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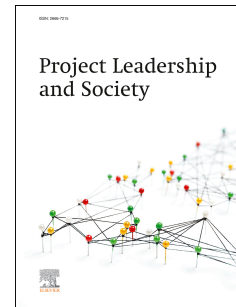
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Bridging the Gap: Reintegrating Legal Perspectives into Project Management

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Abstract

While legal topics have been acknowledged by project management academics, scholarly engagement between project management and the law needs to be further developed. This paper examines the intersection of law and project management addressing the growing complexity and multifaceted nature of contemporary projects and their impacts on society. It starts by reviewing previous project management research that has considered legal themes, such as contracts, delivery, disputes, governance, procurement and compliance. Subsequently, the importance of the context of the project is also briefly considered, with a recognition of its influence on the nature and resolution of legal disputes within projects and emerging themes. Then the legal foundation of projects is explored and the concept of legal projects and portfolios is proposed. The paper concludes by inviting the interdisciplinary research community to establish a new line of inquiry that explores the legal dimensions of project management and how project management can influence the legal profession and research.

Keywords

Project management, law , disputes, contracts, procurement, compliance

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1. Introduction

Project management practice and research must be built on a solid understanding of the legal systems that condition societies and projects. Legal systems shape the design, delivery and behaviour of projects across different contexts. For example, major projects with many parties involved and huge financial and societal costs and benefits, have routinely faced disputes and governance issues among stakeholders that ended up in courts. (Gil, 2023). Additionally, in highly regulated contexts such as drug development and national security projects, stakeholders will also be influenced by the legal framework they have to comply with. Therefore, project management practice and research should be built on a solid understanding of the legal foundations and legal systems that condition societies and the project. By addressing these themes, we can also enhance the robustness of project governance and reduce the likelihood of disputes, which are prevalent in such multifaceted environments.

Although the analysis of legal topics such as contracts and procurement has been linked with project management research in the past (Turner, 1995), over the last decades, it has been a secondary area of concern within the academic project management community. Given the increasing complexity and interconnectedness of societal challenges, it is essential that project management research reengage with a broader range of academic disciplines. The *Manifesto for project management research* already identified that the future of project management lies in promoting scientific cross-fertilization in areas such as law. (Locatelli, et al 2023, pg. 9). Now is the time to reconnect the research agenda of project scholars with legal perspectives.

In this paper, we contribute to this conversation by exploring the legal underpinnings of project management and the role of law in shaping project outcomes. We begin with a review of the key legal themes that have been explored in project management. This is followed by an explanation of the legal basis for project management and law and a definition of *legal projects*. Finally, the advantages of bridging legal and project management studies are discussed and a call for further research within the fields is made.

2. How have project scholars discussed and analysed legal topics?

In project management literature, the most relevant discussion on legal matters concerns to the commercial aspects of projects (Turner, 1995). Papers exploring the overlap between law and

projects have covered a variety of issues, such as contracts, dispute resolution, forms of project deliveries, procurement, governance, compliance and the dark side, and specific contexts, which are briefly discussed as follows.

Contracts. One of the most discussed legal topics within the project management community is “commercial contracts”. Project collaborations and alliances have also long been discussed in project management, with a focus on contract incentives and alignment between parties (Walker, Vaz Serra and Love, 2022). The discussion revolves around the role of contracts in projects, including the impact on performance, management consideration of contract flexibility (Song *et al.*, 2018), the implications of uncertainty on contracting, and the implications for contractual risk allocation.

Dispute resolution. Another relevant perspective concerns dispute avoidance and resolution (Chaphalkar, Iyer and Patil, 2015). This field focuses on strategies for negotiating disputes during the project delivery and designing contracts that minimise the risk of disputes (Yousefi, Hipel and Hegazy, 2010). Dispute avoidance and resolution have been investigated in various contracting settings, ranging from traditional contracting to more complex arrangements like Public Private Partnerships (PPPs) (Chou *et al.*, 2016). The use of alternative forms of dispute resolution (ADR) in different industries such as construction has also been explored by project scholars through the years. (Lee, et al., 2015). For example, the adoption of new online technologies by parties involved in ADR and its implication to law and justice have also been discussed. (Ojiako *et al.*, 2018). Nonetheless, limited studies concerning the rule of law and the role of the national legal contexts in projects dispute resolution have been published.

Forms of project deliveries. There are many different *forms* of project deliveries whose formal considerations focus on contracting. Some of the most common contracting approaches in projects include traditional contracting, integrated contracting (design and delivery), management approach, and collaborative contracting, which includes Public-Private Partnerships (PPP). In project management, several papers focus on the forms of project delivery in PPPs compared to other contracting types. PPPs are a specific form of project delivery about which there is already a substantial amount of papers covering the formal aspects, including dispute resolution, contractual risk allocation, and forms of procurement (i.e. Chou *et al.*, 2016; Sainati, T. et al. (2019).

Procurement. Project management is also commonly associated with procurement agreements and arrangements. The PM literature has primarily focused on strategies for bidding to award

contracts, minimising risks and negotiating effectively during the procurement process. (Turner, 2006). The institutional environment, including regulatory requirements for environmental assessment and community engagement, is also relevant in the procurement (Babaei, Locatelli and Sainati, 2023). However, the literature on project procurement only indirectly refers to the legal dimensions. Instead, it concentrates on the procedural aspects of procurement and the selection of different contract types to comply with various commercial scenarios.

Governance. The governance of projects is an essential component of delivering projects, and contractual arrangements will help establish and guide the governance of the project as agreed upon by the parties. Governance in projects usually employs a broader perspective, which combines the formal aspects with non-formal forms of interaction between project actors, such as the role of trust and mutual cooperation. Formal governance resulting from contractual arrangements and formal institutions (Qiu *et al.*, 2019). There have also been discussions including contractual governance, project ownership, and formal governance in programs (Sainati, Locatelli and Mignacca, 2023). However, the most established discussion about formal governance is rooted in organisational theories, particularly agency (Müller and Turner, 2005) and transaction cost theory (Wang, Li and Lu, 2021) rather than in legal debates in company or public law. Project management has also addressed the issue of lock-in positions resulting from legal institutions and the resulting escalation of commitment (Juarez Cornelio, Sainati and Locatelli, 2021). Nonetheless, this literature has not engaged with the well-developed literature on corporate governance and law (Kraakman, et al, 2017)

Compliance and the dark side. In addition to the traditional commercial and contracting aspects, project compliance is an emergent discussion in project management, which has the potential to establish connections with criminal law discussions. While “the dark side” (Locatelli *et al.*, 2020, 2022) discussion focuses on the illicit phenomena and the associated problems, research on the legal remedies addressing these issues remains limited. (Lehtinen *et al.*, 2022).

Specific contexts. Finally, the majority of literature on project management with an overlap with legal themes is focused on specific industries such as the construction industry. These studies analyse the contractual complexity and the implications of multi-layered subcontracting (Wang *et al.*, 2018) in construction. They also cover design liability for construction contractors and forensic delay analysis (Grzeszczyk, Sainati and Unterhitzberger, 2022). Similarly, it addresses the role of standard forms of contracts used in construction and the contractual

implications of Building Information Modelling (Rahman and Sainati, 2021). Yet beyond construction and engineering, there is a noticeable gap in the literature concerning other contexts like IT projects, drug development, or safety-sensitive environments, which may present unique challenges and opportunities for legal research. It is also important to point out that national contexts introduce additional layers of complexity, as legal frameworks and norms vary significantly across jurisdictions, impacting how projects are governed, and disputes are resolved. In practice the project's jurisdiction is a key issue for project management professionals yet current research usually just takes this issue for granted.

While previous scholars have laid the groundwork for research on the aforementioned topics, there is a lack of in-depth legal analysis and theoretical contributions for scholars and practitioners interested in law.

2.1 Law and Projects – Why now?

Given the relevance of law and the recent limited engagement of project management scholars, we need to adapt our theoretical frameworks and data analytics to study the complex intersection between projects and law to offer relevant and impactful insights. Yet how do project scholars and legal frameworks play a pivotal role in reshaping the parameters within which projects operate, providing the necessary structure to ensure compliance, accountability, and ethical conduct? *Firstly*, legal concepts need to be taught to and considered by project scholars. *Secondly*, we need to expand research in project management, and we need to define *legal projects*. In the next sections, we discuss these aspects and the avenues for further research in this field.

3. Building the Foundations: Legal Pillars of Projects and Society

We need to understand the *legal foundations of project management* and look at projects through a legal lens. Some of the key legal aspects associated with projects include (1) the jurisdiction and source of law, (2) contract law, (3) the legal mechanisms for dispute resolution, (4) tort law and professional liabilities in projects, and (5) other interrelated topics.

These legal foundations are not meant to be exhaustive representations of those legal matters that are relevant to projects, yet they represent a good first approximation of the most relevant areas of law associated with project management. We also need to understand the legal

foundations of project management and look at projects through a legal lens, particularly in contexts where the stakes are high, such as major infrastructure projects or industries with strict regulatory oversight.

3.1 The Jurisdiction and source of law

It is essential for project scholars to acknowledge the legal system that is conditioning their studies. Project professionals find themselves subject to one of the following major legal systems, such as civil law, common law, religious law, customary law or any combination of these (i.e. Chinese law). This system will affect practitioners' and researchers' analyses. The national rule of law will also affect project delivery and the society in which they are embedded. Further, national laws directly impact society's welfare. For example, health and safety regulations for Project Management (e.g., the Health and Safety at Work Act 1974 in the UK), consolidated rules and guidelines regarding project planning risks and employee rights.

Project practitioners (i.e., the project manager and their team) are recognised as professionals in many different legal systems worldwide, and that will constrain their behaviour (Banik and May 2006). For example, England and Wales recognise construction project management as a role tied to contract administration (*Royal Brompton Hospital NHS Trust v Hammond* (No.8) (2002) 88 Con LR 1 at [23] per HHJ LLoyd QC). In England and Wales, the construction project manager shall make impartial, reasonable and objectively constructive decisions on behalf of the employer. Failure to engage a construction project manager would be a classic case of an employer being 'penny-wise and pound foolish' HHJ Wilcox in *Richard Reed v Barpo* [2000] All ER 1044 at [157]. However, beyond the construction industry in the UK, there are debates about project management as a profession around the world. It is essential for researchers to explore and embrace these differences in their studies.

3.2 Contract law

Project managers and firms must carefully understand contract law in the jurisdictions in which they are operating to draft, negotiate, and agree on contracts for their activities. These contracts are usually negotiated at the start of projects and will then be essential in the management of projects. Project management is often involved in defining the scope, schedule, and all the financial and budgetary standards of a project, leading to contracts between parties (Turner, 1995). Further, in most industries, during the project lifecycle, the project manager shall ensure

contractual obligations are diligently followed while administering and monitoring contracts. Contract design mistakes will likely lead to financial, time, and social losses.

It is important to emphasise that although project contracts might involve complex and project-specific tailored contracts, there have been attempts to standardize contracts in different sectors. For example, the construction industry has attempted for years to standardise its contracts with forms such as NEC on a UK level and FIDIC on an international level. Standardized contract forms were explored by project management scholars decades ago (Broome & Hayes 1997; Charoenngam & Yeh 1999), yet there is room for further research. Further there Lastly, we are aware that projects are not only built purely on contracts but also on the trust between parties. Losing trust will increase costs and further affect the project (Zaghloul & Hartman 2003).

3.3 When Things Go Wrong – Legal mechanism for dispute resolution

Understanding the national and transnational legal systems is also of fundamental importance for dispute resolution when projects go wrong (Yang, Chu and Huang, 2013; Lu, Zhang and Pan, 2015). Disputes can be negotiated or settled in national courts. One key point is whether the final judgment will be upheld and enforced. However, alternative dispute resolution methods exist, including negotiation, mediation, adjudication, and arbitration; exploring how they affect projects is of the utmost importance since project managers invariably face disputes in their careers.

3.4 Tort law generating professional liabilities in projects

There are legal liabilities and risks associated with the execution of any project. In most jurisdictions the project manager owes a duty of care regarding such risks and shall help mitigate them and satisfy other legal obligations, such as workplace safety. Particularly, the project manager must act with ‘reasonable skill and care’ (Abdul-Malak, Bou Hamdan and Demachkieh, 2020). This implies that the project manager needs to be able to demonstrate and document a coherent and effective risk management approach to prevent accidents and other liabilities. If the project manager fails to do so, they are legally exposed on grounds such as professional negligence and other tort liabilities. In other words, the legal phrase ‘reasonable skill and care’ means that the project manager could become liable to those who rely on the

project manager's professional service in part or whole for any damage resulting from the project manager's substandard performance.

The project manager is also exposed by activities performed by other actors (e.g., employees and sometimes sub-contractors) by means of what is called 'vicarious liability' in most countries, which concerns a situation where one person or entity is held responsible for the actions or omissions that fall under the remit of another person or entity (Lunney and Oliphant, 2013). This might get more complex when multiple subcontractors, suppliers, and other stakeholders exist (Iy, 2023).

3.5 Beyond Contracts and Tort

Many different areas of law are relevant and will also impact project management activities. For example, there are employment laws that cover anti-discrimination policies, hiring policies and work conditions (Schneider *et al.*, 2022). Intellectual property will be important when defining and protecting intangible assets, patents, trademarks and copyrights (Depoorter, Menell and Schwartz, 2019). Binding government and corporate climate pledges are growing in issues such as net zero carbon emission (Castro and El Daouk, 2023). Further legal aspects that are extremely relevant for project management activities include confidentiality agreements, data management, privacy, antitrust, criminal law like corruption and others. In this non-exhaustive list of legal areas, we can already identify a plethora of potential opportunities and problems in project management that are not addressed and might need to be researched in the future.

3.6 Legal foundations for project management

The basis of project management and legal studies are summarised in Table 1.

TABLE 1: INTEGRATION OF PROJECT AND LEGAL STUDIES

Legal Pillars of Projects and Society	Description
Jurisdiction and Source of Law	<p>Jurisdiction refers to the authority of a court to hear a case.</p> <p>Source of Law includes statutory laws (legislation), case laws (judicial decisions), and regulatory rules that govern projects.</p> <p>Understanding which laws apply based on location and type of project is crucial.</p>
Contract Law	<p>Governs the agreements made between parties involved in a project.</p> <ul style="list-style-type: none"> - Contracts outline the responsibilities, rights, and obligations of each party.

	<ul style="list-style-type: none"> - Effective contract management helps avoid disputes and ensures clear terms for project execution.
Legal Mechanism for Dispute Resolution	<p>Methods for resolving conflicts that arise during a project include mediation (neutral third party helps reach a solution), arbitration (a decision is made by an arbitrator), and litigation (legal action in court). These mechanisms help settle disputes without halting project progress.</p>
Tort Law and Professional Liabilities	<p>Tort Law deals with civil wrongs and damages that occur when one party's actions or negligence harm another. Professional Liabilities refer to the legal responsibilities of professionals (e.g., engineers, architects) to perform their duties with care and competence to avoid legal claims.</p>
Beyond Contracts and Tort	<p>Other legal considerations include:</p> <ul style="list-style-type: none"> - regulatory compliance (following industry-specific regulations), - intellectual property (rights to inventions and creative work), and - environmental laws (impact on the environment). <p>These areas can affect project planning and execution.</p>

4. Legal projects

While project management has much to learn and explore in the legal sphere, the opposite is also true. Most of the legal profession is, by all means, a project-based industry, i.e., it operates mainly through temporary endeavours. Notable examples of projects in the legal profession include legal counselling, legal proceedings (i.e., civil litigation and criminal prosecution), and the promulgation of new laws and regulations. With this respect, lawyers, judges, lawmakers, and regulators operate by portfolio projects and can benefit from ad hoc tools and methods available in project management.

Are legal projects any different than the ones typically investigated in project management? The idea of conceptualising legal projects is not new; for example, practitioners interviewed by the Association of Project Management (APM) already in 2022 promulgated the idea of a new class of projects requiring ad hoc consideration. We believe that, yes, some peculiarities define legal projects; perhaps the most relevant ones include the hyper-constrained environment and the uncertainty of the project's outcome.

In line with field practitioners (APM, 2022), we envisage two main types of legal projects: contentious and non-contentious. The former involves litigation and *other dispute resolution* methods to handle the adversarial and transactional attitudes/relationships that negatively impact projects. Project managers involved in these contentious scenarios have a mutual dependency on the adversary's choice, which aligns with the strategic games envisaged in the game theory or zero-sum engagements. Conversely, non-contentious legal projects are mainly

based on legal transactions, including contract negotiations, mergers and acquisitions, procurement activities, etc. It is also important to remember that in all legal projects, culture and mutual trust are essential since not all behaviours can be contracts.

Therefore, we define legal projects as *temporary endeavours centred on legal matters, based on a formal legal process, or both*.

Legal projects are embedded into a formal environment where the steps and the notification requirements are hyper-formalized. For instance, criminal and civil prosecutions in many countries must follow the procedures in their associated tribunals. Similarly, formal stages and scrutiny processes characterise the ratification of laws and regulations. As a result, legal projects are characterised by uncertain paths, back and forth, which are hard to model with traditional project management tools such as network diagrams and Gantt charts. Unsurprisingly, the penetration of such instruments is relatively low in the legal profession.

Another peculiarity of legal projects concerns their uncertain and contentious nature. Dispute resolution projects are not mere operative plans that should be organised rationally. They can happen in highly uncertain circumstances and adversarial counterparts. Project management studies can help legal professionals and scholars with the tools needed to develop and improve in uncertain environments their design thinking (Liedtka and Locatelli, 2023), allocation of risk, negotiation skills and complexity management among many other issues.

On the one hand, we assume managers control the project's activities. They might operate in an uncertain environment, but not as dynamic and contentious as in legal projects, in which moves and countermoves shall be considered to cope with adversaries. Legal battles, particularly alternative dispute resolutions, require a series of contingent plans (i.e. plans A, B, C) that are continuously updated. The planning style differs from the more static and endogenous control assumed in traditional project management tools. As a result, legal projects provide an arena to develop more interactive and dynamic project management techniques. A good reference point can be strategic studies in which war games blend traditional operation techniques (e.g. logistics) with a competitive game theory approach. Compared with strategic studies, legal projects are characterised by their hyper-constrained environment, so they genuinely represent a distinct class of projects.

4.1 Legal portfolios

Beyond individual projects, legal professions are also characterised by portfolios. Legal portfolios involve a collection of legal projects that are managed together (e.g. by the same entity). This is another area in which project management with their expertise on the theme of projects (Vieira *et al.*, 2024) can contribute to the successful delivery of projects by considering the bespoke nature of the legal portfolios and providing technical solutions to address their challenges.

However important, legal services are often perceived as a transaction cost in the transitions of firms. Making them more efficient can be advantageous for other clients of such services, and the legal profession itself can become more competitive and concentrate on those critical intercultural areas in which the value is generated.

5. Paving the way for the collaboration between Project and Legal Scholars

This paper has discussed the interactions between law and project management and their connections. It emphasized the importance of considering the context in which projects operate, whether in construction, IT, pharmaceuticals, or different national legal frameworks. By understanding these nuances, we can better address disputes and governance challenges in large, complex projects involving multiple stakeholders. Additionally, we have reviewed the current literature and discussed legal foundations for project management, offering a definition of legal projects. Finally, we have identified the areas with the potential to drive the research agenda forward. As we continue to explore this interdisciplinary space, future research should focus on expanding the discussion to include underrepresented contexts and developing a comprehensive understanding of how legal principles can inform project management practices across different industries and legal environments.

We conclude by emphasising the critical advantages of bridging legal and project management, underscoring the relevance of legal issues for projects and society at large. We delve into the essential aspects that project scholars should consider when delving into legal studies, such as the influence of laws and regulations on projects, the significance of legal perspectives in contracts, the exploration of dispute resolution mechanisms, legal remedies in case of litigation, and the issue of legal liability for project-based entities and practitioners.

Moreover, we *are introducing a new* category of legal projects and portfolios, describing their unique characteristics compared to other project types and providing a formal definition for

them. Legal projects are distinctive due to their highly formal and constrained environment and adversarial, uncertain transactions. They can be continuous (e.g., contract litigation) or non-contentious (e.g., contract negotiations). We recommend using customized project management tools and methodologies to suit these specialised projects.

This is a call for a new community of research on legal issues in projects, which integrates the insights and research questions we outlined in this paper and emphasizes the importance of interdisciplinary collaboration between legal and project management scholars.

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Highlights

- Project management research has considered legal themes, such as contracts, delivery, disputes, governance, procurement and compliance.
- However there has been limited research on the topics in the last decade and engagement with legal scholars and professionals.
- Previous legal and project management research is described and it is suggested what should be the future foundation of law and projects research.
- A concept of legal projects and portfolios is proposed.
- A new line of inquiry that explores how project management can influence the legal profession and research and vice versa is suggested.

Declaration of interests

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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