Theory and Method in Socio-Legal Research

Analysing Law and Society – 11 sessions in Michaelmas Term
These seminars provide an introduction to the different contributions that various disciplines have made to socio-legal research. Each session will introduce you to one or more of the themes in socio-legal research, reflecting the expertise of the different research staff at the Centre. These seminars will develop your thinking about law, so that you gain an appreciation of what it means to ask questions about law from a socio-legal perspective and how you might answer such questions using different theoretical and empirical approaches.

Practical Socio-Legal Research Methods - 10 sessions in Hilary Term
In these seminars you will discuss the techniques available for socio-legal research and the ways in which they relate to the different theoretical approaches you might take. You will consider which questions you can ask and answer through which methods. The focus is on empirical research and includes practical guidance on such topics as interviewing, participant observation, sampling, and ethics.

Presentations – 2 sessions in Trinity Term
In one of the two sessions you will make a short presentation of your research project to the rest of the students and some of the Centre’s research fellows. You will also be expected to participate in the discussions relating to the other presentations in order to help the other students develop their own projects.
Each of the seminars is a self-contained, stand alone session but each emphasises key principles of good research design. You should think, throughout the course, about how to link the theoretical perspective through which you approach your research topic, the specific research question that you are seeking to answer and the particular research techniques that you will adopt for answering your research question.

MICHAELMAS TERM
WEEK 1: Monday and Wednesday
Monday 11th October and Wednesday 13th October, Professor D J Galligan
Introduction to the Socio-Legal Field
The object of the first two seminars is to identify the main elements of a legal system and to show what it means to study them from a law-and-society perspective. Since legal theorists have spent a lot of time analysing the concept of law and the elements of a legal system, they provide a good starting point. Of particular use is H. L. A. Hart’s *Concept of Law*; it offers an accessible analysis of a mature legal order which is attuned to law’s social character and its role in ordering a society.
The key concepts in Hart’s account of law are social rules, of which legal rules are one kind, and the acceptance of law by officials. We shall examine the notion of a social rule, what it means to accept a rule, and the rule of recognition as the master rule of a legal order. The role of officials in a legal order will be considered, and Hart’s contrast between officials and citizens examined. At the conclusion of this analysis, we shall have the rudiments of a social understanding of law.
At this point the question arises as to whether there are other systems of law besides state law, and, if so, why prominence is given to state law. This leads to questions about legal pluralism, by which is meant different legal orders existing side-by-side, or overlapping, or one dominating another. The discussion here will be brief since legal pluralism is studied in depth later in this course.

Understanding law and legal system as a social formation is the first part of a law-and-society approach; the second is to examine the inter-relationship between law and other aspects of society. One issue is how law as a system of social rules interacts with other systems of social rules, such as those of civil associations, religious bodies, private institutions, family networks, and so on. What happens when legal rules conflict with or try to change other networks of rules? Here the notion of social spheres is developed and put to use in explaining the inter-relationship.

Another issue is why we need law at all. If society is constituted by sets of social rules, all of which help to maintain social order, achieve social goods, and advance social values, what extra value does law add? One answer is that law has distinct social functions which cannot be carried out effectively by other rule-based systems. Another answer, which is sceptical of functional approaches, claims that law, in the sense of state law, being backed by the institutions and organizations of the state, can contribute to the achievement of social goods. In developing this analysis, law needs to be broken down into different kinds of laws, such as criminal, civil, constitutional, and regulation.

The final issue concerns the effectiveness of law. If state law is explained (and justified) on the basis that it has certain social advantages over systems of social rules, then the assumption is that law is effective in influencing behaviour. Here notions of implementation, compliance, and enforcement are introduced, for more detailed discussion in later seminars.

**Essential Reading**

**WEEK 2: Monday and Wednesday**
**Monday 18th October, Dr Lisa Vanhala**
Political Science Approaches to Socio-Legal Studies I: Legal Mobilization
This seminar will explore the complex relationship between law and social movements. Social movement actors use a wide range of legal tactics – including lobbying, litigation and administrative advocacy – in their campaigns for social, political and economic change. On one hand, movements rely on rights to frame their grievances, to define and reinforce collective identity and to mobilize activists. The realm of the law can provide social reform campaigns with opportunities to influence policy, regulation and enforcement practices. On the other hand, the use of legal strategies and reliance on lawyers can exert a conservative pressure on social movements.
channeling protest and other forms of radical action into conventional political and legal institutions. These tensions inherent in legal mobilization activity have raised a number of theoretical and empirical questions: What are the conditions under which individual and collective actors will turn to the courts to pursue political or social goals? What is the best way for researchers interested in social movements to determine social movement success within the courts, within the policy realm and beyond? What is the impact of legal mobilization on a social movement’s collective identity? The literature on the mobilization of law by social movements – by providing a “bottom-up” perspective – draws on, complements and provides alternatives to court-centric studies of social reform. Drawing on a number of examples the seminar will discuss the dominant theoretical and methodological approaches to studying legal mobilization.

**Essential Reading**

**Further Reading**

**Wednesday 20th October, Dr David Erdos**

**Political science approaches to studying the Law II: Judicial Review and Human Rights**
This session will introduce political science approaches to the study of the law. It particularly explores how political science can be applied to study of the role in the courts in protecting human rights. The session analyzes a variety of theoretical and methodological questions and also provides you with the opportunity to consider the relevance of political science to your own work. The most important piece to read in that by Stoker and Marsh. This work provides a good introduction to political science, concentrating on exploring various competing approaches within what is a broad and multi-faceted discipline. At least some of these approaches should be of use in your own research. The other readings all apply some kind of political science methodology to the analysis of the relationship between law and society.

**Essential Reading**
Further Reading

WEEK 3: Monday
Monday 25th October, Dr Cristina Parau
Political science approaches to socio-legal studies II: The Role of Courts in a Democracy
The judiciary is a high-impact institution. When functioning properly it deeply affects social well-being, facilitating economic development and shielding the individual from arbitrary State power. In countries transitioning from authoritarian rule to democracy, a judiciary empowered to vindicate the constitution is by consensus regarded as essential to democratic consolidation. Given the important role courts are believed to play, it is not surprising that sociologists and political scientists have in recent decades paid ever more attention to judicial affairs. One post-World War II trend, identified, documented and analysed by a diverse sub-group of these investigators, stands out for its ubiquity – the worldwide expansion of both domestic and supranational judicial power. Informed by a paradigm that blames the vulnerabilities of Parliamentary democracy for World War II and its horrors, many have come to see the judiciary as a check on the alleged evils of untrammeled democracy. In one jurisdiction after another, even in the most conservative and authoritarian civil law traditions courts have been empowered, or have empowered themselves to ‘strike down’ with finality statutes of Parliament and even plebiscites which they interpret to be unconstitutional. The judicial assumption of power not merely to nullify democratically enacted legislation but also to legislate new general norms in all areas of life has taken judges far beyond their classical function of reviewing cases where the rights of persons are in jeopardy. This seminar will examine a range of theoretical questions, and re-visit long-standing controversies:
• What ought to be the role of courts in a democratic society?
• Ought judges to intervene in policy processes or should they confine themselves to deciding the guilt or innocence of individual persons?
• Is judicial supremacy incompatible with the democratic ideal of popular sovereignty?
• If activism becomes excessive, how and by whom ought it to be curtailed?
• Do any alternatives to the judicialization of politics exist that are more compatible with democracy yet do not compromise the rule of law?

Essential Reading
Further Reading
Tate, C. N. and Vallinder, T. R., Eds., 1995. *The Global Expansion of Judicial Power*. New York: New York University Press. [A classic on the judicialisation of politics, which focuses on judiciaries outside the US. It is now slightly outdated, but still worthwhile, as the problem of judicialisation has not gone away]

WEEK 4: Monday
Monday 1st November, Dr Marina Kurkchiyan
Sociological Approaches to Socio-Legal Studies I: Placing Law in a socio-cultural Context
This session explores the way in which the framework of cultural relativism can assist the exploration of law as a social construct. The session begins with a discussion of the broad nature of the sociological approach to studies of law before moving on to the specific meanings and roles that people in any particular society attribute to it. The factors affecting that process are then considered, including historically formed traditions, existing institutional settings, and contemporary changes. At this session we will also examine current debates about how legal cultures affect the development process in transitional societies. Methodological issues will be raised for explanation and assessment at each stage in the discussion, especially the relative merits of using qualitative and quantitative methods to gather research data.

Essential Reading

Further Reading
WEEK 5: Monday
Monday 8th November, Professor Doreen McBarnet

Sociological approaches to socio-legal studies II: Can law control? A grounded theory approach to regulation, enforcement and compliance

This session will begin with a discussion of the ‘grounded theory’ approach in socio-legal studies, demonstrating this approach in action by reviewing a range of key issues and concepts that have been developed through empirically based studies in the area of business regulation. The substantive focus will be on the issue of law as a would-be instrument of control, demonstrating the social and legal factors that influence its implementation and enforcement, and addressing the problematic notion of compliance.

The aims are to:
• discuss the role of a grounded theory approach to socio-legal research
• provide you with some useful conceptual tools from classic socio-legal research on regulation
• introduce you to some alternative perspectives from current thinking on regulation
• suggest how to ‘think outside the box’ of current conventional wisdom to formulate alternative perspectives and new questions for research.

Essential Reading

Further reading

A detailed reference list will also be provided to let you follow through on points raised in the lecture.

For practical method in socio-legal research generally see:
S Halliday and P Schmidt Conducting Law and Society research: reflections on methods and practices, Cambridge, 2009

7
WEEK 6: Monday
Monday 15th November, Dr Fernanda Pirie
Law beyond government: anthropological approaches
How should we understand the different types and systems of law that occur throughout the world? By considering radically different examples of law beyond government, what conclusions can we draw about the nature of law, itself?
This seminars use examples of the approaches that anthropologists have taken to law in other societies and cultures, including informal systems of law and dispute resolution. It introduces some of the main anthropological debates concerning colonialism, legal pluralism and the nature of law, itself. We consider the wider implications and applications of an anthropological approach and the nature of the questions it raises. These include an awareness of the cultural specificity of legal concepts and models. This is related to the methods used by anthropologists, typically participant observation, involving long periods of intensive and focused, but essentially unstructured fieldwork.

Essential reading


and: Chanock, Martin. 1985. Law, custom and social order. CUP. [Ch1, pp. 3–10; Ch 12, pp. 219–24, 236–39]


Further reading


WEEK 7: Monday and Wednesday
Monday 22nd November, Dr Christopher Decker
The interaction of economics and law: aspects and approaches
This session aims to provide a general overview of the interactions between, and dimensions of, the relationship between legal and economic scholarship. It will discuss early scholarly approaches in this area; the ‘Chicago’ law and economics movement; and more recent ‘behavioural’ approaches. In so doing, it will examine the main areas where economics and the law are increasingly intertwined such as: economic sociology; behavioural law and economics; regulation; antitrust and 15
new institutional economics. It will also consider critiques of these approaches, and the growing interaction of these two disciplines, including by economists, legal and socio-legal scholars.

**Essential reading**


**Further reading**


**Wednesday 24th November, Dr Iris Benöhr**

An economics approach to socio-legal studies: human rights and the capability approach

The session introduces students to the application of an economics perspective to socio-legal studies. This perspective will be applied within the specific field of human rights and economic law. Inspired by the Capability Approach of the economist Amartya Sen and by the work of political philosopher Martha Nussbaum, this seminar includes a review on the justification and effectiveness of social legal norms. The Capability Approach has been developed in the field of welfare economics and particularly aims at promoting justice and human development. We will assess how it can be applied in the legal context and explore methodological, substantive and policy implications.

The seminar will combine theoretical insights with practical case studies. It will assess Sen’s definition of ‘capability’ and the use made of the notion in different legal contexts. Further, the seminar explores how people’s capabilities might be enhanced by human rights. It also identifies ways in which capability could be operationalised within EU policy, including corporate responsibility, financial services and consumer protection.

**Essential Reading**


**Further Reading**


WEEK 8: Monday
Monday 29th November, Professor Max Bergman (Universität Basel)
Designing a Graduate Research Project

HILARY TERM

WEEK 1: Monday
Monday 17th January, Dr Marina Kurkchiyan
Introduction to Research Methods

The session on Introduction to Research Methods will provide a general survey of the social and philosophical roots of the various techniques available for data collection and link the ideas involved to a student’s initial review of the literature on how to develop a viable research question. Particular attention will be paid to the contested issues in social science research, such as the following. What are we trying to achieve when we are engaged in research activities? Do qualitative and quantitative approaches have equal claims to be considered ‘empirical’? When we decide on which methods to use in collecting the information we need, what assumptions are we making and what do they imply? What philosophical approaches do these assumptions rest upon? What do the differences between the various approaches entail for the interpretation of the nature of knowledge and truth? How do these differences apply at the ultimate stage, when research findings are used as evidence to support an argument and the completed text of a thesis must evaluate the validity of the initial research design? Finally, having surveyed the dynamic interplay between theoretical concepts and empirical data, the discussion will stress the importance of constructing a conceptual framework that will ensure the consistency and integrity of a research project.

Reading

WEEK 2: Monday
Monday 24th January, Mila Versteeg
An Introduction to Quantitative Methods in Socio-Legal Research

This session will focus on the use of quantitative methods in socio-legal scholarship. It will discuss the growing trend towards “empirical legal studies”, where “empirical” is defined as Large-N, or quantitative methods. It will moreover discuss some of the basic principles for large-N research and how quantitative legal data can be used to get at substantive legal questions.

The session will tailor the discussion to the students’ research questions and discuss how large-N methods could be part of the students’ research designs.
Reading

WEEK 3: Monday
Monday 31st January, Dr Fernanda Pirie
Participant Observation
Participant observation is a type of research that could be regarded as diametrically opposed to the collection of quantitative data. This relates not only to the methods but to the types of questions that can be answered, the research design and the subsequent analysis of data.
In the seminar we will discuss the practical issues of undertaking participant observation, but we will start by considering how participant observation relates to other types of research and the continuum between quantitative and qualitative methods that have been discussed in the first and second weeks. To this end you should do some reading on the nature of ethnography and participant observation and consider how your own project may be placed on the scale between quantitative and ethnographic methodologies. You should also read a case study about participant observation and anticipate whether you might encounter any similar practical issues in your own research.
Reading
For theories of research methods, including participant observation, the following have reasonably good summaries:
WEEK 4: Monday  
Monday 7th February, Dr Marina Kurkchiyan  
Interviewing Techniques  
The session will aim at the provision of practical advice on how to conduct semi-structured and unstructured interviews. There will be a short discussion on ‘how to do it,’ incorporating tips drawn from experience in the field. This will be followed by an exercise in which seminar participants will be invited to conduct a sample interview on a specified topic, asking questions either of a fellow-student or an invited informant. The session will then be rounded off with a group discussion of the distinction between individual style and of ‘good’ or ‘bad’ practice.  
Reading  

WEEK 5: Monday  
Monday 14th February, Dr Bettina Lange  
Analysing Qualitative Data  
The purpose of this session is to introduce you to various techniques of analysing qualitative data. Qualitative data pose particular challenges for combining creativity and rigour in their analysis. Moreover, given that qualitative – in contrast to quantitative data - are often voluminous and unstructured, critical reflection of techniques for managing and interpreting such data is important. The seminar will introduce you to the ‘grounded theory approach’ as well as discourse analysis as two main approaches to qualitative data analysis. We will discuss ‘coding’ as a key technique for analysing qualitative data. The seminar will emphasize that techniques for the analysis of qualitative data are not a-theoretical tools, but should be located within theoretical assumptions about how the social world can be understood and researched.  
Reading  

WEEK 6: Monday  
Monday 21st February, Dr Marina Kurkchiyan  
Combining Qualitative and Quantitative Data  
The session will consider the possibility of combining different methods of data collection while working on a single project, and then assess the potential benefits and disadvantages of doing so. It will explore questions such as when might a researcher consider using an extreme combination of
qualitative techniques with quantitative ones, and why? How can such a mixture be designed, and what would it achieve? Once data have been successfully gathered from an assortment of different methods, to what extent can the findings be considered comparable and consistent? Given that any single project necessarily requires a coherent analytical framework if it is to succeed, is it possible to integrate the results of different kinds of data collection in an effective way?

**Reading**


**WEEK 7: Monday and Wednesday**

**Monday 28th February, Dr Lisa Vanhala**

**Case Study Research**

This seminar introduces students to the case study method of research. It will deconstruct the theoretical foundations of different types of case studies as well as address specific issues of case selection, selection bias, conceptual stretching and the definition of negative cases. It will present a range of specific tools for case-study research such as detailed contextual knowledge, bayesian inference, analysis of crucial cases and process tracing. These points will be situated within an understanding of a broader iterated dialogue among theory, data and research design.

**Essential Reading**


**Further Reading**


**Wednesday 2nd March, Dr David Erdos**

**Research Ethics**

This session will provide an overview of ethical issues which may arise during socio-legal research. The first part of the session will consider why it is important to consider ethical issues and will also introduce core concepts which underpin ethical thinking in social studies. There will be an emphasis on considering the various and sometimes conflicting ways in which these concepts are interpreted and applied by academics. The second part of the session will introduce the University
of Oxford’s ethical review procedures (CUREC) and provide a general opportunity for further questions and discussion.

**Reading:**
Socio-Legal Studies Association, Statement of Ethical Research Practice  
(http://www.kent.ac.uk/nslsa/images/slsadownloads/ethicalstatement/ethics_drft2.pdf)  
Association of Social Anthropologists, Ethical Guidelines  
(http://www.theasa.org/ethics/guidelines.htm)  
University of Oxford Central University Research Ethics Committee, CUREC 1/A  
(and related documentation) at  
http://www.admin.ox.ac.uk/curec/oxonly/ethicalapp/index.shtml,  
Centre for Socio-Legal Studies, CUREC Forms – Advice to CSLS Researchers (2010)  
Economic and Social Research Council, Framework for Research Ethics, 2010  
(http://www.esrcsocietytoday.ac.uk/ESRCInfoCentre/Images/Framework%20for%20Research%20Ethics%202010_tcm6-35811.pdf)  

**WEEK 8: Monday and Wednesday**

**Monday 7th March, Dr Marina Kurkchiyan**

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

**Wednesday 9th March, Dr Bettina Lange and Other Fellows of the Centre**

**Research Design Workshop**
The purpose of this workshop is for students to obtain constructive feedback in an informal atmosphere on the research design for their project. The workshop will be based on short presentations of the ‘what, how and why’ of your research project with fellows giving feedback on how to tighten links in your project between the key research question that you seek to answer, the theoretical framework through which you want to investigate your research puzzle and the research techniques through which you will gather data in order to answer your research question.