not stepchildren, even though they may be members of the same household. In addition, only the last common residence is brought up, and the possibility of changing residences or whether one spouse had already left that residence is not addressed. At the outset, the division between gainful and reproductive work is also not related to. However, this division was subsequently mentioned in most of the divorce files in our sample whenever either of the "parties in dispute" brought this in as a matrimonial offense. Thus, a specific familial practice becomes effective at the outset of a proceeding, such as the duration of marriage or whether a marriage contract had been issued. [45]

Much additional information is inferred and administered in the course of the proceeding and is put forth by other actors. The ethnomethodologically informed focus on "'suppliers' who first develop promising contributions to an ongoing proceeding" (SCHEFFER, 2015, p.225) makes it possible to incorporate further aspects of familial life as a part of family court files: Statements by and questionings of spouses seeking divorce, testimonies, and expert reports are perspectives that become a part of files and thus serve to interpret and, as it were, create familial life from various perspectives. [46]

While an analysis focused on practices is more strongly oriented towards how files are produced and the objects those files contain (SCHEFFER, 2015), the second perspective—on discourses relating to such practices—implies the specific inclusion of a contentual level, at which the claims to validity are addressed and negotiated. In investigations inspired by discourse analysis, the focus can thus be laid on the involved actors' multiperspectivity (VOGL, SCHMIDT & ZARTLER, 2019) by means of focusing on different discursive positions and structures (FRIEDRICH & FRANZHELD, 2020; SCHWAB-TRAPP, 2006). The link between the discourse-analytical and praxeological perspectives on divorce and guardianship files makes it possible to reproduce data from such proceedings as discursive fields with diverse power and speaking positions, as well as interpretive frames and action patterns (JÄGER, 2011; KELLER, 2011b), which altogether require various actors' collaboration in order to be generated and negotiated. [47]

Methodically, this approach serves to ask analytical questions regarding the individual cases explored in multiple case studies. Setting out from the insight that family law has a substantial impact on the social construction of relationships, while itself being formed by certain perceptions about the subjects (ZARTLER, 2012; ZARTLER & HIERZER, 2015), our analysis was focused on involved family members. The analytical questions imply that family court files are produced *by*, *with* and *for* family members, as is shown in the following with the example of divorce files as cases. [48]

A divorce is always formally initiated by at least one of two spouses: The first document in a divorce file is a divorce suit or petition originally based on the resp. partner's argumentations and representations and is thus *by* that partner. In the course of our analysis of divorce files, our question in terms of praxeology was: How do spouses create divorce in court? From a discourse-analytical perspective, we additionally asked: Which claims to validity are expounded by spouses filing for divorce? [49]

From this time on, the file accumulates through court injunctions and legal representatives' petitions in collaboration with the spouses (e.g., deposed interrogations or advocacy writings): It thus requires creation *with* the spouses and other family members who interact with yet other actors to perform the practice of a family in court. A family court file ultimately consists of highly diverse documents (e.g., lawsuits, rulings, expert reports) issued by various authors, thus reflecting diverse recorded speaking and producer positions. In this regard, we

asked: How is the practice of divorce carried out in court and how does such interaction develop between various actors? In discourse-analytical terms, the questions arose as to: Which actors bring in which (multiple) perspectives and which patterns of interpretation and action become visible? [50]

After a divorce proceeding is completed, the spouses receive their court ruling. This is a document that is produced *for* the actors of a family and that is intended to legally assist in reorganizing family relationships in the divorce process. Here, it becomes clear that court files are altogether compiled for a particular reason and concluded by the rulings. The praxeological question as to how divorce is produced for the actors of a given family is focused on: How are family members dismissed from the practice of family courts? In terms of discourse analysis, the following questions are particularly interesting: Who are the subjects for whom the divorce is produced in court, i.e., who is addressed here and how? Which power structures can be identified and how is the discourse embedded in those structures in court? [51]

In summary, files from divorce and guardianship proceedings are both constituents and reflections of familial practices. They should therefore be investigated with both emphases. We propose that the questions as to by, with and for whom family court files are produced set a heuristic framework in which these emphases can be included in investigating undoing family (JURCZYK, 2020a). This is because answers to these questions can comprise not only the making of the proceedings, but also ongoing discourses, speaking positions, and power structures. [52]

6. Conclusions

In this article, we demonstrated that the sociological approach to court files requires particular methodological and methodical specifications, while holding a considerable potential for research in the social sciences and family sociology. Our focus in this paper was on two areas as based on 70 family court files which were ascertained and analyzed from a total of 45 court archives in Austria and documented by means of research diaries and memos. [53]

First, we specified *three key methodological areas* in order to make them fertile for further research: *epistemological aspects*; questions in *research practice* regarding field access and ascertainment; and, on this basis, considerations regarding the *unit of analysis* of court files. We elaborated which potentials can arise from establishing court files as a data base little-tapped so far in the social sciences. From our perspective, analyses may potentially be enhanced in the frequently neglected examinations of contexts in which qualitative data are generated and which initiate particular reflection as to process-produced data, i.e., family court data in our investigation. Moreover, court files facilitate an access to a societal area which has received little social science attention and which is reflected in process-produced data. As an active text (SMITH, 2005), these data contribute to structuring everyday life. [54]

Second, we developed a *qualitative methodical approach* that accommodates the context of data production and contentual discourses of *undoing family* in data. A praxeological ontology of events and data material (SCHATZKI, 2016) offers a perspective with which institutions, such as law, judicature and associated procedures and instruments, can be incorporated in *undoing family* (JURCZYK, 2020a; LANGE, 2020). In conjunction with a discourse-analytical perspective (KELLER, 2011a), the multiperspectivity we argue to be a particular potential court files offer to family research can be described (see also FRIEDRICH & FRANZHELD, 2020). [55]

Family members and other actors are connected to these active texts in that court files are produced *by*, *with* and *for* them. They thus are the immanent constituents and at once producers of those files. A methodical approach in the framework of the *multiple case study from a praxeological discourse-analytical perspective* can combine two necessarily overlapping analytical foci on practice and discourse. This approach can also account for the analytical tension between the overall composition of court files and the discourse positions they contain. [56]

The method we propose to analyze court files is only one possible methodical-theoretical variant. The perspective of theory is purposely intended to supplement the multiple case study. Moreover, court files as data material hold much methodical potential that can and should be differentiated with the ongoing variation and combination of theoretical perspectives. In this connection, we advocate methodological hybridization (FLICK, 2005), which includes a pragmatic approach to methodological principles and methods: Severe confinements to a specific methodological discourse are avoided and methods are usefully integrated wherever possible (*ibid.*), such as in our combined praxeological and discourse-analytical approach. In future research, additional gains in knowledge may possibly arise from increasingly including a neo-institutionalist perspective (WALGENBACH, 2002) on legal practice in the context of social changes of the family. This is because the view onto the relationship between powerful judicial actors' intra- and extra-organizational action and out-of-court social expectations could be deepened. Moreover, clear potential has been identified in reconstructive organizational research (VOGD, 2009), with which the focus could more strongly be laid on the orientation of meaning among various professions (e.g., psychological reviewers) who affect decisions in family law and whose practices are reflected in court files. As these files develop on the basis of the legal situation currently in force, and as the data produced in this framework are marked by institutional variance, changes in proceedings could become a specific focus. For example, family court assistance—support for judges' work by means of assessments or mediation of welfare workers, psychologists and educationalists—was introduced in Austria in 2014. From our perspective, methodological flexibility becomes relevant precisely where the potential of novel methodologies, such as those pertaining to court files as data, is to be further developed. [57]

Court files provide detailed insights into constructions of familial practices and discourses, as well as the normative ways in which such constructions are dealt

with. They thus hold the enormous potential to serve describe historical, normative and social processes of change starting from individual practices (and the traces they leave). In this regard, such access to historical discourses and practices is unique: Snapshots from various decades can be analyzed, which reflect both legal and societal sets of norms. From the perspective of the sociology of the family, they also facilitate insights into familial practices that are subject to social desirability in reactive data material, such as intended distancing and denial of relationships. Furthermore, court files allow for the perspectives of often large numbers of different actors, which would barely be feasible with other types of data collection or which could only elaborately be incorporated in empirical assessments. In order to adequately capture these perspectives, interdisciplinary cooperation in terms of assessment and analysis has proven to be an advisable strategy that leads the inherent logics of the fields to be reflected upon. From our perspective, this data material and the associated potentials of analysis should be further developed in both methodological and methodical terms. [58]

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