

Response to consultation on draft criteria

Institution: Socio-Legal Studies Association

Unit of Assessment: 36 (but multi-disciplinary)

Umbrella Panel: 33-44, 68 and 69

The attached comments have been drafted by Linda Mulcahy, the Chair of the Socio-Legal Studies Association (SLSA) on behalf of that organisation. Queries about the comments and further correspondence should be addressed to Linda at:

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Introduction

The SLSA is grateful for the opportunity to comment on the draft criteria for the next RAE. We would like to express support of the following aspects of the draft criteria:

- The choice of panel members which we feel fairly reflects the influence of socio-legal approaches to the study of law.
- The inclusion of more women on the panel, an area which has been neglected in the past.
- The emphasis placed on a range of publications for assessment. The special considerations given to less established staff.
- The undertaking that all the work submitted will be read by at least one member of the panel. The SLSA was concerned to find that this will not be the case for all panels.
- The decision not to rank journals. For reasons outlined below socio-legal scholars often have fewer outlets for their work.

However, there was some concern that the new universities are not well represented on the panel. The SLSA accepts that it has a part to play in the resolution of this problem and plans to actively promote experienced socio-legal scholars from the new university sector in the future. However, we would urge HEFCE to consider using more proactive means to encourage scholars from this sector to come forward for the panel.

General Comments

The draft criteria have been discussed at an Executive meeting of the SLSA and our members have been emailed for further comments. We felt it would be helpful to start by making a few general comments about the nature of socio-legal work.

- The socio-legal community represents a 'broad church' and this is an aspect of the association which we have always cherished. Our members undertake library based theoretical work, empirical work which leads to the development of grounded theory, as well as more policy orientated studies which feed directly into the policy making process. What binds the socio-legal community is an approach to the study of legal phenomena which is multi or inter-disciplinary in its approach. Our theoretical perspectives and methodologies are informed by research undertaken in many other disciplines. Traditionally socio-legal scholars have bridged the divide between law and sociology, social policy, and economics. But there is increasing interest in law and disciplines within the field of humanities.
- Many socio-legal scholars feel isolated within law departments. This may be because colleagues adopt a more doctrinal approach to the study of law. This can make it more difficult for socio-legal scholars to find a conducive research environment and their contribution to national and regional research networks and communities may well need to be taken into account as much as their contribution to departmental research environments.

- Socio-legal scholars need to undertake additional training to that traditionally supplied by law schools in order to become familiar with literatures from other disciplines. One example of the additional work involved in becoming a competent socio-legal scholar is that those undertaking empirical work have to become well versed in methodology and debate about the philosophy of social science. Despite the fact that the consultation document includes law in the broad category of social sciences law schools do not tend to cover such subjects in undergraduate or postgraduate programmes. The language of other disciplines can often feel alien. As a result we would argue that producing and publishing a competent piece of multi-disciplinary work is in itself a significant achievement which reflects the acquisition of a greater number of skills than would be the case in more traditional legal scholarship.
- For the reasons outlined it is often more difficult for socio-legal scholars to find an outlet to publish their work in. Much work produced by members of the socio-legal community is boundary breaking in the sense that it challenges the divisions between disciplines and traditional approaches to the study of law. But such an approach carries the risk that neither discipline in question claims ownership of the work.
- The SLSA would also welcome additional information about the languages other than English which the panel is competent in. The socio-legal community is an international one and many scholars within the English based community may be publishing texts in foreign languages. In particular we would welcome an assurance that submissions can be made in any language (if not also published in English). It follows this that we would also like clarification as to who should pay for the costs of translation should this be necessary. We suggest that a full translation should be undertaken and that the costs of this should be met centrally as otherwise there is a risk that the policy discriminates against those organisations with scholars who publish in foreign language mediums.

Specific Comments

For ease of reference I discuss our remaining comments as they arise in relation to particular sections.

2.28.1

The Executive Committee found this section to be unhelpful. While we were pleased to see socio-legal included in the list, socio-legal studies is an approach to the study of law rather than a discrete subject within it. The same comments applies to empirical work which can be undertaken in all the other fields mentioned. We were also uneasy at the way in which legal theory had been separated out as we felt that theoretical perspectives should underpin all legal scholarship.

We would question whether subjects have to be listed at all in order for the panel, and those submitting to it, to be clear what legal scholarship encompasses. If it is felt necessary to include these descriptors then it might be of more use to have a preamble to indicate that legal scholarship encompasses a range of different approaches to the study of law and legal phenomena including socio-legal, critical legal and doctrinal approaches and that each encompasses a range of theoretical paradigms.

2.28.3 (see also 2.28.13 on a related point)

Concern was expressed amongst members of the community about the ways in which the law panel plan to use submissions relating to research culture. It was suggested at a recent meeting of the Committee of Heads of University Law Schools that most emphasis would be placed on rating individuals within a department and that evidence of a research culture would only be used in 'borderline' cases. Given the amount of work which goes into preparing submissions this seems unfair. Obviously a department will have no idea at the time it submits its return whether or not it is borderline so the same amount of work will have to go into this section of the form. More fundamentally it seems unwise to treat evidence of research culture as something which is 'tagged' on to the appraisal. In our view, evidence of a research culture should be given much more weight as it is much more suggestive of a healthy, ingrained and institutionally supported approach to research than the returns of individual members of a department who may come and go from one RAE to the next.

It is also our understanding that other panels pay more attention to this section of the return which deals with research culture. As all socio-legal research is multi-disciplinary and may be submitted to panels other than law for assessment we urge the law panel to bring their treatment of this evidence into line with other panels.

2.28.12

The Executive Committee was somewhat confused by the definition of, and distinctions between, research which is of international and national excellence. We were unclear as to how primary reference is to be established and would appreciate further guidance on this issue. The distinction also has the potential to favour those publications produced at the beginning of the assessment period which will have had longer to be disseminated to a wider international audience.

2.28.20

The SLSA Executive felt that the word examine should be replaced by read, if this is what is intended. If not, we believe that failure to read the work submitted would seriously undermine the legitimacy of the whole RAE exercise.

Given that submissions from university departments may well cover a range of different types of scholarship it seems illogical that the whole submission should then be given to one member of the panel to appraise. It is our view that work identified as socio-legal be referred to one of the members of the panel with an understanding of socio-legal scholarship. Whilst we appreciate that this may happen under the draft guidelines we would urge that this is the norm rather than the exception.

It would be useful to be given clearer guidance about what the panel expects to happen should they disagree about the rating to be given to a department. Will there be a majority vote?

2.28.21

We welcome the fact that external advisers will be appointed where necessary but would like further guidelines on how they will be appointed. Is this an issue over which the SLSA will be consulted as it was the appointment of panel members?

2.28.23

We consider it important that the panel is prepared to refer work of an inter-disciplinary nature to another panel or appropriate specialist for assessment. For the reasons rehearsed above this is especially important for socio-legal scholars who may be bridging links with other disciplines and questioning boundaries between them. However, there is some concern that other panels e.g., sociology have indicated that they do not expect to refer work out in this way. Again, we urge that there be as much parity between panel criteria as possible.

Some concern has been expressed within the community about the reference to research into legal education. I am in receipt of copies of correspondence between Tony Bradney and Hugh Beale and concur with the points made by Tony in his letter of September 26th. The use of 'legal analysis' is unhelpful as it does not go on to define what is meant by legal analysis. If this is used to cover no more than a content analysis of statutes and case law then clearly this would be of concern to the socio-legal community as much of the work undertaken by socio-legal scholars looks at the impact law. I would argue that reflexive writing on the ways in which the law student is socialised and the ways in which law is taught is of fundamental concern to legal scholars as it provides evidence of what sociologists might refer to as the 'professional project' of lawyers. It also raises fundamental questions about what law is. The choice of terminology also creates other difficulties. Does it follow, for instance, that any work in the field of law and literature would be referred to the literature panel? We believe that individual departments are best place to decide where the work should go and that law schools should be assured that work of this nature will not be treated differently from other submissions.

2.28.24

The SLSA Executive was slightly concerned about the final sentence of this paragraph and why it was felt necessary to separate out Australia, New Zealand and Canada. We would urge further guidance on this issue.

We would also like further guidance on the exact role to be played by such experts.

2.28.25

We note that the panel is considering the involvement of users of research but would like additional guidelines as to whether they will be involving users and if so, how they are to be selected? We also have some concerns about the level of their involvement. Whilst the policy orientation of much socio-legal research is to be applauded we are unclear as to whether users of research are in a position to judge the quality of work submitted as part of an academic exercise.

2.28.28 et seq

We are concerned that no reference is made in this section to postgraduate students as they form an essential part of any research culture. Many of the other panels in the consultation document make reference to postgraduate recruitment, completion as evidence of research culture. This appears to use to be a significant omission.