ABOUT THE AUTHOR

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The usual disclaimers apply: the views expressed in this paper are those of the author and are not necessarily shared by those who commented on it or endorsed by the ESRC.
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1. INTRODUCTION: RESEARCH TRAINING IN SOCIO-LEGAL STUDIES

It is often asserted that socio-legal studies, which — for the purposes of this paper — can be said to comprise the branch of legal scholarship that uses the methods of the social sciences to throw light on the workings of law and legal institutions, needs a strong empirical base and that this in turn calls for researchers who not only have a good background understanding of law but also a good training in methods of social research. This should not be taken to imply that research training in socio-legal studies should concentrate on empirical research techniques at the expense of or to the exclusion of an engagement with theory since this is — in my view — equally important. Because the facts do not speak for themselves, because concepts need to be constructed and because the process of concept construction needs to be theoretically informed, empirical socio-legal researchers need to have a good grasp of legal, political and social theory. This is clearly the case if the research is intended to advance theory but it is, arguably, also the case if the research is intended to deepen understanding, challenge complacency, or inform and evaluate policy. Although there are clearly differences in emphasis, the aim in each case, should be to conduct theoretically-informed empirical research.¹

For a very long time, the Nuffield Foundation and the Economic and Social Research Council (ESRC) have been concerned with the lack of capacity to undertake rigorous empirical research on the law. As long ago as 1971, the Nuffield Foundation set up its own Legal Advice Research Unit and launched a scheme of Social Science Fellowships for Law Teachers. One year later, in an attempt to give an institutional impetus to socio-legal studies, the Social Science Research Council (the predecessor of the ESRC) established the Oxford Centre for Socio-Legal Studies. Although many outstanding empirical studies were carried out at the Oxford Centre and many of those who worked there are now in leading positions in UK universities,² their dispersal has been associated with a decline in the volume of empirical socio-legal research and in the number of socio-legal researchers who have the skills needed to carry out this kind of research. Somewhat perversely, this seems to have occurred at a time when the demand for empirical research on the law to inform policy-making and evaluate policy implementation was actually growing. It appears to be the case that, while law is being recognised as an increasingly important feature of modern life, there has been a decreasing capacity to investigate its operation empirically.

Recognising the seriousness of these capacity issues, and the need for a long-term strategy to address them, the Nuffield Foundation made funds available in December 2003 to launch its Inquiry on Empirical Research in Law. The Inquiry was conducted by a team of three very distinguished socio-legal researchers (Professor Dame Hazel Genn, Professor Martin Partington and Professor Sally Wheeler)³ and aimed to provide factual information about the current capacity to carry out empirical research in law, to examine the causes of any lack of capacity, and to identify a range of possible solutions. The Inquiry’s Final Report, Law in the Real World: Improving our Understanding of How Law Works,⁴ which contains a very thorough analysis of the problem and a set of recommendations that are designed to address it, was published at the same time as this paper in November 2006.

¹ Paddy Hillyard has argued that socio-legal studies needs less ‘theory’ and more ‘moral indignation’. However, he did not really have ‘theory’ as such in his sights but, rather, post-modern attempts to ‘deconstruct’ universal categories and the emphasis they place on subjectivity and relativity, and emphasised the importance of empirical socio-legal research. See Hillyard, Paddy (2002) ‘Invoking Indignation: Reflections on Future Directions of Socio-Legal Studies’, Journal of Law and Society, 29 (4), pp. 645-656.
³ Hazel Genn is Professor of Socio-Legal Studies at University College, London and the leading empirical researcher in this field in the UK; Martin Partington was formerly a Professor of Law at the University of Bristol and a Law Commissioner; Sally Wheeler is Professor of Law, Business and Society at Queen’s University, Belfast and Chair of the Socio-Legal Studies Association (SLSA).
Some two years before the Inquiry’s Final Report was published, the ESRC announced that it would be conducting another of its periodic Recognition Exercises. Applications from universities seeking recognition for postgraduate training in the social sciences had to be submitted in September 2005 and the results were announced in February 2006. Since the 2005 Recognition Exercise provided an opportunity of assessing the adequacy of socio-legal research training in the UK and the effectiveness of the ESRC’s attempts to promote it, it is clearly relevant to the ongoing debate about capacity issues.

This paper describes the experience of socio-legal studies in the 2005 Recognition Exercise, and in the subsequent allocation of quota awards, and assesses the extent to which universities are training the next generation of socio-legal researchers. It notes that law schools, in which most socio-legal researchers work, did not perform well and that, in a procedure in which socio-legal studies and criminology were assessed by the same Panel, the former did very poorly in the allocation of quota awards while the latter did much better.

The paper then analyses the reasons for this state of affairs. Like the Inquiry’s Final Report, it concludes that the problem is a structural one which reflects the relatively weak position of socio-legal researchers and, in particular of those who conduct empirical research in law schools, and the absence of any real incentives that would encourage law schools to take postgraduate training in socio-legal studies seriously. Structural problems call for structural solutions and the paper concludes by outlining five ‘strategic initiatives’, all of which are intended to strengthen the training of socio-legal researchers and their capacity to conduct empirical research. Although these proposals were developed independently from those put forward by the Nuffield Inquiry, they are entirely consistent with the Inquiry’s aim of creating a critical mass of new empirical socio-legal researchers.

2. THE ESRC RECOGNITION EXERCISE

In order to supervise research students who are supported by the ESRC, what the ESRC calls an ‘outlet’ needs to be ‘recognised’ and, since the ESRC is by far and away the major source of funding for PhD students in the social sciences, recognition, which is essentially a form of ‘quality control’, is of considerable significance for research students (and potential research students), for individual universities and for the various disciplines and subject areas for which the ESRC is responsible. In the 2005 Recognition Exercise, 18 Subject Area Panels reviewed postgraduate training and granted recognition to those outlets that satisfied the ESRC’s requirements. The Panels included a Socio-Legal Studies (SLS) Panel, which was responsible for reviewing postgraduate training in criminology as well as in socio-legal studies.

Prior to the 2001 Recognition Exercise, quota awards were allocated to ‘specialist’ (S) and ‘research training’ (RT) Master’s degrees by Subject-Area Panels. In 2001, the ESRC ended its support of ‘stand alone’ Master’s degrees and introduced the idea of linked Master’s and PhD programmes. Quotas for these linked programmes were introduced in 2004 and, since then, the allocation of quota awards to outlets recognised by Subject Area

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5 The ESRC identified socio-legal studies as one of five ‘priority areas’ that were in need of ‘strategic initiatives’. For more details, see Section 5 below.

6 As explained in Section 5 below, socio-legal and criminological applications were assessed against their own training requirements by at least one and usually two Panel Members from that subject area.

7 The Panel was chaired by the author of this paper. In addition, there were two members with backgrounds in socio-legal research [Professor Carol Jones (University of Glamorgan) and Professor Sally Wheeler (Queen’s University, Belfast and Chair of SLSA], two with backgrounds in criminology [Professor Russell Dobash (University of Manchester) and Dr (now Professor) Alison Liebling (University of Cambridge)], and one ‘user representative’ [Carole Willis (Home Office)].

8 Whether or not a single Panel, albeit one that assessed criminological and socio-legal studies against their own research training guidelines, should review both subject areas is an open question that needs to be asked but is not considered in this paper. In the recent Recognition Exercise, new Panels were established for Demography and Social Work. In the previous (2001) Research Recognition Exercise, both these subjects were assessed by the Social Policy Panel.

9 In order to distinguish the name of the Panel from the name of one of the subject areas for which it was responsible, capital letters will be used to refer the name of the Socio-Legal Studies (or SPS) Panel and lower case to refer to the name of the subject area, socio-legal studies.
Panels has been undertaken centrally by the Training and Development Board. In the latest (2005) Recognition Exercise, Subject-Area Panels were asked to decide which outlets should be recognised and, to inform its decision-making, the Training and Development Board developed an algorithm (described in Section 5 below) for allocating quota awards to recognised outlets.

There are several types of recognition. 1+3 recognition, applies to programmes consisting of a research training master’s degree and a PhD programme that meet the requirements set out in the Postgraduate Training Guidelines10 and are normally delivered over a four-year period. Students can hold three-year (+3) studentships or four-year (1+3) studentships in outlets that have 1+3 recognition. Students who have already completed their research training can also hold +3 studentships at outlets that have +3 recognition. Some of these outlets will have applied for 1+3 recognition while others will only have applied for +3 recognition in the first place. Recognition can also be awarded for part-time studies, for distance learning programmes, and for CASE awards, i.e. for doctoral research that is carried out in collaboration with a non-academic organisation. Recognition is also available for professional doctorates although the ESRC does not currently offer funding for them.

3. CRITERIA FOR RECOGNITION11

In deciding whether or not to recognise the training provided by an outlet, Panels were expected to consider:

- the adequacy of provision of formal broadly-based and subject specific training for students in research methodologies and transferable employment-related skills, and the arrangements for the provision of advanced training;
- the adequacy of arrangements for the supervision of students;
- the presence of an active research environment where students may benefit from interaction with experienced researchers and current research projects;
- an adequate critical mass of students who can benefit from interaction with their peers12; and
- satisfactory PhD submission rates which demonstrate that the majority complete their doctorates within a reasonable time.

3.1 GENERIC SOCIAL RESEARCH TRAINING REQUIREMENTS13

As far as the acquisition of broadly-based training in social science research methods was concerned, the Guidelines set out the skills, competences and knowledge that all postgraduate research students in the social sciences are expected to acquire. The aim is to ensure that they acquire, and can apply, basic and advanced quantitative and qualitative research skills that are responsive to the requirements of individual subject areas and disciplines and to the needs of the wide range of organisations that commission and use social research.

As regards data collection, they are expected to acquire a basic understanding of the potential and pitfalls of questionnaires and interview schedules; large and small-scale surveys; and other forms of data collection such as structured observation and focus groups; and of various ways of recording data and constructing data sets.

10 The first edition of the ESRC’s Postgraduate Training Guidelines was published in 1991. The most recent edition (the fourth) came out in April 2005.
11 ESRC Recognition 2005: Subject Area Panel Guidance Notes, para. 3.2
12 In assessing ‘critical mass’, the ESRC advised Panels to look specifically at the overall number of postgraduate research students in the outlet. See Postgraduate Training Guidelines, Section C, para 17. Since socio-legal students are usually a very small proportion of postgraduate research students in law schools, this is not necessarily a very good indicator.
13 Economic and Social Research Council (2005, 4th edition), Postgraduate Training Guidelines, Section E (Framework for Research Methods Training), Swindon: ESRC.
As regards data analysis, they must get direct practical experience of analysing various types of quantitative and qualitative data, using a range of tools — including appropriate computer packages — and demonstrate, through practical application, that they are proficient in the analysis of large-scale survey data, longitudinal or cross-sectional data, data from experimental or quasi-experimental research and qualitative data sets. They are expected to achieve a level of competence that enables them to use and interpret multivariate statistical analysis, and analyse data from interviews, focus groups; structured observation, documents and archives (including content analysis and discourse analysis and other innovative techniques).

As regards research design, they must be able to demonstrate an ability to formulate research problems and questions, and, where appropriate, hypotheses that can be tested. They must also understand the relationships between, and the rationale for using, particular qualitative and quantitative research methods; the relationship between empirical research, theory generation and theory testing; different forms of sampling, sampling error, and potential biases in the interpretation of research findings; and the concepts of generalisability, validity, reliability, and replicability.

As a result of their training in data collection, data analysis and research design, the Guidelines indicate that all students are expected to have acquired the following skills and be able to apply them:

- comprehension of basic principles of research design and strategy, including an understanding of how to formulate researchable problems and an appreciation of alternative approaches to research;
- competence in understanding and applying a range of research methods and tools;
- capabilities for managing research, including managing data, and conducting and disseminating research in a way that is consistent with both professional practice and the normal principles of research ethics;
- understanding the significance of alternative epistemological positions that provide the context for theory construction, research design, and the selection of appropriate analytical techniques.

3.2. SUBJECT-SPECIFIC RESEARCH TRAINING REQUIREMENTS IN SOCIO-LEGAL STUDIES

The first three editions of the Postgraduate Training Guidelines contained a single set of research training requirements for socio-legal studies and criminology. However, in response to lobbying by the Socio-Legal Studies Association (SLSA), the ESRC agreed to introduce separate training requirements for the two subjects and these are set out in the latest (fourth) edition of the Guidelines. Although the section dealing with the research training requirements for socio-legal studies and criminology was renamed ‘Socio-Legal Studies’ and, after consultation with the two professional associations, this section was redrafted, each of the separate sets of research training requirements is actually very similar to those that applied to that subject in the past.

According to the Guidelines, socio-legal studies is an approach to the law in which generic social science skills rather than what it calls ‘doctrinal and arts based approaches’ are used. The Guidelines recognise that the subject is cross-disciplinary in that it draws both on theories and methods developed in the social sciences and on

15 Previously, the name of the subject- area had been ‘Socio-Legal Studies and Criminology’. Because of the change of name, the BSC was concerned that criminology had been subsumed into ‘Socio-Legal Studies’ and raised the issue of a separate Criminology Panel. In the event, it could hardly have done better than it did under the joint assessment arrangements.
16 The Socio-Legal Studies Association (SLSA) and the British Society of Criminology (BSC).
traditional legal scholarship, and acknowledge that there is considerable scope for specialisation within the field. Specialisation can be on the basis of the primary social science discipline that is drawn on (for example, sociology, anthropology, economics or psychology), on the basis of substantive areas of law (for example environmental law, family law or welfare law) or on the basis of the methods and techniques of law (for example, dispute resolution, private ordering and regulation) or the areas that law seeks to regulate (for example, European integration or social development). The ESRC is aware that different research training programmes will reflect different specialist interests and argues that, in addition to a generic research training in social science research methods, all socio-legal research students should become familiar with a wide range of topics, such as theories of regulation and enforcement patterns, the relevance of social and political theory for socio-legal studies, local/national/international and global contexts of law, the nature of legal argumentation, and the potential and limits of combining legal and other kinds of social scientific analysis.

In addition to becoming familiar with these substantive topics, the Guidelines also make it clear that socio-legal research students should undertake subject-specific research training related to socio-legal studies. These include ‘cutting-edge developments’ in data collection and data analysis and issues relating to the ethics of socio-legal research. Considered together, the generic research training requirements and the subject-specific requirements in socio-legal studies combine breadth with depth and create a high set of expectations.

In revising the earlier subject-specific research training requirements, the aim, as far as socio-legal studies was concerned, was to identify the skills and competences that a well-trained socio-legal researcher might be expected to have in undertaking a variety of empirical research projects. But a real difficulty is that, unlike most other subject areas, where postgraduate research students have usually studied the same, or a closely-related, subject at undergraduate levels, few postgraduate research students in socio-legal studies have done so. Most of them have backgrounds in the social sciences and need to learn about the law or in law and need to be retrained as social scientists. As a result, while the research training requirements in most other subject areas seem entirely appropriate and, for this reason, probably command widespread support from the academic community, those in socio-legal studies may be difficult to achieve. A perception that the training requirements are either unrealistically high or, in practice, unachievable may help to explain why many ‘centres of excellence’ in socio-legal applications did not take part in the 2005 Recognition Exercise. This is discussed in detail below.

4. THE EXPERIENCE OF THE SOCIO-LEGAL STUDIES (SLS) PANEL

Of the 33 applications that were considered by the SLS Panel, 13 were for postgraduate training in socio-legal studies, 18 were for postgraduate training in criminology and two were for postgraduate training covering both subject areas. Each application was assessed by two or three assessors – two assessors in the case of 16 outlets.

17 It is significant that, prior to the 2001 Recognition Exercise, when stand-alone Master’s courses were still supported by the ESRC, all the four Master’s courses that were given quota awards by the Socio-Legal Studies Panel were specialised courses. They comprised Master’s courses on Children and the Law (Brunel University), on Law and Economics (University of Manchester), on Regulation (LSE) and on Law and Development (University of Warwick).
18 Consultation with the Socio-Legal Studies Association (SLSA) was intended to ensure that the guidelines reflected the subject area’s view of what the research training requirements in socio-legal studies ought to be.
19 Such as narrative interviewing, appreciative enquiry, reflexive methodologies, visual methodologies, virtual ethnography, computer-assisted personal interviewing (CAPI), computer assisted self-interviewing (CASI), on the one hand, and techniques for analysing Internet data and visual data, on the other.
20 Such as ethical aspects of autonomy, informed consent, beneficence, non-maleficence, confidentiality, privacy, and ownership of research data; the utility and limitations of professional or ethical codes of practice; and their legal responsibilities under data protection legislation.
21 29 applications were submitted to the Socio-Legal Studies (SLS) Panel and four were referred to the SLS Panel by other Panels. In some cases, this was at the request of the outlet.
that did not apply for CASE recognition and three assessors (including the ‘user representative’) for the 17 outlets that did. All applications were assessed against the relevant set of guidelines\(^{22}\) by at least one and usually two Panel Members from the relevant subject area.

The SLS Panel was disappointed at the relatively small number of outlets that applied for recognition — the 33 applications were submitted by 31 outlets (two outlets submitted two applications each) — and, in particular, at the absence of applications from a number of outlets whose courses were recognised in the last full Recognition Exercise in 2001, or in the Interim Recognition Exercise in 2003, and from several recognised ‘centres of excellence’ in both subject areas. In the case of socio-legal studies, some of the major centres of socio-legal research failed to apply\(^ {23}\) while three outlets applied only for ‘+3’ recognition\(^ {24}\). This suggests that, particularly where empirical socio-legal research is carried out in law schools, the link between research and scholarship, on the one hand, and postgraduate training, on the other, is poorly developed. In its General Feedback to Applicants, the SLS Panel suggested that serious thought needs to be given to strengthening the links between law schools and those social science departments that are able to provide methodological expertise and social science research training. A proposal based on this suggestion is developed in Section 6 below.

In the case of criminology, some of the major centres of criminological research and teaching also failed to apply, suggesting that they are not building on the popularity of undergraduate courses in this subject. The SLS Panel also received 17 applications for CASE recognition, which allows universities to develop collaborative proposals with outside organisations and attempt to obtain ESRC funding for them. Four of these applications were in socio-legal studies and 13 in criminology.

The SLS Panel recommended that four of the 12 of the ‘1+3’ applications in socio-legal studies should be given ‘1+3’ recognition.\(^ {25}\) This corresponds to a ‘success rate’\(^ {26}\) of 33 per cent. The ‘success rate’ for criminology was very much higher — the Panel recommended that nine out of 18 or 50 per cent of the ‘1+3’ applications in criminology should be given ‘1+3’ recognition and that six of them

<table>
<thead>
<tr>
<th>subject/recognition requested</th>
<th>Number of applications</th>
<th>Number of recognised ‘1+3’ programmes</th>
<th>Number of recognised ‘+3’ programmes</th>
<th>‘Success rate’</th>
</tr>
</thead>
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<tr>
<td>socio-legal studies/1+3</td>
<td>12</td>
<td>4</td>
<td>0</td>
<td>33%</td>
</tr>
<tr>
<td>socio-legal studies/+3</td>
<td>3</td>
<td>-</td>
<td>1</td>
<td>33%</td>
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<td>6</td>
<td>83%</td>
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<tr>
<td>criminology/+3</td>
<td>0</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>33</td>
<td>13</td>
<td>7</td>
<td>60%</td>
</tr>
</tbody>
</table>

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22 Socio-legal applications were assessed against the socio-legal training requirements and criminological applications against the criminology training requirements.

23 For example, there were no applications from Cardiff, Edinburgh, Leeds, Hull, Manchester, Oxford, Sheffield, Strathclyde and, Westminster Universities, LSE, QMWC and UCL. All these outlets have research reputations in socio-legal studies and, in the author’s opinion, should, in principle, be capable of providing a recognised postgraduate training programme in socio-legal studies. Please note that this list is not intended to be exhaustive and other outlets may well be capable of undertaking postgraduate training in socio-legal studies.

24 Lancaster, Nottingham Trent and Warwick Universities.

25 One application for recognition in both socio-legal studies and criminology was classified as a socio-legal application because this appears to be its primary orientation.

26 ’Success’ was defined as the granting of ‘1+3’ or ‘+3’ recognition. Thus, the ‘success rate’ was: number of recognised ‘1+3’ programmes + number of recognised ‘+3’ programmes / number of applications x 100%.
should be given ‘+3’ recognition. This corresponds to a success rate of 83 per cent. The detailed results are set out in Table 1.

An analysis of the reasons why socio-legal outlets failed to obtain ‘1+3’ recognition reveals that, in three cases, the Panel concluded that the training in generic social science research methods that was provided by the outlet did not satisfy the requirements set out in Section E of the Postgraduate Training Guidelines. These were all law schools that had chosen not to ‘buy in’ to the generic social science training that may well have been provided for social science research students in their universities. In six cases, the Panel felt that the subject-specific training provided did not meet the requirements, and in eight cases it considered that the outlet did not meet the requirements for ongoing training of an advanced nature. Most of the socio-legal outlets that failed to obtain recognition were law schools which lacked a ‘critical mass’ of socio-legal researchers or were unable to access advanced training in research methods that may well have been available elsewhere in the institution. In addition, in one case, the course was new and no students had completed it; in another case, the number of students on the course was considered too small to provide a ‘critical mass’; and in a third case, a first-year conversion course for students with no background in law, had no socio-legal content.

The SLS Panel also recommended that one of the four CASE applications in socio-legal studies and 11 of the 13 applications in criminology should be recognised. This suggests that socio-legal researchers have much less well-developed relationships with outside organisations than criminologists and/or that collaboration with non-academic organisations receives much less institutional support.

The SLS Panel’s ‘success rate’ was not only considerably lower than those of most other Panels but was also much lower than the Panel would have liked to achieve. The overall distribution of applications considered by the Panel was bi-modal – the successful applications tended to be very good while the unsuccessful ones failed to meet the prescribed standards by substantial margins and there were relatively few ‘borderline’ cases.

Of the 33 applications considered by the SLS Panel, 13 (39 per cent) secured ‘1+3’ recognition and 7 (21 per cent) ‘+3’ recognition. The Panel’s ‘success rate’ (60 per cent) compared very unfavourably with the reported ‘success rate’ of 92 per cent for the Recognition Exercise as a whole. However, this was not, in my view, because the Guidelines were rigidly interpreted or slavishly enforced by the SLS Panel – the very high ‘success rate’ for criminology (83 per cent) indicates that this was not the case. In any case, the Panel’s decisions were reviewed by the Recognition Panel of the ESRC’s Training and Development Board and all of them were upheld. The low overall ‘success rate’ of 60 per cent was due to the exceptionally low ‘success rate’ of 33 per cent for socio-legal studies.

What conclusions can be drawn from this analysis? Although law schools would be well advised to make use of the training in generic social science research methods provided by social science outlets in their own institution, it seems clear that this would not be sufficient and that they must themselves be prepared to provide dedicated training in methods of socio-legal research for postgraduate research students in socio-legal studies, not only in their first year but also in their second and subsequent years. There were many references in their submissions to socio-legal research students in their second and subsequent years being ‘given the opportunity’ or being ‘encouraged’ to attend courses of advanced training provided outwith the outlet. However, the Panel did not feel that, in such cases, the outlet could be said to be providing the ‘continuing research training and support’ that is envisaged in the Guidelines or ensuring that all socio-legal research students have access to it.

The combination of a small number of applications and a low ‘success rate’ meant that the Panel recommended relatively few socio-legal courses for ‘1+3’ recognition.

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27 It comprised selection of courses from the undergraduate law curriculum.
28 Economic and Social Research Council (2006b) ‘New Blood Needed to Protect Future Health of the Social Sciences’, accessed at http://www.esrcsocietytoday.ac.uk/ESRCInfoCentre/bout/CI/CP/Social_sciences/iss
Of the four courses of research training in socio-legal studies that the Panel recommended for recognition, one was an inter-disciplinary doctoral programme in environmental law at the University of Newcastle-upon-Tyne and another was a programme of research training grounded in the critical legal studies paradigm at Birkbeck. Only two of them provided what could be described as ‘broadly-based’ programmes of training in empirical socio-legal research. The outcomes also reveal some striking geographical imbalances. In socio-legal studies, only one ‘1+3’ programme – the Birkbeck programme – in the London area was recommended for recognition. Similar geographical imbalances can also be found among criminology courses since no criminology courses in the London area were recommended for recognition.

Although the SLS Panel would have liked to support some innovative approaches to postgraduate training that might have encouraged more students to undertake research training in socio-legal studies, it could only consider the applications that were submitted to it and there were very few truly innovative applications. Thus, there were very few opportunities for it to be innovative or to act strategically. There were no applications from consortia of universities, which might have enabled some universities to pool their limited resources, and no distance learning applications. Moreover, with one exception, all the applications considered by the Panel adopted the conventional ‘1+3’ format. The one exception was an application for a ‘2+3’ programme involving a conversion year followed by a ‘1+3’ programme. However, although the Panel recommended that the ‘1+3’ programme should be recognised, the first-year of the ‘2+3’ programme comprised standard undergraduate law courses which had no socio-legal content and bore no relationship to the ESRC’s training requirements.

5. THE ALLOCATION OF QUOTA AWARDS

Because of the problems it has in recruiting and training postgraduate research students, socio-legal studies was identified by the ESRC as one of five ‘priority areas’ whose problems could best be addressed through what it called ‘strategic initiatives’. With this end in mind, it increased the number of quota wards allocated to the socio-legal studies subject area. The allocation of quota awards to subject areas was based on three variables:

- the percentage of staff in the subject area who are research active in outlets rated ‘4’ and above in the last RAE;
- the percentage of research grant applications from the subject area that are ‘alpha rated’;
- an estimate of the strategic importance of the subject area, based on the findings of the Demographic Review.

Although the ESRC had decided which subject areas were to be classified as ‘priority areas’ before the Demographic Review had finished collecting its evidence, the Demographic Review clearly influenced how socio-legal studies was treated. It accepted that the nature of socio-legal research was shaped by the ‘institutional culture’ of law schools and asserted that the legal profession demanded an ‘overarching vocational impetus to the university curriculum’. Those involved with the allocation of quota awards stated that, when the findings of the Demographic Review became known, the Postgraduate Training Board took the decision to scale back the number of quota awards allocated to socio-legal studies because they realised that simply boosting the number of awards was not the answer and accepted that more imaginative thinking was required. This may explain the fact, described below, that some recognised courses in socio-legal studies were not allocated any quota awards.

29 One of these courses was a joint course which offered training in criminology and socio-legal studies.

30 Other ‘priority areas that were seen to require ‘strategic initiatives are Economics, Management and Business Studies, Social Work and Advanced Quantitative Methods.


32 Economic and Social Research Council (2006a), op. cit, pp. 38-72.

33 Ibid, pp. 52-53.

34 The Training and Development Board took the view that any future consultation with the socio-legal studies community should await further discussion and developments with the community, including the publication of the Nuffield Inquiry. See note 4 above.
The result of the distribution of quota awards was that 37 awards were allocated to the socio-legal studies subject area for 2006/07 and 2007/08. The allocation of the 988 quota awards to subject areas is set out in Table 2 below.

Although the well-established subject areas have, for obvious reasons, been allocated the largest number of quota awards, relative to some of other subject areas, the socio-legal studies subject area has done remarkably well. In the next two years, there will be more quota awards in socio-legal studies than, for example, in social policy, social anthropology or area and development studies.

This outcome would, at first glance, appear to be a satisfactory one. However, when one examines it a little more closely it, it is clear that the majority (6 out of 8) of the outlets that were allocated quota awards and the majority (29 out of 37) of them were in criminology rather than socio-legal studies. The figures in Table 3 overleaf make this clear.

As mentioned above, the allocation of quota awards to ‘recognised outlets’ was informed by an algorithm based on three variables — RAE Grade, number of PhD completions and research income. The aim was to produce a quota allocation that would ‘neither reproduce the historical distribution of quota awards nor lead to a major dislocation of that pattern’. To ensure that outlets were

Table 2: Allocation of Quota Awards by Subject Area

<table>
<thead>
<tr>
<th>Subject Area</th>
<th>2006/07 Quota Awards</th>
<th>2007/08 Quota Awards</th>
<th>Total 2-year allocation</th>
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<tbody>
<tr>
<td>Economics</td>
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<td>63</td>
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<tr>
<td>Human Geography</td>
<td>34</td>
<td>36</td>
<td>70</td>
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<tr>
<td>Statistics, Methods and Computing</td>
<td>24</td>
<td>23</td>
<td>47</td>
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<td>Science and Technology Studies</td>
<td>11</td>
<td>9</td>
<td>20</td>
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<tr>
<td>Interdisciplinary Awards</td>
<td>8</td>
<td>7</td>
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</tr>
<tr>
<td>Total</td>
<td>539</td>
<td>449</td>
<td>998</td>
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</table>

35 In addition, there will be 100 ‘competition awards, which will be allocated to the best applications across subject areas, 65 collaborative (CASE) studentships, 20 ESRC/NERC interdisciplinary studentships, 19 ESRC/MRC interdisciplinary studentships, three studentships jointly with the Department of Work and Pensions (DWP), five with the Department of Transport, seven with the Department of Environment, Food and Rural Affairs (DEFRA), four with the Scottish Executive, four with the Welsh Assembly, and others through the Professorial Fellowship scheme.

36 In addition, one outlet (University of Surrey) was recognised by the Statistics, Methods and Computing (SMC) Panel and received a quota of studentships covering a number of subject areas including criminology.

37 Economic and Social Research Council (2006c), op. cit, paras 9-10.
not prevented from acquiring a critical mass of ESRC-funded students, the minimum number of quota awards awarded to any individual outlet was set at three over two years. However, according to the ESRC, around 30 per cent of quota awards in each subject area were allocated strategically by the Training and Development Board. This was primarily to reward particularly high quality and innovative training provision, especially in quantitative research methods, and to foster the development of sub-disciplinary areas which may fail to secure awards through the quota algorithm.

Although the SLS Panel recommended that five postgraduate research programmes in socio-legal studies should be granted recognition, the algorithm resulted in the allocation of quota awards to only two of them (to the courses at Bristol and Nottingham Universities). The postgraduate research programmes that secured recognition but were not awarded any quota awards were the excellent inter-disciplinary research training programme in environmental law (which ought to have qualified as a ‘sub-disciplinary area) at the University of Newcastle-upon-Tyne and the unusual doctoral programme which is grounded in critical legal studies, at Birkbeck, both of which secured ’1+3’ recognition, and the PhD programme at the University of Lancaster, which applied for and was granted ’+3’ recognition. With so few recognised courses, it is hard to see how the strategic considerations referred to above could really have worked to the advantage of socio-legal studies courses but it is also difficult to understand why some recognised courses were not allocated any quota awards.

In the case of criminology, two outlets that received ’1+3’ recognition were not awarded any quota awards. However, strategic considerations resulted in the allocation of quota awards to two well-regarded outlets whose applications for ’1+3’ recognition had been unsuccessful.

### 6. SOME POSSIBLE EXPLANATIONS

In spite of the fact that, according to the ESRC, around 30 per cent of quota awards in each subject area were allocated strategically by the Training and Development Board, it is clear that this did not benefit socio-legal studies. The relatively weak position of socio-legal studies and, in particular of those socio-legal researchers who conduct empirical research in law schools, which are major themes in the Nuffield Inquiry’s Final Report, and the absence of any real incentives that would encourage law schools to take postgraduate training in socio-legal studies seriously, may also help to explain why there were relatively few applications for recognition from socio-legal outlets; why many of the ‘centres of excellence’ in socio-legal studies failed to apply; and why so few of the socio-legal applications were recognised. In these circumstances, it is not really surprising that socio-legal studies, in spite of its status as a ‘priority area’, failed to benefit from the significantly greater number of quota awards that the ESRC had allocated to the Socio-Legal Subject Area while

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38 ibid, para 23.
39 Other aims were to identify and support ‘leading edge’ interdisciplinary training provision and to ensure a reasonable balance between disciplinary training provisions across the UK.
40 Hull and Loughborough Universities.
41 Keele and Sheffield Universities.
criminology, which did much better in the Recognition Exercise, was much better placed to take advantage of this situation and did very well. The criminologists could hardly have done better had there been a separate Criminology Panel.

Part of the explanation for the weakness of postgraduate training in socio-legal studies is that, unlike some other countries, in particular the USA, where socio-legal researchers can be found in university departments and schools of political science, public policy, sociology and anthropology as well as in law schools, in this country almost all of them are to be found in law schools. Although there appears now to be considerably greater tolerance within law schools of different approaches to legal scholarship than was the case in the past, and the appointment of some very distinguished socio-legal researchers to the Law Panel in the Research Assessment Exercise should ensure that socio-legal scholarship is regarded on a par with other forms of legal scholarship, very few law schools have the resources to provide either generic training in social research methods or subject specific training in socio-legal studies at the standard required for recognition by the ESRC. If law schools were so minded, they could ‘buy in’ to the generic training courses in social research methods offered by graduate schools in the social sciences. However, they would still have to provide the subject specific research training in socio-legal studies themselves and, while staff with skills and experience in empirical socio-legal research constitute a small minority of the teaching staff, law schools lack an incentive structure that would encourage them to develop postgraduate training in socio-legal studies and seek recognition from the ESRC. The costs are too high and the rewards too low when compared with the ‘rich pickings’ that can result from attracting overseas students to take taught Master’s courses on subjects that will enhance students’ professional careers.

The weakness of postgraduate training in socio-legal studies is a structural problem and, as such, it calls for structural solutions. Throwing money at it, the form of additional quota awards, without understanding its causes is clearly not enough and, with hindsight, was bound to fail. To succeed, it is also necessary to address the structural problems of socio-legal studies in law schools and recognise the lack of incentives within this structure for law schools to commit themselves to training the next generation of socio-legal researchers. With this in mind, five ‘strategic initiatives’, all of which have some chance of succeeding, are outlined below.

7. SOME POSSIBLE SOLUTIONS

Although the ESRC correctly concluded that a solution to the problem of postgraduate research training in socio-legal studies called for a ‘strategic initiative’, its attempt to increase the number of quota awards in socio-legal studies does not qualify for this epithet. The relatively small number of socio-legal outlets that applied for recognition and the poor quality of many of the socio-legal applications demonstrate that more radical solutions to the problem are required. A first step might be to find out why so many of the recognised ‘centres of excellence’ in socio-legal studies chose not to take part in the 2005 Recognition Exercise and what initiatives might encourage

42 Those involved with the allocation of quota awards claim that criminology did not benefit all that much from the weak performance of socio-legal studies in the Recognition Exercise since the quota awards that had been set aside for socio-legal studies but which were not awarded to socio-legal outlets were not automatically allocated to criminology outlets. Following a discussion at the Training and Development Board, some of them were re-allocated to smaller disciplines. Criminology did well mainly because of its relatively strong performance in the Recognition Exercise. In addition, it may have picked up a couple of the unallocated socio-legal awards and a couple of additional awards from the strategic pool for outlets providing advanced quantitative training.

43 This was requested by the BJC.

44 The position of socio-legal studies in the USA was described by Professor Herbert Kritzer at the Inquiry’s seminar on ‘transdisciplinarity’, which took place at the Nuffield Foundation on 31 January 2005.

45 This may be due to the fact that law is studied in graduate schools in the USA and, as a consequence, there is a demand for law courses at undergraduate level. This demand is largely met by departments of political science, sociology and anthropology that are not bound by any requirements of the legal profession and are free to teach the subject from their own disciplinary perspective. In the UK, the demand for law courses at undergraduate level is met by law schools, which see themselves as constrained by professional requirements. Although professional requirements undoubtedly act as a constraint, just how a limiting a constraint they really are is a matter of contention.
them to do so in the future. A second step might be to identify some possible solutions to the problem and to see which of these are most strongly supported by the academic community and the ESRC. With this end in mind, five proposals, which constitute the sort of strategic initiatives that may be required, are outlined below. It should be noted that these proposals are not alternatives and that an effective strategic initiative would probably combine several of them.

7.1 PROPOSAL 1 – INVOLVE THE LEADING SOCIO-LEGAL SCHOLARS

Many of the most distinguished socio-legal researchers work in relative isolation in law schools which are not committed to training the next generation of socio-legal researchers. Almost all of them work in universities which do not have postgraduate training programmes in socio-legal studies that are recognised by the ESRC. As a result, they cannot supervise students with ESRC awards. Although they may supervise self-funding students and students from overseas, their contribution to training socio-legal researchers is rather attenuated. This problem could be addressed through a competition in which established socio-legal researchers are invited to compete for a special quota of, say, 5 or 6 ESRC awards per year. Over a period of 5 years, such a scheme should produce 25-30 trained socio-legal researchers.\(^{46}\)

These awards would not be allocated to ‘recognised outlets’ but to ‘recognised individuals’, who would act as the students supervisors.\(^{47}\) In applying for an award, the potential supervisor would be required to indicate how the student could meet the ESRC’s generic and subject-specific research training requirements. Most of the universities in which the recognised socio-legal researchers are employed have doctoral programmes which provide generic social science training that is recognised by the ESRC and which the student could be required to follow. Thus, the problem is far more likely to be that these universities do not offer courses that satisfy the subject-specific training requirements in socio-legal studies. In these cases, students could be required to follow an appropriate course of reading with their supervisor and/or with another member of staff, and take substantive courses, in law and/or the social sciences, where this is deemed appropriate. In addition, the ESRC could organise a programme of day or residential seminars which all the students it supports under this scheme would be required to attend. This idea is developed below.

7.2 PROPOSAL 2 – ESRC ITSELF TO PROVIDE SUBJECT-SPECIFIC TRAINING IN SOCIO-LEGAL RESEARCH METHODS

The heavy professional demands of the undergraduate curriculum and the lucrative rewards of attracting overseas Master’s students effectively prevent many law schools, including those which employ distinguished socio-legal researchers and have a reputation for socio-legal research, from committing themselves to the training of socio-legal research students. This problem could be addressed if the ESRC were to organise a programme of day or residential seminars which would seek to deliver subject-specific training in socio-legal research methods. If it was directed by a well-respected socio-legal researcher with a good overview of the field, it could ensure the participation of experienced researchers and cover a wide range of topics at both basic and advanced levels. If this proposal was linked with Proposal 1 (above), the distinguished socio-legal researchers to whom awards would be allocated might be required to contribute to the programme of seminars that would be organised by the ESRC.

One problem that would need to be solved is that of accreditation for the seminar programme. The Postgraduate

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46 Such a scheme would meet Andrew Dobson’s criticism that the quota system ‘denies PhD student the opportunity to work with the large number of social scientists who are not located in the quota outlets’. See Dobson, Andrew (2004) ‘ESRC Quota Awards...bad for research training, bad for students, bad for supervisors and bad for political science’, Political Studies Association Newsletter, 15 (2), June.

47 There are precedents for allocating ESRC studentships to individuals. The ESRC’s Professorial Research Fellowship scheme includes funding for the Fellow to supervise a PhD student on a topic related to his/her own research.
Training Guidelines require that recognised courses must be assessed and count towards a Master’s degree in the first year of training. Assessment itself is not a problem but acceptance by universities of performance in courses that they have not approved and do not teach is likely to be. The solution may be that, although passing the course would be a condition of continuing to receive an ESRC studentship, it would not count towards the student’s degree. Participation in the subject-specific training course would be required for students at universities that do not offer recognised programmes of subject-specific research training in socio-legal research and encouraged for students at universities that do. Among other things, a centrally-provided programme of research training would provide a peer group for socio-legal research students who might otherwise be rather isolated within their own institutions.

7.3 PROPOSAL 3 – ENCOURAGE COLLABORATION BETWEEN LAW SCHOOLS AND OTHER SUBJECT AREAS AND DISCIPLINES

Socio-legal research is an ‘importer’ subject in that it is significantly dependent on staff trained in other subject areas. Some socio-legal researchers will have received their research training in criminology, others will have been postgraduates in sociology, anthropology, social policy or another of the social sciences. Significant numbers may have received no formal research training and have picked up what they know ‘on the job’. However, if socio-legal studies, with its base in law schools, is not strong enough to become self-sufficient in training future generations of socio-legal researchers itself, it should perhaps be encouraged to contribute to their training by collaborating with other subject areas and disciplines. This could be achieved through a focused competition in which, for example, criminology outlets would be invited to develop training programmes in criminology and socio-legal studies. Recognised programmes could then be allocated a quota of awards. Alternatively, law schools and social science disciplines and outlets could jointly be invited to develop training programmes in socio-legal studies that could be resourced in the same way. The rewards would not only be more funded socio-legal research students, who might be jointly supervised, but also collaborative working relationships between lawyers and social scientists from which socio-legal research could only benefit.

7.4 PROPOSAL 4 – INTRODUCE A DEDICATED PROGRAMME OF COLLABORATIVE STUDENTSHIPS IN SOCIO-LEGAL STUDIES

As noted above, links between law schools and outside organisations are poorly developed, not least in comparison with those in criminology, and, as a result of this, few law schools are in a position to develop collaborative research with outside partners. There is certainly no shortage of partners that, in theory, could include courts, tribunals, ombudsmen, advice and information services, mediation and conciliation services, professional bodies, law firms, the bar, the judiciary etc. What are required are some appropriate incentives for law schools to develop such links. If the award of a CASE studentship was detached from the requirement that the university outlets had to offer dedicated postgraduate training programmes in socio-legal studies, as would be the case if proposal 2 were introduced together with proposal 4, law schools might be more willing to develop such links. One additional advantage of this proposal is that it could be expected to lead to an increase in the volume of socio-legal research on topics with high professional or policy salience.

7.5 PROPOSAL 5 – ESTABLISH A NEW POSTDOCTORAL FELLOWSHIP SCHEME

The fifth solution involves the establishment of a new post-doctoral fellowship scheme in which the fellowship is linked to a teaching post. Those who obtain a PhD in one of the social sciences and who are interested in the field of socio-legal studies, would be given the opportunity
to read themselves into the field and to develop a socio-
legal research agenda as part of their fellowship. They
could be encouraged to work under the guidance of one
of the distinguished socio-legal researchers referred to in
Solution 1 above. Unlike the existing ESRC Postdoctoral
Fellowships, which last for one academic year and do
not automatically lead on to an academic job, these new
fellowships would last for three years and would lead
on to a lectureship at the university concerned. The aim
would be to appoint researchers who would, during the
first three years of their appointment, spend most of
their time on research (although they might be required
to do some teaching). Thereafter, they would have a full
teaching load but would be expected to continue as active
socio-legal researchers. For the first three years, the post
would be funded by the ESRC but, thereafter, it would be
paid for by the university. Applications would be made by
individuals but would be accompanied by a statement from
the university concerning the support the fellow would be
given and the teaching, which might include teaching a
course on some aspect of socio-legal studies, they would
be expected to do.

8 CONCLUSIONS

The small number applications for recognition of doctoral
programmes in socio-legal studies and the poor quality
of many of them are matters of concern not only for the
socio-legal research community but for everyone who
is concerned with the health of the empirical research
base of socio-legal studies. The ESRC has been aware
of the problem for some time and this explains why it
included socio-legal studies, along with a number of other
subject areas, in its list of ‘priority areas’ that needed to
be addressed through ‘strategic initiatives’. This is also
why it increased the number of quota awards allocated
to the socio-legal subject area although, as this paper has
demonstrated, socio-legal studies did not benefit from this.

Rather perversely, the end result of the recent recognition
exercise and the allocation of quota awards is that there
are fewer socio-legal studentships than there were before
the exercise began.

It is clear that some imaginative thinking is required and,
with this in mind, this paper set out five possible strategic
initiatives to address the capacity problem in socio-legal
research. Other initiatives are proposed in the Nuffield
Inquiry’s Final Report which, like those outlined above,
aim to create a critical mass of empirical socio-legal
researchers. It is to be hoped that the publication of this
paper, along with the Inquiry’s Final Report, will help to
stimulate a debate about the relative merits of these and
other possible solutions to the problem.

49 It could be funded from the ‘ring-fenced pot of money for junior researchers just starting out on their careers’ that ESRC is considering. See
Select Committee on Science and Technology in the Committee, First Report, oral evidence from Professor Ian Diamond (Chief Executive of
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