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Introduction

Linda Mulcahy¹ and Rachel Cahill O'Callaghan²

Interest in socio-legal scholarship in the UK is going from strength to strength. The Socio-Legal Studies Association annual conference 2021 attracted more delegates from across the world than ever before and the field now sustains several high-quality journals.³ Researchers in the field are engaged in some of the most important debates of the age around digital poverty, institutionalized racism, gender identity, the post-democratic society, transnational law, transitional justice, space, place and time. There is much to celebrate as third and fourth generations of socio-legal scholars continue to transform the field and raise new questions about it. Despite these many successes, there remain gaps in the scope and remit of socio-legal scholarship. Against this backdrop, this special edition of the *Journal of Law and Society* addresses a longstanding concern that despite its many achievements, the socio-legal community in the UK fails new entrants to the field who want to undertake empirical work by our lack of in-depth engagement with, or development of, debates about epistemology, methodology and method. In this introduction, we consider why methodology is not taken more seriously in the course of academic training or in published works. In doing so, we aim to promote a richer understanding of the importance of methodology to the credibility of our empirical work. Through the contributions to this collection, our goal is to help address this methodology gap by presenting a rich diet of articles that consider the why and the how of fieldwork. This involves debate about how we recognize the objects of socio-legal research, how we capture meaningful data about it and the methodological dilemmas and problems that are regularly faced but are rarely discussed in published accounts of empirical research. The inspiration for this special issue of the *Journal of Law and Society* came from ongoing discussions about the methodology gap between the Centre for Socio-Legal Studies in Oxford, the Centre for Law and Society in Cardiff and the editors of the *Journal of Law and Society*. It builds on the methodology masterclasses that this group organized with the generous support of the Economic and Social Research Council, introductions to methods

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³ See for example the *Law and Society Review*, *Journal of Law and Society*, *the International Journal of Law in Context*, *Social and Legal Studies*, *the Journal of Social Welfare and Family Law*, *Empirical Legal Studies*, *Legalities*, *Law and Social Inquiry*.

published in this Journal⁴ and the ‘Methodological Musings’ section of a blog that was launched by the Centre for Socio-Legal Studies in 2021.⁵ In the pages that follow we aim to add to those initiatives by providing a resource that can be used to explore the complex relationship between ontological questions concerning how we come to name and recognize socio-legal phenomena, epistemological issues around how we can acquire knowledge about them, methodological questions pertaining to how phenomena are best understood and issues about the particular procedures or methods we use to collect and analyse data. In prompting these debates this collection attempts to address two problematic, and seemingly opposed, tendencies in the way that socio-legal scholars talk about their work. The first of these is an inclination to treat some of the concepts outlined above, most notably methodology and method, as though they are synonymous. The second is a propensity, often discernible amongst those who would describe themselves as sociologists of law, to treat theory and empirical observations as distinctive.⁶ Essays in this collection seek to interrogate these approaches by reference to debates around inductive and grounded theory; reflexivity; the dynamic and constantly changing nature of research questions; the interface between theoretical frameworks and fieldwork experience; and the ways in which data is constructed within a framework of pre-existing ways of seeing which are frequently based on a distinctly European and masculine heritage.⁷

Why is methodological debate so absent in socio-legal journals? While the publication of methodology textbooks, monographs, and articles continues to flourish in the social sciences and criminology, in-depth reflections on the what, why and how of our research in the field of law and society remain relatively rare. The texts that do exist tend to focus on qualitative approaches to research, the value of particular theoretical frameworks or the practicalities of using particular methods without examining the links between theory, methodology and method.⁸ There are, of course, some notable exceptions to this trend. Halliday and Schmidt’s excellent collection of essays in which authors of seminal socio-legal research discuss their

⁴ See for instance, Cloatre, E., 2018. Law and ANT (and its kin): Possibilities, challenges, and ways forward. *Journal of Law and Society*, 45(4), pp.646-663 and Mulcahy, L. and Wheeler, S., 2020. ‘Couldn’t You Have Got a Computer Program to Do That for You?’ Reflections on the Impact that Machines Have on the Ways We Think About and Undertake Qualitative Research in the Socio-Legal Community. *Journal of Law and Society*, 47(1), pp.149-163.

⁵ See further Frontiers of Socio-Legal Studies Blog <http://frontiers.csls.ox.ac.uk/>

⁶ This tension is apparent in the otherwise highly stimulating work of Banakar, R. and Travers, M. eds., 2005. *Theory and method in socio-legal research*. Bloomsbury Publishing.

⁷ Davies, M., 2019. Doing critical-socio-legal theory. In *Routledge Handbook of Socio-Legal Theory and Methods* (pp. 83-96). Routledge.

⁸ The focus on qualitative work is also an issue in this collection. This is something that the authors reflect on in a forthcoming contribution to the journal.

journeys around research questions and analysis serves to reveal the messy stories behind published works.⁹ The debate between John Flood and Klaus Ziegert in Banakar and Travers's *Theory and Method*, together with the editors reflections on it, is also an excellent introduction to the ways in which the opposing assumptions underpinning approaches to empirical research are worthy of intense scrutiny.¹⁰ Elsewhere there have been valuable individual reflections on how the socio-legal field is methodologically and theoretically interwoven with the critical tradition and the ways in which our agenda has been skewed as a result of pressure from policy makers.¹¹ But outside of these exceptions our track record in entering into an in-depth and demanding discussion of the craft and theory of empirical work remains poor.

There have been occasional speculations about why the socio-legal community in the UK is so disengaged with the disorderliness, serendipity and ingenuity involved in doing empirical work. These have concluded that it is an absence of methodological debate and training in the field that has led to a serious lack of capacity for high quality empirical work.¹² This claim has wide-reaching implications for the intellectual rigour of empirical research in our field, how other social science disciplines view us and the extent to which we are serving the interests of early and mid-career academics. The point here is not that excellent work is not being done, but rather that reviews of the field suggest that many researchers remain self-taught in advanced methodologies and that the considerable strengths in our intellectual projects sit alongside weakness. Though rarely discussed openly, those with experience of editing socio-legal journals or sitting on grant awarding panels will know that it is far from uncommon to reject a submission or ask for major amendments because of the lack of methodological depth or reflections on why a project should be undertaken in the way proposed. It also remains the case that there are no socio-legal journals dedicated to discussion of methodology as is common elsewhere in the social sciences¹³ and that socio-

⁹ Halliday, S. and Schmidt, P., 2009. *Conducting law and society research: Reflections on methods and practices*. Cambridge University Press. See also Banakar, R. and Travers, M. eds., 2005. *Theory and method in socio-legal research*. Bloomsbury Publishing.

¹⁰ See Section 1 of Banakar R and Travers above which includes Flood J 'Socio-Legal Ethnography' and Ziegert KA 'Systems Theory and Qualitative Socio-Legal Research'.

¹¹ Davies above n5, Silbey, S.S. and Sarat, A., 1987. Critical traditions in law and society research. *Law and Society Review*, pp.165-174. Trubek, D.M. and Esser, J., 1989. "Critical Empiricism" in American Legal Studies: Paradox, Program, or Pandora's Box?. *Law & Social Inquiry*, 14(1), pp.3-52. See also Sarat, A. and Silbey, S., 1988. The pull of the policy audience. *Law & Policy*, 10(2-3), pp.97-166.

¹² Banakar R, Travers M, (eds) *Theory and method in socio-legal research* (2005); Genn, H.G., Wheeler, S. and Partington, M., 2006. *Law in the real world: Improving our understanding of how law works: Final report and recommendations*. Nuffield Foundation.

¹³ See for instance Qualitative Research, Methodological Innovations, International Journal of Social Research Methodology, International Journal of Qualitative Methods, Journal of Quantitative Methods.

legal scholars rarely turn to those social science outlets to publish.¹⁴ Methodology sections in socio-legal journals also tend to be brief; something to be described succinctly before moving on to the more important findings of a study.

THE MARGINALISATION OF METHODOLOGY

The lack of focus on methodological training in law schools has been an acknowledged problem for some time. Bradney has discussed the ways in which law's empire has proven to be a difficult one for other social science disciplines to traverse in order to challenge this absence.¹⁵ For him, the intellectual and physical isolationism of law schools in the UK; their origins as 'trade schools' and close links to the profession; and the complicity of legal academics in sustaining myths about the complexity of law have led to an inward-looking approach to the study of law and legal phenomena. This is further compounded by a long-standing culture in law schools which values the norm of individualism. Doctrinal research and standards of success have focused on lone working and individual authority in ways that have limited the legitimacy of inter-disciplinary collaborative research and served to harden disciplinary boundaries.¹⁶ Travers has argued that this has limited the impact that socio-legal work has on the social sciences more generally and encouraged a methodological conservatism within law and society research.¹⁷

Fifteen years ago the Nuffield Foundation commissioned an inquiry into the issue led by Professors Hazel Genn, Martin Partington and Sally Wheeler.¹⁸ The report they produced claimed to find clear evidence of a developing crisis in the capacity of UK universities to undertake advanced empirical legal research.¹⁹ The authors drew attention to a number of causes of the problem in addition to those outlined above including: the absence of central training hubs; the absence of engagement with law in social science disciplines other than criminology; lack of research training tailored to the needs of new recruits who come from disparate routes; and the fact that in many institutions there is no critical mass legal

¹⁴ But see the Frontiers of Socio-Legal Studies blog launched in May 2021 which has sections dedicated to 'Methodological musings' and 'Talking about methods' <https://www.law.ox.ac.uk/centres-institutes/centre-socio-legal-studies/socio-legal-blog-frontiers-socio-legal-studies>

¹⁵ Bradney, A., 1998. Law as a parasitic discipline. *Journal of Law and Society*, 25(1), pp.71-84.

¹⁶ The traditional exception to this has been the field of legal philosophy.

¹⁷ Travers, M., 2009. Conducting Law and Society Research: Reflections on Methods and Practices. *Journal of Law and Society*, 2009-12, Vol.36 (4), p.607-610

¹⁸ Genn, H.G., Wheeler, S. and Partington, M., 2006. Law in the real world: Improving our understanding of how law works: Final report and recommendations. Nuffield Foundation.

¹⁹ <https://www.nuffieldfoundation.org/sites/default/files/Law%20in%20the%20Real%20World%20full%20report.pdf>

researchers with methodological expertise to mentor early career academics. Banakar and Travers *Theory and Method in Socio-Legal research*, published shortly after the Nuffield Report, was equally critical of the training available to socio-legal scholars. Readers of their collection are left in no doubt about the dangers of failing to identify the problems that ensue when lawyers with little training in social sciences deign to use sociological concepts without a detailed understanding of sociological theory and method. But it is important to note that they are equally as harsh on sociology departments:

“...despite some attempts to bring the two disciplines closer together, they remain frustratingly apart. Jurists complain that sociologists do not understand or respect the content of law, or seek to understand law as a profession. Sociologists complain that ‘law in context’ courses, and the research pursued by the Law and Society movement are not sufficiently sociological’²⁰

Sociology is clearly not the only discipline that socio-legal scholars engage with. Legal anthropology, law and psychology, law and history and legal geography have all played a significant part in shaping the contemporary field of socio-legal studies. But the essential point being made is that lack of in-depth engagement about socio-legal methodology is not solely a problem for the discipline of law.

If a rich diet of discussions around methodology and method exist in the social science do we need more to be produced by socio-legal scholars? Perhaps it is sufficient to farm out social science training to social science departments? There are two reasons why we might want to take stock before accepting these suggestions. The first relates to the sort of training that is provided in social science departments where there is little focus on law and legal phenomena. Bannakar and Travers (2005a) have suggested that such provision has a tendency to ‘other’ law:

...[it does] not tell us the first thing about what it means to interview judges or lawyers in different jurisdictions, observe mediation, dispute resolution or other forms of negotiation in the context of different legal cultures or analyse legal documents in a sociological way. px

There is clearly a danger that in relying on methodological debate which focuses on questions that animate the social sciences, training serves to reinforce the notion of the legal scholar at the margins. These arguments also raise important questions about the extent to which socio-

²⁰ Bannakar and Travers, *Law and Social Theory*, 2002 Bannakar, R., and Travers (2002) *An Introduction to Law and Social Theory* Oxford: Hart Publishing, page 1.

legal studies is content to be a ‘borrowing’ or ‘Magpie’ discipline utilising methodology and methods developed in other fields for its own uses without contributing to, or challenging, the development of substantive debate.²¹

The fact that much social science training for socio-legal scholars is farmed out to other disciplines means that for many lawyers engaging with methodological debates may well be seen as something that happens elsewhere. Methodology and methods are not routinely taught in UK law schools at undergraduate level and outside of specialist socio-legal courses methodological training at postgraduate level remains very limited.²² Even when taught, it has been argued that methods are frequently substituted for methodology and choices in research presented as a tool kit in which all methods have equal status and legitimacy. Ziegert (2005) has called this methods indifference.²³

The Nuffield report included accounts from numerous socio-legal scholars about their intellectual trajectory which reflected a consistent pattern of happenstance and irregular training. Many of those involved were established socio-legal scholars who would have received their training some years ago, but there are indications that this situation has not changed significantly in the period since the Nuffield Report was published. A recent national survey of socio-legal staff and students conducted by the Centre for Socio-Legal Studies for the ESRC in 2019 suggested that the methodological range of socio-legal scholars continues to be narrow.²⁴ Chart 1 shows that amongst the 192 respondents who self-identified as socio-legal, the majority of both students (72 per cent) and staff (83 per cent) had first degrees in law, followed in much smaller numbers by Politics and History.

²¹ Cowan, D., and Wincott, D., 2005, ‘Exploring the Legal’ in Cowan and Wincott (eds) *Exploring the ‘Legal’ in Socio-Legal Studies* London Palgrave Macmillan; Creutzfeldt, N., Mason, M. and McConnachie, K. eds., 2019. *Routledge handbook of socio-legal theory and methods*. Routledge.

²² The exception to this may well be comparative law.

²³ Bannakar and Travers *Theory and methods*

²⁴ Two channels were used to contact staff and students specializing in socio-legal studies. The first of these was the Socio-Legal Studies Association (SLSA) which as readers will be aware is the largest learned society of its kind in the UK. The SLSA Executive Committee was extremely supportive of the initiative and allowed us to use the SLSA mailing list to send a message to all members. This was followed up by several reminders to participate in the survey in the weekly SLSA email bulletin. The SLSA postgraduate representatives also supported the launch of the survey with a Twitter campaign. The second avenue for dissemination was the ESRC Doctoral Training Partnership Network.²⁴ The surveys were sent out in July to coincide with the end of the academic year so that first year students taking part in the study would already have received a years’ worth of training. A total of 210 people responded to the survey of which 110 were staff and 100 research students. It is estimated that this constitutes approximately 45 % of socio-legal research students and 17 % of socio-legal staff in the SLSA and ESRC doctoral training partnership networks. See further: Mulcahy, L., and Teeder, W., *Capacity Building in Socio-Legal Studies Scoping Study*, produced for the ESRC by the Centre for Socio-Legal Studies

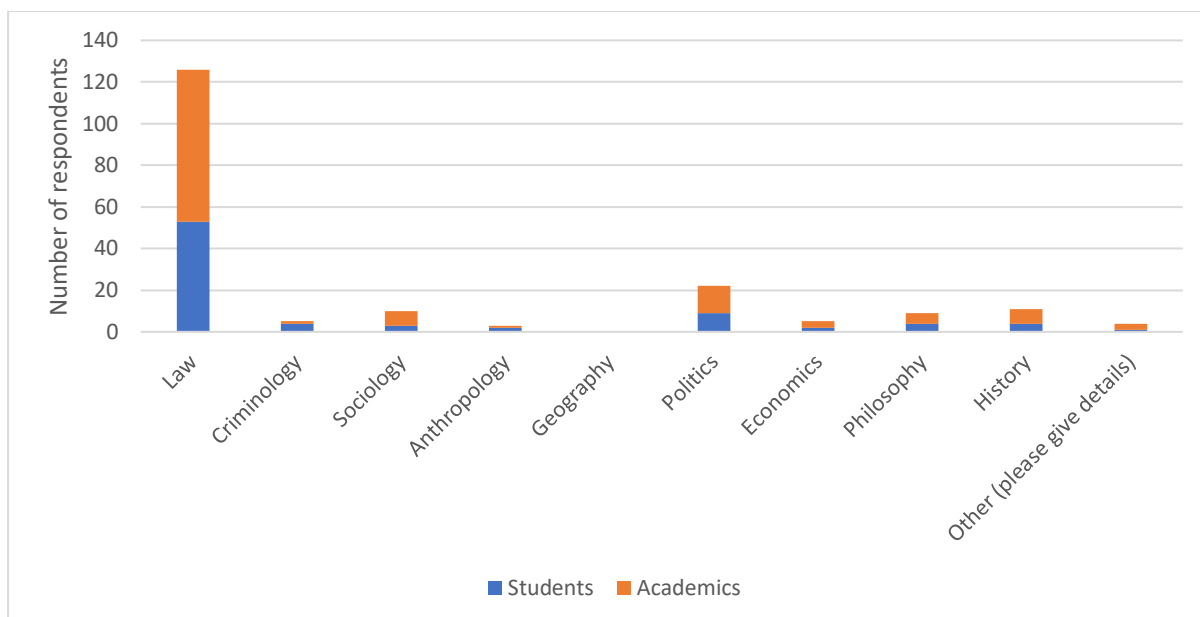


Chart 1: To show first degree of respondents (n=195)

The survey also showed that 85 per cent of students and 74 per cent of staff had Masters degrees in law, suggesting that training in law schools continues to form the foundation for emerging socio-legal scholars. The study went on to discover more about the type and level of training being offered to socio-legal scholars.²⁵ Significantly, 25 per cent of students and 34 per cent of staff claimed to have received no formal social science training at all. The survey also affirmed concerns about the particular lack of training in quantitative methods.²⁶ Sixty-two per cent of staff considered their research to be qualitative in nature, 35 per cent labelled their work both qualitative and quantitative, and just 2 per cent saw themselves as only doing quantitative research. This lack of capacity in the realm of quantitative data collection and analysis may in part be explained by the absence of provision. Respondents who had received some social science training were much more likely to have received it in qualitative methodology. When quantitative training had been received the focus tended to be on single and multiple regression. Other forms of regression analysis or topics such as multi-level modeling, non-linearity and polynomial models or fixed effect interactions were largely absent.

²⁵ Those taking part in the survey were asked a series of pre-coded questions on the type of training they had received. This was based on common components of introduction to qualitative and quantitative methodology courses identified during a review of syllabi undertaken by the team.

²⁶ Discussion of the topic was the subject of a conference at UCL in 2018 on ‘The Future of Justice: Harnessing the Power of Empirical Research’ in which lack of methodological sophistication in the field was viewed as an especially pressing problem in light of the many changes now facing the justice system. Particular concerns were raised in this context about the lack of capacity in quantitative training in the field.

These results are surprising given the longstanding presence of ESRC postgraduate training guidelines which constitute a key reference point in the field and specify a broad and varied syllabus.²⁷ Despite their existence, it is clear that a significant proportion of early career and established socio-legal scholars are not receiving the sort of training provision that facilitates the production of high quality empirical work or produces knowledgeable consumers and evaluators of it. This raises important questions about the impact of the ESRC's training model. The Council has undoubtedly played an important role in the development of socio-legal research in the UK. Its predecessor, the Social Science Research Council, provided core funding when the Oxford Centre for Socio-Legal Studies was set up in 1972 and the ESRC now funds a range of socio-legal training pathways through its Doctoral Training Partnership and the NCRM training portal.²⁸ This financial support has played a critical role in facilitating the development of our sub-discipline. However, the extent to which it is facilitating high level training in any meaningful way beyond the 25 or so research students it funds anew each year is questionable. The nature of its funding model means that doctoral training partnerships are increasingly made up of consortia of Universities. Since 2016, the ESRC has commissioned 14 consortia comprised of 73 research organisations, but it could be argued that the focus on consortia rather than centres of excellence has spread skills and resources thinly across institutions which are often geographically dispersed. By way of example, the South East Network for Social Sciences is made up of ten Universities spanning a distance of . An alternative model would be to concentrate funding in specialist training hubs where socio-legal expertise exists and interdisciplinary research is common. As the Nuffield Report made clear many institutions that have socio-legal research students do not have a critical mass of empirical socio-legal researchers who can provide adequate training and mentorship to new entrants.

ABOUT THIS ISSUE

The central aim of this collection is to address some of these issues by prompting a new discussion of methodological conundrums and dilemmas that arise in the course of designing socio-legal projects, collecting data and analysing it. It is underpinned by several key ambitions. We hope this collection will encourage empirical socio-legal scholars at every stage of their academic career to explore, challenge, and extend existing discussions of socio-

²⁷ <https://esrc.ukri.org/skills-and-careers/doctoral-training/postgraduate-training-guidelines/>

²⁸ <https://www.ncrm.ac.uk/training/login.php>

legal methodology. It is also anticipated that this collection will serve as a resource for those who wish to consider methodological issues more deeply or those starting out on their socio-legal journey. Finally, we would like this special issue to alert the editors, reviewers and authors of socio-legal scholarship to the rich intellectual content of ongoing debates about methodology and method and to the real need to engage with in-depth discussions of methodology in all empirical submissions.

Textbooks frequently draw a clear distinction between methods and methodology, with the former focused on the practicalities of process and procedures involved in gathering data and methodology defined as the theoretical foundation of these methods. The argument that method and methodology are distinct but intimately linked has been central to discussions between the authors in this collection. Many of the contributions abandon the notion that a discussion of methodology leads neatly to a choice of method in a linear process, choosing to emphasise the interactive nature of concept formation and analysis. A central ambition of this collection has been to challenge, develop and explore socio-legal methodology in practice. Many of the papers also demonstrate the importance of fully exploring the theoretical and political assumptions behind the selection of methods and sources and the impact of these issues on the way in which researchers practice their craft in the field. Several contributors to this collection have chosen to view theory as a fluid concept which is capable of change as research projects progress and theoretical assumptions are interrogated and critiqued.

The collection also seeks to draw attention to innovations in the field. The paper by Les Moran draws the socio-legal scholar into the world of visual research. While law and the visual image is becoming an established field, it remains the case that visual methodologies and methods in areas such as law and film studies frequently go unexplored. His article provides a rich understanding of how one looks at judicial images across settings and the sort of questions one asks about the creation, management and consumption of legal images. In her discussion of walking as methodology and method Jessica Smith takes the reader on a journey through Beane House of Art and Knowledge. At the heart of her paper is a discussion of the relationship between observation and movement, and the challenge this poses to traditional assumptions which underpin our conceptions of law and legal buildings. The paper by Francesca Uberti discusses the extent to which traditional notions of ethnography remain intact in the digital age when fieldwork may involve sitting in front of a screen observing online interactions and cultures for a sustained period rather than immersing oneself in a community one has to travel to.

Another group of papers considers the different ways in which the theory of method informs data collection and analysis; from those who hypothesise and test to those who seek to theorise up from the data collected. Discussion of this dynamic is evident in Eleanor Whittngdale's paper which talks about re-becoming a feminist once in the field as everyday life makes evident the reality and complexity of feminist theory. The necessary and complex relationship between theory, methodology and choice of method is also explicit in the paper on time and temporality, at the end of this collection, by Linda Mulcahy, Meredith Rossner and Anna Tsalapatanis. The paper exposes the complexities, both theoretical and practical, that underpin the empirical study of the abstract concept of time.

The papers in this collection also have much to say about concepts of neutrality. The claim of researcher neutrality has traditionally been endemic in both legal scholarship and the social sciences. Legal scholarship and the doctrinal legal method have a strong foundation in scientific discourse, legal positivism and the particular values that both approaches reify. Contributions to this collection are rife with examples of how the researcher can affect every stage of data collection and analysis and even engage in co-production of data. Whilst attempts may be made to keep researcher influence hidden, the articles discuss a number of ways in which reflexivity about subjectivity and positionality is not only present in socio-legal studies but can be a strength and critical tool.

The collection also has much to say about care, ethics and the agency of the research subject. Two particular papers in this collection foreground the importance of the subject and the relationship of trust that is central to many qualitative socio-legal studies. The first is the paper by Rosie Harding who draws on her extensive experience working with intellectually disabled participants to reflect on the ethical and practical considerations which are fundamental to ensuring the voices of marginalised subjects are heard. The paper challenges all socio-legal scholars to consider the praxis of ethics, methodology and methods more carefully. The second paper by Anna Bryson, considers the centrality of trust in oral history research. Her paper presents the complex political considerations surrounding the preservation of individual historical narratives in the context of transnational justice. Both papers, draw the readers attention to the ways in which the needs of the research subject can determine both method and methodological choices.

In closing we would like to thank the many contributors to this special issue and a companion special issue planned on methodology for 2022 for their many contributions to debate.

Everyone was required to present their paper to the group and submit two revised versions to the editors before the collection was submitted for review to the Journal. We hope that each

contribution has been strengthened as a result but we are grateful to the contributors for their patience. It was our policy from the offset to ensure that the two special issues we put together should involve early career and established academics working alongside each other. The early career academics, some of whom are still working towards a doctorate gained their place as a result of a national competition for places. It is to their credit that they have produced such high-quality contributions and this gives us much hope for the future of the field. We hope that this special issue is useful to others who are still undergoing training. Perhaps most importantly we hope that it stimulates debate about methodology and begins a provocative debate about the many ways in which the what, how and why or socio-legal research is deserving of more attention than it has been given to date.