



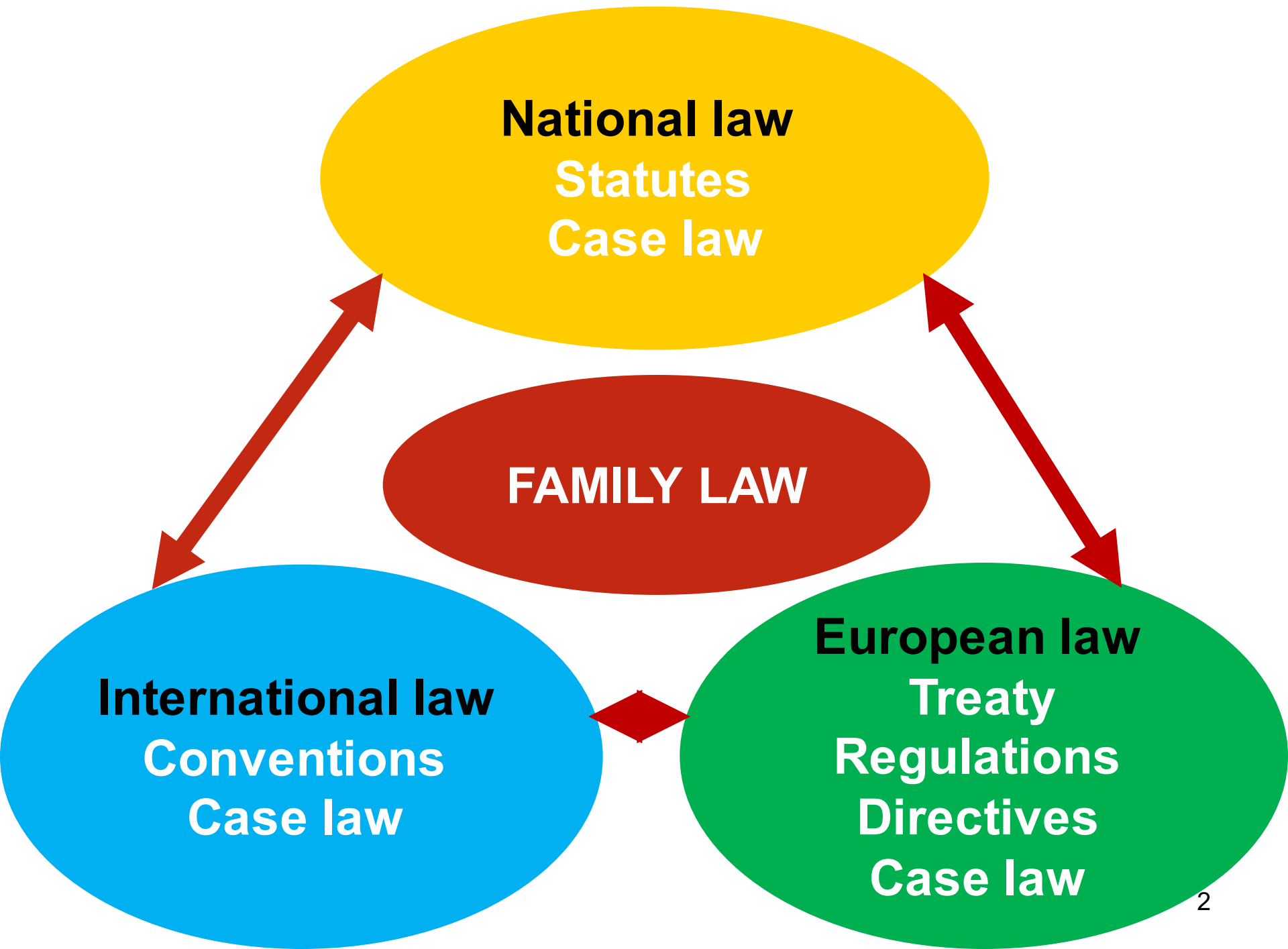
BUCERIUS LAW SCHOOL
HOCHSCHULE FÜR RECHTSWISSENSCHAFT



RESEARCH INTO FAMILY LAW: SOME METHODOLOGICAL REFLECTIONS

ANTWERP, 24TH MARCH 2016

KATHARINA BOELE-WOELKI



Distinctions

- Family law
- Family procedural law
- International family law
 - Conventions
 - Human Rights
 - Cross-border relationships
 - ✧ Jurisdiction
 - ✧ Applicable law
 - ✧ Recognition and enforcement
- European family law
 - Conventions
 - Human Rights
 - Regulations for cross-border relationships
- Comparative family law
 - National - national
 - Regional - regional
 - National - regional
 - International - regional
 - Etc.

Revisiting and testing two articles

- What comparative family law should entail

*<http://www.utrechtlawreview.org/> Volume 4,
Issue 2 (June) 2008*

- Combined comparative research in the field of family law: some reflections from the legal perspective

*Zeitschrift für Familienforschung/Journal of
Family Research 2015, pp. 239-256*

What comparative family law should entail

1. **Preliminary remarks**
2. **Framing comparative family law**
 - 2.1. The subject matter
 - 2.2. The method
 - 2.2.1. Definition, four steps and preliminary questions
 - 2.2.2. The comparative family law method: some examples
Europe
The United States
 - 2.3. The usefulness of national reports
3. **Current debates in family law around the globe**
 - 3.1. The issues of today in perspective
 - 3.2. (Compulsory) arrangements regarding children
 - 3.3. Registration schemes for same-sex couples: new jurisdictions
 - 3.4. The effectiveness of the *pater est* rule
4. **Closing remarks**
 - 4.1. Comparative family law includes international family law
 - 4.2. Harmonization: why and how?
 - 4.3. Comparative research projects covering Europe and the United States
 - 4.4. ALI and CEFL Principles
 - 4.5. How foreign family law should be approached

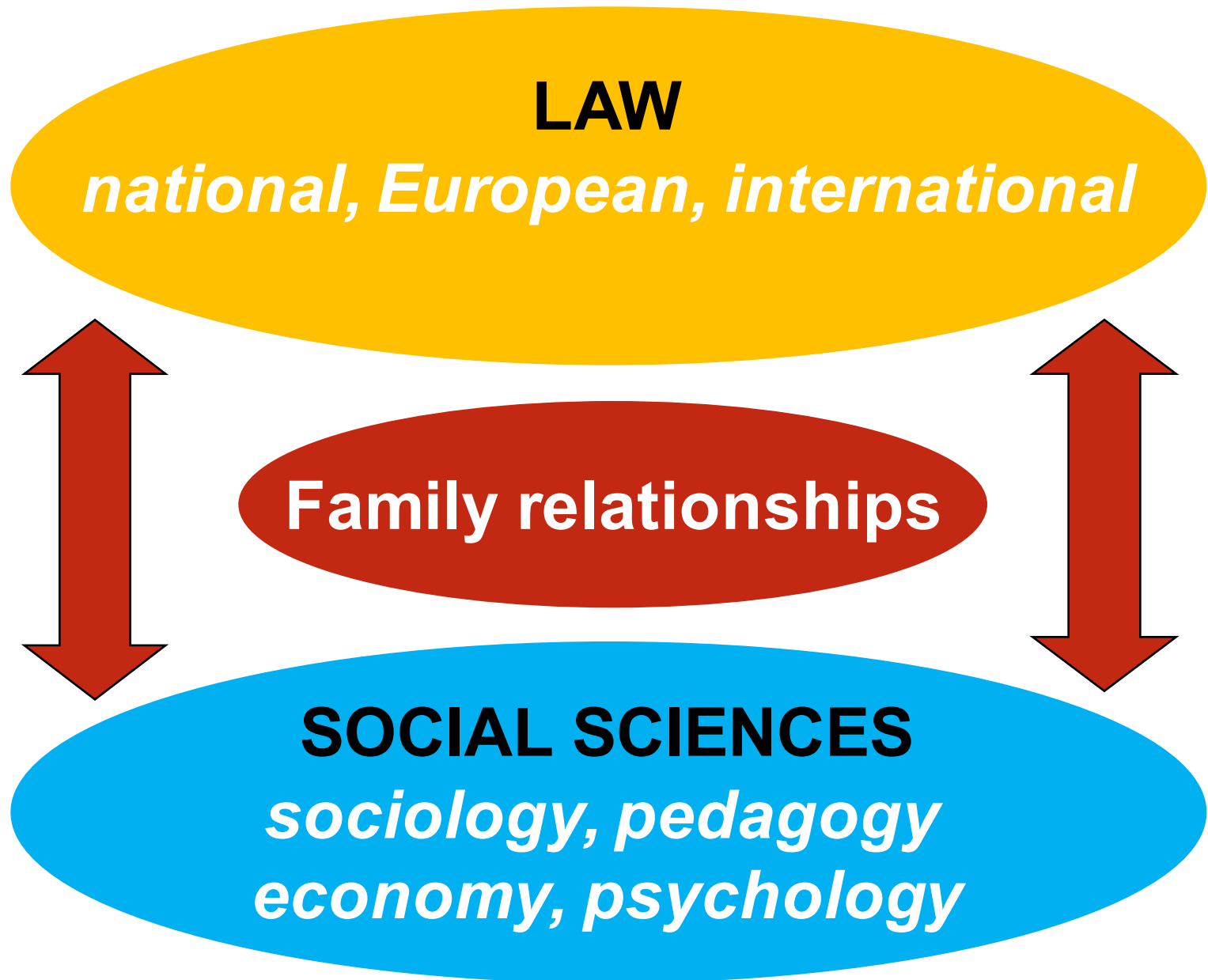
What is comparative (family) law?

Comparison is a scholarly process in which specific 'objects' of at least two jurisdictions are set against each other in order

- (1) to determine their similarities and differences;
- (2) to explain the causes of the similarities and differences and
- (3) to evaluate the solutions.

CRITISISM

- The three steps are too stringent; evaluating solutions belongs to the task of politicians
- A systematic analysis of all jurisdictions that have been selected is not necessary; a punctual selection of specific problems leads to reliable findings
- Studying many jurisdictions is only manageable with a team of researchers; the individual researcher cannot obtain comparable results
- *Auslandsrechtskunde* should also fall under comparative law



Combined comparative research in the field of family relations

1. **Aim and objective**
2. **Guidelines for comparative legal studies**
 - 2.1 Taking a systematic approach
 - 2.2 Posing questions in functional terms
 - 2.3 Exploring foreign legal systems
 - 2.4 Coping with language barriers
 - 2.5 Using reliable sources
3. **Combined comparative research in the field of family relations**
 - 3.1 Synchronized comparative research
 - 3.2 Restricted comparative research
4. **Design and assessment**
5. **Outlook**

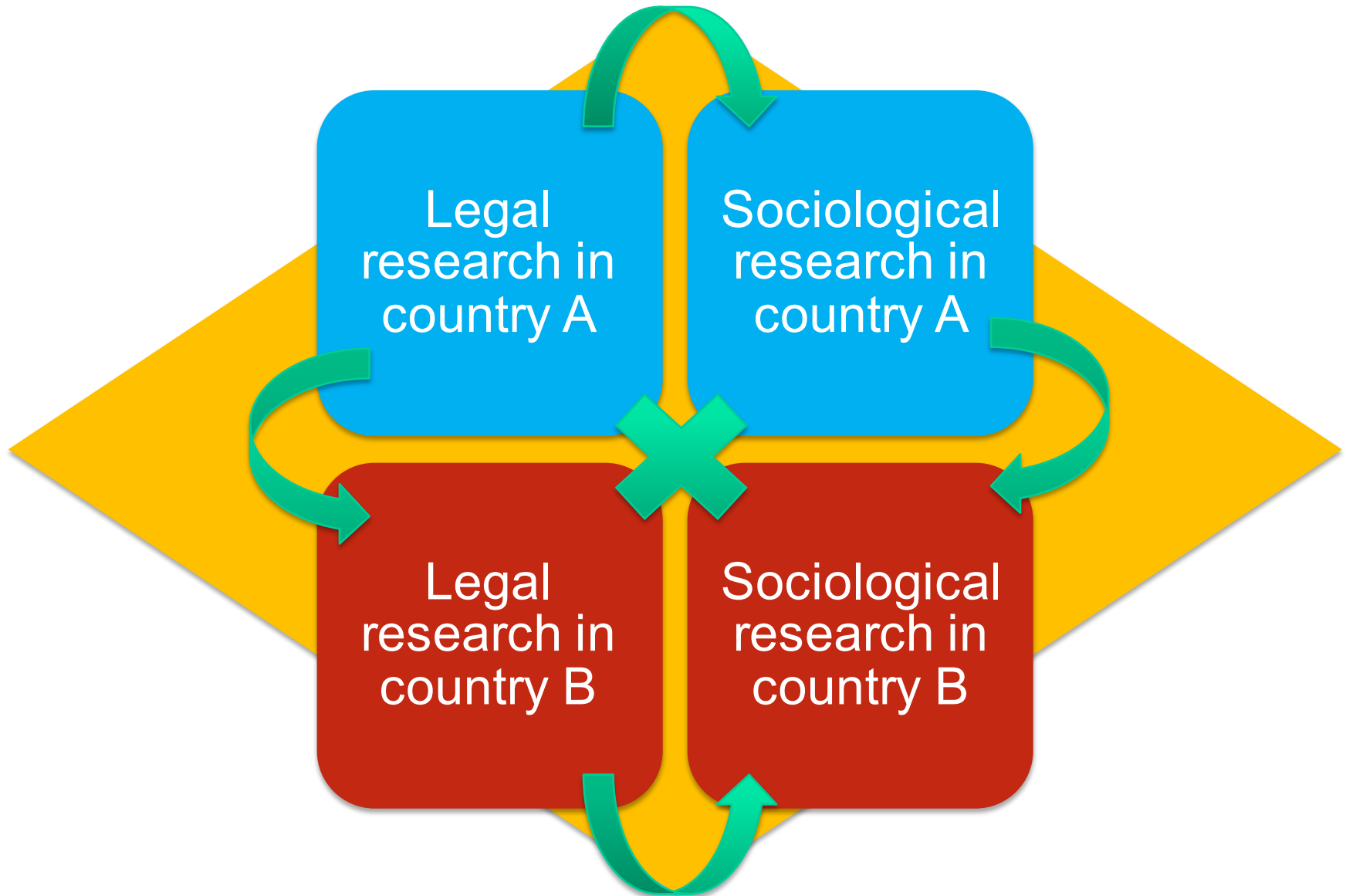
Combined comparative research in the field of family relations

Whether, to what extent and how is it possible and necessary to combine comparative legal research in family law with comparative research in other disciplines, such as sociology, psychology or economics?

Synchronized comparative research

Combined comparative research consists of comparative legal research which includes at least two legal systems and research into the same problem from another or various other disciplines which is conducted in the same countries that have been selected for the comparative legal study

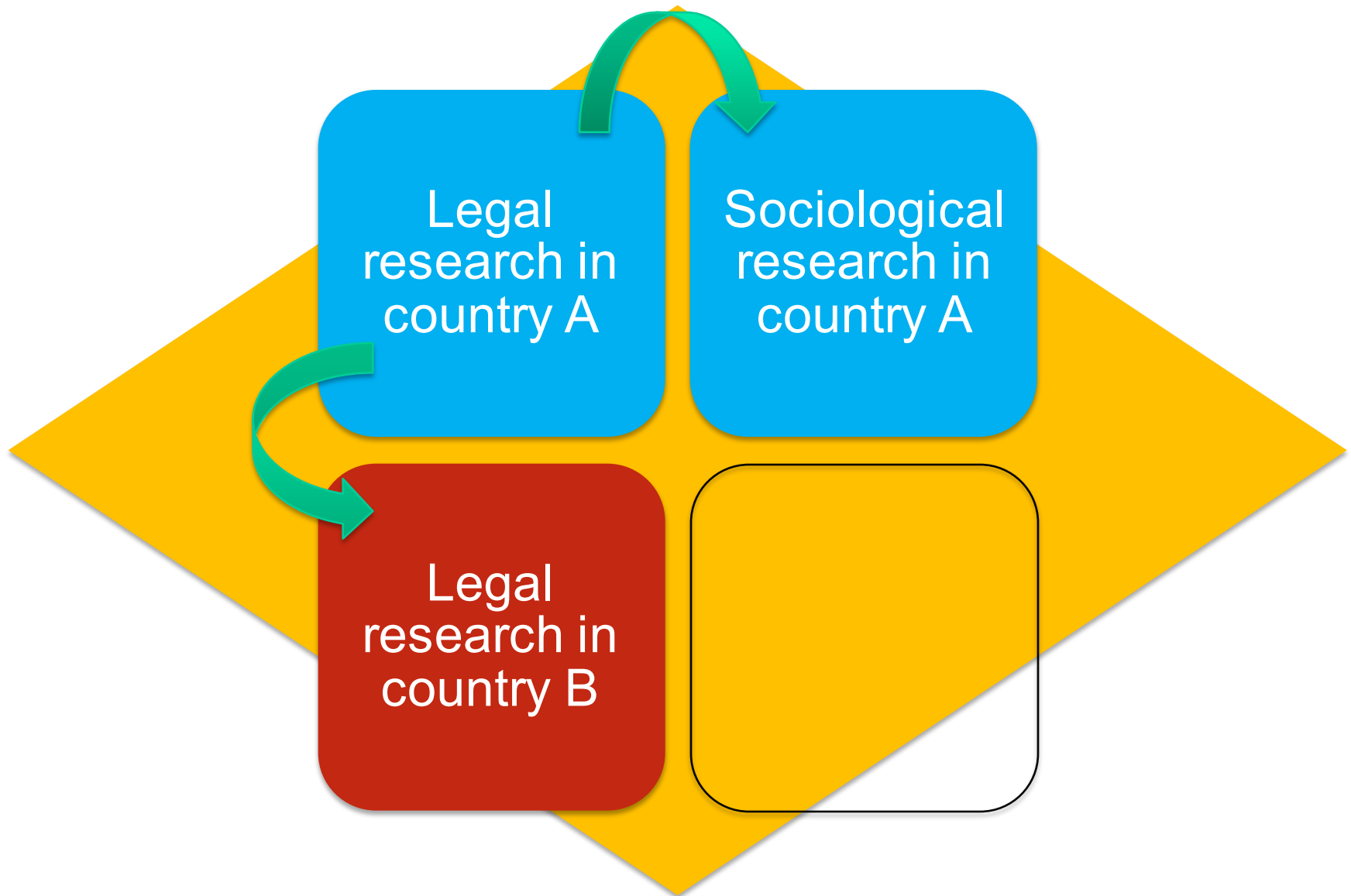
Synchronised comparative research



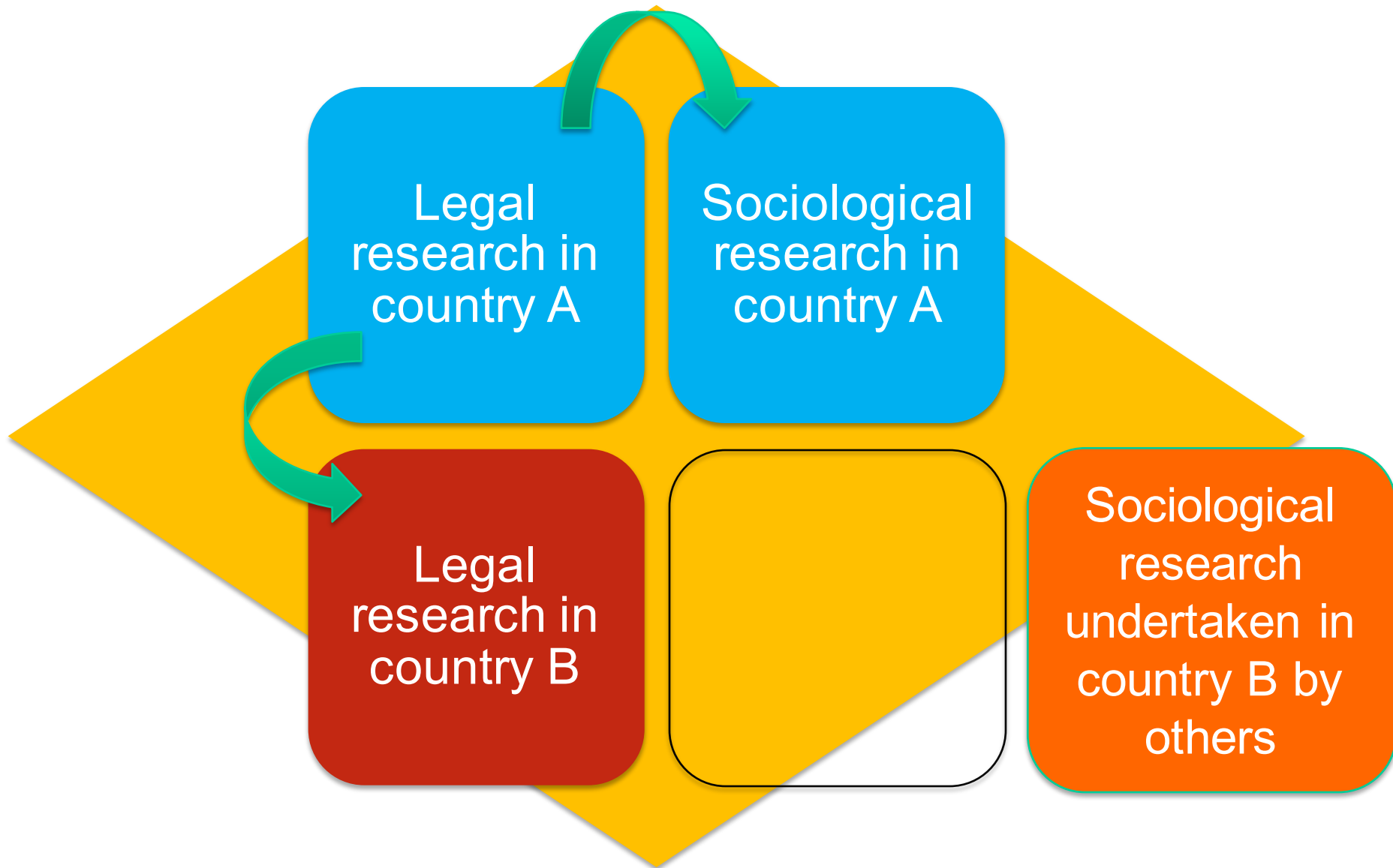
Restricted comparative research

Combined comparative research consists of comparative legal research which includes at least two legal systems and research into the same problem from another or various other disciplines conducted in one of the countries that have been selected for the comparative legal study or that has been undertaken in other countries

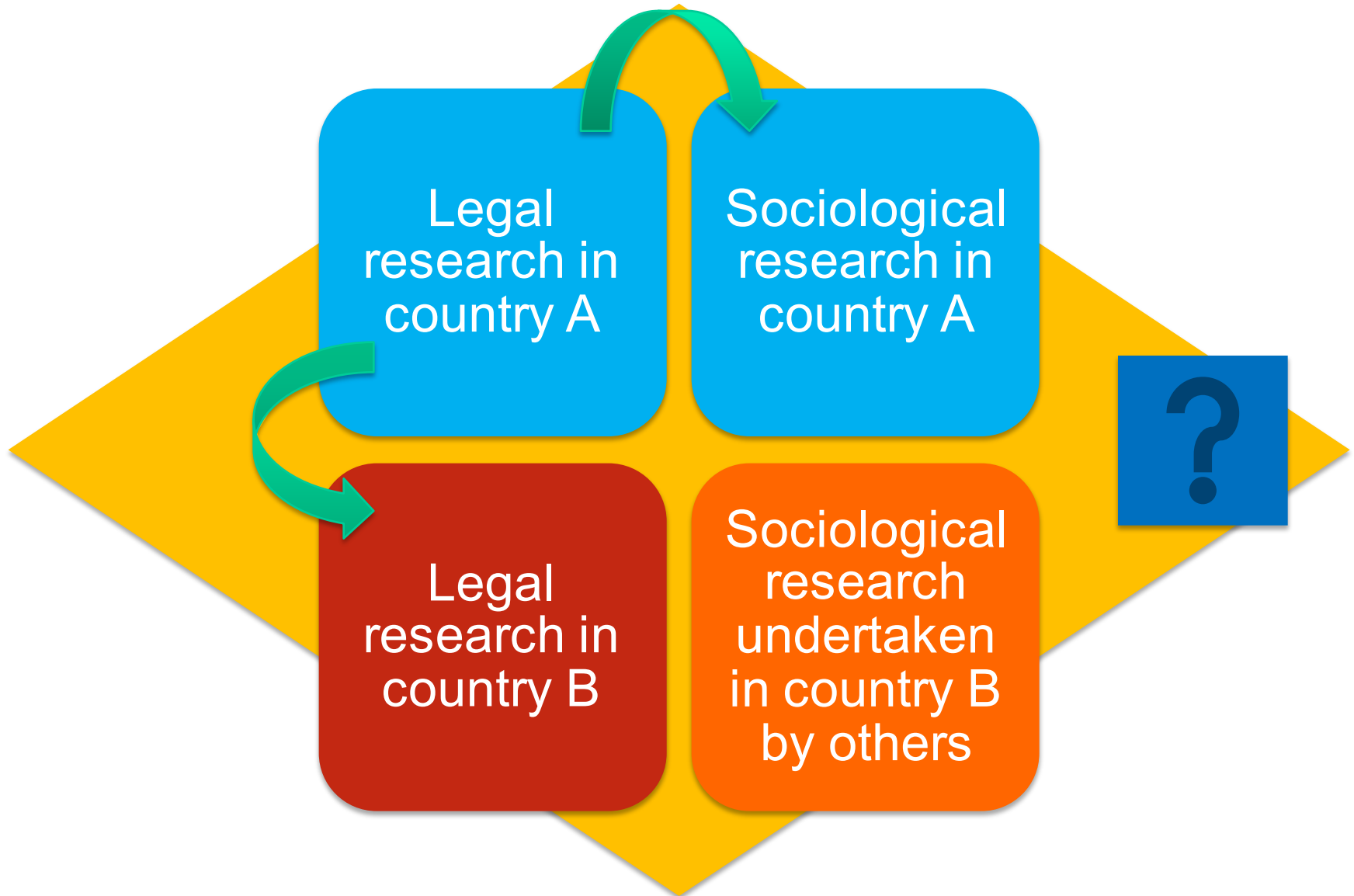
Restricted comparative research



Restricted comparative research



Restricted comparative research



Discussion

- What is your topic? Why have you chosen it?
- What type of research are you carrying out?
- Which and how many jurisdictions have you selected? Why?
- Have you opted for the simultaneous or successive method?
- Do you include empirical research? How?
- Do you include findings from other disciplines? How?

A few guidelines for PhD research

- Discuss the choice of your topic
- Consider and explain your method
- Make a table of content asap and adjust your timetable on a regular basis
- Make a planning of your study visits abroad
- Attend conferences in your field
- Establish and maintain your own network