

# **LAW IN THE REAL WORLD: Improving Our Understanding of How Law Works**

**FINAL REPORT AND RECOMMENDATIONS**

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November 2006

**THE NUFFIELD INQUIRY ON EMPIRICAL LEGAL RESEARCH**

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## Foreword

The Nuffield Foundation has been keen to encourage more empirical research on law for at least 35 years. This report, and the Inquiry which gave rise to it, is merely the Foundation's most recent effort to take practical steps to ensure that we get an accurate picture of 'law in the real world'.

The Inquiry arose because we hoped that having a clearer diagnosis of the reasons why we don't have enough research in law might give rise to suggestions for what to do about it. We have been discussing this problem for a number of years, including with the Socio-Legal Studies Association, itself founded partly to stimulate empirical work, and with the ESRC, which has long been aware of the need to stimulate research in this area. We have also discussed the issues with government departments, and various practitioners, including judges, other adjudicators, legal practitioners and the voluntary sector. After a while, we decided to stop wringing our hands and see if we might occasion some concrete steps to make things better.

So we issued a challenge to Professor Genn and her colleagues: can you look at this properly, collect a full range of evidence, and stimulate a wide-ranging discussion about possible solutions?

At the outset, we were sure of only one thing: no single initiative, or single centre or single short-term funding stream would really solve the problem. After all, the Nuffield Foundation's initial attempts at special Fellowships back in 1971 did not significantly alter matters. The ESRC's creation of the Oxford Centre for Socio-Legal Studies did make a real difference but as with any single centre, its effect attenuated over time. (As both Professor Genn and I know, years have passed and the classes of the 1970s and 80s, with some notable exceptions, have moved on.) It would anyway never really have been possible to create a critical mass of researchers from a single base.

The report starts by making the case that research on how law works really does matter. Indeed, it argues that this is not only an enduring need but one that is increasing. As society spends more time 'doing law' and law gets involved in more and more aspects of our lives, we need more information than ever before about what this means in practice.

In making this case so powerfully, the authors have clarified one important issue. The thing we are especially missing is empirical research, whether quantitative or qualitative. We need to know how law or legal decision-making or legal enforcement really works outside the statute or text book. To that extent, the traditional framing of the issue as one of 'socio-legal' studies may be too broad. It isn't that other types of analysis aren't useful, just that they are not in such short supply.

The authors then go on to discuss the reasons why we do not have more empirical evidence about law. Some of the reasons are to do with the way research issues are carved up between the discipline of law and other social sciences. The report documents the history of attempts to take steps to break down the divide between lawyers 'doing law' and social scientists doing research largely in fields other than law. Some of the problems are a result of the understandable preoccupation of law schools with the legal education of undergraduates, tomorrow's professionals. Some are to do with the extent to which political science in the UK may have an institutional focus that is different from its counterpart in the US.

Whether everyone agrees with all points of detail in the diagnosis, we hope this report will stimulate a constructive debate about the range of concrete steps that could and should be taken to improve matters. The diagnosis strongly supports our initial stance: different people and different institutions need to address this issue in a number of different ways. So a debate that brings a number of organisations together is an essential pre-requisite for any action. The Foundation is ready to do its part.

Meanwhile we are hopeful that if, together, we can take some of the very practical steps identified here, we might be able to create the "critical mass" of researchers that we need – and that refers both to the numbers and to the ability of the research community to become self-sustaining.

We are extremely lucky that Professor Genn and her co-authors rose to the challenge we set. Professor Genn and Professor Wheeler were the original applicants but Professor Partington was far more than a chair, contributing enthusiastically as an author as well. The Foundation has been extremely impressed by the energy, insight and commitment of the authors and is sincerely grateful to them all.

We are also grateful to the Advisory Committee that gave so much time and thought to the questions we set and to the drafts of the various documents. In particular, the Advisory Committee dared the Inquiry to be radical in its suggestions and to think about longer-term sustainability. We are glad they issued the challenge, and we are grateful that the authors accepted it with such alacrity!

Many other people also gave extraordinary amounts of time: responding to the consultation document, convening and contributing to discussion meetings, and responding to requests for information. The ESRC was particularly supportive and helpful throughout.

To all of these we say thank you. And to everyone who reads this report, we would relay our hope that it does not merely lead to discussion, but sets a challenge that all of us will want to meet.

Professor Genevra Richardson  
Trustee, The Nuffield Foundation



## Acknowledgements

The Inquiry was guided by a distinguished Advisory Panel drawn from a wide range of professional backgrounds: Professor Robert Burgess, Sir Robert Carnwath CVO, Professor Ian Diamond, Valerie Macniven, Walter Merricks, Professor Alan Paterson, Professor Genevra Richardson, Roger Smith, Jonathan Spencer, and Professor Paul Wiles. The Panel members made time in very busy schedules to provide invaluable guidance to the Inquiry team and we are indebted to them for their wise counsel.

We would also like to express our thanks to the many people who attended meetings and seminars and to those in the UK and abroad who offered written responses to the Consultation questions. The Inquiry has benefited enormously from the thoughtful and insightful observations made. We are especially grateful to Ann Millar, formerly of the Scottish Executive, now of the Scottish Further and Higher Education Funding Council for her helpful suggestions. We hope that the Report captures the quality of these contributions. We are also grateful to all those who assisted with organising Inquiry meetings and seminars, in particular Professor Michael Adler, Professor David Cowan, Professor Kim Economides, Professor Neville Harris, Professor Paddy Hillyard, Professor Sally-Lloyd Bostock, Professor Phil Thomas and Professor John Usher.

We would like to thank Professor Herbert Kritzer, Professor Ian Diamond and Professor Malcolm Grant for the keynote presentations they made at Inquiry seminars, to Professor Carrie Menkel-Meadow for her contribution to the London meeting and to Professor Theodore Eisenberg for his contribution to the Hart Workshop on Understanding Law and Legal Process: The Approaches, Value and Outcomes of Empirical Research in June 2005.

Marc Mason provided research assistance to the Inquiry and Nathan Emmerich assisted with the careers' survey. We are grateful to Lisa Penfold at UCL for providing administrative support throughout the Inquiry and for ensuring the aesthetic quality of the Inquiry material.

Most importantly, the Inquiry team would like to record their gratitude to the Nuffield Foundation for funding the Inquiry and, in particular, to pay tribute to Sharon Witherspoon, Deputy Director of the Nuffield Foundation, whose guidance, support and contribution - well beyond reasonable expectations - has been of immense value to the Inquiry.

Hazel Genn  
Martin Partington  
Sally Wheeler



# 1. INTRODUCTION

## Empirical Legal Research in the 21<sup>st</sup> Century

1. The work of empirical legal researchers since the last third of the 20th Century has provided Government, the judiciary, law reform bodies, regulatory bodies, universities, social, and economic institutions of all kinds with vital insights into how the law works in the real world. Empirical legal research is valuable in revealing and explaining the practices and procedures of legal, regulatory, redress and dispute resolution systems and the impact of legal phenomena on a range of social institutions, on business and on citizens.
2. In fact, there are grounds to believe that, in future, there will be an increasing demand for research on how law works:
  - As Parliament, particularly through the work of its select committees, and government departments draws on and needs the evidence that can be provided by empirical legal researchers to inform discussion of policy and evaluate legislative change, this adds to the demand for high quality empirical legal research<sup>1</sup>.
  - As empirical legal research is important for underpinning many areas of legal and social policy, there will be an increasing demand from a wider range of others – business, NGOs and so on – that evidence about how law works be made available.
  - As practitioners and non-empirical legal scholars come to realise the ways in which empirical legal research enriches the study and practice of law and the development of doctrine, they too add to the demand for more research.
3. Empirical legal research is now recognised as having a central position in legal scholarship<sup>2</sup> alongside the doctrinal, text-based body of legal research in jurisprudence and substantive law and practice. Abroad, and particularly the USA, the empirical legal studies movement (ELS) is regarded as one of the most vibrant areas of legal scholarship. The theme of the 2006 conference of the Association of American Law Schools was “*Empirical Scholarship*” and the First Annual Conference on Empirical Legal Scholarship was held at the University of Texas in October 2006<sup>3</sup>. Indeed, law

schools and individual scholars in the USA are jostling to establish their ELS credentials, concerned not to be left behind a fast rolling bandwagon<sup>4</sup>.

4. Empirical legal research helps to build our theoretical understanding of law as a social and political phenomenon and contributes to the development of social theory. Put simply, empirical research helps us to understand the law better and an empirical understanding of the law in action helps us to understand society better.
5. The work of empirical legal researchers also influences the development of substantive law, the administration of justice, and the practice of law. As Baldwin and Davis have noted:

“[I]t is principally through empirical study of the practice of law...and in studying the way legal processes and decisions impact upon the citizen, that the disciplines of sociology and, to a lesser degree, philosophy, psychology, and economics have entered into and enriched the study of law. This multidisciplinary research has, in turn, influenced many aspects of legal practice...Even the rules and procedures of the law, which can seem arcane and specialist, reflect this influence.”<sup>5</sup>

6. Research funders are attracted to empirical legal research. The originality of empirical investigation into law and legal phenomena has an immediate appeal for grant-giving bodies anxious to develop interdisciplinary approaches to new fields in order better to advance fundamental knowledge, to inform and evaluate reform, to meet the needs of citizens and improve the quality of life. It is also recognised that existing areas of social inquiry can be enriched by embracing the legal dimension.
7. The scope, methods and output of empirical legal research offer university law schools and social science departments the opportunity to be at the leading edge of relevant social research. There are huge opportunities for academic lawyers to collaborate with colleagues across the full range of social science and other disciplines in order to contribute to major contemporary social and economic issues facing society that are already pre-occupations of the natural and social sciences. These include:
  - Security and personal safety
  - Demographic change
  - Global health and delivery of health care
  - Environment and climate change

<sup>1</sup> This will become even more acute if recent suggestions from the Law Commission relating to post-legislative scrutiny of the impact of legislation are taken forward.

<sup>2</sup> Roger Cotterrell: “Socio-legal scholarship in the broadest sense is the most important scholarship presently being undertaken in the legal world. Its importance is not only in what it has achieved, which is considerable, but also in what it promises.” (Law’s Community, 1995, 314).

<sup>3</sup> The Journal of Empirical Legal Studies edited at Cornell University under the leadership of Professor Theodore Eisenberg, was launched in 2004. There is even now a ranking of the “top ELS” law schools and an animated ELS blog at [www.elsblog.org](http://www.elsblog.org).

<sup>4</sup> For a slightly nervous account of the success of the ELS movement see Mark Suchman, “Empirical Legal Studies: Sociology of Law, or Something ELS Entirely?” Newsletter of the Sociology of Law Section of the American Sociological Association, Summer 2006 Volume 13, No 1.

<sup>5</sup> John Baldwin and Gwynn Davis, ‘Empirical Research in Law’, Chapter 39 in Peter Cane and Mark Tushnet, *The Oxford Handbook of Legal Studies*, Oxford University Press, 2003, at 881.

- Biomedical technology
- Inequality

“Vice-Chancellors struggle to maintain an intellectual community – not silos or sub-units of a factory...The challenge is to ensure cross-communication and cross-fertilisation at the social level, but also at the intellectual level. It is important to ensure that the big questions are not appropriated by a single discipline - for example human genetics. This is not a ‘genetics’ question, and needs social sign-posts – but the social and regulatory responses are failing to keep pace. Another example is in-vitro fertilisation. This is now a matter of consumer choice but wasn’t twenty years ago. These are big questions that cannot be left to medical schools. How do we engage the intellect of law and social sciences to keep pace?”  
**Professor Malcolm Grant, President and Provost, University College London<sup>6</sup>**

## Why have an Inquiry?

8. Despite the achievements and impact of empirical legal research, there has been increasing concern within the academy and the user community that the current generation of empirical legal researchers is not large enough to meet the existing opportunities and demand. More seriously, there is concern that many of the leading empirical legal researchers may retire during the next decade and that there is not a robust successor generation of trained empirical legal researchers to build on existing achievements and meet future demand for research.
9. The problem is particularly acute in the civil law/justice field (for convenience subsuming all areas of non-criminal law and process) where historically there has been lower capacity and less empirical research activity than in criminal justice.
10. 10. The twin problems of the lack of current capacity and of the prospect of a declining future capacity are occurring at a time when the importance of empirical legal research is increasing. There are excellent opportunities to enhance our understanding of legal phenomena by building on the foundational empirical work completed over the last thirty to forty years. The demand for empirical legal research that can inform and evaluate policy is also growing as is the use of empirical material in judicial proceedings.
11. This all reflects the obvious fact that the world in which law and regulation is required to operate is both expanding and changing rapidly. Economic globalisation, scientific and technological advances, demographic change, environmental challenges, new modes of communication, and threats to security are just some of

the big issues facing the modern world. At the domestic level, there are the challenges provided by the expansion of the European Single Market, EU governance, human rights, and other aspects of Constitutional Change. In the European context, there are also opportunities for UK empirical legal researchers to offer leadership since, in much of the rest of Europe, empirical legal research is generally less well-established.

12. As Government increasingly regulates economic, social and family relationships in rapidly changing contexts, there is a need for empirical evidence about the impact of law and regulation; how mechanisms of regulatory control could be improved and adapted; how individuals and organisational respond; and adapt to the legal environment and how law can contribute to the overall well-being of society.
13. The fundamental point is that while law is an *increasingly* important feature of modern life, there seems to a *decreasing* capacity to keep it under empirical examination.

“Parliament often makes family laws ‘in the dark’ – that is, without any clear picture of how the family justice system works, or the eventual impact of those laws once they are in place. Lead Members in local authorities are responsible for the delivery of local services for children – and yet the family courts which play a key role in making decisions on behalf of those same children are often a mystery to those with responsibility for their wellbeing.”  
**Department for Constitutional Affairs, Confidence and Confidentiality: Improving Transparency and Privacy In Family Courts, July 2006, Cm 6886.**

## The Inquiry

14. In recognition of the importance of UK future capacity to conduct empirical legal research, the Nuffield Foundation provided funding for an Inquiry starting work in January 2004<sup>7</sup> that would:
  - Provide factual information about current capacity for empirical legal research among lawyers and social scientists, particularly in relation to non-criminal law and processes;
  - Explore the evidence for a shortfall in capacity to undertake empirical legal research;
  - Explain the causes of the problem including incentives and disincentives for conducting empirical legal research, drawing on overseas experience;
  - Bring together key stakeholders in legal education, training, funders, users of research, and policy-

<sup>6</sup> Keynote speech, Inquiry seminar “Incentives and Disincentives”, London 8 March 2005.

<sup>7</sup> The Inquiry was undertaken by Professors Hazel Genn, Martin Partington and Sally Wheeler, with the support of an Advisory Committee, whose membership is set out in the Appendix. Research assistance was provided by Marc Mason and Nathan Emmerich.

- makers to develop a shared understanding of the issues and to identify where concerted action is possible;
- Identify a range of possible solutions; and
  - Make recommendations for a programme of initiatives designed to secure the future of empirical legal research.
15. The explicit focus of the Inquiry was the capacity of the academy to undertake *empirical* research on law and legal processes, defined as the study through direct methods of the operation and impact of law and legal processes in society, with a particular emphasis on non-criminal law and processes<sup>8</sup>. The focus of the Inquiry was intentionally limited to *empirical legal research*, rather than encompassing socio-legal studies as a whole. British socio-legal study includes a wide range of approaches and perspectives on law as a social phenomenon, with a strong tradition of purely theoretical work. While there may be disagreement about whether there is too little<sup>9</sup> or too much socio-legal theory<sup>10</sup>, what is clear is that empirical study of the operation of law and legal processes represents only a modest part of the body of socio-legal literature and that this in turn reflects a shortage of researchers with the necessary skills to embark on empirical enquiry.
16. The Inquiry lasted just over two and a half years and proceeded in a number of stages.
- A Consultation Document<sup>11</sup> was launched at the Socio-Legal Studies Association Annual Conference in April 2004 and then widely distributed in the UK and abroad. It set out the background to the Inquiry and key issues of concern and invited responses to a series of questions.
  - In June and July 2004, the Consultation Document was discussed at open meetings in Belfast, Birmingham, Bristol, Edinburgh, London, and Manchester. It was also discussed by the Socio-Legal Research Users' Forum<sup>12</sup> and at the 2004 Annual Conference of the Society of Legal Scholars. These meetings brought together scholars from the social sciences, law and the humanities, as well as funders and users of research.
  - In Autumn 2004, written responses to the Consultation Document and the content of discussions at public meetings were analysed leading to the identification of three principal issues:
    - The challenge of transdisciplinarity
    - Education and training
    - Creating incentives and removing barriers to empirical legal research
- These issues were the subject of four further seminars in Spring 2005, three of which were held in London and one in Edinburgh.
- To gather evidence about the age, disciplinary profile and career trajectories of the current cohort of empirical legal researchers, in April 2005 an email survey was sent to a sample of over 400 academics identified as having conducted empirical legal research
- Emerging Inquiry proposals and preliminary findings of the careers' survey were presented at the Hart Legal Workshop in June 2005 which was entitled *Understanding Law and Legal Process: The Approaches, Value and Outcomes of Empirical Research*.
17. The Inquiry has revealed a complex web of issues needing to be addressed in a strategy designed to strengthen and increase capacity in empirical legal studies. Implementation of a strategy will require bold and imaginative leadership from academics, funders, and policy makers. The Inquiry team and the Advisory Committee are grateful for the contributions made by all those who participated in Inquiry meetings and seminars, submitted responses to the Inquiry and completed questionnaires.

<sup>8</sup> John Baldwin and Gwynn Davis, 'Empirical Research in Law', Chapter 39 in Peter Cane and Mark Tushnet, *The Oxford Handbook of Legal Studies*, Oxford University Press, 2003, pp880-881.

<sup>9</sup> For example, Roger Cotterrell (2002), 'Subverting Orthodoxy, Making Law Central: A View of Sociolegal Studies', *Journal of Law and Society* 29, (4), 632.

<sup>10</sup> For example Paddy Hillyard (2002) 'Invoking Indignation: Reflections on Future Directions of Socio-Legal Studies', *Journal of Law and Society*, 29 (4), 645.

<sup>11</sup> See the Inquiry Consultation Document for an extended account of the development of empirical legal scholarship and the background to the Inquiry.

<sup>12</sup> A group of research users from across government, funders of empirical legal research, and academic empirical legal researchers



## 2. THE LANDSCAPE OF UK EMPIRICAL LEGAL RESEARCH

### The development of empirical legal research

#### *Civil law and justice*<sup>13</sup>

“At the Law Commission [empirical legal research] was frequently of great benefit informing our work in reviewing particular areas of substantive law. The Commonwealth Association of Law Reform Agencies has recently expressed great interest in the work of your Inquiry as sound empirical research is so important in underpinning law reform and policy development. At the Council on Tribunals, we had a literature survey undertaken as far back as 20-30 years ago, gathering together all the literature about research into the tribunal sphere. Also in government, we had considerable research undertaken into aspects of family and criminal law.” **Michael Sayers** ex CEO of the Law Commission, General Secretary of the Commonwealth Association of Law Reform Agencies – Response to Consultation

18. Pioneering empirical research on civil law and justice has been undertaken in the UK at least since the 1960s, among others by Professors Brian Abel-Smith, Robert Stevens and Michael Zander. Much of that early work focused on the role of the legal profession and early debates on unmet need for legal services. The period also saw the creation of law schools such as Warwick and Kent offering programmes exploring the interface between law and society. The Institute of Judicial Administration was established in the late 1960s at the University of Birmingham, and in 1975 the Institute published the results of an empirical study of legal services in Birmingham funded jointly by the British Academy and the Nuffield Foundation<sup>14</sup>.
19. A significant boost to the developing field was given when the SSRC (now ESRC) took the decision in 1972 to create a critical mass of researchers dedicated to the interdisciplinary study of the impact of law on society by founding the Oxford Centre for Socio-Legal Studies. Although law was initially regarded as being outside
20. Since the establishment of the Oxford Centre, many institutions have created thematic research centres or groups focusing on specific areas where some empirical work has been undertaken. Examples are: Family Law (Oxford, Bristol, Cardiff); Legal Profession and Legal Services (Birmingham, Sheffield, Exeter, IALS, UCL); Business and commerce (Cambridge); Regulation (LSE); Administrative Law and Justice (Bristol, Edinburgh); Risk (Nottingham); Environment (UCL); Medicine and biotechnology (Nottingham; Cardiff); Courts and Litigation (Nottingham); Ethics (Cardiff). There are also loose coalitions of scholars working on specific topics or disciplinary areas such as Law and Economics (Nottingham, York, UCL, Surrey), Housing (Sheffield Hallam, Bristol).
21. Empirical legal research in the non-criminal field is also undertaken by Government research units, most notably the Legal Services Research Centre (funded by the Legal Services Commission), which for a decade has been conducting imaginative and methodologically sophisticated research into access to justice and publicly funded legal services, and the Department for Constitutional Affairs Research Unit, which promotes a programme of research and conducts its own in-house empirical projects.
22. Private research companies also conduct empirical legal research, as do freelance researchers. Increasingly consultancy firms are becoming interested in the opportunities offered by research in the legal field.
23. The work of empirical legal researchers has described, explained and deepened understanding of the law in

<sup>13</sup> For an expanded account of the development of empirical legal research in the UK and the contribution of empirical legal research to policy and practice see Chapters 2 and 3 of the Inquiry Consultation Document, April 2004.

<sup>14</sup> Lee Bridges, Brenda Sufrin, Jim Whetton and Richard White, *Legal Services in Birmingham*, 1975, University of Birmingham, Institute of Judicial Administration.

<sup>15</sup> For example, Robert Baldwin (Law/Regulation), Professor of Law in the Law Department at LSE; Bridget Hutter (Sociology), Director of the ESRC Risk and Regulation Centre at the LSE; Anthony Ogus (Law and Economics) Professor of Law at Manchester Law School; Hazel Genn (Sociology/Law) Professor of Socio-Legal Studies at UCL; Robert Dingwall (Sociology/Social Policy), Professor of Sociology, School of Sociology and Social Policy Nottingham and Director of Institute for Genetics, Biorisks and Society; Sally Lloyd-Bostock (Psychology/Law) Professor of Law and Psychology at Birmingham University and Director of Institute of Judicial Administration; Paul Fenn (Economics) Professor of Insurance Studies at Nottingham Business School; Roger Bowles (Economics) Professor of Economics and Director of Centre for Criminal Justice, Economics and Psychology; Linda Mulcahy (Law) Professor in School of Law Birkbeck College; Sally Wheeler (Law) Professor of Commercial Law and Socio-Legal Studies Birkbeck College; Genevra Richardson (Law) Professor of Public Law Queen Mary; Carol Jones Professor of Criminology (Glamorgan); Ian Loveland (Law and Political Science) Professor of Law City University; Mavis Maclean (Social Policy/Law) Oxford Centre for Family Law and Policy). In this way the Oxford Socio-Legal Centre has had an influence on the development of UK socio-legal studies through the export of its researchers to law and social science schools throughout the UK.

action across a wide range of areas of public interest, encompassing both civil and criminal law and justice. The corpus of empirical legal research is valued to underpin many areas of legal and social policy in areas including, but not limited to the following:

- Access to civil justice
- Administrative law and justice
- Bioethics
- Business law and policy
- Childcare law and policy
- Employment
- Environmental law and policy
- Ethics
- Family law and policy
- Health regulation and delivery
- Housing and planning law and policy
- Human rights
- Judicial administration
- Judicial appointments
- Judicial decision-making
- Legal education
- Legal profession and legal services
- Litigation behaviour
- Medicine and biotechnology
- Mental health
- Mental health law and policy
- Regulatory policy and practice
- Risk
- Social welfare law and policy

24. Work in these substantive fields, through description and analysis has enabled deeper theoretical understanding of cross-cutting themes such as:

- Complaining and claiming behaviour
- Dispute resolution
- Domestic and international judgecraft and judicial decision-making
- Dynamics of procedural justice
- Family obligations
- Governance
- Health inequalities
- Healthcare delivery
- Participation and self-representation
- Practice and standards in medical decisions
- Professional behaviour
- Redress systems
- Regulatory enforcement
- Regulatory impact
- Responsive redress systems

25. This brief survey of the field of empirical legal research shows that while a wide range of themes and issues have been addressed, the number of empirical researchers working on any particular area is very small and the coverage of issues is thin and patchy, with entire areas largely untouched. There are many fields calling out for empirical research and this is important for reasons of policy, for reform and for deeper understanding of the law and legal processes in action. The field is therefore wide open for researchers and the scarcity of empirical legal research virtually guarantees originality. There are areas where the most basic descriptive information is lacking, creating opportunities for researchers interested in entering a substantive field. This also presents challenges, however, since without existing data and an intellectual investment on which to build - and in the absence of ideas and theory that can be developed and tested - breaking new ground can be a daunting

prospect, especially for aspiring young researchers. Respondents to the Consultation Document gave examples of areas where empirical legal research was thin or absent. For example:

"The whole issue of the open method of coordination as a method of (soft) governance in the EU context is crying out for more elaborated socio-legal and empirically driven research. In practice, in terms of these projects, lawyers passively cede the ground to other social scientists, and especially social policy researchers. There is definitely, to my mind, a capacity deficit in relation to responses to the opportunities posed by European funded research. Part of the problem is not just the micro skills in terms of being able to think research problems through in socio-legal and empirical terms, but also a more macro-problem of lack of familiarity with devising and delivering projects on a larger scale." **Jo Shaw, Professor of European Law, University of Manchester, Consultation response**

"Broadly speaking I think the issue of civil law and public health is profoundly under-researched. This is surprising given the fundamental duties of any government should be to ensure security and health. Terrorist threats allied to biochemical weapons, emerging and re-emerging biological agents, and changes in population movements all potentially threaten public health. Yet many of our laws are grounded in nineteenth century conceptions of disease and nineteenth century responses. The huge potential for domestic law to draw on comparative analyses and be better framed around a better understanding of risk and effectiveness of different response models should be informing our contemporary legal frameworks. If this research is to be conducted, capacity needs to be developed which brings together professionals from varied disciplines including lawyers, public health specialists, ethicists, and epidemiologists." **Dr Richard Coker, European Centre on Health of Societies in Transition, London School of Hygiene and Tropical Medicine, Consultation response.**

### ***Criminal law and justice***

26. Empirical research into criminal law and justice research has had a higher profile for a longer period than empirical research in the civil justice field. This is reflected in the establishment of the Cambridge institute of Criminology in 1959 and the Oxford Penal Research Unit in 1966 (since 1973 the Centre for Criminological Research). There are also now well-established institutes and centres devoted to criminological research in Edinburgh, Sheffield, Glasgow, Hull, Kent, Leeds and Belfast based variously in law, sociology and social policy departments. Criminology and criminal justice research groups seem to have achieved critical masses that, apart from the Oxford Centre at its peak, have not been secured in the civil law/justice field.

27. Criminological research has a rather different disciplinary profile from civil justice research, reflecting the behavioural preoccupations of the field. The intellectual roots of most leading criminological researchers are in sociology and psychology. There is a wealth of training available at undergraduate, postgraduate and mid-career level in criminal law and process, analyses of criminality and victimisation, criminal justice policy and empirical research methods which has no counterpart in the civil law/justice field.

28. Another feature of criminological research is that it is international in a way that it is harder for empirical research in civil justice topics to achieve, in the sense that there is a more common conceptualisation of the problems and issues facing criminal justice systems, such as causes of crime, recidivism, deterrence and so on. There are, however, some notable exceptions to this generalisation, for example in the fields of legal services and legal aid, professional behaviour, regulation and dispute resolution. On the other hand, it is important to acknowledge that in most criminological research the substantive content of the criminal law is largely irrelevant with studies focusing on behavioural issues. By comparison, for example, research on relationship breakdown often takes substantive law or procedure as a fundamental starting point for empirical inquiry.
29. Although it is arguable that criminological research faces a capacity problem in terms of the availability of researchers interested in criminal justice who possess the necessary level of skill to conduct rigorous empirical research, it is largely accepted that the problem is of a different magnitude from that in the field of civil justice research, in terms of both recruitment to the field and the robustness of the research base.

## Funding of empirical legal research

30. Research encourages discovery and creativity and offers the promise that the challenges facing society may be resolved and that the well-being of citizens can be improved. Funding for empirical research is critical to achieving these aspirations. It supports curiosity-driven research, provides incentives for the development of new fields of inquiry, supports the training of successive generations of researchers, and offers career opportunities. The history of investment in empirical legal research is therefore relevant to our understanding of current UK empirical legal research capacity and activity.

### *Criminal law and justice*

31. A significant factor in the development of empirical research in criminal law and justice in the UK is the historical funding investment by the Home Office. The Research, Development and Statistics Directorate at the Home Office (previously the Home Office Research and Planning Unit) has, since the early 1970s, been conducting its own original empirical research studies and, at the same time, annually commissioning research projects from university academics. The RDS has a large budget and employs teams of specialist staff including researchers, statisticians, economists, communication professionals and scientists.
32. The existence of such a well-supported team of researchers within the Home Office provides career opportunities in criminology for those leaving University

## EXAMPLES OF MULTI-DISCIPLINARY EMPIRICAL LEGAL RESEARCH CENTRES

### **The Institute for the Study of the Legal Profession**

University of Sheffield. Interdisciplinary centre founded in 1992. Research streams are 'Professionalism, legal services and regulation' (including recent work on non-legally qualified advisors and their clients and the independent Review of the Community Legal Service for the Department of Constitutional Affairs); 'Legal education and training' (including surveys of work and training at the junior Bar over the last 14 years); 'Criminal justice' (including the evaluation of restorative justice for adult offenders); and 'Civil justice: users, priorities and progress' (including the recent civil justice audit)

### **Oxford Centre for Family Law and Policy (OXFLAP)**

established January 2001 to bring together family lawyers and family policy researchers who study the regulation of obligations arising from personal relationships from a cross national perspective. The Centre works closely with a group of international associates. The aim is to develop the contribution of scientific empirical work to informing policy debate in an area where emotions tend to run high and anecdotal evidence is all too common.

### **Essex Human Rights Centre**

Interdisciplinary centre for research, publication and teaching and a base for practical engagement in human rights work through consultancy contracts, training and legal practice. Centre staff comprise academic human rights lawyers, together with philosophers, political theorists and sociologists who have worked on human rights issues. The Centre co-ordinates the University's interdisciplinary human rights teaching programme, as well as a programme of research, training, external consultancy and publication on international, comparative and national aspects of human rights.

### **ESRC Centre for Analysis of Risk and Regulation (CARR)**

Interdisciplinary research centre at LSE. Core intellectual work focuses on the organisational and institutional settings for risk management and regulatory practices. Works closely with government policy-makers and business practitioners, as well as advancing programmes to establish national and international scholarship ('outreach'), and the development of younger scholars working in risk regulation studies.

### **Centre for Research on Families and Relationships**

Established in 2001 through a SHEFC Research Development Grant. Research funded with grants from ESRC, Rowntree, the Scottish Executive, Health Scotland and Scottish Local Authorities. A consortium research centre, whose main office is at the University of Edinburgh, with partners at Glasgow Caledonian University, the University of Aberdeen, University of Glasgow, and University of Stirling. Takes a broad approach to research on families and relationships across the lifecourse and generations. The research programme is collaborative and inclusive and produces high-quality quantitative and qualitative cutting-edge research relevant to Scotland today. The centre builds on partnerships across and within the statutory, voluntary, private and academic sectors.

### **ESRC Centre for Business Relationships, Accountability, Sustainability and Society (BRASS)**

Established 2001. Interdisciplinary centre combining expertise from the Business School, the Law School and the School of City and Regional Planning.

research training posts. Perhaps more important, the large and relatively stable budget for the commissioning of criminological research means that a large cohort of researchers has been able to plan a career around work in this area. This has provided the conditions in which incentives for research have been established and new researchers can be trained and sustained.

### **Civil law and justice**

33. There has never been an equivalent significant source of funding for empirical research on civil law and processes. There exists a range of funders who offer a variety of schemes (both directive and responsive) to which empirical researchers in civil law and justice issues can apply. These include grants for individual curiosity-driven projects, themed programmes, and research Centres. Examples include:

- **The Research Councils**, including the Economic and Social Research Council, the Arts and Humanities Research Council, and to a lesser extent the Medical Research Council and British Academy.
- **Charitable research foundations** including the Nuffield Foundation (in particular its long-standing Access to Justice programme and streams of funding for research on the family), the Leverhulme Trust, the Joseph Rowntree Foundation, and the Esmée Fairbairn Foundation.
- **Government departments** such as the Department for Constitutional Affairs, the Home Office, the Department of Trade and Industry (in particular for employment law and dispute resolution), have provided streams of research funding and funding of one-off projects. The Scottish Office and now the Scottish Executive have historically provided funding for civil justice research in Scotland. Other departments have commissioned research on an ad hoc basis, for example the Department of Health into personal injury litigation and mediation in medical negligence claims, the Office of the Deputy Prime Minister (now Communities and Local Government) for research on housing disputes, homelessness and anti-social behaviour.

34. Funding has also been made available by voluntary agencies and local government<sup>16</sup>.

35. Despite these various sources of funding, one of the most important constraints on the development of a body of empirical researchers interested in civil law issues is the historical lack of Government investment comparable with that of the Home Office. Aside from the Research

Councils, the amount of money available in schemes and programmes relevant for non-criminal empirical legal research is modest and with one or two exceptions (for example the Nuffield Foundation Access to Justice Programme) there are no ring-fenced funds. Empirical legal researchers interested in civil law and justice compete with the full range of disciplines encompassed by the various funders. Although the AHRC remit has some overlap with ESRC, it is more appropriate for doctrinal and textual rather than empirical legal research. The ESRC is therefore the largest current potential funder of empirical legal research. Perhaps paradoxically, information from ESRC and other funders shows that the number of applications to support research in the fields of civil law and justice has historically been small and that the situation is not improving. This is discussed further in Section 3.

36. There have been some areas of civil law and justice research where a steady stream of funding has been available – for example legal aid. This has produced a cohort of academics who have specialised in empirical investigation of public funding of legal services<sup>17</sup>. Even in this field, however, aside from the work being conducted by the Legal Services Research Centre, there seem to be few new researchers entering this field, raising questions about sustainability over the next decade. Similar comments can be made in the context of family law and family justice research.

<sup>16</sup> See Section 3 for the wide range of sources currently being tapped to support empirical legal studies.

<sup>17</sup> For example the work of Alan Paterson, Avrom Sherr, and more recently Richard Moorhead.

### 3. THE CAPACITY PROBLEM

37. Unease about 'capacity' in empirical legal studies is not new and discussions about the issue go back over some 35 years. As far back as 1971, in response to concerns about empirical legal research capacity, the Nuffield Foundation launched a scheme of Social Science Fellowships for Law Teachers to enable legal academics to spend a year working in a social science department on an empirical project. The scheme suffered from very low uptake and closed after a few years<sup>18</sup>. The establishment of the Oxford Socio-Legal Centre in 1972 was an exercise in capacity-building. At the peak of its activity the Oxford Centre had over twenty full-time researchers and ran a programme of training in socio-legal research for its corpus of doctoral students. From 1985 onwards the Centre's core activities began to shrink and its researchers and postgraduates took up posts in the law and social science departments of other Universities. This model was intended in the original conceptualisation of the Centre. It was to be a site for the training of a critical mass of empirical legal scholars who would eventually promote the wider penetration of empirical legal studies throughout universities in the UK by establishing research centres, groupings or programmes in law schools and social science faculties.
38. However, a decade after the ending of the Oxford Centre's core funding, an ESRC-commissioned Review of Socio-Legal Studies concluded in 1994 that there was a shortage of trained empirical legal researchers and that the national demand for empirical legal research could not be met within current capacity. The review noted that there was a shortage of staff in law departments able to provide training in empirical legal research and that social science departments did not have academics with the necessary training to help develop an interest in law as a focus for research activity. The Review recommended increased provision of research training for established academics and postgraduate students and identified two key issues for the future viability of the subject. These were:
- the need for the skills base of academic lawyers to be broadened to enable them to undertake empirical research; and
  - the need for funders other than the ESRC to support socio-legal studies.
39. The available historical evidence suggests that many legal academics still do not have a research-based postgraduate qualification by mid-career. A decade ago, Leighton<sup>19</sup> reported that only about one-fifth of legal

academics had a PhD in Law; about one third of legal academics had a taught postgraduate degree in Law; and a handful of legal academics had a postgraduate research degree in a subject other than Law. These figures indicate the lack of cross-fertilization between law and other disciplines, and perhaps start the explanation of why there is such a small cohort of established legal academics with the interest and skills to undertake empirical legal research.

40. While the Socio-Legal Studies Association (SLSA) currently has a membership of around 400, only a small proportion of members include empirical legal research in their Directory profile, and, of those, about half are located outside law departments in criminology, sociology, social policy, and politics and government. The Association has always reflected the wide-range of approaches adopted in UK socio-legal scholarship and the recent programmes from Annual Conferences demonstrate a preponderance of purely theoretical and textual analyses rather than theoretically informed empirical legal research.
41. From our widespread consultation, responses to the Consultation Document, and discussion at open meetings and seminars, we conclude that there is general agreement about a shortage of capacity to undertake empirical legal research in civil law and justice; this is not the case for criminal justice. There is an ageing cohort of experienced empirical legal researchers, but the field is not expanding and there are signs that there are already too few researchers to take advantage of the intellectual and funding opportunities available. For funders of research, lack of capacity is evidenced in a low level of research applications from empirical legal researchers interested in projects in non-criminal law issues. For commissioners of research, the capacity problem manifests itself in a shortage of researchers with the skills to conduct good quality empirical research in the civil law and policy field.

"From our perspective there is a lack of available socio-legal researchers willing and able to undertake work in Scotland. ..This is at a time when the demand for such skills is increasing rather than declining...Of 32 expressions of interest received in response to the launch of our three year research programme, only five were from experienced socio-legal researchers. Moreover most of these researchers are very experienced and fairly senior in their organisations often meaning that they have limited capacity for undertaking research. None of them are at the beginning of their research careers and there is little evidence of new researchers joining their ranks, or indeed their teams." **Legal Studies Research Team, Scottish Executive, Response to Consultation**

<sup>18</sup> For an expanded account of the development of empirical legal research in the UK see Chapter 2 of the Consultation Document.

<sup>19</sup> *Today's Law Teachers: Lawyers or Academics?* Cavendish London, page 18.

“The Foundation’s interest in empirical research doesn’t stem from a lack of interest in conceptually sophisticated or legally precise thinking. Quite the reverse: it is that, like the White Queen, it is sometimes possible to believe six impossible things before breakfast when thinking in the abstract about how law works. Empirical studies play a vital role in showing how systems actually work and which of those six thoughts are accurate understandings. They can also illuminate how law, or particular legal processes or structures actually seem from the standpoints of citizens, families, and ordinary people; this too is an enduring preoccupation of the Foundation. Sometimes what is needed is a good representative study or modelling of complex configurations of cases, in which case quantitative skills are needed. Other times elite understandings, or explorations of motivations or ethnographic observation are appropriate, in which case more qualitative skills are required. But what is important is that a researcher or research team has both methodological sophistication and a subtle understanding of law. And sadly, that combination is all too rare, and likely to grow even rarer.” Sharon Witherspoon, Deputy Director, The Nuffield Foundation

42. It also seems clear that, while law graduates and legal academics do not engage in empirical research on civil law matters, nor do students and academics from sociology, social policy, politics, economics, psychology, and geography, who in general appear to have little or no interest in law and legal phenomena. In short, law or legal structures are not a significant site of interest for many other social science disciplines who do take an interest in, for example, medicine. There is a voluminous sociology of medicine literature and medical sociology options are commonplace in both undergraduate and postgraduate UK sociology curricula.
43. The picture of relatively modest levels of empirical legal research in the civil law and justice field is supported by recent ESRC information on applications for research funding to the ESRC Grants Board and applications to its Postgraduate Training Board.

## Applications to ESRC Grants Board

44. While applicants in the field of socio-legal studies have recently been achieving an about average success rate in competition for funding from the ESRC Grants Board, the number of applications since 1997 has remained consistently low, and with the exception of a blip in 2004/5, appears to be on a downward trend. Moreover, for ESRC purposes socio-legal studies includes Criminology. Many of the applications to the Research Grants Board concern criminal justice examined from the disciplinary position of Criminology rather than empirical legal studies of civil law and process.
45. Recently published data from the ESRC show that, with the occasional exception, socio-legal studies is among the bottom two or three disciplines in terms of volume of applications to the Grants Board. For example, in 2003/4 there were just 11 socio-legal studies applications compared with 92 in sociology, 70 in politics, 27 in social anthropology, 117 in economics, 51 in Human Geography, 184 in Psychology, and 55 in Management and Business studies. In 2005/06 there were only nine applications in socio-legal studies and of those nine, not a single award was made.

## Applications to the ESRC Postgraduate Training Board

46. Concern about the security of future research capacity in empirical legal studies is underlined by the outcome of the most recent ESRC postgraduate training ‘Recognition Exercise’. Departments wanting to supervise doctoral students funded by ESRC must be formally ‘recognised’. Recognition is a quality mark which confirms that the Department is able to offer appropriate training and support.
47. There are several types of ESRC ‘recognition’. Full, or ‘1+3’ recognition, applies to programmes consisting of a research training master’s degree and a PhD programme

ESRC Research Grant Applications and Awards by Year<sup>20</sup>

Year	Socio-Legal Studies			All Disciplines		
	Applications	Awards	% Success	Applications	Awards	% Success
1997/1998	25	1	4	1010	200	20
1998/1999	12	3	25	705	215	30
1999/2000	20	1	5	774	195	25
2000/2001	14	5	36	595	209	35
2001/2002	17	5	29	734	230	32
2002/2003	16	6	37	810	219	27
2003/2004	11	5	45	831	283	34
2004/2005	32	6	19	935	257	27
2005/2006	9	0	0	1051	282	27

<sup>20</sup> ESRC Corporate statistics, 2006

delivered over four years. Students can hold three-year (+3) studentships or four-year (1+3) studentships in outlets that have full or 1+3 recognition. Students who have already completed their research training can also hold +3 studentships at outlets that have partial or +3 recognition. Some outlets apply for 1+3 recognition while others only apply for +3 recognition.

48. In the 2006 Recognition Exercise<sup>21</sup>, 18 Subject Area Panels reviewed postgraduate training and granted recognition to those outlets that satisfied the ESRC's requirements. These panels included a Socio-Legal Studies Panel responsible for both socio-legal studies and criminology. The Panel considered 33 applications, of which 13 were for postgraduate training in socio-legal studies, 18 for training in criminology and two for training covering both subject areas. In a paper discussing the exercise, Adler (2006) states that the Panel was "disappointed" at the relatively small number of outlets that applied for recognition.
49. The outcome of the exercise was that the Panel recommended that four of the 12 socio-legal '1+3' applications should be given full (1+3) recognition, corresponding to a 'success rate' of 33 per cent. The 'success rate' for criminology was very much higher, with the Panel recommending that nine of the 18 - or 50 per cent - of the '1+3' applications in criminology should be given full (1+3) recognition and that six of them should be given partial (+3) recognition, corresponding to a success rate of 83 per cent.
50. According to Adler, socio-legal outlets failed to obtain full (1+3) recognition most commonly because in the Panel's view either the training offered in generic social science research methods failed to satisfy ESRC requirements, or because the Panel felt that the subject specific training provided did not meet the requirements, or because 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.
51. The socio-legal Panel's overall 'success rate' at 60% was *"considerably lower"* than those of most other Panels and compared badly with a reported success of 92 per cent

for the Exercise as a whole. In reflecting on the results, Adler states that the poor outcome was not *"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..."* Rather, in his view, 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."*

52. The need to put in place an effective training strategy that will support the development of a new generation of empirical legal researchers and Inquiry recommendations for how this might be achieved, are discussed in Section 5.

## ESRC Demographic Review 2005

53. The ESRC has recently had concerns about future research capacity in a number of disciplines within its portfolio. In 2005 the ESRC Training and Development Board commissioned a demographic review of the UK social science base, involving scoping work on the demographic profile of the social science community using HESA data. The Demographic Review stemmed from a realisation that a strategic approach to funding was necessary in some disciplines. Preliminary demographic analysis of age profiles by ESRC showed that replacement cohorts of researchers were not coming through and that action was necessary to avert decline of the disciplines. Drawing on this work, the ESRC identified a number of potentially 'vulnerable' disciplines - economics, management and business studies, advanced quantitative methods, socio-legal studies, social work and social policy – for more detailed review. The subsequent review showed the quality and strength of the social science base to be highly variable, with disciplines facing different challenges. Socio-legal studies was identified as a 'practice-based' discipline where the research base is "relatively old" as compared, for example with geography and psychology identified as "research intensive" disciplines where the research population is younger and appears to the ESRC to be "well positioned to support long term sustainability"<sup>22</sup>.
54. Although the ESRC Demographic Review data support the suggestion of an ageing community of empirical legal researchers, the interpretation of the data in the review is flawed. The authors have placed socio-legal studies in the same category as management and social work, on the grounds that teaching law is a "practice based" discipline. By this, the Review authors seem to assume that the age profile of the socio-legal community reflects the fact that academic staff are recruited to law departments after having gained hands-on practice experience prior to academic appointment. In fact,

<sup>21</sup> The material in this Section draws on a paper presented by Professor Michael Adler entitled *Recognising the Problem - Socio-Legal Research Training in the UK*, presented to a meeting organised by the ESRC in June 2006 to discuss capacity issues in socio-legal studies.

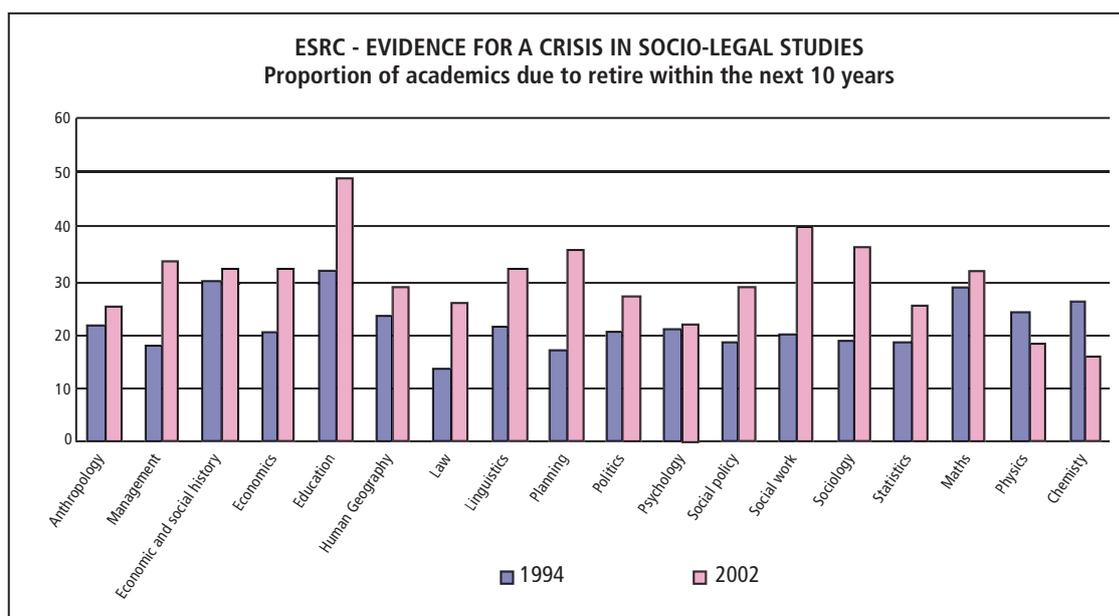
<sup>22</sup> ESRC Background Paper, *Developing a Strategy for Research Capacity Building in Socio-Legal Studies*, July 2006.

this is generally not the case in law schools where, on the whole, a career in practice is more likely to be a recruitment disadvantage, especially in the current RAE-driven climate where appointment without publication is virtually impossible. So most new staff are in fact appointed having done well in their academic study of law. While it used to be common for law academics to be appointed to lectureships without a PhD, the current trend is to appoint those with a PhD. The explanation for the ageing profile of the empirical research community is rather to be found in the complex interaction of factors related to the primacy of teaching undergraduates who are going to become practitioners, rather than because the staff themselves have to be practitioners. This is discussed further in Section 4, paragraphs 91-103.

55. During the Inquiry seminar on Education and Training, Professor Ian Diamond, Chief Executive of the Economic and Research Council, confirmed the conclusion of the Council that there was a "crisis" in what he called socio-legal studies<sup>23</sup>. Presenting graphic data on the age profile of socio-legal studies in relation to other social science disciplines, he confirmed ESRC's concern about what a wave of impending retirements would mean to the capacity to carry out 'socio-legal' research. According to Professor Diamond, Government has accepted that, along with physics, chemistry and modern languages, quantitative social science is of strategic importance. Thus part of the ESRC's strategy is to develop new partnerships with other research councils and with government departments to support and grow capacity. The Council's new Strategic Framework recognises the need to invest in the next generation of scholars and, in

particular, to support disciplines seen to be under threat. Professor Diamond stated that building capacity to undertake socio-legal studies was now an ESRC priority too.

56. It was clear, Professor Diamond believed, that in this case improving capacity meant either giving those with a legal disciplinary background additional training in research methods, or in taking those from social science backgrounds and giving them a deeper understanding of some legal issues. Even in an age when larger research projects are more likely to be conducted by multidisciplinary teams, some team members are likely to need an appreciation of both the 'social research' and the law issues. And while the standard '1+3' model of postgraduate training<sup>24</sup> had played an important role in improving both methodological skills and completion rates, it was important now to be flexible about whether different training paths might be needed to tackle particular problems. So the ESRC is adopting a 'life-course' approach to investment in training which will be capable of responding to training needs at different stages of a researcher's career. Professor Diamond accepted that different forms of studentships with longer periods of structured training and more creative approaches – for example on a consortia basis - might be more attractive and effective in building empirical legal research capacity. These and other suggestions made by Professor Diamond at the Inquiry seminar are discussed in more detail in Section 5, paragraphs 144 to 156.



Slide presented by Professor Ian Diamond at Inquiry seminar on Education and Training, London

<sup>23</sup> This of course differs somewhat from our own interest in capacity for empirical legal research, but there is a significant overlap.

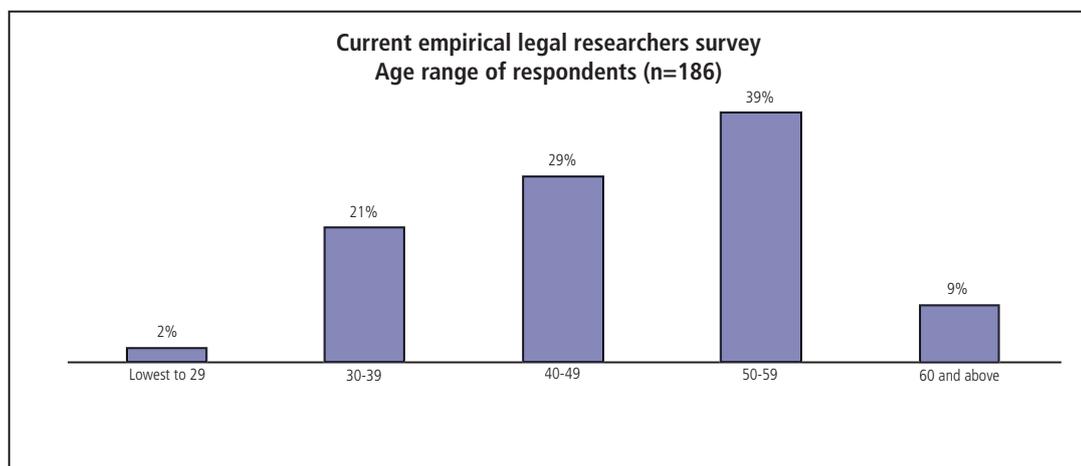
<sup>24</sup> In which postgraduates start with a one year Master's course with a heavy methodological component, and then go on to the 3 year thesis.

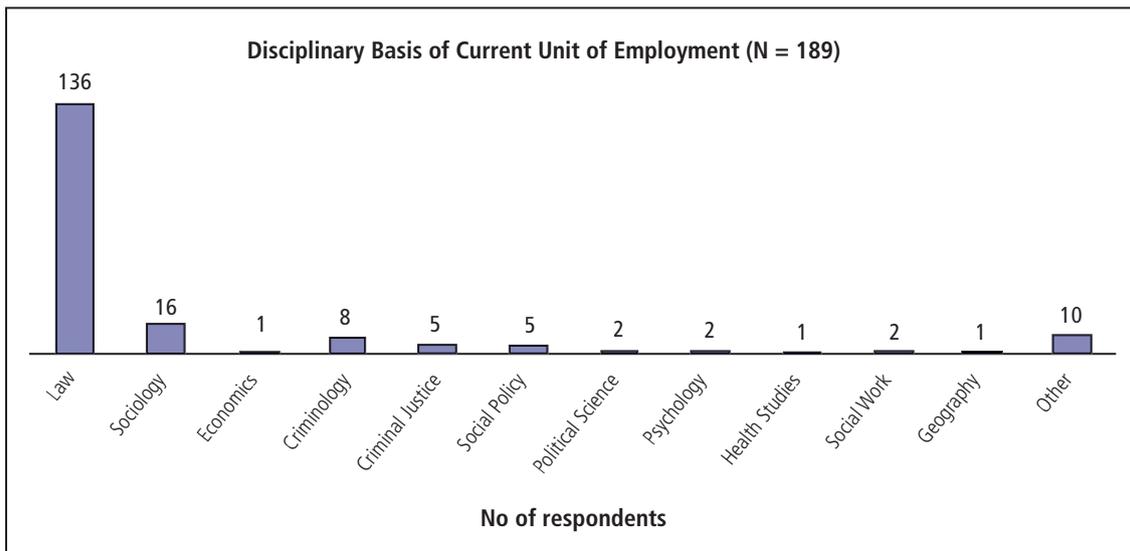
## Who and where are the empirical legal researchers?

57. Understanding how current researchers got into doing empirical legal research may provide a useful guide to how we might plan strategic interventions to motivate and equip the next generation of researchers. During the Inquiry an electronic survey of academics was carried out to learn something about their disciplinary backgrounds, career trajectories, motivation for working in the field, and experience of external funding, focusing specifically on researchers working on civil law and justice.
58. There isn't, of course, a directory of empirical legal researchers. Initially we hoped that the Social-Legal Studies Association directory might suffice as a proxy, but it became clear that this would be far too restrictive an approach. So instead, a sample was constructed using the Inquiry's broad definition of empirical legal research (see paragraph 15 above), but excluding those working exclusively in criminology. Directories of academic societies, the contents of journals, conference abstracts and university websites were searched for those who declared themselves to have funding for empirical legal research or those who were producing work in the field that could have been funded. Sources were cross-checked against historic material to make sure those who had moved out of the field into other interest areas or into management jobs within HE were included. This produced a sample of 444 potential empirical legal researchers to whom email questionnaires were sent.
59. The original sample comprised 56% men and 44% women, one in five of whom were based in the 'golden triangle' universities of Oxford, Cambridge and London, 53% in old universities, and about a quarter in new universities. About 40% of this sample held Professorial posts.
60. The response to the email survey was 42%. Of those replying 93% had at some time applied for funding to undertake empirical legal research, suggesting that

those motivated to respond to the survey were among the most active and successful empirical researchers. The findings presented in the following paragraphs are presented as indicative only since the response rate was relatively low, and the responses represent the current population of researchers. The findings are therefore likely to be biased towards those that have successfully stayed in the field – what we might call a 'longevity' bias.

61. There was an even gender split among those replying to the survey, with a slight over-representation from old universities as compared with the original sample (62% of respondents) and a significant under-representation of new universities (15% of respondents) as compared with the original sample. About half of those responding hold Professorial positions, reflecting the bias in the original sample towards senior posts.
62. Although the age of non-respondents is unknown, the age profile of those replying to the survey supports the suggestion of an ageing cohort of empirical legal researchers. The median age among respondents was 49 with a minimum of 26 and a maximum age of 72.
63. If the responses to the survey are taken as broadly representative of the current cohort of active empirical legal researchers, it seems that about three-quarters are currently situated in Law departments (72%), the remainder tending to cluster in sociology (9%), criminology/criminal justice (7%) and social policy (3%) with one or two in political science, psychology, social work, health studies, economics and geography. This confirms how many of the current cohort of empirical legal researchers are located in law departments rather than in other social science disciplines. However, it is possible that the method of sampling was more likely to capture those working in law departments than, say, social policy or sociology departments.
64. An interesting aspect of the response, and one which bears on later discussions about the problems of conducting empirical legal research in the absence of a



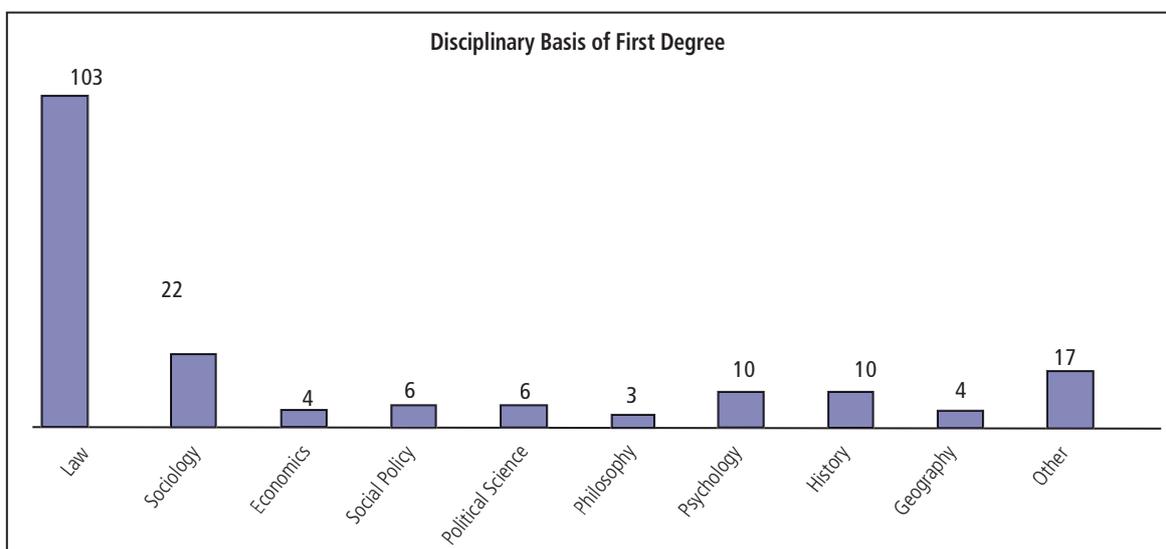


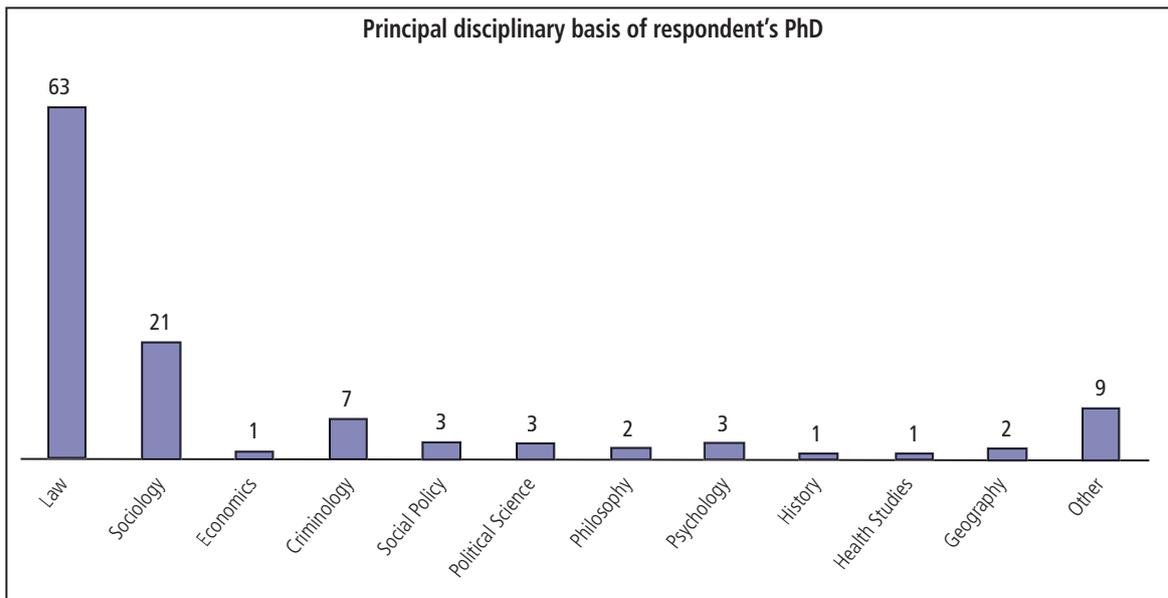
critical mass of researchers, is the fact that the 189 survey respondents were based in 66 different universities. The universities with more than a sprinkling of respondents were LSE, Oxford, Bristol, Edinburgh, QUB, Hull, Leeds, Liverpool, Manchester, UCL, and Cardiff. Almost no institutions had more than 5 or 6 active empirical legal researchers in place.

65. Responses to the questionnaire confirm that the initial discipline of the majority of those undertaking empirical legal research was law. Just over half of those responding have first degrees in law, with the remainder spread among the social sciences – most commonly sociology, psychology, history, politics, and philosophy. If law departments are the most likely home locations, it is not surprising that most of those responding started out with law credentials.
66. Just under two thirds of those responding have a PhD (61%) (somewhat more commonly among younger age groups) and a little under half (43%) have a professional qualification – mostly as barrister or solicitor, but also

teaching qualifications. About one quarter of respondents have both a PhD and a professional qualification.

67. Of those with PhDs the majority had been supervised only, or principally, by a legal academic. Of the 116 respondents with PhDs, one quarter had been jointly supervised (29). Seventeen of these involved joint supervision between a lawyer and social scientist, for example law and criminology, law and sociology, law and gender studies, law and political science, law and philosophy, law and history. In 12 of the 29 cases involving more than one supervisor the supervision had been entirely outside of law, most commonly sociology and social policy, sociology and anthropology, sociology and economics, sociology and criminology. What is also striking here is the relative absence of political science, compared with the USA where joint law and political science centres are not uncommon.
68. Over half of those responding to the survey are currently supervising doctoral students undertaking projects involving empirical legal research; about 30% of these supervisors do not themselves have a doctorate.





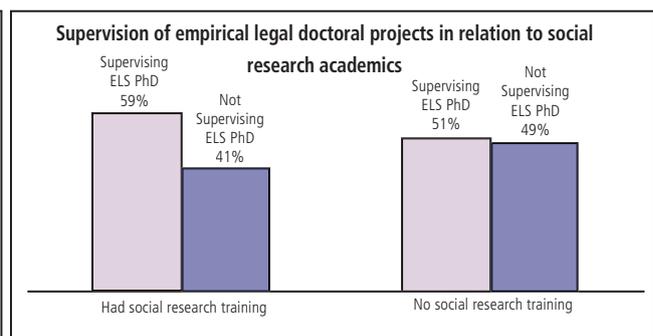
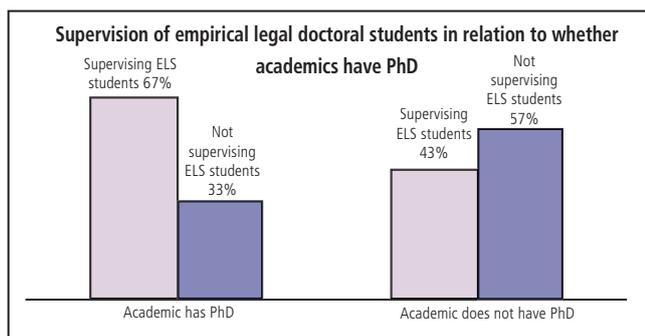
Although academics without PhDs are significantly less likely than those with PhDs to be supervising doctorates involving empirical legal research, even so, nearly half of those without PhDs who replied to the survey are, in fact, supervising such doctorates

69. Three-quarters of those responding to the survey said that they had received some social research training at some time during their career. About one in five of all those supervising empirical legal doctoral research had no formal social research training in their first degree, PhD, or at the mid-career stage. Overall, academics without social research training are as likely to be supervising PhD students undertaking empirical legal research as those with formal social research training.

70. As noted earlier, those who responded to the survey were overwhelmingly researchers who had at some time applied for research funding. Over 90% of respondents said that they had applied of whom only eight percent said that they had not been successful in obtaining funding. The most common sources of funding were the ESRC, Government, the Nuffield Foundation, the Leverhulme Trust, other charities, and the EU.

71. Aside from these sources, respondents mentioned a wide range of other sources of funding that had been used on one, or sometimes more than one occasion to fund research. What the survey was not able to show, however, was the amount of funding obtained from these sources. It is likely that, in most cases, funding was modest and/or limited to very specific projects. The list includes, but is not limited to the following:

- American Bar Foundation
- Age Concern
- Advisory Committee on Legal Education and Conduct
- Anglo-German Foundation
- Avon Constabulary
- Barlow Cadbury Trust
- British Academy
- British Council
- Canadian High Commission
- Carnegie Trust
- Cobden Trust
- Comisariat du plan
- Commonwealth Foundation
- Community Foundation Northern Ireland
- Council of Europe

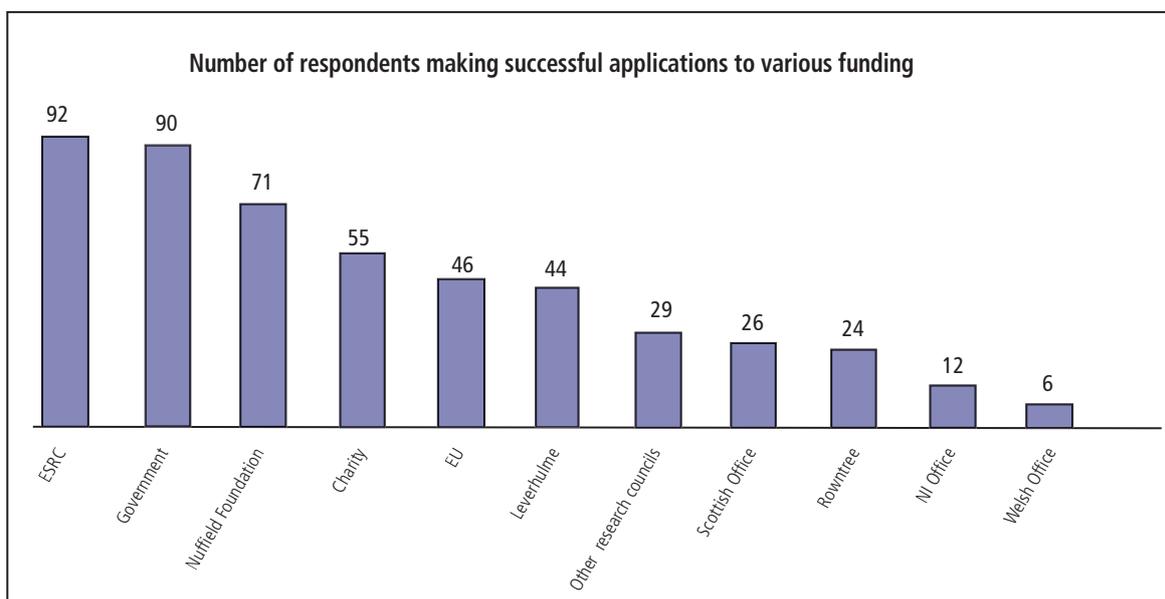


- Commission for Racial Equality
- Criminal Justice Agency
- Daimler Benz Foundation
- Danish ESRC
- Electoral Commission
- EPSRC
- Esmée Fairbairn Foundation
- Ford Foundation
- King's Fund
- Legal Aid Board
- Law Society
- Lloyds TSB Foundation
- Metropolitan Police
- NACRO
- National Audit Office
- NSPCC
- Police Foundation
- Prison/Probation Service
- Royal Commission on Criminal Procedure
- Save the Children
- Science and Engineering Research Council
- Scottish Legal Aid Board
- Scottish Homes
- Sheffield Town Trust
- Solicitors Pro Bono Group
- Society for Public Teachers of Law
- Wellcome Trust
- Welsh Consumer Council
- United Nations

72. In summary, the survey responses confirm the dominance of law as the intellectual starting point and academic home of most active empirical legal researchers. Whether this is inevitable and needs to be taken into account in thinking about the next generation is a question we turn to in Sections 4 and 5 below. The responses also demonstrate the small number of researchers based in social science departments and the ageing profile of current researchers.

## Paths to Empirical Legal Research

73. In addition to the survey, summarised in the previous Section, we also collected a number of biographical pen-portraits from experienced empirical legal researchers. These brief accounts of career paths reveal the often serendipitous entry - and occasionally stumble - into empirical research in civil law and justice. While the social scientists quoted below take for granted their empirical research skills and tend to focus on the development of their interest in legal issues, the lawyers who have made the transition from legal academic training to empirical legal research, focus more on their cross-disciplinary journey and the acquisition of the skills and, most importantly, the confidence to undertake empirical projects. One or two undertook intensive research training in social science research methods, but most lawyers learned 'on the job' and often by means of symbiotic collaboration with a social scientist or an established empirical legal researcher. The vignettes illustrate the importance, for both social scientists and lawyers, of hands-on experience in developing empirical research expertise, whether or not they had received formal research methods training.
74. Several of the contributors talk of critical - sometimes chance - relationships with established scholars who had a profound influence on outlook and approach to research. Such 'mentoring' relationships laid the foundation for both intellectual and skills development, by offering a different perspective on the study of law and legal processes and demonstrating, by example, how empirical questions about the operation of law might be studied.
75. Several of those who entered empirical legal research from traditional legal academic training refer to the influence of non-doctrinal undergraduate and post graduate courses in stimulating an interest in the law in action, perhaps in a substantive area such as family



or welfare, and the policy and values underpinning legal regulation and intervention. Such courses provided an attractive contrast to doctrinal scholarship and offered an insight into the intellectual excitement that motivates empirical legal researchers.

76. The biographies also illustrate how the opportunity to become involved in an empirical legal project early in an academic career had led to a lifelong commitment to empirical legal research in civil law and justice. Several leading empirical research careers have developed from a short term research assistant post on an empirical legal project. The histories demonstrate the importance of such career opportunities in attracting new entrants to the field and developing the skills of the next generation of researchers.
77. Another theme emerging from the vignettes is the practical value of partnerships between the skills and perspective of the social scientist, and the perspective and in-depth knowledge of the empirically inquisitive lawyer.
78. Finally, the biographies provide some evidence of the challenges facing even well-established legal researchers in making the space and time necessary for empirical work. They reflect both the hard realities of empirical data collection and the tremendous intellectual satisfaction gained from the successful completion of projects.

**Carol Smart, Professor of Sociology, Department of Sociology, Manchester University**

"My interest in socio-legal studies came via my first degree in sociology and then my Masters in criminology, but was also largely informed by my feminist politics. Empirical socio-legal research was particularly attractive to me because it could offer such strong policy links and could have such a clear reform agenda. But my shift towards the socio-legal would not have been possible without 3 years funding to do my PhD as part of the then SSRC Socio-legal Fellowships scheme. For me this was absolutely crucial as it gave me the time to immerse myself in the new (for me) field of family law, as well as giving me the support to start empirical research with solicitors and magistrates. The main challenges I faced in those early days was getting lawyers and other family law practitioners to take me seriously and I remain uncertain about whether the real problem was my gender or the fact that I was a non-lawyer. But this was 25 years ago and I now find that even judges are interested in sociological research (as long as it is accessibly presented!). Perhaps one of the real advantages that I have experienced because of my socio-legal background has been the pleasure of being able to work in departments of law as well as sociology and social policy. This kind of flexibility is quite precious. Challenges in the 2000s are rather different to those I faced a few decades ago and now seem to focus more on whether socio-legal studies has a place in sociology because, although it is possible to get research funding from time to time, it does not fit well with the teaching syllabus in sociology and so there seems little chance of bringing on a new generation of socio-legal scholars from within the discipline."

**John Baldwin, Professor of Judicial Administration, School of Law, Birmingham University**

"I doubt that many people start out with the ambition of embarking on a career in empirical legal research: we are more likely to end up doing it because of chance factors and circumstances.

As an economics undergraduate in the late-1960s, I remember liking the sound of a final year option in Criminology, finding the course very interesting and then spotting an advertisement for a postgraduate Criminology degree on a notice board. As a result of these fortuitous circumstances, I found myself at the Cambridge Institute of Criminology and (again for no particularly compelling reason that I can now identify) deciding to apply to do a PhD in the area. I was eventually accepted at the Law Faculty at Sheffield University working with my supervisor, Tony Bottoms, on a project concerned with area patterns of crime. It is curious how addictive empirical research becomes and, the more one does of it, the more this seems to be the case... On completing the PhD, I moved to the Institute of Judicial Administration in the Faculty of Law at Birmingham University – a research institute which focuses on the workings of the criminal and civil courts, tribunals and other justice agencies – and I have been in Birmingham ever since. I have worked on over twenty substantial empirical research projects over these years and, with only a couple of exceptions have hugely enjoyed being involved in them... While every socio-legal researcher knows that empirical work is frequently very stressful and frustrating and likely to involve a great deal of thankless drudgery, conducting such research has in my experience always been a uniquely satisfying and fulfilling enterprise. I count myself extremely fortunate that it has brought me into contact with many extraordinary and impressive people, whether as respondents, professionals, sponsors, politicians or policy makers. More importantly, I have never lost that sense of excitement that attends the discovery of new knowledge."

**Judith Masson, Professor of Socio-Legal Studies, School of Law, University of Bristol**

"My undergraduate degree (law Cambridge) did not provide a basis for empirical research but did leave me intensely curious about why laws were enacted and the desire to find out more. As a new lecturer, a colleague introduced me to an NGO, the Association of British Agencies for Adoption and Fostering and a seminal empirical study, J. Rowe, Children who wait. Through work with ABAFA (now BAAF) I became fascinated by the reforms to step-parent adoption introduced by the Children Act 1975 and wanted to find out more about the reasons for these and about their impact. The Children Act 1975 made specific provision for research into its effect and BAAF was interested in developing a research portfolio. Links with BAAF provided the opportunity to develop a project but I lacked any background in empirical research. Ignorance also left me with a conviction that I could carry out research to find out how the Children Act was working. My institution supported me to attend the Essex University Summer School in Survey Design and Analysis which provided the opportunity to talk about research with experienced researchers. The course was demanding with lectures all morning for 4 weeks and practical exercises each afternoon and homework every evening. Living in a tower block on the Essex campus in the vacation alongside Saga holiday makers and people learning Transcendental Meditation made reading books on statistics and computing very attractive. I learned to use SPSS, which was not so easy before PCs... Through BAAF I met a lecturer in social work who was also interested in step-parent adoption. Together we prepared a project... The DHSS accepted our proposal... I learned a lot about doing research through this project: design of recording schedules, data collection, the problems of large datasets, analysis using SPSS, interviewing using a structured questionnaire, working in a team, and report writing. A colleague agreed that he would act as my PhD supervisor and sign the necessary forms, 'as long as I did not expect him to do anything else.' Fortunately I had some guidance from the research officer, the advisory committee which included Professor Roy Parker and Gwynn Davis. The project became the basis of my PhD. Looking back I can see that I was driven by curiosity, naivety and a belief that I could do anything. I was lucky to be in the right place at the right time, when there were few people able or willing to conduct empirical socio-legal research. I cannot imagine being supported to do this work had anyone with experience come forward or now."

**Alan Paterson, Professor of Law and Director of the Centre for Professional Legal Studies, University of Strathclyde**

"Honours law degree from Edinburgh in 1969. The law teaching was very black letter, and often of a high calibre...My only real exposure to socio-legal studies (as yet unnamed) was a Family Honours course taught from a US textbook which drew heavily on empirical materials. A breath of fresh air, until it came to the exam which was very black letter. Went then (1969) from sheer curiosity as to how judges actually made decisions to do a D.Phil at Oxford University (Pembroke College) on the Judicial House of Lords. I was exceedingly fortunate to have two terrific mentors / supervisors while I was there. Philip Lewis and Neil MacCormick. Through their contacts I eventually got access to almost all of the Law Lords and interviewed all but a few. The rest, as they say, is history. The two really formative experiences for me in terms of socio-legal studies occurred while I was at Oxford. Through Philip I suspect, I got to hear of a Summer Institute for Law and the Behavioural Sciences at the University of Madison, Wisconsin in 1971. It was a conjoined effort of several departments at Madison including Law and Political science. Amongst those who taught the summer courses at the Institute that summer were Herb Jacob, Joel Grossman and Stewart Macaulay. There was even a guest seminar by a legal academic from Madison just back from India, with some fascinating ideas on why "repeat players" often have the inside track in the Justice system. It was, of course, the young Marc Galanter. My favourite course, however, was on disputing, taught by a young anthropologist, Michael Lowy, who had been part of Laura Nader's Berkeley Village Law Project. It was the infancy of ADR and the Anthropologists were to the fore. The optimism that disputing studies could solve many of the ills of the adversarial system had not yet been dispelled. The course and indeed the whole Institute was a life-changing experience for one who had been brought up on the dour, black letter confines of substantive law. The Institute was for graduate students, mainly from the USA (1 Pole and 1 Scot to lighten the fare) from all of the social sciences which made for fascinating debates both in and out of the classroom. It probably helped that the campus had just been voted the "hottest" venue for students in the USA. Not that I had any awareness of that until I arrived. My exposure to what has now become socio-legal studies that summer, transformed my approach to my D.Phil research, allowing me to draw on a range of disciplines. This in turn led me in 1972-3 to become the first research associate (and first employee, almost) at the newly created Centre for Socio-legal Studies in Oxford where Don Harris (the first Co-Director) in particular, took a close interest in my research. In 1975 I was appointed as a lecturer in Scots law at Edinburgh University. My approach to law teaching was decidedly contextual and regular visits to teach in the USA in the next 20 years reinforced my desire for broader horizons. It was there I learnt to teach professional ethics and the sociology of the legal profession, before bringing these courses back to Scotland."

**Hazel Genn, Professor of Socio-Legal Studies, Faculty of Laws, UCL**

"My first degree was a combination of sociology, social anthropology and social administration, which I undertook with the initial ambition of a career in social policy. After 2 weeks of late 60s Marxist sociology I decided that I wasn't interested in piecemeal social engineering and thought I might like to do something sociological, but wasn't sure what. After graduation, I started a Sociology Masters, but toward the end of the first term applied for, and was offered, a job as a research assistant at the Cambridge Institute of Criminology in 1972 to work on a Home Office funded victim survey led by Dick Sparks. Ignoring the prediction of my tutor that to abandon the Masters would end any hopes of an academic career, I accepted the RA job and never looked back. Quantitative research methods was a large part of my first degree, but it was Dick who taught me how to punch cards, write Fortran statements and use SPSS on a computer that occupied a whole room and on which simple crosstabs jobs ran overnight. I drafted questionnaires, interviewed crime victims and even for a period moved into a desperate housing estate in

Hackney the better to "understand" the experience of multiple victimisation. As the project drew to a close I was appointed to the Oxford Socio-Legal Centre in 1974 to work on the Centre's Compensation Survey. They wanted my quantitative research skills and I was attracted by the job – not the subject-matter. I knew I loved empirical social research and was as happy to work in civil as criminal justice. It was not a conscious choice of field, but of a career opportunity. After a few years at the Centre my interests had moved away from pure sociology and feeling that both intellectual and career prospects would benefit from some solid legal study, I took a part-time law degree while working at the Centre. On completing the degree in 1984, and feeling myself now to be fully 'socio-legal', I looked around for a job in a Law Department. I had 12 years in full-time socio-legal research under my belt, several publications to my name and was experienced in obtaining external research funding, but my appointment to a lectureship in the Law Department at Queen Mary College was absolutely contingent on my ability and willingness to teach Land Law and Trusts – which I did on and off for 10 years. Although the QM Law Department was keen to get me on the payroll for my research profile, it would not have been possible without the ability to teach core subjects. When I moved to UCL in 1994, although I refused ever again to teach Land Law, my appointment was, once more, contingent on willingness to teach other core subjects. I have spent 35 years flogging around the country sitting in the backs of courts and tribunals, sitting in the listing offices and basements of courts picking through files, sitting in the homes of people struggling with civil justice problems – and have loved (almost) every minute of it. I remain endlessly fascinated by the legal system as it operates and as it is experienced by ordinary people."

**Caroline Hunter, Senior Lecturer in Housing Law, Faculty of Development and Society, Sheffield Hallam University**

"After obtaining a law degree and a post-graduate diploma in housing administration I worked as a housing adviser and barrister specialising in housing and local government law. After teaching housing part-time on the L.S.E.'s postgraduate housing course, I decided that I really enjoyed teaching and moved into academia fulltime at what is now Sheffield Hallam University in 1990. My particular interest has always been in housing, and my previous work experience, coupled with teaching law to part-time students who were working in the field, illustrated the "gaps" between the legal theory and the practice of law in housing organisations...It was these gaps and the interaction between housing organisations and the first level of courts that I was interested in researching. Such research inevitably requires funding to collect empirical data and I was lucky enough to secure funding for my first major project from the Joseph Rowntree Foundation in 1993 to investigate housing possession cases in county courts and in particular the impact of court based advice schemes on outcome. Since then I have been involved in teams who have received funding from a variety of sources... Apart from 5 years at Nottingham University, I have spent my academic life at Sheffield Hallam University, within what is currently the Urban and Regional Subject Group within the Faculty of Development and Society. The great advantage of this has been working in an interdisciplinary environment where I have been able to work with colleagues with expertise in housing policy, sociology and other related fields. This has meant we can bring a range of skills to research - which has proved invaluable to someone like myself whose training is essentially as a lawyer. What it also points up is the difference between doing narrow legal research, which essentially requires no external funding and simply access to a good library and doing socio-legal research which is impossible without external funding."

**John Flood, Professor of Law and Sociology, University of Westminster**

"Three things got me into socio-legal work. The first was being sent by Michael Zander to a police station to ask what information they had for arrested people: no one told the police that I and 50 other first-year law students were about to descend on them. The

second was watching a man fall off the roof of a train between Wadi Halfa and Khartoum, get arrested for travelling illegally while being screamed at by 300 people sitting on the same roof who of course were not arrested. The third was taking a course in anthropology of law. That alone made me realise there was much more to law than, to my mind then, stultifying doctrinal analysis of statutes and cases. The other two forced me to consider that the world was normatively pluralist and that there were other sources of norms than the state. I experimented with empirical work by going to Warwick for an LLM by research. It gave me freedom. I wanted to study barristers' clerks, a small group who seemed to exert considerable control over significant parts of the legal profession. By accident I became an ethnographer, they having decided that I could not possibly understand their work by merely asking questions in an interview. When it came time to write up I was at a loss. No one in the law school had done this kind of research although William Twining knew about it through his work on Llewellyn and Hoebel—but he was a theoretician like the former rather than a fieldworker like the latter. Warwick, however, had a resident anthropologist from whom I began to learn the art of being a sociologist. I was convinced that to understand the legal system we had to understand how lawyers functioned within it. To find this I had to go the US and ended up in Chicago at the American Bar Foundation and Northwestern University's sociology department where I registered for a PhD. At these two institutions what I wanted to do was normal. My PhD—an ethnography of a large law firm—and subsequent studies all revolved around doing empirical work. Although the law and society movement was small, it was considerably bigger than in the UK. I never had to defend my work against the charge of "not being law", something which has happened a lot in the UK. Indeed, my first job in the US was a joint appointment between a law school and a social science department. Of course that doesn't hold now. Over 50% of the law schools in the RAE2001 said they did socio-legal work. But that raises a serious question for me. Preparing students for socio-legal work is time consuming and necessitates a series of skills, most of which are absent from law schools. In the US I found the interaction between law schools, sociology, history, political science and economics departments and business schools highly stimulating and it generated research of enormous quality. The training for socio-legal scholars is also more rigorous and encompassing than in the UK. An increasing number of socio-legal scholars now have double qualifications in law and a social science. That's as it should be. One final point: being an empirical socio-legal scholar in a law school, which is where most are in the UK, means living on the academic margins. But I prefer life there since there are fewer rules to adhere to and so one isn't bound by convention as much as mainstream scholars."

**Neville Harris, Professor of Law, University of Manchester**

"Neither my LLM thesis nor my later PhD were empirical studies as such. However, they drew on published work which convinced me that empirical research is an important means to proper evaluation of the effectiveness of the law and legal processes. My empirical work began in earnest with a study of the way that legal firms provide advice services in the field of welfare law, which was commissioned by the Law Society. Another of my projects in the field of legal services, was a study of complaints procedures and client care in firms of solicitors, commissioned by the National Consumer Council...The amount of data that studies such as these tend to generate and the range of issues that arise are such that often a lengthy report or a book is needed to ensure proper analysis and reporting. The downside is the sheer amount of work and time involved to produce a comprehensive and coherent account that places the findings in wider theoretical and other contexts. A delay in publishing the findings is often the result, which can be frustrating.... Often this kind of work is most effectively carried out in multi-disciplinary teams. I have had less experience of this than some others, but the fieldwork and subsequent book on school exclusion appeals (Challenges to School Exclusion) were a joint effort with a sociologist (Karen Eden); and a more recent study on the

social and legal implications of childcare provision by schools, commissioned by a children's charity, was conducted with a childcare expert. International partnerships are also possible, as with the Education Law and Policy Research Network developed with seven European partners, funded by the EC (Framework V). In this case, my contribution, examining with a German scholar comparative issues of liability in the field of education, was not in fact based on empirical work, but it is clear that networks such as these give considerable potential for comparative empirical projects across a range of fields, if funding can be secured."

**Fran Wasoff, Professor of Family Policies, Co-Director, Centre for Research on Families and Relationships, School of Social and Political Studies, University of Edinburgh**

"I was one of the few holders of the then SSRC (pre ESRC) Training Research Fellowships in Socio-Legal Studies (from 1978 to 1981) These fellowships were intended 'normally' for British people who had degrees in sociology or law who wished to do a PhD in socio-legal studies. I was fortunate that the SSRC took a flexible approach to an applicant from the wrong discipline (mathematics) and wrong country (US) who already had a PhD and several years of post-doctoral research in developmental biology but wished to re-train. Most immediately, I had been working in the voluntary sector as the first coordinator of Scottish Women's Aid and I became especially interested in feminist law reform campaigns to achieve social change, specifically family law reform and the Housing (Homeless Persons) Act 1977 which gave women made homeless by domestic violence an entitlement to housing. For this fellowship I carried out research on how the criminal justice system in Scotland dealt with cases of domestic violence, but I also became especially interested in family law and was puzzled by the dearth of empirical studies in this area.

At the end of the fellowship, I was keen to find an academic post but that took a bit of time since socio-legal training then did not provide an obvious route to an academic career (particularly for an ex-mathematician!) or an obvious fit into an established academic discipline. But my socio-legal training remained relevant in my next job I as an information writer for the Scottish Association of Citizens Advice Bureaux (now Citizens Advice Scotland), writing information for advice workers on family law in Scotland, bankruptcy, debt, housing, and social security. Then in 1984, I was appointed to a lectureship in the Department of Social Policy and Social Work. Since then I've been involved in various socio-legal research projects, mainly empirical studies of family law, and much of it funded by the Scottish Office/Scottish Executive, such as a comparison of how mediators and lawyers deal with divorce, a study of the outcomes of private ordering on divorce, and more recently, a survey of public attitudes to family life which informed the recent passage of the Family Law (Scotland) Act 2006. While I am now actively carrying out policy-relevant family research on a wide range of topics, the empirical study of family law and family law professionals remains at the heart of my research."

**Avrom Sherr, Woolf Professor of Legal Education at the Institute of Advanced Legal Studies of the University of London**

"Law and the Underprivileged was a half course in the third year at the London School of Economics of 1970-1971. The course was taught by Professor Michael Zander and Professor Leonard Leigh. The course would probably not quite fall into the heading of "Critical Law Studies" which came some time after and the course title now seems not a little curious to the modern ear, but it seemed sufficiently "left wing" then for an LSE which was the breeding ground for conflict over the Vietnam war and other major political issues of the day. Houghton Street (then a through-road and rat run for Evening Standard vehicles) was periodically closed by student demonstrators. The gates of the administration block at LSE had been stormed. Some of the major marches relating to Vietnam had begun at the LSE and demonstrators had slept there overnight beforehand... Law and the Underprivileged was one of the few courses in which a mini thesis might be written for assessment purposes rather than the (then) ubiquitous formal 3 hour examination. I wrote on "No Magic in the Rent Book" attempting a study of what Notting Hill local authority and private

flat renters thought that the “rent books” from the local authority meant to them. Empirical work was difficult as undergraduate, but Professor Zander had introduced us to carrying out such work with his annual piece of research aimed at including all law students. I found an LLM student who was prepared to help me carry out some of the surveys. (This kind person went on to become managing partner of a major firm and then on to being a circuit judge)...As there was a mini thesis, there had to be a separate external examiner for the subject (unheard of in those days). We had a viva... The external examiner was Professor Gerald Dworkin, then of Southampton University. He had bushy eyebrows and a very enquiring mind... Somehow I got a first in that subject and I sent the thesis off to a Professor at Warwick who was then publishing things in that area. I never received a reply. Many years later when I was teaching at Warwick the said Professor told me that he never received it; too late I had already worked out the perceived relative unimportance of empirical work in the area of legal scholarship! Then it was 1975, I was a fairly new lecturer beginning a second set of areas of research. A book lay open on the lounge table at home with a chapter analysing doctor-patient communication. Idly reading other people’s work I began to realise how close this was to my own research in lawyer-client communication. There were numbers and charts and graphs in the chapter. It was empirical, cross-disciplinary and looked just right. That became the starting gun for my next set of empirical projects.”

**Trevor Buck, Professor of Socio-Legal Studies, De Montfort University**

“I originally studied Politics, History and Philosophy at degree level (Lancaster, 1970-73) but did not sit my final exams due to personal circumstances and refused to avail myself of the appeal mechanism available. In retrospect, this was perhaps not the best start for an academic career! In the 1970s I worked variously as a bus driver and community worker providing advice and other welfare support to newly-arrived Ugandan Asian refugees settling in Leicester... These experiences led me to return to higher education with the aim of graduating in Law and then going on to qualify as a solicitor with the intention of working in a Community Law Centre. I shall be forever grateful to Preston Polytechnic (as it then was) for admitting me to study law, and this time, despite having two small children, as a highly motivated mature student, I did graduate with an upper second... At the end of my studies at Preston my interest in academic pursuits had been rekindled and I was admitted to undertake an LLM by research at Lancaster University, along with my first academic job as a research assistant on a one-year contract. I became involved in my first empirical inquiry into the views of local employers about the prospects of age discrimination legislation... I then secured my first permanent lectureship at Preston (renamed Lancashire Polytechnic) and worked there for four years. Although I had a heavy teaching load I remained interested in empirical work. In my view, some questions simply call out for empirical methods to advance our understanding of them. This seems especially so if one is interested in change. I still believe in the power of good quality evidence to influence policy choices. **I published an article during this period on the new school admission appeal process based on some observations and interviews. This was my first experience of the difficulties that can be encountered in securing access. I recall it took me about two years to obtain the local authority’s agreement to observe hearings.** At this time I also won my first small research grant from the Nuffield Foundation to examine the operation of the Parliamentary and local government ombudsmen in relation to social security complaints... I was the lead researcher a few years ago on a project that examined the operation of the Social Security and Child Support Commissioners which involved interviewing all the Commissioners and a small set of appellants. I am currently working, again under a Nuffield Foundation award, on a project that will examine the use of precedent in the tribunal sector. An important factor in achieving a socio-legal-friendly research culture is the extent to which one’s colleagues understand the nature and demands of socio-legal research. No doubt, some Law Schools have been more sensitive to these issues than others and most people would want to work

in a supportive environment. Sometimes it is not appreciated that such research requires a longer timescale than a short desk-based journal article, for example. It is probably even less acknowledged that the process of making grant applications takes much time and effort and, of course, good psychological management when some bids are inevitably rejected.”

**Robert Dingwall, Professor and Director, Institute for the Study of Genetics, Biorisks and Society, University of Nottingham**

“I never really started out intending to do sociology of law. My PhD was a study of the education of health visitors, which provided useful expertise when the Oxford Centre for Socio-Legal Studies was looking for a social scientist who knew about health and social welfare to form part of a project on the legal management of child protection cases. In the end, the project moved a long way ‘upstream’, recognizing that what the courts did was the result of a long process of sifting, that actually excluded most candidate cases – a finding that seriously challenged the fashionable belief in the late 1970s that local authorities and courts were stalking the land looking for children to snatch from their parents... After this finished, I worked on several other projects. However, the termination of ESRC funding for the Oxford Centre convinced me that I should look for a more stable job and I moved to a sociology chair in Nottingham in 1990. Since then, I have tried to sustain work on socio-legal issues, but this has been quite difficult. My undergraduate courses attracted far more enthusiasm from law students than from social science students, although I was able to supervise a number of PhD students, some of whom have stayed in the field. I now direct a research institute in science and technology studies, where I encourage work on issues of regulation and governance using socio-legal perspectives, and where I have a number of projects linked to colleagues in our law school, which is sympathetic to these approaches. However, the recent reforms of ESRC studentships have made it impossible for me to train new socio-legal graduate students in this environment and a great deal of my time is diverted into other areas, particularly in relation to health, where there is more substantial funding available. Like most research institutes, our programme depends more on what is fundable than on what our own preferences might be, and a steady supply of funds is necessary to retain and develop a strong research team. I remain active in law and society networks but I am not sure that I can see myself returning to the field full-time in the way that I might once have envisaged.”

**Pascoe Pleasence, Director, Legal Services Research Centre and Visiting Professor UCL**

“Degrees in philosophy (UCL) and criminology (MPhil, Cambridge), plus the CPE (City). Called to the Bar (Middle Temple) in 1991. I had a longstanding interest in the philosophy of law and punishment which led to an interest in more empirical matters. For example, discussions about deterrence are difficult to conduct without a grounding in the empirical evidence of the deterrent effect of punishment. The framing and framework of the law is also critical, hence undertaking the CPE. My course through Bar Finals and pupillage may have had more to do with crowd dynamics and the herd instinct than passion to practice, although I remember some idea of wanting to help people achieve justice! I returned to my real interest through starting doctorate at QMW (the impact of personal appearance on criminal trial outcomes), eventually coming under the influence of Hazel Genn. In parallel with doctoral studies, I started teaching and working on research projects with Hazel. ...Through an emerging profile in the civil side of empirical legal research, I was offered a temporary and experimental (for them and for me!) in-house position at the Legal Aid Board - to undertake a project to profile the characteristics and costs of personal injury cases. While intended to be of 6 months duration, the project ran for a number of years and the spin-off findings delivered to the LAB in the early days of the project laid the foundations upon which grew the LSRC. The initial project work at the LAB, and a building of confidence and experience on both my and the LAB’s part, led to progressively more adventurous

commissions for project work. My main professional interests (in subject matter terms) could be said to be mostly accidental, but behind them lie a long standing interest in trying to look at issues from all angles, and a commitment and belief in 'scientific method'. This has led to my now regarding my main interest and motivation being methodological and analytical. My methodological and analytical skills have been appropriated from colleagues or developed through hard experience. The mandatory ESRC methods elements of the M.Phil and PhD (which I never went back to finish) provided little more than a glossary. The real trick of research is in matching the execution to design. The RCT of debt advice that I am working on at present is incredibly simple 'in theory', but has been by far the most difficult project to conduct. I think I have benefited from being able to develop in an environment that has allowed me to learn through both replication and trial and error. I have also benefited from being able to draw from whatever discipline has seemed most appropriate to the task in hand. The LSRC comprises mathematicians, psychologists, an economist, a criminologist and (yes) a couple of people who 'passed through' the law... Quality social science methodologies require a whole range of skills that do not come about through single projects, or in single disciplines... They are unlikely to manifest fully in single individuals. Also, they are as much about making things work in the real world (both in terms of methodology and results) as theoretical underpinnings... I could do with a bit more space for theoretical (conceptual) work, but there's plenty of time for that. Ultimately, I hope to use all the skills I am gaining to go back to the questions that fascinated me in my undergraduate days and address them from the other side of the looking glass."

**Kate Malleson, Professor of Law, Queen Mary, University of London**

"I suspect like many other socio-legal scholars, I came to work in the socio-legal field through a rather round-about route and more by luck than design. Having completed articles in a criminal practice, my interest in socio-legal studies began on a masters criminology course which I took simply because this seemed to offer path from practice to academia. The areas of criminology which I then found interested me most were those with a socio-legal focus. I also discovered an interest in research methods, which I had no previous experience of. After my PhD, the substantive focus of my work shifted from the criminal justice process to the legal profession, the judiciary and the constitution, but the lens of socio-legal enquiry remained central to my approach. I think my timing may have been lucky because I don't feel that I have ever experienced any substantial barriers in pursuing these socio-legal interests. I've always been aware that socio-legal scholars are a minority of the legal academy as a whole, but I've never felt marginalised or undervalued by colleagues with more black-letter interests. This may partly be because my formative years were spent at the LSE which, inevitably, has a strong inter-disciplinary orientation and so a respect for a wide range of approaches to law. Other institutions may possibly not be so receptive. I also feel that I have been lucky in obtaining funding for my work, partly because it has usually quite a strong policy relevance. I imagine that socio-legal scholars who are working in areas which have not attracted the interest of policy-makers may have a harder time."

**Richard Moorhead, Professor of Law, School of Law Cardiff University**

"I first became interested in empirical work as an undergraduate at Warwick doing a course called Legal Practice I (led by Roger Burridge and Avrom Sherr). It mixed work on the professions with psychology and other social science approaches, seeking to develop an understanding of legal skills from a base grounded in research. Two motivations stand out. One is that it provided an intellectually stimulating way of considering one's own development; the learning was very personal – all of a sudden it was about me rather than an exam – and the link with a legal clinic provided a firm demonstration that knowledge had a direct impact on real people, the clients. The second motivation was less egocentric. Having got used to the relentless and circular arguments of many substantive law seminars; suddenly, we were

exposed to the potential of social sciences to 'prove things'. I didn't remain that naive for long, but having a mixed arts and science background, I remember waking up to the relevance of the sciences when we were asked to read Raiffa's the Art and Science of Negotiation. The slide-rule dweeb in me was excited by the curve of a graph... More substantially, my first opportunity to work on a research project came working with Avrom. I had to shadow solicitors, record how they spent their time and interview them. I got to try my hand at a dos-based version of SPSS, an unhappy experience, and wrote up a chapter of qualitative findings, which gave me shivers of pleasure (the process not the result). I loved the writing and being out in the field, seeing what was going on. After I graduated, Avrom asked me if I wanted to be a research assistant working on a project for the Legal Aid Board. I had a free year before the solicitors' exams, and jumped at the chance. Over the next three or four years I spent some time working on as a full-time researcher and the rest qualifying as a solicitor. Stimulating as legal practice was, it couldn't compare with the excitement of being involved in politically important areas and seeing a legal aid system evolve first hand. Data analysis and writing though, were the things I loved the most and I moved permanently into academic work, initially on a succession of contracts on soft money. It's worth reflecting on what helped me develop. I had an excellent mentor: he encouraged me to develop skills through careful and detailed supervision. I read up on methodology and had the opportunity to test out ideas on a variety of projects. Working in teams meant being able to try ideas out before they were tested in the field. Crucially he encouraged me to attend conferences and write; was fulsome in his praise and protected me from critics. My knowledge of methods improved as I worked with psychologists, economists and health researchers. There was regular contact with practitioners and policy makers. The variety of fora and discussions was enormously stimulating: debating theories of professions with Rick Abel one day, and how much practitioners should be paid with the CEO of the Legal Aid Board, the next. For me, there are two things that stand out as pros in being an empirical socio-legal researcher. One is the joys of data; there is real rigour and creativity in the analysis of data. It can challenge prejudices and confirm reason; surprise and comfort. The second is variety. You get to participate in a wide range of activities and contexts, talk to a wide range of people from the 'powerful' to the 'powerless', and carry out a whole host of activities that stretch and excite."

**Linda Mulcahy, Anniversary Professor, School of Law, Birkbeck College**

"When I studied for my first degree I was lucky enough to be able to choose from a diet of black letter and socio-legal options such as 'Sociology of law' and 'Poverty law'. A minority of tutors encouraged me to feel that the questions I was asking about the impact of law and its legitimacy were important ones but it still felt like being an outsider to query a rules based approach and took some nerve to pose them in the context of a course essentially dedicated to doctrinal approaches. I was both fascinated but also frustrated by the way in which law seemed to be taught as though it had an internal logic. Legal method was what confused me most because I never could find the ratio - or things the leading judges were supposed to be agreeing on. One of my tutors told me I would go far as a result but I still needed a lot of convincing... After becoming disillusioned about the legal practice course I took up my first research post as Hugh Beale's research assistant at Bristol. I suppose my first comment about the trajectory I took is that I was lucky to 'fall in' with socio legal projects and people interested in socio-legal work. No one during my undergraduate studies used the socio legal label or was able to help me plot a career in the field. At Bristol, with little funding Huge Beale and I did some really interesting research on the car distribution industry which mirrored Macaulay's early work in the US. I am now rather embarrassed by the fact that neither of us had any formal training in methodology. But we were aware of the existing literature and asked lots of questions. From there I went on to the Law Commission where I worked on Brenda Hale's research team and came to appreciate how socio-legal research could be used to change policy. Her reports were evidence based and full of citations to socio-legal work. She even allowed me to conduct a small empirical study for the Commission which was

published as an appendix to the Grounds for Divorce paper...By this stage I realised that I wanted to become a career researcher rather than being condemned as an early career academic to teach someone else's course in their way...The second comment on my trajectory is that I was fortunate to receive the best possible training in socio-legal methods in a unique environment. While at the Commission I was asked to come and have a talk with Don Harris about working at the Centre in Oxford. I feel very fortunate to have got a job there and the opportunity to work with historians, sociologists, psychologists and other lawyers. Credit is also due to Robert Dingwall who was very good at spotting eager researchers and getting them involved. The Centre is where my real training began - before it had just been an orientation. I see the four years I spent there as my apprenticeship. Sally Lloyd-Bostock challenged all my bad practices in socio-legal research and retrained me to be a rigorous empiricist so that the work I did with her had much more authority. She devoted a lot of time to that for which I am grateful. At times, surrounded by all those colleagues from other disciplines who were so certain about their disciplinary methodology, I felt exposed and as though I had not learnt anything of real value during my law degree. I continue to think that is the case and it is one of the reasons I remain so concerned about how we expose our students to socio-legal, critical and doctrinal work in the undergraduate programme and allow them to make choices. Despite a bit of a crisis about law while at the Centre, I came out as a much more confident researcher. I also felt I had a good network of people to help and guide me. If I had to name the most important component of this story it would undoubtedly be the Oxford centre. I suspect we were seen as elitist and as getting the lion's share of grants from the ESRC. But nowhere else have I received so much support as an early career academic nor so much understanding of the difficulties of being inter disciplinary or multi-disciplinary. The international links were also quite phenomenal."

#### Fiona Cownie, Professor of Law, Keele University

"My motivation for doing socio-legal research arose from the fact that I had had some experience of socio-legal material in my undergraduate course, and it was by far the most interesting stuff that I came across. It took me a while to get into socio-legal research, because I had no background in social sciences, and I needed to teach myself methodology from scratch. Never having been fond of numbers, I rapidly moved into qualitative work, which I have found very rewarding. Doing socio-legal research has allowed me to pursue my joint interests in law and education, for which there would have been no room within a strict doctrinal paradigm."

#### Sue Prince, Lecturer in Law, University of Exeter

"I became interested in empirical legal research because my career prior to my degree was in advertising and marketing. I worked in advertising agencies using data and research to help understand consumers' lifestyle choices. I saw the difference that considering individual opinions can make to commercial decisions. In terms of law there is very little empirical research compared to other aspects of society so there are lots of opportunities to learn from experience and observation.

I became involved in researching mediation after being asked to sit on a Steering Group for an emerging mediation scheme at Exeter County Court.

#### Incentives

- Offers explanations or elucidations where the answers had previously been based upon theoretical assumptions
- Dynamic and up-to-date – empirical research allows you access to go where no one has gone before!
- Possibility of funding and also informing the decision makers so contributing to policy decisions.

#### Barriers

- Extremely time-consuming
- Undervalued by others who see no benefit in using such research methods in law
- Primary research is not really acceptable for the RAE

#### Challenges

- (Especially in civil law) Every area explored raises other questions which are difficult to answer because there has been no or little empirical research done
- Raise the profile of empirical research so that it is more valued by the academic community
- Balancing the needs of the body contracting the research with academic objectivity – would like some more guidance if socio-legal empirical research develops."

#### David Cowan, Professor of Law and Policy, School of Law, Bristol University

"I had no formal socio-legal training at undergraduate level and have no postgraduate qualification (it being unnecessary when I applied for a lectureship in a law school). The first time I heard the label 'socio-legal' used was in around 1991 when I attended informal groups set up by Denis Galligan for early career staff (I remember after one of these groups saying, 'I've just realised that my work is socio-legal'!). I still feel relatively self-conscious about my lack of formal training...I sort of drifted into empirical work, partly because of the slow realisation that cases were so marginal to everyday experience; a colleague/partner who was a socio-legal scholar and naturally encouraged/worked with me; and also because I became obsessed by everyday injustices of housing and homelessness law, policy and practice. In the early 1990s, I was taken by the hand and lead into empirical work, and subsequently developed a taste, or thirst for it. I have been fortunate enough to have worked with, learned from, and become friends with a number of fantastic socio-legal scholars within the community. It is those relationships which have sustained and challenged me, and, more than anything else, made it fun...I recognise that luck and people have played a considerable part in my career development.... In terms of obtaining funding for work, my record is pretty good (having only had a couple of rejections so far). There are two reasons for this:

- First, my collaborators have often taken primary responsibility for writing the bid document and they are skilled at this part of the process. Writing bids is a skill which is rarely recognised, if at all and certainly not the length of time it takes to write them.
- Second, funding for housing work is relatively available. There are always avenues – rejection by one funder can lead to better alternatives, and, in any event, some funders in reactive mode are willing to see/work towards/fund rewritten bids....

In the mid-1990s, working in a law school in which the demands for core teaching were uppermost in the minds of the powerful, negotiating buy-out time was difficult. I would say that was the chief barrier in my career development (Once I was accused of trying to 'avoid' teaching and felt held back by the doctrinal preconception)."

#### Richard Young, Professor of Law and Policy Research, School of Law, Bristol University

"So how did an aspiration to become a petrol pump attendant end up with me holding a chair in 'law and policy research'? While a full explanation would involve ruminations on the influence of a myriad of factors (not least of which was the introduction of self-service pumps by the time I reached adulthood) the main turning point came in 1982 during the first year of my law degree at Birmingham University. A compulsory course in 'criminal system' was run by an inspirational set of lecturers, including Mike McConville, Peter Moodie, and Andrew Sanders. The socio-legal approach they took to the materials made the subject 'come alive' in a way that simply wasn't true of the other first year courses. That was enough to get me hooked and in the second year of the degree I carried out my first piece of empirical research (on the media presentation of a particular crime story) which was subsequently published as a journal article. I enjoyed the whole process of data collection, writing up, and getting published, and it was probably around then that I settled on the idea of undertaking doctoral work and committing myself to an academic

career. For a number of years thereafter I was uncertain about the teaching side of such a career. I found the idea of presenting ideas in front of a large (and largely silent) audience incredibly daunting. As a recent graduate I also had my doubts about the effectiveness of the traditional lecturing approach. Ultimately my inspiration for teaching came, once again, from Mike McConville. I still have a strong memory of the first year lecture he gave in which he suddenly grabbed a student's bag and ran out of the room at great speed. (Now that's what I call 'law in action'). He returned a few minutes later and asked us what he'd been wearing at the time of the 'crime'. While this exercise was effective in demonstrating the fallibility of human memory and, thus, identification evidence, the longer-lasting lesson for me was that it was possible to lecture in an interactive and entertaining way. I've been running out of lecture theatres ever since. Luckily, I've found that presenting socio-legal work lends itself to this kind of approach. Thus the development of, and my involvement in, socio-legal studies has enabled me to enjoy both the teaching and research aspects of my job. So much so that my petroleum tinged dreams are nowadays few and far between."

**Penny Darbyshire, Reader, Kingston Law School**

"My story is corny. As a law student, I was so shocked to learn about unmet legal need, miscarriages of justice and the flimsy protection offered to the accused that I resolved that when I grew up I would write about what the English legal system was really like. I chose my MA in criminology at Keele because it included the best grounding in sociology, philosophy of social science, stats and research design. Lawyers cannot do socio-legal research without this toolkit. When my tutor suggested a PhD, I thought I was too thick but was astonished to be offered SSRC studentships in socio-legal studies by Sheffield and Birmingham. John Baldwin, at Birmingham, was the perfect supervisor: an extremely helpful martinet. I intended to go to the Bar for five years, as I thought I couldn't legitimately criticise the English legal system without practising in it but after seven years as a student, I couldn't be bothered..... I am currently reporting a 2003-5 project on judges, funded by the Nuffield Foundation. I've work-shadowed 40 judges of all types, from district judges to law lords. I've interviewed 77, at length. Before designing the research, I did three pilot studies: circuit, district and High Court. I planned to approach individual judges... I phoned John Baldwin and Andrew Ashworth for advice. One of them thought there was a procedure whereby you had to ask the permission of the Senior Presiding Judge so I went to see Lord Justice Judge and he asked "What procedure?" In the meantime, I had gained the support of the Council of Circuit Judges and the Association of District Judges. Fortuitously, Auld LJ had asked the LCJ and senior judges to read the jury research paper so they had heard of me. Sir Igor cross-examined me ferociously for 45 minutes on the detail of my research design, then smiled warmly "I think this a wonderful piece of research and I'll give you all the help I can". He has been the key to my success. He helped select the sample by answering questions about judges, then contacted all my selected judges, asking them to cooperate. Only one DJ declined. I am the luckiest of researchers. Judges included me in everything they did and I had masses of fun. I sat next to them on the bench and asked them to think aloud, out of court. The CA allowed me to watch their deliberations and the law lords let me watch the appeals committee. In the CA and HL I got the whole lot for the price of my selected sample. I was welcomed everywhere and seemed to get unlimited access to information. The only problem is that I now have so much info on judges that it is taking forever to write the book. I wish I had a degree in social anthropology, because that is the nature of this research. I only hope I can do it justice."

**Lee Bridges, Professor and Director, Legal Research Institute, School of Law, University of Warwick**

"I undertook my undergraduate degree, originally in Maths, at Dartmouth College in the US, but dropped out two-thirds of the way through my first year to join the civil rights movement. I spent my time away organising various protest activities in northern cities around issues of employment discrimination, including being arrested and spending three days in a County Jail.

On my return to Dartmouth I switched to a major in Government, with a particular focus on urban politics, including spending a term as part of a team undertaking empirical research on ethnic groups in Boston and a Summer internship in East Harlem, where I ran a fresh meat cooperative as well as becoming involved in the community control of schools issue which eventually formed the basis for my undergraduate dissertation. On graduation in 1968 I decided to leave the US rather than allow myself to be drafted to fight in Vietnam, foregoing places I had been offered at Law Schools. I was registered as a visiting student at the LSE (the year it was shut down as a result of student protests), studying race relations in Britain. This led to my first academic appointment in the Sociology Department at Birmingham on a one year study of race relations. In 1970 I was recruited to work with Richard White on a British Academy-funded study of legal services in Birmingham, where I was primarily responsible (without the benefit of formal research methods training) for the design and conduct of the first large-scale, empirical investigation of access to civil legal aid in the UK. This was the beginning of my career in socio-legal studies and indeed as a non-legally-qualified researcher/teacher in academic law departments (and eventually Chair of the School of Law at Warwick from 2001-2005). I was appointed in 1974 (along with John Baldwin) as a Lecturer in Judicial Administration at Birmingham, in what I believe were the first permanent academic positions in the UK designated specifically for socio-legal researchers. In the same year I received my first major research grant, from the then Social Sciences Research Council, and a number of other grants followed. I have always taken the view that those involved in policy-related research, rather than maintaining an academic distance (and despite the risks of their work being abused by politicians and policy-makers), should be willing to 'get their hands dirty' through direct engagement in the development of legal policy and services, and in 1984 I made a decision to leave academic employment. Over the next decade I pursued a 'portfolio career', which included policy research with the Institute of Race Relations in London and a variety of research consultancy and public service appointments more directly related to my general interests in legal administration and services. In 1991 I became the first Research Director of the Public Law Project (PLP), and in 1994 I was head-hunted back into academia to become Principal Research Fellow in the School of Law at Warwick. As well as my commitment to influencing policy through research, a great deal of my research has involved the development and evaluation of pilot projects (such as the national police station duty solicitor scheme) and the innovative use of observation techniques in various legal contexts. Today, it would be perhaps be impossible for someone without formal research training or a graduate degree to establish a career in this field. It is worth noting here that I profoundly disagree with the current '1+3' structure for ESRC recognition. In my view, research training and development should run in parallel with actual involvement in empirical research (possibly over a four-year funded period of PhD study). Nor does the RAE appear to give sufficient recognition to directly policy-oriented and focussed research which does not always lead to academic outputs. There are also barriers (including the advent of full economic costing) to the type of direct collaboration between academic institutions and voluntary and public sector organisations in which I have been involved throughout my career."

**Gavin Drewry, Professor of Public Administration at Royal Holloway, University of London**

"I entered the field of legal research more or less by happy accident. Having gone to Southampton University (with maths and science A-levels) to read Chemistry, I soon became disenchanted with the malodorous world of test tubes and Bunsen burners and switched to the social sciences – albeit with little notion of what 'social sciences' actually were. I chose politics and law as my major subjects (I particularly enjoyed the administrative law classes, taught by Gabi Ganz). My parents, I remember, were much exercised about where all this would lead in career terms, and I ended up drifting into and being accepted onto the national

training programme for hospital administrators... Meanwhile (this was the summer of 1966), I had spotted, in *The Guardian*, a report by 'our [anonymous] legal correspondent', about the change of practice whereby the House of Lords would, in future, permit itself, in exceptional circumstances, to overrule its own previous decisions. The report mentioned that a major study of the House of Lords in its judicial capacity was about to be undertaken by Louis Blom-Cooper in the Legal Research Unit at Bedford College. This sounded interesting so, on spec (prompted perhaps by subconscious misgivings about my prospective career in the NHS), I wrote to Louis (himself 'our legal correspondent', as it turned out), who invited me to London for a talk. To cut a long story short, I found myself appointed as his research assistant, on a starting salary of £735 p.a. To cut an even longer story short, Louis generously promoted me to the status of co-author of the book based on the research, *Final Appeal* (OUP, 1972). Through the 1970s I continued to work with Louis – on an SSRC-funded study of the Queen's Bench Divisional Court (some of the products of which found their way into the Law Commission's early reports on public law remedies) and on a co-edited volume, *Law and Morality* (Duckworth, 1976)... Meanwhile, Bedford College had appointed me to a lectureship, to teach courses in politics and public administration and my research interests shifted towards things mainly to do with Parliament and the legislative process and the history and workings of the civil service. However, at the heart of my academic interests lay a continuing fascination with what happens at the interface between the worlds (both academics' and practitioners' worlds) of law and politics. And, as the 'new public management' (NPM) revolution of the Thatcher years transformed the traditional face of public administration, I became particularly interested in the constitutional tensions that might arise as our independent judiciary gets more and more caught up in the NPM imperatives of performance targets and public accountability. This was the subject of my inaugural lecture, following my appointment to a chair at Royal Holloway in 1989, and a version of it can be found in *Current Legal Problems*, 1992. I also worked, under the auspices of the European Group for Public Administration (EGPA) as a member, and later co-convenor, of a study group on the comparative development of 'contractualisation' in the public sector, with a particular interest on the impact of NPM on traditional mechanisms of administrative law as the boundaries between 'public' and 'private' institutions and actors become increasingly blurred. ...More recently, shades of my early days in the Bedford Legal Research Unit have caught up with me, and I have teamed up again with Louis (now Sir Louis) Blom-Cooper and Charles Blake, to undertake a study of the operation of the Court of Appeal (Civil Division) – generously funded by a grant from the Nuffield Foundation. The results of this work will be published by Hart Publishing in 2007. This work has enabled me to revisit some of my own favourite themes – the history and development of legal institutions, the impact of NPM on the administration of justice and the position of the judicial House of Lords (soon to be The Supreme Court) at the apex of the appellate hierarchy. For me, the academic wheel has turned full circle – but the cycle of rotation has been forty years. A slightly scary thought ...!"

**Felicity Kaganas, Senior Lecturer in Law, School of Social Sciences and Law, Brunel University**

"I qualified as a lawyer in South Africa... and then undertook the LLM degree course at the University of London. **My legal training was largely traditional and black letter in nature.** However, I was taught to think critically and analytically. I developed a particular interest in family law and my experience of empirical research has been in this field....I have always been interested in exploring behind legal doctrine to see the way that the law is experienced. I am also interested in examining policy. Also, early on in my career I adopted a feminist perspective in my research and my horizons broadened beyond pure legal analysis as I read the work of feminist scholars. I ventured in my reading into areas I knew nothing about such as sociology and anthropology. I also began to teach on the post-graduate socio-legal degree at Brunel. **A lot of what I know about designing research projects has been learned through discussions with a colleague who teaches research**

**methods on the course and through supervision of students' dissertations.** In short, then, I have had no formal training as a socio-legal empirical researcher. I have never taken a course in empirical research methods. **The empirical studies with which I have been involved have been undertaken in collaboration with colleagues who have had formal training.** They have taken the lead in relation to methodology and my main role has been to analyse the data. The analysis I have done has been qualitative rather than quantitative."

**Herbert Kritzer, Professor of Political Science and Law at the University of Wisconsin and current editor of *Law & Society Review*.**

"I was brought to the world of socio-legal studies by my colleagues at Wisconsin. Trained as a political scientist, my doctoral dissertation was a study of sentencing of draft resisters during the Vietnam War. I saw this early research not in socio-legal terms but as a study of the behavior of political elites which was my core interest during graduate studies (during my early years in academe, I published a variety of articles dealing with political elites outside legal settings). Soon after arriving at the University of Wisconsin in the late 1970s, I was invited by a senior colleague to join a team competing for a contract to study civil litigation in the United States. That project, which came to be known as the Civil Litigation Research Project (CLRP), moved my focus clearly into socio-legal studies, and it was during the time that I was working on this project that I first attended the annual meetings of the Law & Society Association. Also during this time, *Law & Society Review* was edited by Joel Grossman, one of my colleagues at Wisconsin. Much of my research over the last 25 years has roots in issues and questions that arose from CLRP, and all of my substantive writing during that time is socio-legal in character."

**Mavis Maclean, Oxford Centre for Family Law and Policy, Department of Social Policy and Social Work, University of Oxford.**

"I met Don Harris on a committee concerned with the rights of disabled people in the early 70s. I had started out in history at Oxford, moved on to social policy at LSE and then to the beginnings of medical sociology under Margot Jeffreys at Bedford College, London where I learned a great deal about social research methodology from George Brown. Don invited me to apply to join his new enterprise...the Oxford Centre for Socio-Legal Studies, and at this period of the Thatcher administration the strength of law was appealing to a member of the besieged social policy community. I felt that the concerns of medical sociology with a powerful profession, working with powerless clients had resonance for this new field of inquiry...and being married to a lawyer was an added incentive to study their strange ways. I'm still doing it – out in the field observing the work of the family bar, which involves a lot of getting up early to catch trains, trundling large black bags on wheels....I'm so grateful to Don not only for making the Centre in Oxford such a happy and creative place to work – I think we followed the model of the Cavendish Laboratory in Cambridge by having one kettle, so that conversations with members of other disciplines were frequent and informal...but also for opening up the world of international scholarship to us. Working with the Onati Institute as President of the RCSL has been a gastronomic as well as intellectual delight...and over the last ten years I have been thrilled to support the development of a research arm within the DCA (formerly LCD) acting as their Academic Adviser. It has been extremely satisfying to see the Research Unit grow to its present strength, and to be able to draw on the word-wide research community to support evidence based policy making within DCA...One of the skills in working across disciplines as socio-legal scholars must do is the need to be clear and free of technical jargon...and this has helped in the task of communicating research to policy colleagues and ministers. For me socio-legal studies has opened doors to work with the best of colleagues, and the combination of exciting scholarship with making a difference. The Nuffield Foundation has been a long standing source of support and encouragement."

**Maurice Sunkin, Professor of Law and Dean of Law School,  
Essex University**

"I took my first teaching post in 1976 at the Polytechnic of the South Bank's recently established Law Division... It was while at South Bank, during the 1970s, working with sociologists that I became interested in socio-legal studies. At that time one of our central concerns was with access to legal education and my first tentative empirical steps were taken exploring demand patterns for legal education. The work helped to inform the early initiatives designed to widen access including the establishment of the early law access courses... In the late 1970s, with financial assistance from the Nuffield Foundation, I also started investigating judicial review. I had little idea about how to do social science research properly. It was very much trial and error. I remember being basically being driven by simple curiosity. There had been reforms to Judicial Review and much debate about the process, but who was using judicial review, in what areas and against which authorities, and with what effects? There was no way to begin to answer such basic questions except by looking at the actual court records. Had the information been more readily available I doubt that I would started on this aspect of my career. My basic equipment was a pen, paper and filing cards. Having secured the corner of a desk in the Crown Office at the High Court of Justice, data collection essentially consisted of recording the details of cases from the handwritten records kept by the Crown Office. These were the days before the use of computers in court management and the whole atmosphere was very Dickensian. When I got home I took the Dickensian approach with me and I would make lots of lists and do lots of counting. This was somewhat ironic since I was always hopeless at maths at School and seem to remember my maths teacher telling me that if he were to set our class a maths test I would come 43 out of the class of 42. I left South Bank for Essex in 1989 in large part because of the exceptionally strong reputation of Essex for social science work. Since coming to Essex I have continued to develop my socio-legal research although I am still very much an amateur who relies on others for the more technical scientific aspects of data collection and analysis."

**Lisa Webley, Principal Lecturer, School of Law, University of  
Westminster, Research Fellow, Institute of Advanced Legal Studies**

"My empirical research training began at school, stalled somewhat at undergraduate level, and then began in earnest after I had graduated and completed my LPC. I was fortunate enough to be taught at school by teachers who believed passionately in getting pupils to do practical research and, in particular, received research training at high school from a history teacher who was very keen on involving pupils in field trips, in analysis of historical documents and in interviewing local people to uncover living history within the community. Once I attended Law School, this all stopped, although we did receive training in doctrinal research techniques and were permitted to use empirical techniques as part of our dissertation research, albeit without formal training. I was lucky enough to have Professor David Feldman as a tutor in my final year, who broadened my research horizons, and encouraged me to undertake postgraduate research (and who wrote to me a year after I had graduated with an advert for a research assistant position at IALS, without which I would have been unlikely to have ended up in socio-legal research). After graduating from the University of Birmingham with a Law with French degree in 1994 and from the College of Law Chester with an LPC in 1995, I applied for the three month research assistant position at IALS, about which Professor Feldman had contacted me, and stayed there for five years. I have never really understood why Professor Avrom Sherr gave me the research assistant position, I am not sure that I would have been so forgiving of my lack of experience - I had only an undergraduate degree and a LPC qualification, little empirical research experience and only a few work placements in law firms in hand. It was not until much later that I gained an MA in Legal Practice, although I did register almost immediately for a PhD. It was during the five years that I spent at the Institute working on a whole range of socio-legal empirical projects, usually externally funded by amongst others the then Legal Aid Board, Law Society and European Commission, that I received most of my research training. The training was sometimes formal

in the form of brief courses on particular methods and techniques, but mostly informal from other researchers including Avrom Sherr, Alan Paterson, Richard Moorhead and Tamara Goriely, and an array of books that were not that well tailored to my needs but which did give me some reassurance that what I was doing was broadly in keeping with accepted theory and practice. This was particularly true in relation to quantitative methods in a socio-legal context. Since moving to the University of Westminster I have run socio-legal and empirical training courses at IALS for PhD students, as well as taught on research methods programmes for undergraduates and postgraduates. I have also continued to undertake socio-legal research, usually with the use of empirical research methods. I enjoy examining the legal system and legal practice in operation, although I should like the time to think more deeply about the implications of what I have found - much of my research is externally funded with demanding reporting deadlines that are difficult to fulfil along with teaching and non-funded research commitments."

**Anne Barlow, Professor of Family Law and Policy, University of Exeter**

"My route into socio-legal empirical research was far from conventional and did not begin until after I had spent a number of years practising as a solicitor and like many legal academics of my generation, I did not undertake doctoral research. However, as an undergraduate reading Law with French at Sussex University my interest in the socio-legal approach was definitely nurtured by the contextual social science courses I was encouraged to take alongside my law subjects. Whilst practising as a legal aid solicitor in London, I was also struck by the gulf between theory and practice in terms of what law could actually deliver for those trying to use it, particularly in the fields of family and housing law... On becoming an academic at the beginning of the 1990s, empirical socio-legal research seemed a good way to try and unpack policy issues surrounding the law but I realised that I lacked both training and experience. I gained these in rather an ad hoc way, as at the time there was little formally on offer. First I was fortunate enough to be asked by two Geographers who needed a housing lawyer to advise on and then co-direct a project funded by the Joseph Rowntree Foundation on the effectiveness of the Rent (Agriculture) Act 1976. This was a very positive experience from which I learned a great deal about the dos and don'ts of empirical research. For me, empirical research gave me back the coal-face excitement (and frustrations!) which I found I unexpectedly missed from practice and seemed to be lacking in academic life. A staff development course on how to write research applications, a small grant from my university to undertake a pilot project and informal attendance at my university's post-graduate research training programme (I considered going in disguise but braced it out!) also enhanced my empirical research skills and ultimately set me on my way to successful research funding bids... Other important influences on my research career have been attending the SLSA conference which has enabled me to share in other people's approaches to empirical socio-legal research and constructive and useful feedback from funders such as Nuffield on outline research applications. Perhaps most significant though, has been the way in which leading socio-legal researchers were themselves prepared to selflessly advise me on research ideas and approaches to obtaining funding which have been invaluable. This is certainly a tradition which in my view it is vital to keep... So why do I do it? With empirical research, there is certainly never a dull moment and your research agenda is always moving and challenging! At heart, I suppose I like to feel I still have at least one foot in the real world and at times you may even get close to informing evidence-based policy."

**Gwynn Davis, Emeritus Professor of Socio-legal studies,  
University of Bristol**

"My early enthusiasms were all sporting and I displayed no academic talent to speak of through school and university. I achieved a lower second in English at Aberystwyth, and whilst I would like to claim that this was because I spent all my time running, the truth is more that I was never cut out to be an English scholar. I then took a Dip Ed at Oxford before getting a job teaching English at a Reading comprehensive school. I survived for two years, but I was desperate to escape and somehow alighted on the idea of becoming a probation officer

- mainly because it involved returning to University which, in light of recent experience, had assumed a more positive aspect. I became a Home Office trainee and embarked on the first stage of probation officer training, which in my case was the Diploma in Social Administration in the School for Social Policy at Edinburgh University. The Edinburgh year (1971-2) was the making of me, academically speaking. I thoroughly enjoyed social policy, even developing an enthusiasm for social security, upon which subject I wrote several earnest papers. But the real eye-opener was the first year sociology course, which we Diploma-ites shared. The core text was Peter Berger's *Invitation to Sociology* and the lectures were delivered by Michael Anderson. This was primarily 'micro' sociology rather than grand theory. (The latter would of course have been of no assistance whatever when it came to undertaking legal research, although there are those who try, more or less fraudulently in my view, to marry the two.) Anyway, at Edinburgh I discovered that academic work could be profound, exciting, and fun. My personal tutor was Mike Adler - one of several excellent teachers in Edinburgh at that time. Unfortunately I was committed to my probation officer training, which meant I left Edinburgh to embark on the Certificate of Qualification in Social Work at Bristol. Surprisingly enough I enjoyed this as well, although mainly because I met lots of young women. I also met Roy Parker, who was an impressive Head of Department, and Mervyn Murch, who was a tutor on the course. I then tried being a probation officer. It was better than teaching, but still not for me. Mervyn meanwhile was researching the legal process of divorce (he was engaged in some practical fieldwork of his own) and he invited me to join him in bidding to the Joseph Rowntree Memorial Trust for a substantial grant. A year later I got one of my own (to monitor the work of the Bristol Family Mediation Service) and I also quickly got the hang of publishing the results of my enquiries. From 1978 to 1987 I was an externally funded contract researcher, based in the School for Policy Studies in Bristol. It was all private family law at that stage - having started down that path, it was not easy to veer off. Anyway, I quite enjoyed it, trying to make sense of the strange legal forms I was observing and I particularly enjoyed the challenge of writing engagingly on the basis of socio-legal investigation, trying to see the wood for the trees. In 1987 I transferred from Social Policy to Law. This was because I'd begun to work with Stephen Cretney, and Stephen offered me at least partial relief from the insecurities of the contract researcher existence. It was agreed with Stephen that I would attempt to build socio-legal research into the work of the Law Faculty, assisting other colleagues who saw the benefits of this way of working...If anyone 'taught' me socio-legal research it was Mervyn, but I think I was just as much influenced by Peter Berger and Michael Anderson. It was they who gave me the first glimmerings of a sociological understanding. I have become rather opinionated on some aspects of research method, but it's all been through experience. I've had no formal research training. I've not done an MSc in anything. I've always regarded the 'those who can, do, those who can't, teach' aphorism as stupid and insulting, but I'm inclined to make an exception of socio-legal research. It's an odd career choice in any event, and it would be a mistaken one for most people, whatever their academic background. There are far easier ways of making a mark in academic life, without the hugely burdensome juggling of grant applications, staff appointments, access negotiations - and then, if you're going to do it properly, immersion by the senior researcher in the fieldwork task, followed by all the usual expectations with regard to publication."

## Overseas Experience

79. As part of the Inquiry, we consulted with a number of overseas colleagues to see whether the issues we appeared to face in the UK had been more satisfactorily dealt with elsewhere. We did not have the resource to undertake a complete comparative study. Nonetheless, the information we were able to obtain from overseas colleagues makes clear that concern about empirical legal research capacity is not limited to the UK and that some of the factors affecting capacity in the UK are replicated elsewhere<sup>25</sup>. The following paragraphs summarise the situation described in several overseas jurisdictions and some of the explanations for lack of empirical research capacity.
80. **Canada:** A perception of weak capacity for empirical legal research in Canada was attributed to the lack of research methodology on the Law curriculum and the fact that very few legal academics had any training in empirical research. It was argued that work done outside of law faculties has been grounded in "an impoverished view of law" leading to limited scope and issues. Other contributing factors included a general "dumbing down" of social research, with the late C20<sup>th</sup> growth of data-free ideological work, together with publication pressures creating perverse incentives against lengthy empirical projects. In common with the UK, civil law issues in Canada have been subordinated to those of criminal law both within and outwith academia. A heightened focus on criminal laws, courts and processes is pervasive within government, the media and the legal system. Public interest in, and concern about, crime is promoted by the mass media, whereas coverage of civil law issues is minimal. Again in common with the UK, there is a lack of available data about the Canadian civil justice system
81. **Australia:** Similar capacity problems have been experienced in Australia where Law schools offer little, if any, formal training in empirical legal research. Scholars doing empirical legal research have generally learned research skills through prior training in another social science discipline or as a result of taking combined Law degrees which are relatively popular in Australia. Empirical legal research remains somewhat marginal within the Australian legal academy and the few active scholars tend to be in newer universities. On the other hand empirical research projects tend to attract competitive research grants and there is a strong incentive for development in this area.
82. **New Zealand:** Responses to the Consultation suggest that there is little empirical legal research being conducted in New Zealand, with no uniting body for the field. The culture of black-letter law is seen as

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<sup>25</sup> See Consultation Document for an extended discussion of overseas experience.

dominant in Law Schools and empirical research is not seen as offering solid career progression. With a small publishing industry empirical legal research struggles to compete with text books which offer a safe and continuing market. The longer timescale required for empirical research is seen as daunting, especially for young academics, in the “publish-soon-or-perish world of the modern academy”. *“It is so much easier to stay in the law library reading cases and statutes.”* A further issue is the “formidable range of knowledge and skills” needed for empirical research in law – skills which are not normally taught together at undergraduate level in New Zealand. The potential solution of legal academics working in interdisciplinary teams (as with the science model) is hampered by law students being taught to work alone. Suggested solutions include a shift to North American models of the legal academy and replication of the styles of research found in the sciences.

83. **USA:** As discussed in Section 3, the situation in the USA seems rather more mixed where much empirical legal research is located outside of the law schools and most researchers have a mainline social science background. Most importantly, in the USA, many entrants to law are drawn from political science and thus benefits from the major stream of empirical training available in this discipline (this is discussed further below in Section 4). Despite the differences between the background of empirical legal researchers in the USA as compared with the UK and the greater volume of empirical legal work in the USA, it was nonetheless suggested by one respondent to the Inquiry that the establishment in the USA of the Journal of Empirical Legal Studies was partly a response to concerns about the availability of publishing outlets for empirical legal research. Moreover, although the profile of empirical legal research is relatively high in the USA, and the research community is growing, ‘Law and Society’ research is nonetheless a smaller field than doctrinal legal scholarship and within the Law and Society movement itself, there is a greater volume of purely theoretical and textual research than original empirical work. Even in the US, therefore, those who undertake empirical legal research may find it harder to publish their work than other academic lawyers or social scientists not working on law-related issues.



## 4. UNDERSTANDING LACK OF CAPACITY

84. The original Inquiry Consultation Document suggested a range of factors that might account for the fact that there are so few researchers carrying out empirical legal research and explain why so few young researchers are being trained. In the responses to the Consultation, and in contributions to the Inquiry meetings and seminars there was a measure of agreement that the explanation was to be found in an interaction of factors. Some of these are particular to the way law schools and social science departments work, relating to their intellectual traditions and preoccupations, the disciplinary isolation of many law schools, and the internal constraints that are the product of external pressures. Others relate to broader university structures, patterns of funding for research and training, and the influence of the RAE.

### Law Schools

#### *The problem of self-replication*

85. There is little disagreement that law schools have historically been dominated by theoretical and text-based doctrinal research. This is reflected in the research skills taught at undergraduate level. Most law courses do not incorporate empirical legal research material into their teaching programmes. Thus undergraduates have few opportunities to read empirical legal research, much less develop skills in empirical data collection. Even in areas like family law and welfare law, where evidence about social context is arguably vital to understanding the profile of cases that arise, there are few texts that build in empirical material.<sup>26</sup>

86. The influence of professional practice on the undergraduate curriculum constrains its development and, unlike most programmes in the non-law social science disciplines, undergraduate legal education rarely requires or even includes a research component or dissertation. Of course, a starting point is that, unlike the situation in some other countries where law is a postgraduate or professional level training, here undergraduate law degrees are the most common entry point to the profession and Law Schools have no trouble recruiting high quality students. However, the fact that the main task and the main income of departments, requires teaching a curriculum that is heavily influenced by the demands of the professional bodies places real constraints on the treatment of law as a 'social science' discipline or on interdisciplinary dialogue, much less research.

87. Lacking a broad perspective on legal inquiry and constrained by a lack of skills and familiarity with empirical research, when law graduates who do consider an academic career choose postgraduate courses and topics for doctoral research, they naturally gravitate towards doctrinal topics and issues in law. There is thus an almost inevitable pattern of self-replication. Research training and appreciation at undergraduate level is limited to doctrine and this approach is then reinforced at Master's Degree and doctoral level (see diagram below)<sup>27</sup>. The effect is that on recruitment to academic positions, the skill and experience offered by new entrants and valued by Heads of Department for their teaching programmes, is that of the doctrinal lawyer.

88. Once in post, the mid-career possibilities for legal academics interested in developing empirical research skills are limited. There are few courses available of a sufficiently accelerated quality, and undertaking cross-disciplinary training over a sustained period would require a significant investment from the Department or Institution.

89. A consequence of this cycle of self-replication is an absence of research supervisors competent to supervise empirical projects at doctoral level. Traditional legal scholars are likely to encourage postgraduate research projects involving traditional legal preoccupations and skills. What the careers' survey discussed in Section 3 did not explore is the extent to which prospective doctoral students are being diverted from empirical projects by academics who are more comfortable with traditional approaches and who do not feel that they have the skills or experience to supervise empirical legal research. Joint supervision with a colleague in a social science department may not be attractive and there is a financial disincentive in sharing revenue and credit with another department.

90. There is also the problem that the current cohort of experienced empirical legal researchers are so busy with their own research and other responsibilities that they may have insufficient time to invest in 'bringing on' and developing the skills of many new researchers.

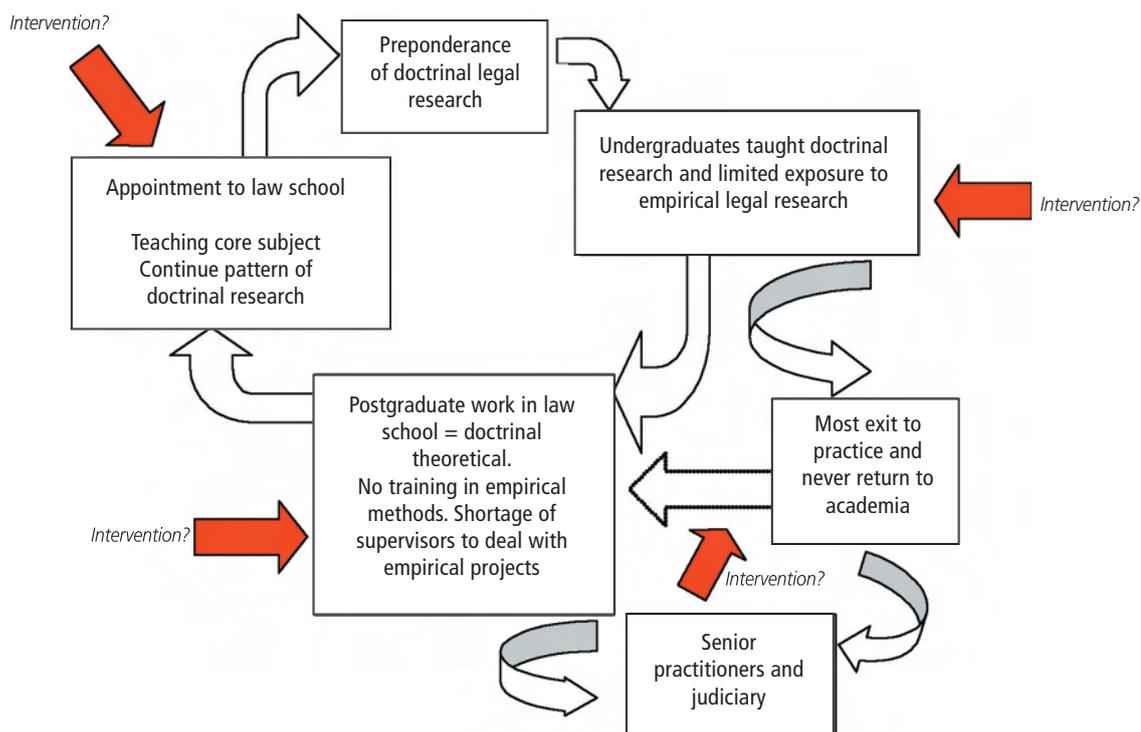
#### *Academic careers in Law Schools*

91. The influence of professional demands on the law curriculum and the historic emphasis on teaching means that most Law Schools maintain heavy teaching loads. This has two effects. First it leads to strain in accommodating the practicalities of empirical research. Empirical research involving fieldwork necessarily requires researchers to be 'in the field' rather than in the lecture theatre. To accommodate fieldwork absences,

<sup>26</sup> One example of an exception here is *The Family, Law and Society: Cases and Materials*, by Brenda Hale, David Pearl, Elizabeth J. Cooke, and Philip D. Bates

<sup>27</sup> For a useful discussion see M Heise 'The Past, Present, and Future of Empirical Legal Scholarship' *University of Illinois Law Review*, 2002, 819-850.

### Model of Legal Education and Research – Where to break in?



arrangements must be made to cover both teaching and enabling responsibilities. For this to occur there needs to be both a will on the part of Heads of Department and resources available. Second, and, perhaps more importantly for diversity and the interdisciplinary development of law schools, empirical legal researchers unable to contribute to core teaching are unlikely to be hired. This affects non-lawyers interested in research in non-criminal justice fields to a greater extent than criminologists, who are more likely to be seen as relatively valuable providers of popular undergraduate and postgraduate criminal justice options. The absence of non-criminal Law and Society options in the undergraduate law curriculum makes it difficult for empirical legal researchers from a non-law background to contribute to the core teaching business of law schools.

“Within law schools, there is little place for researchers who do not contribute to core teaching. Criminology is sufficiently important an option to count. So there is an issue of the long-term career structure for those engaging in civil justice research. Their future as lecturers depends on an ability to teach a major subject and civil justice does not easily provide this. So some imagination is needed on how those engaging in this work can have a long-term career.”

**Professor John Bell, Law Faculty, University of Cambridge**

“Law schools when appointing staff still seem to give their teaching needs priority. This may stem from the fact that historically, teaching rather than research was seen as being of central importance within the law school. Whilst law schools need to service their teaching needs, this appointment practice now seems odd, particularly in the context of the importance attached to research by leading law schools.”

**SLSA response to Consultation**

92. Criminology is an exception, partly because it is a popular option with undergraduates so it can generate both research and teaching income. However, there is no such thing as “civil justice” in law schools, a core topic equivalent to criminology or criminal justice options. Criminal justice as a core topic supports the employment of staff able to undertake research. In addition there are careers within criminal justice, which provide a body of students interested in these subjects.

“The topics [in civil justice] are obscure to students in a way that crime and criminal justice is not. The universe of agencies and segments of the public that relate to civil matters is much broader and more diffuse than is the case as regards crime and criminal justice. The academic law establishment does not itself regard these topics as particularly compelling and, within a general context of indifference to empirical research, is especially unlikely to trouble itself over finding out what research exists in these fields, thinking the topics quite complex enough and off-putting to students without complicating the final examination syllabus with inconvenient glimpses of reality.”

**Professor Nigel Fielding, Institute of Social Research, University of Surrey, Response to Consultation**

93. Legal academics find the time commitment needed for undertaking empirical research difficult to fit into the demands of teaching in Law Schools. Empirical legal researchers contributing to the Inquiry say that sometimes their home departments have been unwilling to accommodate the needs of empirical research, especially those involving fieldwork absences. Indeed, there is an implication that funded leave to do fieldwork, rather than offering an important research opportunity

that will benefit the School as a whole, instead represents an undesirable and possibly unfair dereliction of the key responsibility – which is to teach.

“My experience from working in medical faculties is that staff teaching programmes have built into them sabbatical periods which enable empirical research. These sabbatical periods are funded by the teaching department. This is because empirical research is expected and valued. The lack of awareness of the value of empirical research by senior law academics has meant that empirical research in law is undervalued outside the social science area.”

**Robyn Martin, Professor of Public Health Law, Centre for Research in Primary and Community Care, Hertfordshire University, Response to consultation**

### ***Culture of legal scholarship***

94. There was also general agreement that the traditional culture of legal scholarship is characterised as a law-centred enterprise conducted by lone researchers unused to collaborating with others, undertaking close textual analysis of legal material with the objective of relatively rapid publication of journal articles and textbooks. Some also suggested that, in sharp contrast to the models of other disciplines such as medicine or engineering, this tradition leads to a privileging of sole-authored work and a corresponding undervaluing or suspicion of collaborative publications which is often the model for empirical legal research monographs produced by groups or teams of researchers.

“Most researchers who have come through law schools have been trained to look for and analyse the principles - the ratio decidendi - underlying judicial decisions in difficult or borderline cases at appeal level rather than their impact in run-of-the-mill cases. When they embark on research projects they typically concentrate on these theoretical or normative issues and find it difficult to see how empirical survey work will assist them. There is a well-developed argument in the philosophical tradition over the relationship between the normative and the empirical but it does not appear to have transferred easily into the socio-legal field. Part of the explanation may be the difference between theory in social science, which is directed towards the explanation of what people **actually do**, and theory in most legal analysis which is directed towards what people **should do**. There is a resulting need for the development of materials and persuasive examples on how this potential divergence in approach can best be bridged. This will ideally involve not only those directly engaged in empirical work but also those concerned with issues of legal argumentation and its relationship with legal theory. [There needs to be] the development of a firmer theoretical and practical foundation, and associated materials, on the link between empirical and normative research.”

**Professor Tom Hadden, Queen’s University Belfast, Consultation response**

“It is clear that there has been a huge rise in the amount of research being done in university law schools over the last decade. However...most of that research remains text-based in its nature. Large-scale empirical projects call for both a very different set of skills and a different knowledge-base to that that most academics will have acquired through an undergraduate course in law. Accessible training is therefore a pre-requisite to the recruitment of new researchers.”

**Professor John Flood, Dr Bronwen Morgan, Professor Anthony Bradney, SLSA response to Consultation**

95. While the traditional stand-alone Law School – physically and intellectually insulated from colleagues in the social sciences - may have facilitated and reinforced a narrow doctrinal approach to legal scholarship in the past, the recent integration of many Law Schools into wider Faculties ought to provide opportunities for greater interaction, cross-fertilisation of ideas and development of collaborative partnerships.

“Scientists often wonder “where are the lawyers?” But it must be considered whether this is about ‘lawyers on tap’ or ‘lawyers on top’. Needing to know more about international regulation is lawyers on tap. When lawyers should be ‘on top’ is a more profound question about how lawyers can contribute different perspectives to the questions others are grappling with.”

**Professor Malcolm Grant, President and Provost, University College London**

96. The dominant emphasis on doctrine and normative questions in legal scholarship has directed the energy of many legal academics more towards influencing legal reasoning and rather less toward influencing and shaping policy and practice. The result is that UK Law Schools engage less with the practice and institutions of law than those in other jurisdictions.

97. Many of the issues raised during the Consultation in relation to legal education and research were taken up in the Inquiry seminar on Transdisciplinarity. On the question of how to create empirical legal researchers Professor Herbert Kritzer of the Department of Political Science, University of Madison-Wisconsin<sup>28</sup> drew on US experience, suggesting two principal routes to the acquisition of transdisciplinary skills: Training from Scratch and Conversion.

98. In the USA legal education is a postgraduate degree. There are generally no undergraduate programmes similar to the UK LLB. Law is taken at the postgraduate level as a qualification for practice. However, undergraduates can take one of the 30 or so interdisciplinary undergraduate legal studies/law and society programmes available in a number of universities (some of which include requirements that students take research methods and

<sup>28</sup> Editor of *Law and Society Review*

statistics courses) and then progress on to post-graduate research training. These students comprise one source of potential empirical legal researchers in the U.S.A. As Professor Kritzer noted:

“A small number of the students coming out of these interdisciplinary programs realize that studying socio-legal phenomena is likely to be much more interesting than the day-to-day practice of law, and choose to pursue graduate training with a focus on socio-legal studies.”

99. A second route is for students who graduated in one discipline, converting to other skills to enable them to undertake empirical legal research. Some expand from a law background to other social sciences, while others (including Professor Kritzer himself) came from social science disciplines and acquired skill in legal research or substantive law. Professor Kritzer noted that in the USA Law was often viewed as a sub-field of political science and government and that the intellectual roots of many US empirical legal researchers are in political science.
100. In suggesting a strategy for developing capacity for empirical legal research in the UK Professor Kritzer argued that it was important to secure appropriate intellectual partnerships between lawyers and other social scientists and in this respect wondered why the potential for fruitful collaboration between law and political science was so little developed in the UK. He also argued the need for thorough but focussed research training for law and social science graduates that would require earmarked funding.
101. To encourage graduates and mid-career academics to enter the field of empirical legal studies, in common with respondents to the Consultation, Professor Kritzer stressed the importance of making more visible the attractions and opportunities offered by empirical legal research. Professor Kritzer argued that it was not necessary for every Law School to behave in the same way – aside from some curricula changes to promote a more contextual approach to legal study – but that what was needed was sufficient competition between Law Schools vying to be centres of excellence in empirical legal research. Professor Kritzer felt that a realistic aim for developing future capacity in empirical legal research was to establish funding for a small number of centres of excellence.
102. Finally, Professor Kritzer considered the best tactics for attracting new entrants into the field from among those who had practised law but were now considering alternative careers. He felt that tailored training programme for those returning from practice would enable UK Law Schools to benefit from the many practitioners who already have cross-disciplinary training via a non-Law undergraduate degree followed by the Common Professional Examination which enables non-law graduates and, in some instances, non-graduates to complete the foundations of legal knowledge required by the professional bodies for the academic stage of legal training.

103. Professor Kritzer also urged the introduction of socio-legal issues into the undergraduate curriculum for lawyers. This is an issue we return to below.

### ***Doing empirical legal research***

104. Respondents to the Inquiry detailed the skills and attributes necessary for successful empirical legal research and some of the challenges posed in accommodating research into the normal ebb and flow of work within academic departments. While some of the challenges are common to any academic department, social science departments expect and are used to making adjustments to accommodate empirical research, but this is not so for law departments.
105. Inexperienced researchers lacking skills in applying for funds may be unwilling to risk the time investment in making an unsuccessful grant application in a research climate which imposes pressure to publish. There is little room for trial and error.
106. For more experienced researchers the time pressures may go in a different direction. On the one hand some projects with a very long time line may be difficult to bring to fruition and publication within the RAE period. On the other hand, Government-funded research often imposes strict timescales which may have to be met while fulfilling teaching commitments. Both of these are, of course, true to some extent of all researchers in any department. But, for the reasons discussed above, there are particular problems with law departments. The Law RAE panels have so far not included any user members, so there is no clear signal or critical expertise in policy-relevant user research. And given the very heavy teaching loads of law departments, getting time off to do fieldwork poses particular difficulties for those working in law departments rather than in social science departments.
107. Difficulties gaining fieldwork access to conduct empirical research may present greater challenges in civil justice than in the criminal justice field. There is a wide range of potential sites for non-criminal empirical legal research, but many are more private than the criminal justice field, some may involve commercial sensitivities, and there are less well-developed databases of information.
108. There was a common feeling that lack of skills, together with the time and cost involved in empirical legal research as compared with doctrinal, or purely theoretical or philosophical work, deters those with an interest in empirical questions from engaging in empirical legal research.

### ***Absence of critical mass***

109. There was general agreement that the diffusion of empirical legal researchers throughout law schools in the UK, demonstrated by the careers survey discussed

in Section 3, created difficulties in providing supervision for doctoral students undertaking empirical projects. It also made it hard to offer a supportive and intellectually stimulating environment for colleagues keen to develop a career in empirical legal research. It was argued that critical mass in research centres or research networks is essential as a magnet for research students and colleagues interested in experimenting with empirical legal research.

“It would not be right to diagnose the problem of under-capacity as being a problem simply of the basic law degree and its ongoing neglect of non-doctrinal research skills. It is also likely to relate to unit size; the empirical research-minded lawyer in a law department is unlikely to be surrounded by others with such interests and with experience of such work. It is hard to get helpful coaching on draft proposals, and the exchange of ideas within the working group may be less stretching (or at least, less relevantly stretching).”

**Professor Nigel Fielding, Consultation Response**

110. We have seen in Section 2 that there are a number of research centres undertaking programmes of research that have an empirical legal studies element. It is not clear, however, that they see themselves as helping to solve the capacity problem addressed in this report through the creation of structures for the training and support of new empirical legal researchers.

## Social Science Departments

111. There are some distinguished sociologists, economists, and other social scientists who have made a career in empirical legal research in the civil justice field (some of whose biographical pen-portraits appear at the end of Section 3). But responses to the Consultation and contributions to Inquiry meetings and seminars agreed that the study of law and legal phenomena has not become a major focus for research within social science, despite the historic links between law and the social sciences.
112. As Professor Kritzer noted in the Inquiry seminar on Transdisciplinarity (discussed above at paragraphs 97-103), there is a much lower profile for law within political science in the UK than is the case for the USA or states in continental Europe.
113. A number of explanations were offered, and to some extent these varied according to discipline. Some questioned whether the general move away from empirical studies towards textual analysis meant that sociology was less likely to yield postgraduates interested in doing empirical research in any sub-field. Others noted that political science in the UK tended to focus on a relatively small range of questions to do with governance, political movements and development. While psychology generated a stream of students with an interest in criminology, there were fewer places that

generated an interest in family law (as opposed to family dynamics).

114. More generally, there appears to have been a decline in interest among social scientists in subjects such as power and social class that lead to a natural engagement with law. It was also argued that there has been a general shift in focus within social science from an interest in institutions and structure to a pervasive concentration on culture, as cogently argued by Professor Nigel Fielding in his response to the Consultation Document:

“Younger social scientists seem to lack the interest in the critical matters of social structure, power and social class that lead one very quickly to the law as a major element in constituting society as it is. Sociology has turned from matters of production to matters of consumption. For example, a great deal of research attention is now given to how people use mobile telephones. If a previous generation had had those devices, the issue would have been how they were socially distributed. Now the issue is how they are decorated.”

**Professor Nigel Fielding, Consultation response.**

115. It was also suggested that a relative decline in disciplines such as social anthropology and social policy, which historically have had a serious engagement with legal issues, may provide a partial explanation for the current weak presence of social scientists in empirical research legal research.

“British anthropologists made important contributions to understanding the essential forms and nature of law. British social policy saw law as an important dimension of the welfare state and sustained a level of interest in social security and family law. ..Both of these disciplines have, though, experienced long-term decline, for different reasons. Disciplines like geography and psychology have also made useful contributions, but these have tended to reflect the passions of enthusiasts rather than being recognized as core elements of the discipline.”

**Professor Robert Dingwall, Consultation response.**

116. Another possible explanation is that without any introduction to legal issues during their undergraduate training, social scientists might be deterred from moving into empirical legal research on the assumption that it would require a high degree of technical knowledge. On the other hand, this concern does not seem to have held back the growth of medical sociology or the sociology of science and technology. What these areas do have, however, is a number of institutions that provide training and a steady stream of funds for training and placements as well as for projects.
117. Although, as noted in Section 2, there are a number of research centres undertaking important interdisciplinary work which include an empirical legal component, a review of university websites suggests that there are many exciting developments, for example, at the intersections of social science and biomedicine and excellent examples of collaborative research centres and

networks within which legal input is either absent or not evident. This reflects on the one hand the lack of consciousness of social scientists of the potential of a legal perspective in enriching and enlarging the research agenda, and, on the other hand, the extent to which lawyers have still to establish constructive intellectual relationships with social scientists and engage more actively with contemporary social issues.

## Other Constraining Influences

118. Contributions to the Inquiry suggested that in addition to disciplinary traditions, developments and preferences in scholarship, there were a number of external factors that were likely to have either a positive or negative influence on empirical legal research through the provision of incentives, such as funding streams, institutional structures that inhibit transdisciplinary, and the RAE which has a mixed and significant influence on the choices that researchers make, on institutional rewards for research, on recruitment, and potentially on career development within university departments.

### **General under-investment in civil justice research**

119. As noted earlier, and as was repeatedly stressed during the course of the Inquiry, civil law and justice is not a “coherent” field or concept. There is no ‘civilology’ equivalent to criminology. This absence of a feel for civil law or civil justice system is itself a function of the sheer breadth and diversity of civil justice issues – family, company/commercial, administrative, mental health, employment, tort, contract, property, legal aid, legal profession, regulation, courts, tribunals and alternative dispute resolution. The civil justice system, at the broadest level, lacks the coherence of the criminal justice system: the parts of the legal system that are not concerned with the criminal law comprise a huge range of issues, problems and disputes with widely differing configurations of involved parties. The possibilities for legal redress are myriad, and the avenues of redress diverse<sup>29</sup>. The issues encompassed within the realms of civil law and civil justice are the stuff of everyday family, social and business life and while they may not be as headline-grabbing as criminal justice issues they are of critical importance to citizens and to the well-being of society as a whole.

120. Paradoxically, the very scope and diversity of the ‘civil justice system’ may inhibit the creation of a critical mass of researchers in any one subject area, thus slowing down the development of substantial bodies of work on which new researchers might build. Critical mass is necessary to provide an intellectual foundation for new research through

competition of ideas, to create capacity for undertaking new research, and equally importantly, to enter into critical discourse on the product of academic research.

121. The existing body of empirical legal research in the non-criminal field cited in Section 2 demonstrates a huge and varied potential ambit for inquiry and investigation, but it is clear that activity within what might broadly be termed civil law and justice is often fragmented and uncoordinated, conducted by lone researchers following personal research agendas.

122. There was general agreement among respondents to the Inquiry that the lack of coordinated and sustained investment in research in the non-criminal law field has constrained the development of research. Although the Department for Constitutional Affairs now has its own Research Unit and research programme, this has only been in existence for a decade. Its size and funding means that it does not stand comparison with the investment in criminal justice research made by the Home Office. The evidence provided from the Inquiry careers’ survey shows the significance of Government funding for empirical legal research. However, in the current funding climate, Government commissioned research often operates on very short timelines. This tends to restrict the pool of applicants since only established researchers have the track record and confidence to undertake the work. It does not provide the investment resources needed to train a new generation of researchers able to work in the civil justice field. The role of funders such as the Medical Research Council in funding centres of epidemiology or medical sociology, with post-doctoral awards and steady streams of project funding, were often mentioned as a comparison. Even criminology, some respondents pointed out, was underpinned by wide-ranging funding from MRC, the ESRC and others interested in psychology or geography or other fundamental social science issues, so that the much larger government funding was still not the only significant stream available.

123. Still, the longer term, substantial and sustained investment of the Home Office is seen as a key factor in the relative health and vitality of criminology and criminal justice research, not least because it has yielded some large data collection exercises (like the National Crime Survey). While the SSRC/ESRC made a major investment in the Oxford Socio-Legal Centre in the 1970s and 1980s, it was one of a kind and perhaps suffered from an absence of other, potentially competing, centres of excellence. There has been no recent comparable centre or programme in which research into non-criminal law has been a central feature. Research Foundations, such as the Nuffield Foundation, have funded programmes of work on legal services and family justice, but this has covered only a limited part of the ground. A sustained

<sup>29</sup> See an extended discussion of this issue in Hazel Genn ‘Understanding Civil Justice’, in Michael Freeman (ed) *Law and Opinion at the End of the Twentieth Century*, Current Legal Problems Vol 50, Oxford University Press, 1997, pp155-187.

and identifiable investment by funding bodies in civil justice, comparable with that in criminal justice, would provide the magnet in terms of research and longer-term career opportunities that would attract a new generation of law or social science researchers to the field.

124. The paradoxical evidence of low application rates for existing research funds discussed in Section 2 suggests a chicken and egg cycle that needs breaking. A dearth of scholars with empirical skills and interest in non-criminal law and process leads to under-application for existing general research funds. On the other hand, the establishment of a high profile and specifically-branded funding stream for empirical legal research in civil law and process would almost certainly have centripetal force, pulling in new entrants and engaging the attention of established academics.

“More strategic direction by universities and funding councils will be necessary to establish enough capacity in terms of research students, researchers and staff to engage in any kind of empirical research outside of the field of criminology (which is already the beneficiary of such strategic funding). The most important incentives are start-up costs for groups plus some seed-corn funding....A research centre with a limited life would be best.”  
Professor John Bell, Cambridge, Consultation response

125. Another important consequence of the historic under-investment in civil law and justice research is the relative paucity of centrally maintained basic administrative data on civil justice issues. This presents two challenges for researchers contemplating empirical research. First, it means that the initial step in much research, and before the more interesting questions can be addressed, is the tortuous collection of basic factual data, for example from court records. This makes research more time-consuming and costly than might be the case in the criminal law field where there is a relative wealth of existing data sources, either derived from administrative data (police statistics, for example) or from large data sources like the National Crime Survey. Even in sub-fields of ‘civil law’, like family law, such data do not exist, so we don’t know, for example, what proportion of contested divorces have particular characteristics. This is both the second challenge and an opportunity, as it means that there is an enormous value in the civil law field in basic descriptive work and mapping exercises that simply tell us what is happening. But while such work may be greatly valued by the legal academy, policymakers, the judiciary and even occasionally the profession, such descriptive work may not meet the demands of methodological innovation or theoretical development that leads to high ratings in research council and charitable funding competitions. Of course, descriptive work can lead to conceptual or theoretical sophistication, but again that requires researchers capable of going beyond the mechanical collection of data and using such evidence to reflect on deeper questions about law.

“The demand of many funding bodies for methodological and theoretical sophistication rules out some of the much needed projects for the collection and classification of basic data on the operation of the legal system in various areas. This kind of material lays the foundation for the development of an understanding of what is actually happening in new areas of study and is an essential precursor for future theoretical and normative hypotheses. But in the early stages of the development of a socio-legal perspective in any area more emphasis should perhaps be placed on the collection of basic data than on theoretical or methodological development. In this area encouragement for the collection of new data by the provision of relatively small grants, along the lines of the Nuffield Small Grants Scheme but with somewhat higher limits, would be a significant step forward. The ESRC and other funding bodies [should develop more specific grant programmes] for the collection and classification of basic data on the operation of the legal system in neglected areas; the Nuffield Small Grants Scheme, with appropriate amendment and an increase in the funding limit, would be a good model.’

Professor Tom Hadden, Consultation response

### *The challenge of transdisciplinarity*

126. There was also a measure of agreement that a number of challenges faced researchers interested in transdisciplinary training and collaboration. Particular concern was expressed about the disciplinary-based structures of universities which have not always provided ideal conditions for collaboration.
127. At an Inquiry seminar devoted to Transdisciplinarity, Professor Malcolm Grant, Provost and President of University College London, offered his perspective on the ambitions of modern Vice-Chancellors in fostering greater cross-disciplinary collaboration. He argued that university departments still reflect a Victorian “brigading” of knowledge into law, philosophy, biology, medicine and so on. There is a potential to move away from departments to ‘big-school’ structures, but at the same time there is a need to provide administrative structures which underpin both teaching and research.
128. On the research front Vice-Chancellors are seeking to capitalise on research funding investments in the interface between disciplines, and trying to ensure that the institutional structures of universities are flexible enough to respond to those opportunities. There is also an attempt to facilitate the wider intellectual engagement of departments such as law which are traditionally thought of as standing alone.
129. Universities have a social responsibility, not just as repositories of knowledge, but also to develop the understanding and expertise that bear on the major contemporary social issues and to ensure that the big questions are not “appropriated” by a single discipline.

130. Across science, 'interdisciplinary' is used in relation to the interaction of areas of difficult enquiry. For example, chemistry and biology were historically taught as separate disciplines, but we now have 'chemical-biology and also 'biological-chemistry.' Nanotechnology has brought together other traditional science disciplines (particularly chemistry and physics), but has become so important in terms of funding that it has been re-branded as a new disciplinary area. This is an example of the way that new funding streams impact on ambitions.
131. Professor Grant suggested that Vice-Chancellors can promote interdisciplinarity by operating like a 'dating agency', facilitating conversations about the benefits of joint thinking. An example he provided was of researchers with datasets from different disciplines that, if combined, might reveal amazing and original discoveries - for example economics and epidemiology. There is a major loss of potential collaboration if academics work in close proximity, but never meet.
132. One problem in collaborative partnerships between scientists and lawyers is traditional research working methods. In order to do more research, scientists focus on adding more PhD students to their teams, whereas lawyers and social scientists focus on reducing teaching time and having more individual research time. These are very different mindsets. In order to encourage more collaborative associations it may be necessary to modify traditional working patterns.

### ***Lack of cross-disciplinary training opportunities***

133. A related issue, and one on which there was again a large measure of agreement, was the need for more training opportunities at the postgraduate and mid-career stage for those wishing to develop new skills in order to undertake empirical legal research. **In this respect one size will never fit all.** Lawyers - whether at the postgraduate training stage, at the post-doctoral stage, at the mid-career stage, or those considering entering academia from practice - have particular training needs. This is for empirical legal research skills relevant to the specific context in which they will be working and on the kinds of research that they are most likely to be undertaking and that is consistent with their previous training. They also require some intellectual development or 'retooling' to engage confidently with the role of law in society. Training that deals with both theory and skills will be intellectually more attractive and ensure that researchers are capable of asking and contributing to deeper questions. Recent law graduates who have never been exposed to social science or empirical methods have specific training requirements. Social science graduates or mid-career social scientists, on the other hand, have a different set of requirements and might, for example, value opportunities to gain some grounding in the areas of law that they are interested in researching.

"There is a mistaken assumption that the methodology and skills involved in socio-legal research are or should be the same as those in other social sciences. This has resulted in QUB in a requirement... that all research postgraduates in the Faculty should take part in a single programme of research training. This compulsory course has been centred on research techniques, notably quantitative statistical analysis and psychological interviewing, that have not been in any way related to the interests and concerns of research postgraduates in the Law School. This has proved to be a huge disincentive to almost all our research postgraduates to embark on any form of empirical work, as they have tended to associate all forms of empirical work with what they have perceived as the total irrelevance of the training they have been exposed to. This has led me to attempt to develop some more appropriate and useful research training that might help to overcome this negative reaction. The most important part of this has been to focus basic training on three aspects of research: (a) obtaining access to and the collection of relevant data; (b) the analysis of small scale surveys on the flow of cases through legal systems; (c) carrying out opinion surveys on legal issues. In each of these areas the objective has been to provide examples of good socio-legal studies in a variety of fields and to discuss the advantages and disadvantages of particular approaches. But I have not found it easy to locate readily accessible materials for this purpose or a satisfactory general text on which to base the course. A primary objective for the [Inquiry] should be the production of suitable training materials and packages for use in training programmes both for new researchers and for more established staff."

**Professor Tom Hadden, Law School, Queen's University Belfast, Consultation response**

### ***The RAE***

134. The Inquiry team received mixed views on the impact of the RAE on the development of empirical legal research. Some of the suggested problems include: a lack of appreciation of the time needed for undertaking empirical research; the lack of research users on the law panel; the inability of departments to gain additional credit for obtaining external funding thus reducing the incentives for academic lawyers in particular to go to the trouble of submitting applications for research grants; and the lack of any credit for making unsuccessful research grant applications. Unlike the law panel, many if not most, academic disciplines including arts and humanities, accept success in attracting external research-funding as an independent factor in rating research activity for the RAE.
135. Some law academics fear that the path to career success lies not in time consuming, collaborative, funded empirical research, but rather in doctrinal research which they feel, rightly or wrongly, is more likely to impress the RAE panel. Similar arguments apply to those from other social science disciplines where interdisciplinary research is also relatively under-valued.

Some respondents argued that the RAE leads to some pressure on legal academics to write articles with a high degree of theoretical abstraction, and to publish in a narrow range of journals.

136. While the Funding Councils continue to assert the importance of transdisciplinary research and work with high user-relevance, they seem unable to create the mechanisms for incentivising those who wish to work in a transdisciplinary context or on policy relevant subjects.
137. Set against these comments, other respondents were of the view that problems with the RAE could be overstated. In particular the time gap between the last RAE and the next – seven years – could not be used as an excuse for not undertaking empirical research. Further, since almost by definition empirical research would be innovative, it should score highly with the RAE panel, who were adequately equipped to assess the quality of such work.
138. As is discussed in the next Section, the proposed change to a greater emphasis on metrics post-RAE2008 may cause a seismic shift in the incentives for empirical legal research (see further below) and a corresponding upsurge of interest in cross-disciplinary training which, if properly met, may provide a boost for empirical legal research capacity.



## 5. CONCLUSIONS AND RECOMMENDATIONS

139. The Inquiry received reams of evidence about the importance of empirical legal research in deepening our understanding of law and legal processes and of society and in improving our understanding of major contemporary social issues. Empirical legal research is valued by the academy, by policy makers and reformers, by the judiciary, and by practitioners. Through collaborative partnerships with other disciplines, empirical legal researchers can contribute to the ambitions of UK universities to be at the leading edge of research that responds to global challenges and builds new knowledge.
140. Yet, despite the achievements and potential of empirical legal research, the Inquiry received equally clear evidence of a developing crisis in the capacity of UK universities to undertake empirical legal research. Contributions described the factors that were felt to be important in explaining both the current capacity deficit and the fact that, looking ahead, it will grow worse. There simply is not a flourishing next generation of empirical legal scholars. These following factors operate independently and interact:
- The traditions and culture of legal scholarship and its relative insularity from social science.
  - The impact of professional practice training requirements on the undergraduate law curriculum
  - The absence of engagement with law - either legal issues or law as an empirical site - in social science disciplines like political science or sociology or psychology, other than in criminology.
  - The breadth and variety and relative lack of clear definition in 'civil law' spanning as it does family law, administrative law, mental health law, and civil and commercial law.
  - The absence of sustained and predictable funding streams for empirical work in non-criminal law.
  - The absence of research training tailored to the needs of new recruits who wish to do empirical legal research, coming as they do, from disparate routes, which needs to be recognised.
  - The fact that in most institutions there is no 'critical mass' of empirical legal researchers who can provide training for postgraduates and provide encouragement and support to colleagues.
  - University structures and other reward structures that may inhibit cross-disciplinary collaboration.
141. These present a number of challenges if our aim is to set out a future strategy for UK empirical legal research that will create a system of incentives to attract new researchers while also laying down the structural conditions within which new recruits can be effectively trained and thrive. They also require an **integrated strategy** that will support and further develop a

sustainable research capacity in empirical legal research. Such a strategy involves **short, medium and long-term initiatives** and activities that address the needs of potential researchers at different stages throughout their career including **undergraduate level**, the **immediate post-graduate level**, **post-doctoral level**, and **mid-career stages**. Any proposed strategy needs to consider the recruitment incentives and training needed for those coming from various routes: from undergraduate law degrees, from undergraduate social science degrees and as returning legal practitioners.

142. We are also aware that while a few of our recommendations call for widespread change, most are aimed at creating change in a few centres of excellence to achieve the critical mass of researchers that we feel is needed if the empirical legal research community is to become self-sustaining.
143. We now set out what we feel is needed, how this might be achieved, and where responsibility for strategic interventions might lie. The full detail of the proposed measures will require further discussion and debate.

### A Funding Bodies

#### (i) Training

"Many of our students who start out with empirical interests gravitate away from them out of fear of not being sufficiently well-equipped. This could be ameliorated by building better links with social science departments... Training is vital. There is a paucity of training milieux because law schools are largely not set up to offer socio-legal training. There does need to be more interdisciplinary training among university law schools and other social science departments. Unfortunately, for many social scientists, the study of law is a marginal activity compared to many other subject areas."  
SLSA Consultation response

144. The ESRC, AHRC, Government and Charitable funders have a role to play and an interest in supporting and sustaining the next generation of empirical legal researchers. The critical points identified for strategic intervention in training are described below. Developing such interventions is a challenge which can be met by individual funders or in partnership.

#### Course materials development

145. We believe there is a need for a more widespread development and use of course materials and modules that would encourage interest in empirical legal research. Developing materials that can be used in undergraduate law and in social science curricula, combining legal sophistication with empirical evidence (and assessment of its strength) is an obvious way to show why empirical legal research matters. Options that focus on key areas

of policy can immediately fire enthusiasm for empirical legal research in areas such as medical law and ethics, healthcare delivery, dispute resolution, family justice, administrative justice, social welfare and equality law, and constitutional law. Funders might wish to consider funding curricular development by providing **Research Leave Bursaries** for the purpose of preparing course materials that would support undergraduate courses or modules. Such bursaries might also be extended to develop more extensive material to be used in post-graduate and mid-career training. Traditionally funders have left the preparation of curricular materials at virtually all levels to the market to provide, but in this area, giving a kick-start to such materials could help galvanise departments in law and social science to collaborate in offering such courses, as they ease the transition costs of new curriculum development.

### **Undergraduate Empirical Legal Studies Bursaries**

146. There is growing recognition that active steps need to be taken at undergraduate level both to stimulate interest and to give some 'hands on' experience of the excitement of doing empirical research. In the case of undergraduate law students this would mean being introduced to some methods of empirical legal research and in the case of social science undergraduates it means they need to become more familiar with law and justice issues, including some substantive issues, questions of structure and ways of legal reasoning.
147. Interest might be stimulated by the provision of **undergraduate bursaries** for various forms of summer work. These might include: attending summer schools or 'master classes' on empirical legal research, covering both issues of law and methods. Or they might include bursaries for placing undergraduate students in settings where they could see such research taking place (in research centres of excellence, or Law Commission teams for example). An example of the former type of work is the projects the ESRC is commissioning for special initiatives to improve teaching in quantitative methods, where summer schools seem a possible way forward. An example of the latter is the discussions being held by funders such as the ESRC and The Nuffield Foundation on funding summer placements. These might, for example, be for students similar to the bursaries that the Institute for Fiscal Studies has long offered to undergraduates, often between their second and third years, so that it can influence their choices about their subsequent careers. The idea would be not simply to focus on providing training in methods or recondite legal issues, but to capture the imagination at an early stage of those students who might be considering postgraduate work and introduce them to a broader approach to legal scholarship and to a different range of research skills.

### **Post-Graduate Empirical Legal Research Studentships**

148. One essential outcome of a new strategy for strengthening the empirical legal research base must be the creation of a **critical mass of new empirical legal researchers**. The Inquiry believes that there should be a scheme of post-graduate studentships in empirical legal research, trailed and planned well in advance to create a body of say 20 newly trained researchers per year over the next five years. This would yield a potential group of around 100 researchers. It would be essential for such a scheme to be designed after appropriate collaboration with departments of law and social sciences, with no assumption that the natural home would be in one or the other, but with clear agreements about the criteria for supervision (to be genuinely cross-disciplinary) and for the provision of the structured training. We do not believe a quick fix announcement will work, but rather would hope that the ESRC or other funders would announce their commitment and publicise it widely among undergraduates (to allow excellent candidates time to plan), while at the same time working with providers to agree criteria in a number of centres of excellence. The exact topics should be broad, but the core should be a commitment to an empirical project in non-criminal law and/or process involving social science training and content too.
149. The present fragmentation of empirical research effort will require a new approach to the provision of such programmes. These might be across departments within a single university in the case of some existing large research universities, or in consortia of HEIs making use of IT, distance learning materials, on-line lectures and seminars. Such a consortia-based programme could be supported by residential weeks or weekends that would help to build the contacts and networks necessary for encouraging new entrants to embark on a research career. It might have the advantage of contributions from the best scholars, but would require institutions to adopt a more collaborative approach than has hitherto been the case. One option might be to develop consortia approaches during the Master's research training phase, and reverting to a single institution with cross-disciplinary supervisors for study towards the PhD. We would only add that we think it would be vital to ensure that such courses included both quantitative and qualitative research skills training: the Inquiry felt that there was still an assumption in some circles that empirical legal research meant small scale studies. While such studies are obviously important, some of the contemporary pressing questions require larger samples and more sophisticated modelling and other developing techniques (such as randomised controlled trials) that only quantitative training would equip researchers to handle.

150. In addition, the ESRC and AHRC should actively consider altering their funding rules in this area to promote the development of new courses. For example, those coming from undergraduate law degrees might instead of the classic ESRC “1+3” model for postgraduate funding be funded for a “2+3” model with the research training element geared specifically to the needs of law graduates interested in a career in empirical legal research. The master’s element could then cover not only training in relevant empirical methods but also some of the specific social science frameworks, questions and concepts that might be helpful. These might focus either on issues very specific to particular topics (a ‘family law’ masters for example, to cover sociology and psychology, substantively and methodologically) or might be more generic. The aim should be to create more than a few such courses, and allow planned transfers from the location of the courses (which might again be on a consortium basis). Conversely, post-graduates coming from a social science background might be funded to take such master’s courses, but also to attend undergraduate modules or special ‘legal’ modules that were part of these courses in the relevant substantive area of law. The aim should be to design fellowships and courses that make sense for entrants from **either** law or empirical social science backgrounds, that bring such students into regular discussions with one another and with academics from both disciplines. But, we repeat, there should not be an assumption that the departmental home would necessarily be in law. This might or might not be the case depending upon the particular circumstances.

### **Post-Doctoral Empirical Legal Research Fellowships**

151. A further stage of recruitment should be sought from those who have done PhDs in fields who might move to empirical legal studies by way of post-doctoral funding. These **empirical legal research post-doctoral fellowships** could be provided on a competitive basis in a number of ways. For instance, a one year post-doc could be offered to those whose dissertations were already in empirical legal studies, to allow them extra time for publication and development of their career. An extra year would be justified by the need to place articles in journals that reach both law and social science and by the fact that planning career moves for those who might fall between disciplinary stools requires extra time and care. The key requirement though should be that the work was an empirical study, and the fellowships should be awarded on a competitive basis. Given the small numbers that exist now, it would be necessary again to trail such a scheme a year or two in advance, and to start small, with an aim to grow larger as the number of PhDs that might prove eligible increases as a result of other activities.

152. A different model might be for two or three year ‘conversion’ post-doctoral Fellowships. These might be aimed at those with PhDs in related areas, for instance law PhDs that might benefit from an empirical research project or social science PhDs that might move into a deeper understanding of the law. The aim would be to fund a project that was both an empirical research project and that included a ‘skill development’ component. These could include attending existing MScs in research methods, undergraduate law modules or any of the new programmes that might arise as a result of other initiatives. Or they might include working with an ‘experienced partner’ from the other side of the disciplinary divide, in a way similar to the Nuffield Foundation New Career Development Fellowships. The aim should be to recruit some outstanding post-graduates in law and the social sciences and give them the incentive to retrain and do research on an empirical project in law. At the most ambitious, these could even be linked to institutional ‘challenges’, to fund a limited amount of teaching responsibilities if the institution would fund a permanent post at the end.

### **Mid-Career Cross-Disciplinary Bursaries**

153. One additional recruitment path would be to encourage existing academics, from law or social sciences, to re-tool with specialist skills in empirical legal research. While this may not attract a large number of recruits, it could be an important way of bedding down enthusiasm for empirical legal research within the host departments, as existing networks and professional expertise could be deployed to ensure that the work was seen as legitimate, and did not fall between disciplinary stools and statuses. These might take any of the forms identified above for post-graduate or post-doctoral training. Funding a year out at the bursary-holders existing salary, asking them to put together a ‘reskilling package’ might be one way to start. Or they could ask for funding for existing masters’ degrees or summer schools (like the Essex summer school). Some of the biographies of current leading empirical legal researchers presented in Section 3 illustrate the value of such intensive cross-disciplinary training experiences. There may also be scope to develop a range of short, intensive courses. Whatever the model, **grants for empirical legal research training course development and cross-disciplinary training grants** (that would cover teaching relief) would be valuable in supporting the training programmes that would help academics at the mid-career stage to embark on empirical legal research.

“What is needed is skills (a) methodologies (qualitative and quantitative) and data analysis; (b) how to apply for and administer a research project. Overall encouragement is needed away from isolated law-centred research towards interdisciplinary research. There is a need to encourage pilot studies so that learning experience can be gained before taking on a project.”  
Response to Consultation Document

## **Empirical Legal Research Fellowship Programme**

154. A further incentive to the development of empirical legal research would be the creation of a modest number (perhaps one or two a year for the next 5 years) of **Special Empirical Legal Research Fellowships**. These would provide the opportunity for established scholars who had undertaken appropriate transdisciplinary training to have a period of study leave to undertake an empirical legal research project. It might be a condition of such an award that the fellow should be attached to a research centre, thereby helping to build its critical mass.

## **Career Change Studentships**

155. It may also be useful to consider funding practising lawyers who wish to return to academia from practice to undertake a programme of training and research in empirical legal studies. This might be particularly attractive and effective for those lawyers whose education included both social science and law. A significant proportion of those entering the profession received undergraduate training in a discipline other than law followed by the Common Professional Examination and vocational training. Such returning practitioners could be offered enhanced stipends for existing "1+3" or "2+3" courses, or for shorter retooling courses. They might also be offered enhanced stipends for doing empirical legal research based doctorates.

## **Professorial Empirical Legal Research Mentoring Fellowships**

156. The short biographies offered by current empirical legal researchers (presented in Section 3) frequently show just how important having the right mentor could be in inspiring people and guiding the development of empirical skills. We suspect this remains true. But many active researchers either do not have or do not make the time to bring on younger scholars. To encourage and facilitate such relationships the Inquiry thinks that consideration might be given to funding special **Professorial Mentoring Fellowships** that would provide studentship funding attached to an established empirical legal research scholar. This might provide studentship funding on any of the models above, but could provide some additional funding for the mentor, to buy him or her out of teaching or administrative duties, or to buy a period of time for concentration on the student's project. This may, however, be less important than the incentives offered to new entrants, and the new Full Economic Cost regime may give some scope for project-based collaborations to include a degree of mentoring.

## **(ii) Research Funding**

157. Of course, research funds for empirical legal research are already available through the responsive grants programmes operated by the research councils and charities and through the more directive DCA research programme. However, these funds are widely distributed among fragmented research efforts. The topics of interest in the more directed streams may change from time to time. More importantly, all the funders we spoke to had little doubt that calls for applications or ring fenced streams of funding were more likely to give rise to applications and to allow new researchers to plan to move into a research area. For that reason, the Inquiry believes that having a "branded" or "ring fenced" strand of funding for empirical legal research projects, in addition to funding for Centres, would be an important way to draw new researchers into the field, or to encourage new partnerships between social scientists and lawyers. Such a strand would need to be large enough to encompass a critical mass of grants, and to last for 3-5 years to encourage longer term planning. We note that the Nuffield Foundation has such a strand of funding under its 'Access to Justice' badge, and in its 'Child Protection and Family Justice' heading. We would recommend that the ESRC, as the other funder who has taken a strategic interest in this area, consider establishing **a new funding stream for projects in empirical legal studies**. The key criterion might be that these grants are for empirical studies of non-criminal law and processes, with priority given to those that are innovative in terms of the area of the legal system that they study. Applications that brought new researchers into the area might also be given some priority, if the quality were otherwise equal. Or those who received these grants might be given additional funding for post-doctoral or doctoral assistants.

## **Higher Education Funding Councils for England, Wales and Scotland**

158. An enduring problem in encouraging empirical legal studies is that cross-disciplinary work often falls between two stools. Of course, as the discussion in Section 4 recognises, to some extent this might simply be the concerns and anxieties of academics facing an uncertain world. But there are some real concerns: the fact that the 2008 RAE Law Panel has no user representation increases fears that empirical research is given lower priority than doctrinal or textual analysis. To that extent, concerns about the ability of the HEFC and SHEFC to ensure that rhetoric favouring cross-disciplinary approaches to research is translated into practice on the ground may be understandable.

159. The possible change to metrics post-RAE 2008 presents an opportunity for enhancing the value of empirical socio-legal research and inter-disciplinary projects, if metrics were adopted in a sensitive manner, appropriate to social sciences and humanities. Certainly, in considering the future use of metrics there should be a vigorous and constructive debate about how they might be developed for law and social science in a way that will create positive incentives for academics to develop their skills and engage in empirical socio-legal research.

## **B. Other stakeholders**

### ***Vice-Chancellors***

160. We were impressed by the contribution of the Provost of University College London to the Inquiry, and the extent to which he took the robust view that an entrepreneurial approach on the part of higher education institutions could counteract the conservatism of the disciplinary divide. It is clear from submissions to the Inquiry that Vice-Chancellors and University senior management in universities have a critical role in creating the right structures for the support of cross-disciplinary research in general and in empirical legal research in particular. Having strong research in law is important for institutions that want to engage with the real world, and to bring policy makers and senior members of the judiciary into close and regular contact with staff. If VCs and others take seriously the view that empirical legal research has the potential to influence and shape policy and practice over a wide range of current social, economic and legal issues, they might view the creation and support of expertise as a long term strategic investment. The Inquiry challenges them to do so.
161. A particular hope is that research active universities with good law departments and one or more strong research active social science departments will work with their staff to encourage initiatives. These might be at a general level, where across a range of social science disciplines and substantive areas in law a generic 'law in society' masters' courses might be developed. Or it might be in the form of specific initiatives, in law and medicine, law and family, law and social welfare policy and so on. It seems clear that institutions can help break the stasis caused by the fact that law departments, well-funded as they are for undergraduate pre-professional teaching may be unlikely to initiate such moves themselves. Institutional encouragement through the strategic use of seed-corn funds is another important possibility.
162. At a practical level, VCs can ensure that in keeping with the new emphasis in cross-disciplinary intellectual development, institutional incentives and support for undertaking mid-career research skills-development are in place, as is training for the management of research projects.

### ***Heads of Law Departments***

163. Not all law schools will want actively to encourage or house empirical legal researchers. So we separate our recommendations for law departments into those that we think might be useful for all departments to consider, and those that present opportunities for departments that wish to become centres of excellence in fostering empirical legal research.
164. Law schools take seriously the need to develop general transferable skills and those necessary for the practice of law. They devote resources to mooted competitions, client interviewing skills, and clinical legal education. Encouraging students to understand and appreciate empirical research design and evaluation would not only provide a stimulus for some future empirical legal researchers, but it would better equip those destined for practice to deal with a world in which there is an increasing demand for data and where legal practice requires a wide range of research skills in addition to those of the doctrinal lawyer. Students also need the technical understanding to analyse data. For these reasons, all law departments might be encouraged to consider whether offering an option on law in society, or offering options for specific areas within which there is much empirical research (for example family law, dispute resolution, some aspects of public law, evidence about the effects of regulation and so on) might be useful.
165. For those law departments that wish to become centres of excellence or that wish to foster a culture favourable to empirical legal research, there are a number of subtle and not-so-subtle steps that might be taken. In encouraging and supporting empirical legal research Heads of Department of course face the dilemma that law schools, whose income and standing derive largely from their teaching of pre-professional undergraduates, generally impose heavy teaching commitments on staff. Doing empirical research undoubtedly can interfere with this, and heads may wish to foster a dialogue about how to ensure that researchers' workloads can take account of their research.
166. To some extent, this requires law departments to think more carefully about their attitude towards bringing in research funding. Of course, as long as undergraduate teaching is the dominant source of departmental income, they may decide they have little incentive to do so. But in research active universities, the culture of doing research is likely to be powerful. Heads of department may wish to consider how to stimulate and encourage staff to be more active in applying for research funding. As discussed in Section 3, the record of law schools in attracting research funding through grants has been rather weak. This is not only the case for empirical projects but also in applications to support doctrinal work. Philosophy and Theology – the two other disciplines in the relevant AHRC research panel – do far better in applying for funding than lawyers.

Heads of law departments may want to consider how to shift the balance towards a greater degree of research income, which the Full Economic Cost regime, with its payments for staff time and overheads, may make more attractive. This could reduce somewhat the incentive simply to expand student numbers to increase departmental income. A shift in strategy might lead to a modification in recruitment practice, to allow some empirical legal researchers into the department, as well as permitting more space for social scientists who could teach empirical legal research options and offer training and support in empirical methods for both students and staff. Positive steps to improve grant writing skills – mentoring, teaching budgeting skills (lawyers have a reputation among grant-giving bodies for underestimating the costs of doing their research) and so on – may all be appropriate steps.

167. Law departments have in the past been the main home of those doing empirical legal research. The survey findings reported in Section 3 establish clearly that **it is from within Law Schools that the majority of UK empirical legal researchers emanate and it is from within Law Schools that the majority of UK empirical legal researchers currently operate.** Even if, as we suspect, social science departments may have an increasing role to play in raising future cohorts of researchers, law schools should and are likely to have a continuing role. So some law schools may wish seriously to consider whether they want to become a centre of excellence in fostering empirical legal research. This may be sensible where, for instance, they already have a few staff engaged in empirical legal research (discussed in Section 3).

168. If law schools wish to position themselves to take advantage of any new funding initiatives in this area, there are a number of steps they might take and in comparison with other university departments, law schools are actually well-placed to do this<sup>30</sup>. In a seminal discussion of the need for Law Schools to take seriously the development of empirical research methods, Epstein and King (2002) point out that although legal academics generally have little experience of the methods and norms of empirical research, by comparison with areas of arts, social sciences and sciences they focus more heavily on curriculum and teaching and spend more time discussing issues of pedagogy. They are consequently in a good position to consider ways of drawing undergraduates into empirical legal research.

169. As discussed above, a critical intervention point is undergraduate training where there are opportunities to capture the interest and imagination of the largest number of new recruits to the world of law by introducing them to the methods and fruits of empirical legal

research. Heads of law department are in a position to provide leadership in encouraging the inclusion in the undergraduate curriculum of modules on empirical legal methods, in positively supporting the penetration of empirical legal material into the reading for core and optional courses, and in facilitating the development of courses and research dissertation options that would encourage students to adopt a more contextual perspective to their study of law.

170. In thinking about this strategy, those we consulted were at pains to point out that a number of different models should be considered, and departments should tailor their strategies to their own existing strengths. Law departments might wish, for example, to consider collaborative teaching arrangements with social science departments and positive encouragement to students would enable law students, under some sort of empirical legal studies badge, to undertake social science options such as politics, sociology, or social policy. A department with constitutional lawyers might make more explicit links with a department of politics that carries out empirical research relevant to it. A department interested in fostering empirical research on family law might wish to develop arrangements with departments of sociology, psychology or social work and ensure joint hiring or development of courses relevant to this area.

171. One point that we think important to stress is that strategic development formulated in precise and subject-specific terms is likely to yield more dividends than trying to create a field or sub-discipline of 'empirical legal research'. Developing critical masses around substantive themes may be the most productive way forward.

172. In deciding where to position themselves, law departments will want to think about more than the undergraduate curriculum. Those interested in fostering empirical work will need to consider how to encourage and support existing staff who want to develop empirical research skills, whether to hire some staff with crackerjack skills or whether and how to collaborate with social science departments within their own institution. With the expansion of new empirical legal research methods courses recommended by this Inquiry, there will be greater opportunities in the future for legal academics to enlarge their range of research skills in order to undertake empirical projects. This will be valuable for new entrants to academia as well as more established staff.

173. Law departments should note that one intangible benefit of deciding to foster empirical legal research will be the resulting expansion in interactions with practitioners and policy-makers. Increasingly central government, local courts, the judiciary and practitioners recognise

<sup>30</sup> The approach here draws heavily on proposals put forward in a seminar paper by Lee Epstein and Gary King and 'The Rules of Inference' *The University of Chicago Law Review*, 69, 1, 2002, 1-133.

the need for reliable information and understanding of legal processes and outcomes and alternatives to formal redress systems.

### ***Heads of Social Science Departments***

174. Although the Inquiry, like the ESRC Demographic review, initially focused on the challenges facing law departments in encouraging empirical legal research, we are convinced that the active engagement of social scientists from disciplines other than law is an important part of the solution. We do not think that academic law departments alone can address the issue. This is not only because those trained as lawyers need methodological skills and training that can be got only from social sciences if they are to carry out sophisticated empirical work. It is also because some of the broader framing questions of political science, sociology, social work and other disciplines contribute in important ways to the agenda that empirical legal research needs to address.
175. Heads of departments in social science disciplines should therefore consider how to take advantage of the opportunities offered by fostering empirical legal research. But in doing so, they face different challenges from law departments. Social scientists may have the skill to conduct empirical research, but lack the familiarity and engagement with law and legal processes that might lead to the development of empirical legal research agendas. The Inquiry noted the low visibility of law in social science research priorities, the expressed need for departments of sociology to focus more on empirical work, and for departments of political science to engage with legal issues. The absence of the law and legal institutions from undergraduate social science curricula is not something that can be changed overnight, even if the impetus for change existed.
176. So we would hope that many social science and social policy and social work departments with staff interested in, for example, family dynamics, inequality and social welfare issues, constitutional issues, or health, might encourage staff to work with colleagues in academic law departments or to retool themselves. We believe that true transdisciplinarity will arise from the bottom up – from carefully framed questions that bring together conceptual and empirical issues in a relatively precise way, with colleagues in different disciplines collaborating because they have to in order to answer interesting questions. What is important is that in seeking to fund more empirical research, there is no assumption that providers in law departments or elsewhere have priority.
177. Funding initiatives calling for work in particular areas that suggest collaboration between lawyers and social scientists - while being framed by the substantive questions, rather than the disciplinary base of those who might apply -

would be important in creating incentives for fostering new relationships. In this way, putting money into some of the precise questions for which empirical research is the answer might be a way to build capacity from the ground up.

### ***Learned societies***

178. Learned societies and others could play an important role as brokers. They can bring together people to help shape the transdisciplinary research ideas that might attract significant research funding. They can promote publication in journals and through conferences that stimulate the kinds of longer-term conversations between disciplines that result in research collaborations.
179. Learned societies also have a role in facilitating the development of empirical legal research training materials and packages for use in training programmes for new researchers and for staff wishing to develop empirical legal research skills mid-career. They should take the initiative in seeking funding from the funders who have shown an interest in this area, as well as from commercial publishers. Examples of what is needed may include: bespoke textbooks, readers and training packages that support empirical legal research methods training and that will underpin the development of undergraduate courses in empirical legal research, law and society, civil law and justice, as well as empirical readers in substantive areas where there is a solid body of UK and international empirical research. Examples are family law and justice, publicly funded legal services, professional behaviour and ethics, medical practice and ethics, regulation.
180. In our view, the learned societies are likely to be concerned with and influential in thinking about the undergraduate curriculum, in a manner independent of the pressure emanating from professional practice. They may be a useful voice in encouraging the legal academic community to modify undergraduate legal education to incorporate a broader perspective on how the law actually works. As we have suggested, optional modules on empirical legal research or even a required choice from among optional modules would add interest to undergraduate law courses and encourage students to engage more directly with law in its social, political and economic context. For undergraduates who are not intending to become practitioners, it may offer inspiration about alternative careers in research or policy

### **Conclusion**

181. Whatever institutional support and encouragement may be provided at national, university or departmental level, success must be measured by the creation of a younger general of researchers with the interest, enthusiasm and skills to undertake empirical legal research. If the

recommendations made in this report are accepted, there will be fresh opportunities for obtaining fellowships to develop intellectual capital and to train a new generation of postgraduates interested in empirical legal studies.

182. As the personal histories in Section 3 demonstrate, the world of empirical legal research presents boundless opportunities for lawyers and social scientists to explore uncharted territory. Establishing an original voice and sustaining an academic career in empirical legal research is easier than in some of the more well-trodden areas of legal doctrine and social science. Empirical legal research offers the prospect of conducting path-breaking work that is relevant, influential and socially important. The recommendations of this report are intended to enable existing and future law and social science scholars to take advantage of those opportunities.
183. What the Inquiry has tried to do is show that there are some achievable steps that can be taken to improve the chance of creating this younger generation. Some of these steps are conceptual: we argue that it is important now to reframe the issue as one of capacity to carry out empirical research, not as one of 'socio-legal studies'. What is missing is not text-based studies that allude to law's social context, but studies of how legal processes, outcomes or structures actually are in the 'real world'. Only that kind of empirical study will give us a broader and deeper understand of law outside law books. This is not to argue that text-based studies are not essential, just that this is not the kind of work that is in short supply.
184. The Inquiry's view is that some fairly immediate and concrete steps could yield results. For example, sponsoring places for postgraduate law students on the Essex Summer School or setting up undergraduate empirical legal research bursaries and establishing funds for leave for preparation of empirical legal research texts. Steps such as these will not address the issue in the round, but they could, like the ESRC initiative on undergraduate training in quantitative research methods, begin to make the issue more transparent and create a sense that it is worth carrying out practical experiments. Developing a sense of optimism and momentum is part of what is needed
185. Other steps are longer term suggestions and will require some planning, for example changes to the undergraduate curriculum and recruitment of post-graduates. Detailed thinking needs to be done about whether these issues should be taken on by all law departments, while others will be of interest to those departments and research groups that want to become acknowledged centres of excellence. All of the medium and longer term steps, such as new research funding initiatives, post-doctoral awards, or changes to the pattern of ESRC-supported research training, will require further engagement and discussion with the affected bodies. Funders like the ESRC and the Nuffield Foundation are likely to continue to have some brokering role, but so too, we suggest, should learned societies and some of the academic leaders like Vice-Chancellors and others.
186. Finally, we have not provided a detailed blueprint for our recommendations. The Inquiry's role was to initiate discussions, not to direct them and certainly not to pre-empt them. What we have tried to do is provide a sense that there are concrete measures that can be taken, that the issue matters and that taking some of these measures can achieve the desired aim. We hope that, after the publication of this report, there will be a number of meetings and discussions about whether and how to take our recommendations forward. We are certainly willing to take part in these discussions and hope we may actually instigate some. But for now we hope we have left a sense that empirical legal research matters, we need more of it, and there are steps we can take to ensure we get it.

# APPENDIX

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## C. CONSULTATION DOCUMENT QUESTIONS

### *The Development of Empirical Legal Research*

- Q1. What do you regard as the key factors explaining the relative paucity of empirical research in civil justice?
- Q2. What do you regard as the key factors explaining the relative wealth of empirical research in criminal justice?
- Q3. Is it easier to integrate criminal justice rather than civil justice research centres within Law Schools and social science faculties, and if so why?
- Q4. What lessons can be learned for the development of empirical research in the civil justice area from the history of empirical research in criminal justice?
- Q5. To what extent do you think that Government investment has been an important factor in the historical development of empirical criminal justice research?
- Q6. Are there factors relating to the requirements of funding bodies, their schemes or their programmes that deter empirical researchers interested in civil law from applying or from succeeding with applications?
- Q7. Are the explanations for this low application rate to be found in an interest or skills shortage among lawyers and social scientists, or are there factors built into the criteria for funding, or the shape of funding schemes and programmes that deter such applications?
- Q8. Is there more that could and should be done by the funders of research to promote empirical research in the civil justice field?
- Q9. Are there other sources of funding empirical research that have not been identified above?
- Q10. Who should be funding empirical research into civil law subjects?
- Q11. Do consultees think that the relative lack of official data about the operation of the civil justice system acts as a deterrent to the undertaking of empirical research in this area?
- Q12. How important do you think the building of critical mass in research centres is to the success of empirical research in civil justice?
- Q13. If your answer to the preceding question is positive, what size research groups do you think are optimal?

### *Building Empirical Research Capacity: Incentives and Disincentives*

- Q14. To what extent do policymakers in your field of research interest encourage and commission empirical research?
- Q15. To what extent are policymakers in your field interested in engaging with the results of empirical research, whether or not they have commissioned work?
- Q16. Are there measures that need to be taken both by researchers and policymakers to increase dialogue and enhance the impact of empirical legal research?
- Q17. Do you agree that these factors represent incentives for both lawyers and social scientists engaging in empirical research in law?
- Q18. If so, which do you regard as the most significant incentives?
- Q19. Are there other incentives that should be taken into account?
- Q20. What measures could you suggest to increase the incentives for scholars to engage in empirical research in law?
- Q21. Have structural changes in universities led to improved collaboration between law and other social science areas?
- Q22. Is there a lack of interest in the investigation of issues relating to justice and society among young legal academics?
- Q23. How can the recruitment of new empirical legal researchers be made more attractive?
- Q24. What should be the relationship between university pay scales and other employers of potential researchers?
- Q25. What is needed by way of training for new empirical researchers wishing to enter the field?
- Q26. Where should it be provided?
- Q27. How can it be funded?
- Q28. Can such training be offered collaboratively?
- Q29. Could graduate schools be the focus of research training/ staff development to enable new researchers to develop the necessary skills?
- Q30. Should law schools be as dominated by the demands of the taught curriculum as they currently appear to be?
- Q31. Could the organisation of teaching programmes provide more time for staff to carry out empirical research?
- Q32. Are there lessons that law schools could learn from other disciplinary areas (e.g. engineering, medicine) where

there are pressures to teach an extensive professionally determined syllabus while at the same time carrying out cutting edge research?

- Q33. Are there ways in which law schools can cost-effectively include socio-legal researchers in their staff complements?
- Q35. Is there a lack of engagement with the law as part of sociology or other social science training?
- Q36. Does lack of fluency in legal issues present a serious problem for sociologists interested in research on law?
- Q37. Does the ESRC stress on research skills for graduate social scientists hamper attempts to branch out and develop new skills, such as legal skills?
- Q38. Is there a need for positive incentives to encourage students in social science to cross disciplinary boundaries?
- Q39. Has the demise of joint Law and Sociology degrees (e.g. Warwick) had an impact on the development of interdisciplinary research interest?
- Q40. Is there an intellectual 'animosity' between lawyers and other social scientists that inhibits interdisciplinary activity?
- Q41. What are the key factors inhibiting social scientists from engaging in empirical research on legal subjects?
- Q42. What measures could be taken to overcome such problems and to encourage social scientists to work either alone or collaboratively on empirical research in law?
- Q43. Do consultees agree that the capacity of the HEFCE (and other HE Funding Councils) to address the specific issues raised in this CD is limited?
- Q44. Should the Funding Councils be more directive?
- Q45. Do consultees agree that a particular effect of the RAE has been to deter researchers from undertaking empirical research into law and legal process?
- Q46. If so, are there measures that can be taken to address the issue?
- Q46. If so, are there measures that can be taken to address the issue?
- Q47. Do you agree that the barriers and disincentives suggested in this Chapter act as a constraint on both lawyers and social scientists engaging in empirical research in law?
- Q48. If so, which do you regard as the most significant constraints?

Q49. Are there other barriers and disincentives that should be considered?

Q50. What measures could you suggest to overcome these barriers and disincentives?

### ***Experience Overseas***

Q51. Are there concerns about capacity to conduct empirical research in law in your country?

Q52. If so, what is the nature of the problem and what do you consider to be the contributing factors.

Q53. If, on the other hand, there are no such concerns about capacity, can you suggest why the situation in your country might be different from that in the UK?

Q54. Are there any lessons from the experience in your country that you think would be particularly important to consider in the UK context?

## **D. EXTRACT FROM THE DEMOGRAPHIC REVIEW OF THE UK SOCIAL SCIENCES (ESRC, 2006)**

### ***SOCIO-LEGAL STUDIES***

#### ***Introduction***

Socio-legal Studies staff and socio-legal research are predominantly found in Law schools. This matters, as the institutional culture of Law schools shapes the very nature of Socio-legal Studies, and the work of those faculty members engaged in the field. Whilst there is the pressure and drive from the profession of Law that demands an overarching vocational impetus to the university curriculum, there is also an expectation that graduates are made very conscious of 'the social, political, economic and other contexts in which the law operates (Fox and Bell 1999:1)'. This opens up the field for empirical socio-legal research. However the work that is commissioned is often heavily geared to the needs of policy makers, meaning that the academic community is discouraged from generating their own research on how the law and legal institutions operate. Perhaps because of the heavily vocational emphasis of Law courses, there is a small pool of young law graduates happy to risk the uncertain future that a PhD in Socio-legal Studies entails. Economically, there are heavy financial costs and risks in undertaking postgraduate studies and seeking postdoctoral funding, set against the financial rewards of a professional career in law.

The Nuffield Inquiry into Socio-legal Studies received most returns from socio-legal academics in the 50-59 age bracket. This does not necessarily reflect the true demographics of those engaged in socio-legal work, as those under 30 are very hard to 'capture' in such a survey. Our survey results showed that most (40%) permanent appointments over the last year in Socio-legal Studies were in the under-35 age category. Other data from the Inquiry shows that there is a high migration into Law schools from other disciplines, especially Sociology. This suggests that, historically, Socio-legal Studies is an importer discipline, with a relatively older age profile.

Issues facing socio-legal academics include heavy teaching loads necessitated by the demands of the profession, the lack of status of Socio-legal Studies within Law schools, and the vocational nature of law. Together, this means that few of the best graduates considering an academic career which involves empirical research. The lack of legal knowledge inhibits entrants to Socio-legal Studies from other areas of social sciences. Funding from undergraduate numbers is healthy within Law schools, and this has to be set against the resources that would be/are required to sustain ESRC Recognition status.

### ***Age, gender and nationality of staff***

19 returns were received from Socio-legal Studies, 14 of which were from Law schools rated 5 or above in the RAE. Despite anecdotal evidence that the field is a 'soft' area of law, dominated by women, our survey results shows that 55% of permanent appointments made last year were male. Just over 60% of permanent appointments in the last year were UK nationals, around 35% from the EU and 5% from North America and Canada. Accordingly, only a minority of respondents cited recruitment of UK domiciled staff as important or very important. Relatively speaking, a high proportion of faculty are from the EU.

A number of respondents – five out of 19 - pointed to staff turnover as a problem, and that there was a lack of incentives to stay in the field. Repeatedly respondents said that little empirical work was being carried out. A number of factors were cited as affecting the quality of empirical research. One commented that 'the PhD is not as valued in Law as in other disciplines'. This is supported by findings in the Nuffield Inquiry which showed that 30% of ELS (Empirical Legal Studies) supervisors did not themselves possess a PhD. 'A PhD was not considered a central part of the pathway to a successful career in a law school' (Nuffield Inquiry – Preliminary Results). As mentioned before, the vocational nature of law draws off most graduates. A final problem is that permanent posts within law schools are more attractive than post-doctoral funding opportunities – leading to a lack of a culture of empirical research in Law schools.

#### ***Summary***

Socio-legal Studies lends itself to interdisciplinary work, and there is clear awareness that there is a significant potential for quality empirical work to be done across disciplinary boundaries. The Nuffield Inquiry consultation document has stimulated a discussion within socio-legal studies, which will lead to a set of recommendations for the future. However, some clear ideas emerged from our own work on the sustainability and development of research capacity in the field, which may reflect the findings of the Inquiry.

As with other practice-linked fields, socio-legal work is often hidden, taking place in unexpected institutional niches such as business schools. The value of socio-legal work needs to be promoted, and its relevance to all areas of life highlighted. Part of this is an internal issue within law schools, and part is about wider public perception. The situation is not helped by its invisibility at undergraduate level. There are significant structural differences between law and social science teaching, leading to skills and knowledge gaps for both legal scholars and social scientists. Legal scholars need training in empirical research methods and social scientists require legal training. These shortcomings could well be addressed at the undergraduate, postgraduate, and/or the postdoctoral level.

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