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INTEGRATING SOCIO-LEGAL STUDIES INTO THE LAW CURRICULUM | Edited by Caro

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PALGRAVE MACMILLAN SOCIO-LEGAL STUDIES

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Caroline Hunter
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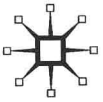

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Contents

Part II Socio-Legal Studies in the Foundation Subjects

1

Introduction: Themes, Challenges and Overcoming Barriers

Caroline Hunter

The Nuffield Inquiry on Empirical Legal Research, *Law in the Real World: Improving our Understanding of How Law Works*, published in November 2006, identified a national lack of capacity in empirical legal research. A number of reasons were canvassed for this, including the historical domination of law schools by theoretical and doctrinal-based research and the constraints of the professionally influenced curriculum. Thus:

> Lacking a broad perspective on legal inquiry and constrained by a lack of skills and familiarity with empirical research, when law graduates who do consider an academic career choose postgraduate courses and topics for doctoral research, they naturally gravitate towards doctrinal topics and issues in law. (Nuffield Inquiry, 2006, para. 87)

The report concluded that there was a need to support initiatives to address the needs of potential legal empirical researchers at all stages of their careers, including at the undergraduate level.

In fact, there is little data about the extent of the use of empirical research in the undergraduate law curriculum. In order to try and fill in some of this lack of information the Nuffield Foundation funded a small research project comprising an online questionnaire and one-day seminar. The questionnaire sought to gather data on:

1 whether undergraduates are being taught skills that would enable them to either carry out or critique empirical work;
2 whether they are actually carrying out empirical projects of their own;
3 whether empirical work figured in other ways in teaching and assessment.

The survey was not intended to map where empirical research is and is not being used, but rather to engage with those who have included it in the

curriculum in order to be able to identify the range of practice. Thence, the intention was to disseminate examples of interesting and innovative practices to others who may be interested in incorporating empirical research into their teaching.

The questionnaire was available online between January and May 2009. Invitations to take part (and reminders) were sent out through the Socio-Legal Studies Association, the Society of Legal Scholars and the Association of Law Teachers. Twenty-seven responses to the questionnaire were received, although three of these simply declared that there were no relevant modules at the particular institution. Seventeen different law schools were represented. As mentioned, the questionnaire was primarily intended to identify a range of practice rather than engage in a mapping exercise. Indeed, as some responses were specifically solicited, it can in no way be thought of as representative.

While it unearthed some interesting modules and practices, some of which were discussed in the subsequent seminar and in this volume, there did not seem to be a plethora of examples. Indeed, it seemed to point (if no more) towards the same conclusion as Bradney (2010, p. 1028) that there is little teaching of empirical legal research in UK law schools.

The second part of the project, the seminar[1] was held in July 2009 at the University of York. It provided an opportunity to discuss further some of the issues around the teaching of empirical legal research. Some of the discussions from the seminar are reflected in the chapters in this book, which seeks to take that approach forward, but situate it in the wider context of socio-legal studies, rather than focusing purely on empirical legal research.

The dichotomy between doctrinal law and other approaches to understanding law is perhaps not as stark as it once was. The chapters in this volume indicate the varied extent to which a socio-legal approach is already ingrained in the teaching of different parts of the law curriculum. Thus, Simon Halliday in his review of public law states 'a principal contention of this chapter is that many aspects of what could easily be called a "socio-legal" approach have long been integrated into the study of public law in the UK' (p. 143). Others, however, point to teaching traditions (e.g. in property and trusts and European Union (EU)) where a black-letter approach still tends to dominate.

That tradition nonetheless would seem to be on the decline in UK law schools. Cownie (2004) has noted that UK legal academics are as likely as not to consider themselves as socio-legal in their *approach*. What such approaches mean in practice may, of course, be very variable. Definitions of the socio-legal can be hard to pin down. The oft-cited Economic and Social Research Council (ESRC) definition of socio-legal studies (ESRC, 1994) provides as good

1 Supported by the UK Centre for Legal Education (UKCLE).

a starting point as any: 'an *approach* to law' which 'covers the theoretical and empirical analysis of law as a social phenomenon' (emphasis in original). An even more inclusive view can be seen in the current strap-line of the Socio-Legal Studies Association: 'Where law meets the social sciences and humanities'. The breadth of such an approach is reflected in the approaches in this volume. Thus, there is an interest in law as 'text' seen in Matthew Weait's discussion of transcripts from criminal trials, in Rosemary Auchmuty's discussion of the importance of history in teaching property and equity, and in Karen Devine's approach to tort cases as stories.

The chapters in this book make the case for the inclusion of a broad approach to the socio-legal and its incorporation into the undergraduate curriculum. However, such an approach does not mean that empirical legal research will necessarily be encompassed within it. Indeed, Cownie (2004, p. 57) suggests that a number of academic lawyers who describe themselves as black letter do so because they associate socio-legal approaches with carrying out empirical research. Of course, the two are not necessarily coterminus, in that a socio-legal approach to law does not have to be empirical. Although the Nuffield Inquiry (2006, para. 183) concluded that:

> it is important now to reframe the issue as one of capacity to carry out empirical research, not as one of 'socio-legal studies'. What is missing is not text-based studies that allude to law's social context, but studies of how legal processes, outcomes or structures actually are in the 'real world',

the approach taken in this book is that the two cannot be disaggregated. Thus, in order to understand what can be gained from an empirical study, students must be able to situate this in the broader theoretical frames of socio-legal studies. Empirical legal research cannot sit in a vacuum, it will proceed out of a socio-legal approach to teaching. Thus, in this volume we have not sought to isolate it, but rather to examine how, in a socio-legal approach to teaching, learning about empirical legal research may also emerge.

What is meant by empirical legal studies is, like the definition of socio-legal studies, open to debate. The Nuffield Inquiry provided a short definition which defined empirical legal research as: 'the study through direct methods of the operation and impact of law and legal processes in society, with a particular emphasis on non-criminal law and processes'.[2] Cane and Kritzer (2010) note how a lively interest in empirical legal research has emerged, particularly over the last 20 years or so, in both the USA and the UK. While the empirical legal studies movement in the US has had more of a focus on quantitative research, Cane and Kritzer (2010, p. 1) refer to a 'healthy

2 This was adapted from Baldwin and Davis (2003).

pluralism of empirical approaches to the study of law and legal phenomena'. This includes both quantitative and qualitative social science.

In this volume we have also taken a broad pluralistic approach. Examples and suggestions include the analysis of trial documents, the collection of quantitative data, and reference to a wide range of very diverse existing empirical studies.

Scope

The book is divided into two parts. In the first part we consider the practices in three particular modules in Bristol, Leeds and Sheffield Universities. The first two are examples of standalone modules that seek to address socio-legal studies and include a specific engagement with empirical legal research. The third provides a discussion of an assessment method that requires students to engage in such research. All three chapters provide practical examples of how such modules/assessments may be devised, while also reflecting on the problems and limitations they present.

The second part concentrates on what are referred to as the qualifying law degree (QLD) subjects. This focus comes out of the importance of such modules to the undergraduate curriculum, and the disappointment that the initial survey found only one respondent who indicated that empirical research was used in a core QLD module (property). In addition, none of the modules mentioned in the survey were taught in the first year of the undergraduate degree – where QLD subjects predominate.

It is worth considering further what can be offered by each of these approaches – the standalone module and incorporation into the QLD subjects – and their limitations.

Standalone modules and dissertations

The questionnaire elicited details of a number of standalone modules specifically addressing the sociology of law or socio-legal studies. At the seminar, a discussion of the types of sociology of law modules that are offered suggested that these may not include a large element of empirical work, but tended to be more theoretically based.

Another form of standalone module that did not have a specific subject content was the 'law-in-action' type module. Two were mentioned in responses to the questionnaire as including an empirical element. Such modules involved students working with community and other groups, often including some form of action research. It was noted in a response to the questionnaire that in the module at Keele, which was only in its first year, 'empirical evidence was drawn on regularly by the students in preparing their research projects'.

The two chapters in Part I focusing on standalone modules both describe examples of socio-legal modules that address empirical legal research. They provide a contrast: one (Leeds) is a compulsory module to all second-year students and the other (Bristol) is an optional module for third-year students. In Leeds, the module developed out of a need to prepare students for their compulsory third-year dissertation. Peter Vincent-Jones and Sarah Blandy describe how the module has evolved over a ten-year period, away from what might be recognized as a traditional social science 'methods' module (taught by staff from outside the law school) to one designed to equip 'students with critical skills necessary to evaluate the arguments of academic writers, drawing on qualitative/quantitative research, in specific journal articles selected as case studies in the use of socio-legal research methods' (p. 48). This 'critical consumer' approach enables students to critically use existing empirical studies in their final-year dissertations. Vincent-Jones and Blandy note that:

> Although the majority of law students at Leeds continue to base their final-year dissertations on what might be described as 'doctrinal' subject matter, a significant minority choose topics which require at least some discussion of 'law in society', and a number of dissertations are genuinely socio-legal. (pp. 50–1)

The dissertation, it could be argued, provides a real opportunity for students to take a socio-legal approach and even to undertake some empirical research. Nonetheless, the seminar discussion provoked quite a debate on the 'problem' of empirically based dissertations, no doubt reflected even in the discouragement at Leeds of students undertaking their own empirical studies. Reflecting on her experience at Westminster University, at the seminar Sylvie Bacquet concluded that there were a number of problems in students undertaking empirically based dissertations. First is the absence of suitably trained supervisors and the clear reluctance of some academics to engage in empirical research. Second, there are often ethical constraints. Finally, undergraduate researchers often have problems of credibility in accessing data subjects. As well as these barriers that presented themselves to students, there could also be problems for students who were unable to assess whether empirical research was suitable to their project or who made unrealistic assumptions about the scope of empirical projects they could undertake (e.g. planning to interview victims of honour crimes).

A number of these problems were also reflected in a comment made in response to the questionnaire from an academic at a different institution:

> Empirical research is not encouraged but allowed for purposes of completing a final year dissertation where such enquiry is