

# Theory and Methods Course in Socio-Legal Research

## Sessions for probationary research students

The aims of this part of the course are to:

1. Help students understand the intellectual origins of socio-legal studies and how the field relates to doctrinal scholarship and critical legal studies.
2. Introduce students from both law and social science backgrounds to the contributions of sociology, politics, anthropology and economics to understanding the role of law in society.
3. Familiarise students with seminal and contemporary debates in socio-legal studies.
4. Enable students to situate their own research projects within the context of these debates and to identify its contribution to wider socio-legal debates.
5. Allow students to critically assess and compare key empirical methods for the collection and analysis of data.

**Seminars take place – *unless otherwise stated* – on Mondays, 2.00 - 4.00 pm in Seminar Room A.**

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## MICHAELMAS TERM

Sessions in Michaelmas Term provide an introduction to key approaches and debates in contemporary socio-legal studies. The discussions will explore the nature of law, the various forms it takes, and the different roles it plays in a variety of social settings and relationships.

The readings listed here are essential preparation for the seminars. Please see the 'Readings on theory and methods in socio-legal research' for key general texts and additional resources.

### **WEEK 1: Monday 12<sup>th</sup> October, Prof. Linda Mulcahy Histories of socio-legal studies**

Socio-legal studies has many histories. This seminar will open with a consideration of the notion of a discipline and consider the extent to which law is distinguishable from other fields of study. It will go on to consider how socio-legal approaches to the study of law can be distinguished from other schools of thought within the legal academy. This will involve us looking at doctrinal, critical and socio-legal traditions and the extent to which the 'othering' of doctrinal law is essential to law and society scholarship. We will also consider the extent to which socio-legal approaches are accurately treated as being synonymous with empirical approaches to the study of law.

#### **Essential reading:**

Bradney, A. 1998. 'Law as a parasitic discipline', *Journal of Law and Society*, 25(1): 71–84.

Silbey, Susan and Austin Sarat. 1987 'Critical Traditions in Law and Society Research', *Law & Society Review* 21 (1): 165–174

**WEEK 2: Monday 19<sup>th</sup> October, Prof. Fernanda Pirie**  
**Non-state laws: anthropological approaches**

How is law to be identified outside the formal legal systems of the nation state? What does it even mean to talk of 'non-state law'? Should it be identified by its sources, its functions, or its form? This seminar discusses debates about the nature of law generated by anthropological examples from around the world, including what is promoted as 'legal pluralism', and the ways in which they can be used to reflect upon what law is.

**Essential reading:**

Moore, Sally Falk. 1973. 'Law and Social Change: the Semi-Autonomous Social Field as an Appropriate Subject of Study', *Law & Society Review* 7: 719–46.

Roberts, Simon. 2005. 'After government: on representing law without the state', *Modern Law Review* 68: 1–24.

**WEEK 3: Monday 26<sup>th</sup> October, Prof. Bettina Lange**  
**Legal and socio-legal conceptions of law**

Is law a regulatory tool or a knowledge regime? This session reflects upon different ways in which we can conceptualize law for the purposes of socio-legal research. First, we will critically analyse an instrumentalist conception of law, which perceives law as a powerful normative order that can regulate social actors' behaviour and facilitate social change. This is a conception of law that chimes with lawyers' understanding of legal ordering. Second, we will contrast a symbolic understanding of law. Here law does not just encompass social practices, but is a particular way of representing and understanding the social world, a distinct knowledge regime. We will discuss how this idea was developed by the French philosopher Michel Foucault. This session will also provide an opportunity to think about different ways of conceptualizing law in the context of race and law.

**Essential reading:**

Valverde, Mariana. 2010. 'Specters of Foucault in Law and Society Scholarship', *Annual Review of Law and Social Sciences* 6: 45–59.

Walker, J. 1997. *Race, Rights and the Law in the Supreme Court of Canada: Historical Case Studies*, ch. 1. Wilfrid Laurier University Press.

**Week 4: Monday 2<sup>nd</sup> November, Prof. Linda Mulcahy**  
**Lawyers as Translators**

Research on lawyers has produced a rich stream of socio-legal publications. The notion of 'lawyer' and 'legal profession' have been identified as folk concepts, which vary across jurisdictions and types of legal work. A consistent element in the work that lawyers do is their claim to possess rarefied or specialist knowledge. This has led to them being characterized as 'translators'. In this session we will discuss the extent to which the process of 'translation' can ever be objective or morally neutral. This gives rise to a series of question about whose interests lawyers protect.

**Essential Reading:**

Cunningham, C.D. 1991. 'Lawyer as translator representation as text: towards an ethnography of legal discourse', *Cornell Law Review* 77: 1298–.

Felstiner, W.L. 2001. 'Synthesising socio-legal research: lawyer-client relations as an example', *International Journal of the Legal Profession* 8(3): 191–201.

**WEEK 5: Monday 9<sup>th</sup> November, Prof. Fernanda Pirie**  
**Law beyond the state**

Historical examples of mercantile relations indicate that laws have transcended state boundaries for centuries. The modern equivalent are the many conventions, regulations, standards, and codes made by commercial organisations, financiers, internet regulators, international sports federations, and those promoting human rights and transitional justice. Some are the subject of international treaties signed by state representatives, but others are not. Given the lack of formal enforcement mechanisms in most cases, their status as law is contested, but they obviously remain significant. How might we understand these empirical phenomena? In what sense are they forms of law? There is a growing interest in this 'transnational law' in law schools, but how might we study it as socio-legal scholars?

**Essential reading:**

Pirie, Fernanda, 2013. *The Anthropology of Law*. OUP, (Ch. 8).

Koskenniemi, Martii, 2011. What is international law for? In M. Koskenniemi (ed.) *The Politics of International Law*. Oxford: Hart, and in M.D. Evans, 2003, *International Law*. OUP.

**WEEK 6: Monday 16<sup>th</sup> November, Dr. Chris Decker**  
**Key discussions in law and economics**

This session will provide a general overview of the historical development and main research agendas of the different strands of the law and economics movement. It will trace this development from early scholarly interactions, through the Historical and Institutional schools, and the 'Chicago' law and economics movement, to the more recent 'new institutional' and 'behavioural' law and economics approaches. The central research themes of each of these schools will be considered, along with the legacy of each school in terms of both theory and methodology. In so doing, the session will explore some of the main areas where economics and law have become practically intertwined in scholarly work as well as in practical policy contexts, such as regulation; antitrust and consumer behaviour and economic sociology.

**Essential reading:**

Mackay, E. 2000. 'History of law and economics'. In *Encyclopaedia of Law and Economics*, B. Bouckaert and G. De Geest (eds), Vol I. Cheltenham: Edward Elgar, pp. 66–99.  
<http://encyclo.findlaw.com/0200book.pdf>

Sunstein, Cass R. and Richard H. Thaler. 2003. 'Libertarian Paternalism Is Not an Oxymoron', *The University of Chicago Law Review* 70: 1159–1202.

**WEEK 7: Monday 23<sup>rd</sup> November, Prof. Linda Mulcahy**  
**Feminisms in socio-legal research**

Socio-legal studies has long drawn on feminist discourse and the notion of marginalized legal lives. Like post-colonial theory, feminist legal scholarship compels us to examine the ways in which formal law has been complicit in the production of hierarchy and inequality. It has also drawn attention to the ways in which gendered thinking about law and authority, and the very notion of an 'impartial' judge, are constantly constructed and re-constructed. In this seminar we will examine a seminal piece written by sociologist Carol Smart. We will go on to look at the work done by the Feminist Judgements project, whose members took it upon themselves to re-write the 'missing' feminist

judgement in leading decisions. In contrast to the majority of legal scholarship, this project imagined how the law could have been decided differently if seen from a feminist perspective. The project threw up numerous questions about what it means for a judgment to be feminist, which we will explore in the course of discussion. We will also begin to look at the impact that being a feminist has on how you undertake socio-legal research.

**Essential reading:**

Bano, S. 2005. 'Standpoint, difference and feminist research', in R. Banaker R. and M. Travers (eds), *Theory and Method in Socio-Legal Research*. Oxford: Hart.

Adjin-Tettey, E. et al. 2008. 'Postcard from the edge (of empire)', *Social & Legal Studies*, 17: 5–38.

Hunter, R. 2019. 'Feminist approaches to socio-legal studies', in *Routledge Handbook of Socio-Legal Theory and Methods*.

**WEEK 8: Monday 30<sup>th</sup> November: Prof. Linda Mulcahy  
Race and Law**

This seminar will continue some of the discussions on structural inequality that were covered in week 7. Race has long been of interest to socio-legal scholars in the sense that they are interested in different legal cultures and legal pluralism. In this session we will be looking at the ways in which law, legal education and legal research have been complicit in the production of hierarchy and discrimination. The articles we will read begin to reveal the ways in which people of colour are 'othered' or marginalised through academic and societal practice.

**Essential reading:**

Harrington, J. and Manji, A. 2017. 'The limits of socio-legal radicalism: social and legal studies and third world scholarship', *Social & Legal Studies*, 26(6): 700–15.

Crenshaw, K. 1990. 'Mapping the margins: intersectionality, identity politics, and violence against women of color', *Stanford Law Review*, 43: 1241–.

Kennedy, D. 1982. Legal education and the reproduction of hierarchy, *Journal of Legal Education*, 32(4): 591–615.

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**HILARY TERM**

In these seminars we will discuss the practical techniques available to carry out socio-legal research and the ways in which they relate to the theoretical approaches you might take. We will consider which questions you can ask and what methods can help you to answer them. During the last session of the first term, CSLS students who have reached an advanced stage of their projects or who have already completed their theses will share some of their experiences with you. They will talk informally about the challenges that they faced and the bridges they had to cross.

**WEEK 1: Monday 18<sup>th</sup> January, Prof. Marina Kurkchiyan and Prof. Florian Grisel  
Introduction: the qualitative-quantitative spectrum**

The session will provide a general survey of the social and philosophical roots of the various techniques available for data collection and analysis. Particular attention will be paid to the contested issues in social science research, such as: what are we trying to achieve when we are

engaged in research activities? Do qualitative and quantitative approaches have equal claims to be considered 'scientific'? When we decide on which methods to use in collecting the information we need, what assumptions are we making and what do they imply? What philosophical approaches do these assumptions rest upon? What do the differences between the various approaches entail for the interpretation of the nature of knowledge and truth? Finally, having surveyed the dynamic interplay between theoretical concepts and empirical data, the discussion will stress the importance of constructing a conceptual framework that will ensure the consistency and integrity of a research project.

**Essential reading:**

Banaker, R. & Travers, M. 2005. 'Law, Sociology and Method', in Banaker R. & Travers M (eds), *Theory and Method in Socio-Legal Research*. Hart. pp. 1–27.

Adler, M. 2008. 'Can tribunals deliver justice in the absence of representation?' Paper presented at the Legal Services International Conference, Greenwich

Robson, C. 2002. *Real World Research*. Blackwell Publishing. Part I, pp. 3–77.

**WEEK 2: Monday 25<sup>th</sup> January, Prof. Linda Mulcahy**

**Sampling**

This session offers a basic introduction to sampling. Many of us begin with a list of all the people it would be useful to interview or survey, or an aspiration to conduct lengthy ethnographic in two fieldwork sites. In reality we rarely have the time or resources to collect all the data we would like. In other instances, it may be very difficult to get access to raw data. This means that we often have to make choices. It is important to develop a sampling frame that justifies the choices we have made and how we have prioritised the different characteristics of those you want to research. This often helps us to narrow down our research question and to prioritise certain issues. Choices about who or what we include in our sample are critical as they can have a large impact on the data we generate and its generalisability. This is equally true of a comparative study of two distinct legal cultures or the types of legal judgements we choose to analyse as it is of a large scale study.

**Essential Reading:**

Bryman, A. 2015. 'Sampling in quantitative research' (ch. 8) and 'Sampling in qualitative research' (ch. 18), in *Social Research Methods*, Oxford OUP.

[Please note: The OUP website has some useful additional learning resources linked to the book, including multiple choice questions where you can check your understanding, a glossary, datasets from the book, etc.]

Becker, Howard S. 2014. *What About Mozart? What About Murder? Reasoning From Cases*. Chicago: University Press.

**WEEK 3: Monday, 1<sup>st</sup> February, Prof. Linda Mulcahy**

**Interviewing**

In this seminar we will be looking at one of the most popular forms of data collection, the interview. We will consider a broad range of approaches to interviewing as well as the different ethical and practical issues around interviewing 'elites' and 'everyday' people. This week is the first in our series of 'Masterclasses' led by experienced empirical researchers. The class will be led by Professor Paul Rock, who has substantial experience in a range of methods including ethnographies and qualitative interviews. Paul has recently finished writing the 'Official History' of Criminal Justice in the England and Wales, and will reflect on his methodologies of combining elite unstructured interviews with

archival work. For further details of Paul's extensive range of research and publications see:  
<http://www.lse.ac.uk/socialPolicy/researchcentresandgroups/mannheim/staff/rock.aspx>

**Essential Reading:**

Bryman, Alan. 2015. 'Interviewing in Qualitative Research' in *Social research methods* (5<sup>th</sup> ed.). Oxford: University Press

or

Silverman, D. 2015. 'Interviews' in *Interpreting qualitative data*, (5<sup>th</sup> ed.) London: Sage.

Halliday, S. and P. Schmidt, P. 2009. 'Patricia Ewick and Susan Silbey and The Common place of Law', in *Conducting law and society research: reflections on methods and practices* (ch. 19) Cambridge University Press.

**WEEK 4: Monday 8<sup>th</sup> February, Prof. Fernanda Pirie**  
**Ethnographic Methods**

Participant observation is a key technique of ethnographic socio-legal research methods. It is a type of research that could be regarded as diametrically opposed to the collection of quantitative data. This relates not only to the methods but to the types of questions that can be answered, the research design and the subsequent analysis of data. In the seminar we will discuss the practical issues of undertaking participant observation, but we will start by considering the how participant observation relates to other types of research and the continuum between quantitative and qualitative methods that were discussed in the first week. To this end you should do some reading on the nature of ethnography and participant observation and consider how your own project may be placed on the scale between quantitative and ethnographic methodologies. You should also read a case study about participant observation and anticipate whether you might encounter any similar practical issues in your own research.

**Essential reading:**

Nader, Laura. 1986. 'From anguish to exultation', in P. Golde (ed.) *Women in the field*.

For theories of research methods, including participant observation, the following have reasonably good summaries:

Punch, K. F. 2005. *Introduction to Social Research: quantitative and qualitative approaches*.

Hammersley, M. and P. Atkinson. 1995. *Ethnography: principles in practice*. [Ch 1]

**WEEK 5: Monday 15<sup>th</sup> February, Prof. Linda Mulcahy and Prof. Bettina Lange**  
**Analysing qualitative data**

Research anchored in empirical data as well as theoretical research that builds on a critical analysis of previous, including empirical, studies, has made an important contribution to socio-legal scholarship. Hence, whatever your research, you will need to engage with the question of how empirical data about law and society phenomena can be analysed. This seminar provides an introduction. It draws attention to the ways in which prior theoretical assumptions about social and legal worlds, a theme discussed during the Michaelmas Term sessions, can shape approaches to qualitative data analysis. More practically, it will introduce you to discourse analysis and computer aided analysis. How do socio-legal scholars approach the data they have gathered through observation, interview and other qualitative methods? Much of the analysis and writing will demand engagement with academic literature and wider themes and debates, which you will need to discuss

directly with your supervisor. Here, we consider the initial task of sorting what often seems to be a mass of disorganized and unconnected notes, interviews, and observations. Is it useful to 'code' data? How is this best done and to what ends? Or are there other ways of beginning to analyse and write?

**Essential reading:**

Bryman, Alan. 2015. 'Qualitative Data Analysis', in *Social research methods*, ch. 24, (5<sup>th</sup> ed.) Oxford University Press.

or

Silverman, D. 2015. 'Data Analysis', in *Interpreting qualitative data*, (5<sup>th</sup> ed.). London: Sage

Hartog, Hendrik. 2004. 'Romancing the quotation' in A. Sarat (ed.), *Law in the liberal arts*. Cornell University Press.

**WEEK 6: Monday 22<sup>nd</sup> February, Dr. Chris Decker and Prof. Florian Grisel**

**The dilemmas of working with quantitative data**

In the course of our research most of us rely on quantitative data, published statistics or attempt to count things even if we are doing qualitative research. In a world in which 'big data' is increasingly being discussed, it is important for us to understand the provenance of large data sets and to be able to judge the credibility of published data sets or those made available for secondary analysis.

Without a basis knowledge of statistical significance, univariate, bivariate and multivariate analysis we cannot attempt to judge the credibility of published research. In this session we will look at some of the terms and models that are commonly used by statisticians and go on to consider the ways in which 'big data' impacts on the world of socio-legal studies.

**Essential Reading:**

Bryman, A. 2015. 'Secondary analysis and official statistics' (ch. 10) and 'Quantitative data analysis' (ch. 11), in *Social Research Methods*, Oxford: OUP.

Gandomi, A. and Haider, M. 2015. 'Beyond the hype: big data concepts, methods, and analytics'. *International journal of information management*, 35(2): 137–144.

Background Viewing:

Dancing statistics: 'Correlation' <https://www.youtube.com/watch?v=VFjaBh12C6s>

Dancing statistics: 'Frequency' <https://www.youtube.com/watch?v=dr1DynUzjq0>

Dancing Statistics: 'Variance' <https://www.youtube.com/watch?v=pGfwj4GrUIA>

**WEEK 7: Monday 1<sup>st</sup> March, Dr. Lena Rose**

**Ethical issues and CUREC procedures**

While every researcher looks forward to finalising the often-complicated institutional ethics processes for their study, ethical questions do not simply end with ethics approval. Drawing insights from a chapter of Lareau's *Unequal Childhoods* (2011), along with Mark Israel's introduction to ethics in socio-legal research, this session will reflect on the on-going moral and ethical considerations that take place before, during, and after undertaking empirical research. It will include guidance on how to identify possible ethical issues and negotiate institutional ethics requirements, including questions of anonymity, privacy, research data management as well as power relationships in the field.

**Essential Reading:**

Israel, Mark. 2017. 'research ethics and integrity in socio-legal studies and legal research', *Research Methods for Law*, 180.

Lareau, Annette. 2011. 'Reflections on longitudinal ethnography and the families. Reactions to unequal childhoods', in *Unequal Childhoods: Class, Race, and Family Life*, 312–60. University of California Press.

**WEEK 8: Monday 8<sup>th</sup> March, Dr. Kira Allman and others**  
**Experiences of doing field research**

In this session two or three of the Centre's senior doctoral students will be invited to share with the group their experience of conducting empirical research and discuss the problems that they have encountered in the final process of writing a full thesis draft. They will reflect upon the challenges that they have faced at the various stages of advanced research, how they have overcome them, and what lessons they have learned during the implementation of the project that they envisioned at the outset three years before.

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**TRINITY TERM**

During the first three weeks of the Trinity Term each student will be given an opportunity to make a presentation of her or his project before the Centre Fellows and other students and to receive constructive feedback. We expect the occasion to be an account of 'work-in-progress' in a congenial setting. You are also expected to attend the presentations of your fellow students and participate in the discussions. They are designed to help everyone to focus their research project and to prepare for the QT assessment.

**WEEK 1, Monday 26<sup>th</sup> April**

**WEEK 2, Monday 3<sup>rd</sup> May**

**WEEK 3, Monday 10<sup>th</sup> May**

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**Sessions for advanced students**

The Centre will organise a series of ad hoc sessions for students writing up their theses. The aim of these sessions is to discuss the difficulties and challenges of the later stages of the thesis-writing process and to allow students to share ideas and learn from the experiences of both other students and fellows.

**Michaelmas term, date tbc**

**The final stages**

This session will discuss the last stages of thesis preparation, up to and including submission and viva exam. It is primarily intended for students who have already passed through their Confirmation of Status.

**Hilary term, date tbc**

**Writing up and analysing data**

How do you start organising your data and writing it up? This session will discuss the early stages of writing up. It is primarily intended for students in their third year, who have recently returned from fieldwork or who have almost finished gathering their data.

**Trinity term, date tbc**

**Shaping a thesis and preparing for the Confirmation of Status**

New challenges arise as you finish writing up your data, writing initial drafts of chapters, and start preparing for the Confirmation. This session will discuss how you plan the final shape of your thesis and how you present the relationship between your empirical data and broader theoretical themes and debates. It is primarily intended for third-year students.

**Additional sessions for all students**

**Dr. Kevin Grecksch, Trinity term, Mondays, 24<sup>th</sup> and 31<sup>st</sup> May, 2–4.30pm**

**Scenario-building and analysis**

This is a qualitative method involving stakeholders and engaging them in unconstrained blue-sky thinking about the future. The aim is to develop scenarios for future developments. It is useful in cases where there is good knowledge regarding how a certain system works but an ambition to explore the consequences of alternative developments. Using a recent example, we will discuss the benefits of the method, what it entails, potential problems and in what cases it makes sense to apply the method. We will also do a scenario-building exercise applying a real-world case.

**Essential Reading:**

Börjeson, Lena, et al. 2006. 'Scenario Types and Techniques. Towards a User's Guide', *Futures* 38: 723–39.

De Jouvenel, Hugues. 2000. 'A Brief Methodological Guide to Scenario Building', *Technological Forecasting and Social Change* 65: 37–48.

Grecksch, Kevin. 2017. 'Resilient drought and water scarcity management in England and Wales in 2065', *Scenario Workshop Report*. Oxford: Centre for Socio-Legal Studies. Available here: <https://www.law.ox.ac.uk/research-and-subject-groups/governance-water-scarcity-and-drought-uk>