

# Theory and Methods Course in Socio-Legal Research

The aims of this course are to:

1. Help students understand the intellectual origins of the socio-legal studies movement and how it relates to doctrinal scholarship and critical legal studies.
2. Introduce students from a law and social science background to the contributions of sociology, politics, anthropology and economics to understanding the role of law in society, and thus to highlight the various ways in which law contributes to the governance of societies.
3. Familiarise students to seminal and contemporary debates in socio-legal studies, including discussions about the nature of law.
4. Enable students to situate their own socio-legal research project within the context of these debates and to begin to identify the contribution of their specific project 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 the CSLS Meeting Room, No. 341.**

## **MICHAELMAS TERM**

Sessions in Michaelmas Term are intended to provide an introduction to a selection of key approaches and debates in contemporary socio-legal studies. The discussions will explore the nature of law and the various forms it takes in a variety of social settings and relationships. Understanding the nature of different theoretical and disciplinary approaches to the study of law will equip you with the perspective necessary to pose questions that are relevant to the field, and to appreciate the range of different ways in which you might explore them. The overarching objective of the term is to empower you to ground your project in the socio-legal field, while enabling you to exercise as much choice as possible about how you frame your project intellectually.

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## **WEEK 1: Monday 14<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 disciplines. 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**

Pound, R. (1910), 'Law in the books and law in action', *American Law Review* 44(1): 12–36.

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

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

**WEEK 2: Monday 21<sup>st</sup> October, Prof. Marina Kurkchiyan**  
**Law and social sciences**

This session deals with approaches that have been developed to explain how society is organised, how various social forces ensure its coordinated functioning, and which institutions maintain its stability. These are fundamental questions in social science, and the debate about each of them is supported by a vast body of academic literature, which develops an assortment of theoretical models. Whichever approach is taken, it will affect, either implicitly or explicitly, the way in which the nature of law is understood and its role in organising social order. During the session we will analyse various theories and link their interpretations of what law is to the larger viewpoints of social philosophy. We will then discuss whether the models have relevance to empirical reality, whether different societies are built upon different models of social order, whether the maintenance of social order is a fixed process or an evolving one, and the implications of all these possibilities for the analysis of law in a specific social context.

**Essential reading:**

Cotterrell R. 2006. 'Law and Social Theory', in *Law, Culture and Society*. Ashgate, (Ch 1).

Hunt A. 2002. 'The Problematisation of Law in Classical Social Theory', in Banakar R. & Travers M. (eds.) *An Introduction to Law and Social Theory*, Hart, pp. 13–31

Delanty G. 1999. 'The Foundation of Social Theory: Origins and Trajectories', in Turner, B S. (ed.) *The Blackwell Companion to Social Theory*, pp. 19–71.

**WEEK 3: Monday 28<sup>th</sup> October Prof. Linda Mulcahy**  
**Feminism 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 ways of thinking about law, 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 Carol Smart, a sociologist who is one of the founding members of the journal *Social and Legal Studies*. We will go on to look at the work done by the Feminist Judgements project, which was the second of its kind in the world. The feminists engaged in the project took it upon themselves to re-write the 'missing' feminist judgement in leading decisions. In contrast to the majority of legal scholarship which rarely deals with classic legal texts such as judgements, 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:**

Smart, C. 1992. The woman of legal discourse. *Social & Legal Studies*, 1(1): 29–44.

[Rosemary Hunter](#), [Clare McGlynn](#), [Erika Rackley](#) (2010) *Feminist Judgments: From Theory to Practice*, Oxford: Hart Publishing, (Ch. 1).

Anderson, K. Armitage, S. Jack, D. and Wittner, J. 1987. 'Beginning where we are: feminist methodology in oral history', *The Oral History Review*, 15(1): 103–127.

**WEEK 4: Monday 4<sup>th</sup> November, 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 5: Monday 11<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 by some, but they obviously remain significant. How might we understand these empirical phenomena? In what sense are they forms of law? And how might we study them as socio-legal scholars?

**Essential reading**

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

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

**WEEK 6: Monday 18<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), Volume I. Cheltenham: Edward Elgar, pp. 66–99.  
<http://encyclo.findlaw.com/0200book.pdf>

Sunstein, C. and R. Thaler. 2003. 'Libertarian Paternalism Is Not An Oxymoron', *University of Chicago Law Review*. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=405940](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=405940)

**WEEK 7: Monday 25<sup>th</sup> November, Prof. Linda Mulcahy**

**Geographies of law**

When lawyers think about the spaces in which law is performed they tend to think of it as neutral. It is frequently assumed that both the experience and outcome of legal proceedings would be the same wherever they are conducted. In this session we will explore the burgeoning interest in law and space in socio-legal scholarship. In addition to interrogating the idea that space is neutral we will also consider the various ways in which legal subjects are constructed in spatial terms. The purpose of the seminar is to alert students to the role that space and place play in the construction of legal identities and the many ways in which space frame and dictate the forms of participation in legal systems that are possible or allowed.

**Essential reading**

Bennett, L. and Layard, A. 2015. 'Legal geography: Becoming spatial detectives', *Geography Compass*, 9(7): 406–422.

Blomley, N. 2010. 'The right to pass freely: circulation, begging, and the bounded self', *Social & Legal Studies*, 19(3): 331–350.

Mulcahy, L., 2007. Architects of justice: The politics of courtroom design. *Social & Legal Studies*, 16(3): 383–403.

**WEEK 8: Monday 2<sup>nd</sup> December: Prof. Marina Kurkchiyan**

**Law, language and society**

The aim of the session is to explore the role of language in shaping and re-shaping social reality. We will examine the way in which the careful scrutiny of language can expose the rich texture of the social fabric, reveal the interplay of meanings that we attach to social phenomena and the structure of relationships. The session will provide an overview of the various streams of discourse analysis and of how they have been applied to socio-legal studies. We will review the socio-legal knowledge already generated by this approach, assess its limitations, and consider its potential for further studies of the legal domain.

**Essential Reading**

Taylor, S. 2013. *What is Discourse Analysis?* Bloomsbury.

Kwai Hang Ng. 2009. "If I lie, I tell you, may heaven and earth destroy me." Language and Legal Consciousness in Hong Kong Bilingual Common Law', *Law & Society Review* 43(2): 369–403.

Conley J.M. and O'Barr W.M. 1998. *Just Words: Law, Language and Power*. Chicago University press.

## **HILARY TERM**

In these seminars you will discuss the practical techniques available to carry out socio-legal research and the ways in which they relate to whatever theoretical approach you might take. You will consider which questions you can ask and what methods can help you to answer them. During the session in the first week in Trinity Term CSLS students who have reached an advanced stage of their project 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. In the concluding sessions held during the Trinity Term you will be invited to make an overall presentation to Centre students and fellows of your chosen project.

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### **WEEK 1: Monday 20<sup>th</sup> January, Prof. Marina Kurkchiyan** **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, June 19). '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 27<sup>th</sup> January, Prof. Linda Mulcahy and Dr. Kevin Grecksch** **Sampling framework**

This session offers a basic introduction to sampling. This is an essential session for anyone wishing to undertake qualitative or quantitative research. Many of us begin with a perfect sampling frame. This might be a list of all the people it would be useful to interview or survey, or it could be an aspiration to conduct a lengthy period in two fieldwork sites doing ethnographic research. In reality we rarely have the time or resources to undertake all the research we would like to. In other instances, it may be very difficult to get access to raw data. This means that we often have to make choices about the number of things it is possible to do. In making a choice that is robust and defensible it is important to develop a sampling frame which justifies the choices you have made and how you have prioritised the different characteristics of those you want to research. The valuable things about developing a sampling frame is that it 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 do a content analysis of as it is a large scale study.

### **Essential Reading**

Bryman, A., 2015 'Sampling in quantitative research' (chapter 8) and 'Sampling in qualitative research' (chap 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 of Chicago Press.

Nelken, D. 2005. 'Doing Research into Comparative Criminal Justice', in Banaker R. & Travers M (eds), *Theory and Method in Socio-Legal Research*. Oxford: Hart.

### **WEEK 3: Monday, 3<sup>rd</sup> February, Prof. Linda Mulcahy and Dr. Dvora Liberman**

#### **Interviewing: from life stories to telephone interviews**

In this seminar we will discuss one of the most popular research methods, interviewing. It is very common for socio-legal researchers to conduct semi-structured interviews but in this class we will consider a range of different types of interview from life stories (a form of oral history) where interviews typically take up to 12 hours over three days to telephone interviews which might be complete within 20 minutes. We will consider a broad range of approaches to interviewing from the structured format used in telephone interviews to the unstructured face to face variety. Most importantly we will consider the epistemological assumptions that lie behind each approach.

### **Essential Reading**

Burgess, R. 1995. 'Interviews as Conversation', *In the field: an introduction to field research*. London: Routledge.

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

Hartog, H. 2004. 'Romancing the quotation', in Austin Sarat (ed.) *Law in the Liberal Arts*. Cornell University Press.

### **WEEK 4: Monday 10<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 have been discussed in the first and second weeks. 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 17<sup>th</sup> February, Prof. Fernanda Pirie****Analysing qualitative data**

How do socio-legal scholars approach the data they have gathered through ethnography and other qualitative methods? Much of the analysis and writing will demand engagement with the academic literature and wider themes and debates, which you will need to discuss directly with your supervisor, and during work-in-progress and other seminars. 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**

Ewick, Patricia and Susan Silbey. 1998. *The common place of law: stories from everyday life*. University of Chicago Press. [Ch. 8 and Appendix A]

Coffey, Amanda and Paul Atkinson. 1996. *Making Sense of Qualitative Data: Complementary Research Strategies*. Sage Publications. [Ch. 2].

**WEEK 6: Monday 24<sup>th</sup> February, Prof. Linda Mulcahy/ Dr. Chris Decker****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' (chapter 10) and 'Quantitative data analysis' (chapter 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 2<sup>nd</sup> March, Dr. Anna Tsalapatanis****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 (2017), 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 Pr.

### **WEEK 8: Monday 9<sup>th</sup> March, Dr. Anna Tsalapatanis** **Experiences of doing field research**

In this session two or three of the Centre's most 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.

During the next two sessions you will make a short presentation of your research project to the rest of the students and some of the Centre's research fellows. You will also be expected to participate in the discussions relating to the other presentations in order to help every research student to develop his or her own project to its maximum potential.

### **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. It is designed to help everyone to focus their research project and to prepare for the QT assessment.

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**WEEK 1, Monday 27<sup>th</sup> April**  
**WEEK 2, Monday 4<sup>th</sup> May**  
**WEEK 3, Monday 11<sup>th</sup> May**



## Additional reading on methodology:

Banakar, R. and Travers, M. eds, 2005. *Theory and method in socio-legal research*. Bloomsbury Publishing.

Becker, H.S. and Horowitz, I.L. 1972. Radical politics and sociological research: Observations on methodology and ideology. *American Journal of Sociology*, 78(1), pp.48–66.

Bryman, A. 2008. Of methods and methodology. *Qualitative Research in Organizations and Management: An International Journal*, 3(2), pp.159–168.

Charmaz, K., 2006. *Constructing grounded theory: A practical guide through qualitative analysis*. London: Sage.

Dey, I. 1993 *Qualitative Data Analysis*. Routledge

Dingwall, R. 1997. Accounts, interviews and observations. *Context and method in qualitative research*, pp. 51–65.

Halliday, S. and Schmidt, P. 2009. *Conducting law and society research: reflections on methods and practices*. Cambridge University Press.

Goffman, E. 1978. *The presentation of self in everyday life*. London: Harmondsworth.

Goffman, A. 2009. On the run: wanted men in a Philadelphia ghetto. *American sociological review*, 74(3), pp. 339–357.

Hemmings, C. Grewal, I. and Kaplan, C. 2011. *Why stories matter: the political grammar of feminist theory*. Duke University Press.

Miller, G. and Dingwall, R. eds, 1997. *Context and method in qualitative research*. London: Sage.

Rabinow, P. 2007 (first publication 1977) *Reflections on Fieldwork in Morocco*. University of California Press

Ragin, C.C. and Becker, H.S. eds, 1992. *What is a case? Exploring the foundations of social inquiry*. Cambridge University Press.

Robson, C. 2002. *Real World Research*. Blackwell Publishing

Silverman, D. ed. 2016. *Qualitative research*. London: Sage.

Silverman, D. 2015. *Interpreting qualitative data*. London: Sage.