

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

## **REPORT SUMMARY**

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**THE NUFFIELD INQUIRY ON EMPIRICAL LEGAL RESEARCH**

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**INQUIRY WEBSITE:**

<http://www.ucl.ac.uk/laws/socio-legal/empirical>

## THE INQUIRY

In 2004, the Nuffield Foundation funded a major Inquiry into the UK's capacity to carry out empirical research on how law works in the real world. The aims of the Inquiry were to:

- Gather information about the current capacity to carry out empirical research on law, particularly outside criminal law;
- Look for evidence of any shortfall in capacity;
- Examine the causes of any shortfall, including the incentives and disincentives to carry out this kind of research;
- Compare the situation in the UK with that in other countries;
- Bring together key stakeholders including funders, users of research, and policy-makers to develop a shared understanding of the issues;
- Identify a range of possible solutions;
- Make recommendations designed to secure the future of empirical research on law.

The focus of the Inquiry was the capacity 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. Traditional modes of legal analyses are, of course, important to the development of law. But purely theoretical or text-based socio-legal research seems not to be in short supply. What is missing is research on how legal processes, outcomes and structures operate in the 'real world'. The Inquiry's focus was exclusively on UK capacity to undertake this type of research.

### **Why empirical research on law matters**

Over the last 40 years, empirical legal researchers have given Government, the judiciary, law reform bodies, regulatory bodies, universities, and a wide range of social and economic institutions vital insights into law and legal processes in action. Often these point out the unintended consequences of law, or how legal processes are affected by resources, or by other social pressures. Empirical legal research has been crucial in revealing and explaining the practices and procedures of legal, regulatory, redress and dispute resolution processes and how these affect government, businesses and citizens.

There is now an increasing demand for research on how law works:

- From government departments, Parliament and its select committees to inform policy-making and evaluate legislative change;
- From business and NGOs for evidence about the operation and impact of regulation;
- From the judiciary, practitioners and legal scholars for evidence that enriches the study and practice of law and the development of doctrine;
- From voluntary sector bodies and others who want to understand how laws may be improved to better meet the needs of ordinary citizens.

### **Why have an Inquiry?**

Despite the achievements of empirical legal research, there is concern that the number of empirical legal researchers is just not large enough to meet the demand for it. Moreover, many leading UK empirical legal researchers will retire during the next decade. There are not enough younger researchers taking up this kind of work to meet current or future demand.

The problem is particularly acute in the civil law field – including family law, administrative and constitutional law and civil justice and regulation – where historically there has been less empirical research activity than in criminal justice. But even in criminal justice, the concentration of much work is on patterns of offending and social and psychological processes; there is, however, growing demand for empirical research on criminal justice processes in their own right.

These twin problems – lack of current capacity and declining future capacity – are occurring at a time when the importance of empirical legal research is increasing. Law and regulation are affected by and must in turn influence economic and global change, scientific and technological advances, demographic change, environmental challenges, new modes of communication, and threats to security. As Government increasingly regulates economic, social and family relationships, there is a need for real world evidence about the impact of law and regulation; how mechanisms of regulatory control could be improved and adapted; how individuals and organisations respond and adapt to the legal environment and how law can contribute to the overall well-being of society. **The fundamental point is that while law is an ever more important feature of modern life, there seems to be 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.” Department for Constitutional Affairs, *Confidence and Confidentiality: Improving Transparency and Privacy In Family Courts*, July 2006, Cm 6886.

### **How the Inquiry worked**

The Inquiry proceeded in a number of stages:

- It published a Consultation Document inviting responses both from the UK and abroad;
- It held a series of open meetings bringing together scholars from social sciences, law and humanities, with research funders and users, to discuss the issues raised in the Consultation Document;
- It conducted a survey of academic researchers involved in empirical legal research;
- It held seminars to discuss three particular themes that arose in response to the Consultation:
  - o The challenge of transdisciplinarity
  - o Education and training
  - o Creating incentives and removing barriers to empirical legal research

The Inquiry revealed a complex web of issues needing to be addressed in a strategy designed to strengthen and increase capacity in empirical legal studies.

## **INQUIRY FINDINGS**

### **Civil law and justice**

Since pioneering work in the 1960s, empirical legal researchers have worked across a wide range of areas such as access to justice; administrative justice; business; childcare and protection; employment; environment; family relationships and breakdown; health regulation and delivery; housing and planning; human rights; judicial administration, appointments and decision-making; legal profession and services; mental health; risk; social welfare and social justice. But despite the scope of this activity, the number of researchers working on any particular area is small and coverage of issues remains thin and patchy, with entire areas largely untouched.

### **Criminal law and justice**

Empirical research on criminal law and justice has had a relatively high profile since the 1950s. There are well established criminological institutes around the country. Criminological research has a different disciplinary profile from civil justice research. The intellectual roots of most leading criminologists are in psychology and sociology, reflecting the behavioural preoccupations of the field. The substance and procedure of criminal law is less widely examined, though many respondents felt that these should be more central.

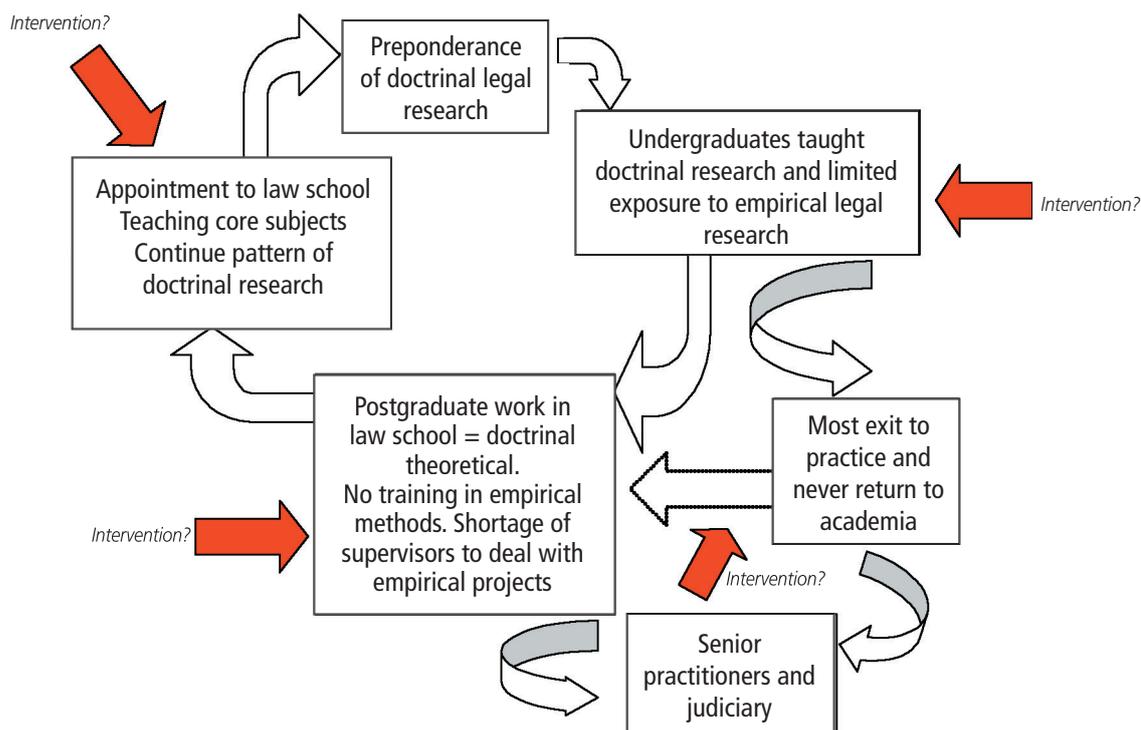
### **The Capacity Problem**

Our consultation demonstrated widespread concern about a shortage of capacity to undertake empirical research in civil law and justice. Indeed, unease about capacity goes back a long time. In 1971, the Nuffield Foundation set up a special scheme to encourage legal academics to become involved in empirical legal research. The SSRC/ESRC funded the Oxford Centre for Socio-Legal Studies to promote empirical legal research, but two decades later, an ESRC-commissioned review in 1994 found that there was still a shortage of trained empirical legal researchers and that national demand for empirical legal research could not be met within current capacity. This analysis has been confirmed more recently by its *Demographic Review of the UK Social Sciences* (ESRC February 2006). While the Socio-Legal Studies Association currently has a membership of around 400, only a small proportion of members engage in empirical legal research.

Evidence gathered during the Inquiry confirmed that there is an ageing cohort of experienced empirical legal researchers; that the field is not expanding; and there are already too few new researchers to take advantage of existing intellectual and funding opportunities. There is a shortage both of legal academics engaging in empirical legal research and of social scientists with an interest in law and legal phenomena.

Lack of current capacity is reflected in low levels of applications to funding bodies from empirical legal researchers interested in non-criminal topics. Commissioners of research note a dearth of experienced researchers available to tender for work on civil law and policy issues.

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



“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... most [empirical legal researchers] are very experienced and fairly senior in their organizations 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

### Career paths

The ESRC’s Demographic Review and the Inquiry’s own survey showed that the majority of empirical legal researchers are based in law departments and that research activity is diffused across a wide range of institutions, few of whom have a critical mass of researchers working on the same issues. Biographies of a selection of experienced empirical legal researchers showed they often started their careers as empirical researchers by chance. Many noted the importance of undergraduate courses in stimulating interest in the

law in action; others cited the significance of mentors and early opportunities to gain hands-on experience in empirical projects.

## REASONS FOR THE LACK OF CAPACITY

The Inquiry concluded that the explanation for lack of capacity was to be found in a number of interacting factors. Some of these are particular to the way law schools and social science departments work, others relate to broader university structures, patterns of funding for research and training and the influence of the Research Assessment Exercises.

### Law Schools

#### Self-replication

UK law schools have historically been dominated by theoretical and text-based doctrinal research. This is reflected in the research skills taught at undergraduate level. More fundamentally, their central function involves teaching a curriculum heavily influenced by the demands of professional practice. This constrains the introduction of interdisciplinary subjects into the curriculum and influences research. Because law is an

undergraduate degree in the UK, those studying law are not only focused on professional legal careers but they lack broader training. With limited research skills, law graduates considering academic careers naturally gravitate toward what they know - doctrinal topics and issues. There is thus an almost inevitable pattern of self-replication. Once in post, the mid-career possibilities for legal academics interested in developing empirical research skills are limited. The consequence of this cycle of self-replication is an absence of research supervisors competent to supervise empirical projects at doctoral level.

### **Academic careers**

The historic emphasis on teaching means that most law schools maintain heavy teaching loads. Law schools find it hard to accommodate the practicalities of empirical research, for example absence for carrying out fieldwork. More importantly, empirical legal researchers unable to contribute to the core law curriculum are unlikely to be hired. This affects non-lawyers interested in research in non-criminal fields more than criminologists who are more likely to be able to provide undergraduate courses in criminal justice, for which there is widespread demand among undergraduates. This adds to the difficulties facing those who want to carry out research in civil, family and administrative law.

“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**

### **Culture of legal scholarship**

Legal scholarship tends to be law-centred, conducted by lone researchers undertaking close textual analysis of legal material. This emphasis on doctrine and normative questions has directed the energy of legal academics towards influencing legal reasoning rather than evaluating or influencing policy and practice.

### **Empirical research skills**

Those who come from legal backgrounds have no easy way to acquire the skills needed to do empirical research; data collection and statistical and quantitative analysis skills are particularly hard to develop.

### **Absence of critical mass**

The diffusion of empirical legal researchers throughout law schools in the UK creates difficulties in providing supervision for doctoral students undertaking empirical projects and providing a supportive and intellectually stimulating environment for researchers.

### **Social Science Departments**

The study of law and legal phenomena has not become a major focus for research within social science, despite historic links between law and the social sciences. In particular, there is a much lower profile for law within political science in the UK than is the case for the USA or within continental Europe. Explanations included a general move away from empirical studies towards textual analysis; a decline in interest among social scientists in subjects that lead to an engagement with law; a relative decline in disciplines such as social anthropology and social policy which historically have had a serious engagement with legal issues.

“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.**

### **Why is there a particular problem in civil justice research?**

Civil law and justice is not a coherent field or concept. There is no ‘civilology’ equivalent to criminology. The sheer breadth and diversity of civil justice issues – spanning family, administrative justice, commercial, employment, property, contract etc – may inhibit the creation of a critical mass of researchers in any one subject area, which in turn slows down the development

of substantial bodies of work. Moreover, there has been a lack of coordinated and sustained funding investment in research in the non-criminal field comparable with that made by the Home Office in criminal justice. An important consequence of under-investment in civil law and justice research is the relative paucity of centrally maintained basic administrative data on civil justice issues. This means that researchers often have to undertake tortuous data collection from primary sources in order to provide the most basic descriptive information that in the realm of criminal law and justice can be accessed with relative ease from existing databases.

## The challenge of transdisciplinarity

The disciplinary-based structures of universities do not always provide ideal conditions for collaboration between lawyers and academics in other disciplines, with university departments still reflecting a Victorian “brigading” of knowledge. While there have been moves towards larger multidisciplinary schools, these have often been driven by managerial rather than academic pressures. There is a need for active efforts on the part of funders and university administration to promote cross-disciplinary collaboration.

Related to this is the need for more training opportunities at postgraduate and mid-career stage for those wanting to develop new skills in order to do empirical legal research. In this respect, one size will never fit all with lawyers needing to develop empirical research skills while social scientists need grounding in areas of law they wish to research.

## The Research Assessment Exercise

There were mixed views on the impact of the RAE on the development of empirical legal research. Despite the official rhetoric, many felt that the RAE gave little incentive to spend the time involved in empirical legal research; it undervalued even important policy-relevant research. There were also fears that collaborative empirical research is less highly valued than sole-authored doctrinal work. While the funding councils assert the importance of interdisciplinary and policy-relevant research, they do not appear to have created successful incentives for such work. The greater emphasis on quantification of research activity post-RAE2008 may improve incentives for conducting empirical legal research and increase opportunities for cross-disciplinary training.

## CONCLUSIONS

The Inquiry found that:

1. Empirical legal research is increasingly important to and valued by policy makers, law reformers, the judiciary, academics and practitioners.
2. There is clear evidence of a developing crisis in the capacity of UK universities to undertake empirical legal research.
3. Important factors are:
  - 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 lack of engagement with law in the social sciences;
  - The breadth and lack of clear definition of ‘civil law’;
  - The absence of sustained and predictable funding for empirical work in non-criminal legal areas;
  - The absence of research training tailored to the needs of new recruits to empirical legal research;
  - The lack of any critical mass of empirical legal researchers in most universities who can provide training and a supportive research environment;
  - Institutional arrangements that inhibit cross-disciplinary collaboration.
4. There is a need for an **integrated strategy of short, medium and long-term initiatives** to address the needs of potential researchers at different stages throughout their career including the **undergraduate level, the immediate post-graduate level, post-doctoral level, and at mid-career stages**.
5. The strategy also needs to offer incentives and training for those coming from **different routes**: undergraduate law degrees, undergraduate social science degrees, mid-career academics and legal practitioners returning to academic research.
6. While the Inquiry calls for some changes that would affect all universities (e.g. changes to the curriculum), many of the recommendations are aimed at creating a few centres of excellence with the critical mass necessary for the empirical legal research community to become self-sustaining.

## RECOMMENDATIONS

The Inquiry identified the following points for strategic intervention:

### Training

We recommend:

- i. The establishment of **Empirical Legal Research Leave Bursaries** for the preparation of course materials and modules that would support undergraduate, post-graduate and mid-career training in empirical legal research skills. The stimulation of interest in empirical legal research at the undergraduate stage is fundamental to the recruitment of new researchers.
- ii. The provision of **Undergraduate Empirical Legal Research Bursaries** to stimulate interest and to give 'hands on' experience of empirical legal research, for example through various forms of summer work such as summer schools or 'master classes' in empirical legal research covering both law and methods; or placements in centres of research excellence, or policy-making settings. The purpose would be to capture the imagination of outstanding undergraduates and seek to influence their career choices.
- iii. The creation of a scheme of **Post-Graduate Empirical Legal Research Studentships** to create the necessary critical mass of new empirical legal researchers. This should aim to create, say, 20 newly trained researchers per year over the next five years. The scheme should be designed in collaboration with departments of law and social science and supervision should be genuinely cross-disciplinary. Training could be across departments in a single university or in consortia of institutions. The Inquiry recommends that ESRC and AHRC should actively consider altering their funding rules to promote the development of new courses and to allow more flexibility in the pattern of doctoral research. The aim should be to enable lawyers to develop the skills needed to undertake empirical legal research projects and social scientists with empirical research skills to gain the necessary grounding in relevant areas of substantive law.
- iv. The funding of **Empirical Legal Research Post-Doctoral Fellowships** to provide opportunities for 'conversion' at the post-doctoral stage for those with PhDs in law to undertake an empirical project

or social science PhDs seeking to investigate a law related issue. The fellowships would include a 'skills development' component. These would be designed to recruit outstanding post-graduates in law and the social sciences and give them the incentive to retrain and do research on an empirical legal project.

- v. The establishment of **Mid-Career Cross-Disciplinary Bursaries** to encourage existing academics, from law or social sciences, to re-tool with specialist skills in empirical legal research. The bursaries could fund a year out to attend an existing master's course or a summer school (like the Essex summer school).
- vi. The creation of a modest number (perhaps one or two a year for the next 5 years) of **Special Empirical Legal Research Fellowships** to provide the opportunity for established scholars who had undertaken appropriate trans-disciplinary 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 benefiting from and contributing to critical mass.
- vii. The funding of **Career Change Studentships** designed for practising lawyers (many of whom have first degrees in social science disciplines) wishing to return to academia to undertake a programme of training and research in empirical legal studies. This could involve enhanced stipends for existing "1+3" or "2+3" courses, or for shorted retooling courses. They might also be offered enhanced stipends for doing empirical legal research-based doctorates.
- viii. The creation of special **Professorial Mentoring Fellowships** to provide studentship funding attached to an established empirical legal research scholar. The career biographies of current empirical legal researchers demonstrated the importance of mentors in inspiring new entrants and guiding empirical skills development. These fellowships would be designed to encourage such relationships by buying the mentor out of teaching and/or administrative duties to concentrate on the student's project.

### Research

Existing research funds for empirical legal research are extremely fragmented. All the funders we spoke to were clear that ring-fenced streams of funding could help

attract new researchers. Only thus could a key finding of the Inquiry – the lack of critical mass – be addressed.

The Inquiry recommends two ways of developing critical mass to make empirical research on law self-sustaining:

- ix. The Funding Councils and the Research Councils should combine to invest in new interdisciplinary centres that bring together lawyers and social scientists to undertake empirical research on law. Unlike the original Oxford Centre, we think such centres should be focused on specific subject areas, for example the family, the environment, or processes such as dispute resolution, or legal decision-making. It should be a condition of funding such centres that capacity building is central to their activities. Research training infrastructure could be provided on a consortia basis through collaborations between a number of centres.
- x. ESRC could create a “branded” stream of funding for empirical legal research projects to draw new researchers into the field and to encourage new partnerships between social scientists and lawyers. The funding would need to be large enough to enable the creation of a critical mass of grants, and last for 3-5 years to encourage longer term planning. 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.

## Research Environment

In addition to the resources needed to ensure that the capacity issue is properly addressed, the Inquiry also recommends that a number of steps need to be taken to encourage a research environment in which empirical research on law can flourish and expand.

## Vice-chancellors

Submissions to the Inquiry showed that Vice Chancellors and University senior management 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. This would have benefits for the leading research universities. Having strong research in law is important for institutions that want to bring

policy makers, senior members of the judiciary and other strategic practitioners into close and regular contact with staff.

- xi. We recommend that research active universities with good law departments and one or more strong research active social science departments should work with them to encourage new initiatives. They might be at a general level, so that, for example, across a range of social science disciplines and substantive areas in law a generic ‘law in society’ master’s might be developed. A more fruitful approach might take the form of specific initiatives in special subject areas, for instance, in law and medicine, law and family research, law and social welfare policy and so on. Institutional pressure is needed to help break the stasis caused by the fact that law departments, well-funded as they are for undergraduate pre-professional teaching, may be unwilling to initiate such moves themselves. Institutional encouragement through the strategic use of seed-corn funds is another possibility.

## Heads of Law Departments

Law schools take seriously the need to develop general transferable skills and those necessary for the practice of law. At present this tends not to involve encouraging students to understand and appreciate empirical research design and evaluation.

- xii. We recommend that all law departments should consider **enhancing the undergraduate curriculum** by offering an option on law in society, or offering options with a significant empirical content (for example family law, dispute resolution, some aspects of public law). This would better equip students to deal with a world in which there is an increasing demand for assembling and analysing social data and where, indeed, legal practice requires a wide range of research skills in addition to those of the doctrinal lawyer. Such students should also acquire the technical skills needed to analyse data.
- xiii. We recommend that those law departments that wish to become empirical legal research centres of excellence should think strategically about the **balance between research funding and teaching revenue**. Heads of department should consider how to stimulate and encourage staff to be more active

in applying for research funding. 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.

The Inquiry survey findings show that law departments have in the past been the main home of those doing empirical legal research. If law schools wish to position themselves to take advantage of any new funding initiatives in this area, such strategic thinking should ensure that they are well-placed to do this.

Departments should also consider how better collaborative teaching and research arrangements can be made with social science departments that would give positive encouragement to 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. Developing critical mass around substantive themes may be the most productive way forward.

## **Heads of Social Science Departments**

The Inquiry initially focused on the challenges facing law departments in encouraging empirical legal research. A key outcome of the Inquiry is the recognition that the active engagement of social scientists from disciplines other than law is an important part of the solution. Those trained as lawyers need social science methodological skills and training; equally importantly, some of the broader framing questions of political science, sociology, social work and other disciplines are central to the agenda that empirical legal research needs to address.

The Inquiry noted the low visibility of law in social science research priorities. This creates an opportunity for heads of departments in social science disciplines who want their departments to challenge current disciplinary orthodoxy. Social science departments with staff interested in, for example, family dynamics, inequality

and social welfare issues, constitutional issues, or health, should be encouraged to help their staff to work with colleagues in academic law departments or to retool themselves. We believe that true trans-disciplinarity will arise from the bottom up – from carefully framed questions that bring together conceptual and empirical issues in a relatively precise way. Heads of social science departments can play a really valuable role in fostering good empirical research on law.

## **Learned societies**

The learned societies and institutions, like the British Academy and the Royal Society, also play an important role in bringing together people to help shape trans-disciplinary research ideas. They can promote the long-term dialogue between disciplines necessary for research collaborations to thrive

The learned societies may also be able to promote new thinking about the undergraduate curriculum which is essential to inspire the young to take empirical research on law seriously. They have a role in facilitating the development of empirical legal research training materials and packages for training new researchers and for mid-career training courses.

## **FINAL COMMENTS**

The Inquiry has shown that there are concrete and achievable steps that can be taken to grow a new generation of empirical researchers on law. Some – such as the development of new curriculum material – are relatively short term. Others require longer-term planning, needing more precise and detailed thinking. All of the suggested medium and longer term steps, in particular the recommended research funding initiatives, will require further discussion with funders. The learned societies and academic leaders like vice chancellors and heads of departments can assist in developing our initial ideas into practical outcomes.

We emphasise that the Inquiry report does not provide a detailed blueprint. The Inquiry's role was to kick-start conversations – not to direct them and certainly not to pre-empt them. But 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.

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