

The *Journal of Law and Society* at 40: History, Work, and Prospects

BY PHIL THOMAS

AS TOLD TO CHRISTOS BOUKALAS AND LYDIA HAYES

The story of the JLS is closely linked with that of socio-legal studies in the UK. They were both formed about the same time (in the mid-1970s) as a spontaneous alternative to the Law School establishment, its pedagogy and its ideology.

I set up the journal in 1974, having spent four years as lecturer in Cardiff Law School. Previously, I taught and studied in Africa and the USA. In the 70's there was a casual group of young *men* who shared an interest in a different and what we called a socio-legal approach to law. There were few female students at law schools in those days, and even fewer who worked as academic staff. The only woman I remember in our original socio-legal group was Maureen Cain. I'm now unsure what we called ourselves – I think the Socio-legal Group or something like that. We used to meet informally each Easter and it was a lifeline for me. We were mostly playing football, getting drunk and laughing at each other, but also there was a serious side and radical thought and associated enterprise around in the early 1970s. In a sense those 'socio-legal' meetings were a mutual support group: an alternative to the daily experiences at our various law schools.

On one occasion, at a meeting in Sheffield, Colin Campbell, (subsequently vice-chancellor of Nottingham University) said 'we really ought to have a journal! We should set up a journal!' And so I said 'I'm already involved in setting one up'. Actually, I wasn't quite that far advanced: more thought and planning rather than action. However, I had been involved in new law journals overseas. I had been thinking about doing so – hadn't even discussed it with anyone. I just realised that it was the thing to do because if you are trying to develop and promote a certain style of thinking and scholarship, where can you get it published? We needed a vehicle to carry and promote our scholarship. So the JLS came out of that meeting when I stuck my hand up and said 'I'm doing it'.

Once back in Cardiff, I turned endeavour into action. I got in touch with a legal publisher, Professional Books, and told the owner what I thought this journal should be doing. The publisher, David Kirk, said 'yes, I'll take it on'. It was to be published twice a year under the title of the *British Journal of Law and Society*. [Subsequently changed to *Journal of Law and Society*.] There were several established, doctrinal journals available, so I was seeking to open up something radically different, a new dynamic that would produce something new. In this sense, you can say that JLS was born out of the spirit

of 1968; it was born out of that feeling. I wrote to Otto Kahn-Freund, who was at the LSE and a founder of the *Modern Law Review*. I asked for his opinion. His reply was enthusiastic, 'go for it. The MLR was set up by a group of us seeking to do the same thing but really we haven't been that successful. So what you hope to do is what we wanted to do. It's a great idea!' Finally, the last potential obstacle, my Head of School, was cautiously supportive – especially when I told him that there would be no cost to the School. So, that's how JLS started, in 1974.

While a wide range of theoretical influences (marxism, feminism, sociology of law, critical legal studies, anarchism) and social movements influenced the early period of socio-legal studies and of the JLS; the catalyst was the weight of personal experience that a young generation of scholars had gained in the 1960s and their limited capacity to express it in the Law School as it then stood. In my undergraduate class, at Aberystwyth, there were about 30 white men, 2 women, one black man, and one mature student. That's it. The rest of us were all public school or grammar school boys. It was *totally* doctrinal law delivered by white, young males all of whom had studied at Oxford. I was bored, didn't pay much attention, apart from one lecturer, Harry Calvert, who was *not* from Oxford and he was, I thought, inspirational. When I finished my degree, I had the opportunity to join a 'political' law firm in Cardiff, led by an MP, Leo Abse who represented Pontypool. However, I was persuaded to do an LLM with a scholarship and, from there I went over to Yale in the USA. I decided to become an academic out of chance rather than design; I hadn't enjoyed my short time in practice, but I loved teaching and so it was a simple choice to make!

I'm from the Valleys of South Wales and before I went to Yale, I had rarely travelled outside Wales. In Yale, I met William Twining who proposed I go to Dar es Salaam, Tanzania and join the law school at the University of East Africa. This appealed to my new found sense of adventure. At that time, the mid-1960s, East Africa was a hotbed of socialism: African Socialism fronted by President Julius Nyerere. People on the Left from many countries were going there to support and experience the time with him. Some of the staff and visitors included Sol Picciotto, Aubrey Diamond, Ian Brownlie, Ian McNeil, Lawrence Friedman, William Twining, Jack Hiller, Aki Sawyer, Gil Boeringher, Quinton Johnson, Abdul Paliwala, Yash Ghai, Anthony Bradley, Patrick McAuslan and many more. The dean was a wild, inspiring Australian/Canadian, A.B. Weston. It really was a honeypot for people on the Left to go and make a contribution to an exciting impoverished nation led by a very principled leader.

I spent 2½ years there, and loved it. I learnt so much about law in action, about political engagement, and about the idea of law as a possible means for social change. It was much later that I read E.P. Thompson's *Whigs and Hunters* – and it made perfect sense. The law can be a negative factor in terms of social change but sometimes you can make it work for you, for the common person, and I felt that was the case in Tanzania and subsequently in

Zambia when I was teaching there. I brought back with me that feeling that law is not doctrinal, law is not simply what's in the law reports, what judges or Westminster decide. That really took me into a new way of thinking about law and ultimately it fed into the JLS.

After Tanzania, I did a stint at Michigan, Ann Arbor, as a research fellow. I returned home to Cardiff and joined the University with very different ideas about what law schools should be doing. It made me appear different to other people who had a much more traditional, narrow engagement with the law. I certainly felt different from my colleagues at the time. I taught company law for several years and I knew that what I was teaching bore little relevance or resemblance to what was going on in the real world. I'd had a series of different, unsettling exposures and I was heavily influenced by those experiences.

So, from the start, the JLS carried a restlessness about law – what is law? What is its relation to social and political affairs? But the journal was never politically 'hyper' in a soapbox sense. Top of its agenda has always been first class scholarship; quality alternative scholarship, expanding our understanding of law in society. At least, that is what we have tried to achieve. Ultimately, it is for the reader to judge its success or failure.

The introduction to the first issue was about two paragraphs long – I think I wrote it on the back of an envelope. There is a funny story about what happened when we were deciding what the front cover should look like. I'm notorious for having very poor dress sense, and Gareth Lewis, who designed the journal cover and layout with me, was colour-blind but I didn't know. He thought he'd chosen a rather nice light brown colour for the cover. I knew it was pink but Gareth saw brown. It was only some years later that his wife said 'you do realise that Gareth is colour blind!' Some people called the JLS the 'pinko journal'. It made me laugh, ultimately black and pink, the colours of anarcho-feminism. We got it right after all, didn't we!

THE JOURNAL: WORK, PURPOSE, AND STRUCTURE

To this day, the JLS has a relatively simple structure; comprising a production team, an academic editorial board and a supportive advisory board. The production team is Carol Black and Sian Edwards. They ensure the smooth running of the journal. They engage with the printer and the publisher who takes care of finances and distribution. The editorial board, on the other hand, are the academic quality control people. As the editor, I am the conduit between these two teams and the first port of call for everything that comes in. I take an initial look at all incoming articles. Sometimes I can tell straight away that an article is not for us and so I reject it at the point of entry but otherwise, if it looks interesting and relevant, I decide who on the editorial board is best suited to read it. Initially, there are two in house readers. We accept around 10% of submissions.

We run the journal as a collective. We don't vote on issues – our decisions are based on consensus. This sense of collegiality and connectivity among the people in the board is important; it's a big part of the reason for keeping the journal anchored in Cardiff. The members of the board know each other, they meet in the corridors, they know each other's work and support each other. That said, the JLS is not an in-house journal for Cardiff Law School – far from it: anyone from Cardiff knows we tend to be harder on our colleagues than on anyone else. To bolster our independence and editorial strength we work closely with our advisory board. Its membership is extremely strong and this formidable team of experts is part of a wider group that reads and reviews the work submitted to us. They provide recommendations and pass judgement on each volume.

The editorial board is a community of people with similar, *not* identical, politics. They are somewhere on the Left and that's always been very important to me. This makes it easier for us to make collective decisions because we're not continuously fighting about politics. We may disagree about issues, and sometimes we do, but basically we're moving in the same direction. I think there's a lot to be said for continuity. The board structure enables like-minded people to work together. There's a huge amount of experience on the board, both men and women, and there are newer colleagues too. As for what today's editorial board is looking to publish, well, we are open to articles from around the world, addressing all areas of law, and taking a wide range of theoretical approaches. However, we are looking for work that is theoretically engaged. We are happy to have empirical material within it, but data alone won't do. An article has to be theoretically based. Personally, I am interested in two more things. First, I like social policy and, second, I am looking for something which is fresh, clear, challenging and engaging. Finally, I think it is important not to become a prisoner of the vagaries of fashion. Whatever is fashionable at the moment, we tend to get lots of. Perhaps that's inevitable, but I think part of my role as editor is to resist being tossed around on the waves of fashion and to identify that *this* is what we want.

In terms of quality the journal has really come a long way. In the early days, there were occasions when the deadline was a month away, and we still didn't have enough material. This explains why I must still be the most published author in the JLS – it's because we might have been coming up to a deadline and I thought I'd better write something! Since then, the quality of what we publish has gone up and up. I think today the journal is better than ever. Fortunately, it's not just me who thinks that! I get mail from leading names in socio-legal studies who tell me so. If I'd submitted material that was published many years ago, I think the board would chuck it out today. The quality of the journal has gone up, and also its reach. Our authors and readership spread way beyond the UK – our readership and hopefully relevance is truly international. I think here and now is a very good time for the journal. I think, it will get even better. In terms of journal development,

success breeds success, the more success we have, I think more and better papers we will come our way. Commercially we have about 9,000 subscribers, the vast majority being electronic. If we're staying on the library lists when library budgets are getting tighter, we must be doing something right. The scholarship we publish is being read around the world and surely that's what it's all about.

So for people who want to publish in the JLS, it is a vehicle where they are offered an international readership. Today, with the multiplicity of journals it is so much easier to be published. The challenge to the author is to be widely read. It's a fact that sometimes work does not reach us because people self-censor, they think, 'I won't send this in to the JLS, it's too hard to get into'. People have told me this and I always say to them, 'but what are you frightened of? Start with your top choice. What's the worst that we can do, hang you?' Even if you are unsuccessful you will get a polite letter saying no thank you with constructive comments which hopefully will help you review and rewrite your paper. All submissions are reviewed anonymously; the only person who knows the author's name is the editor – neither the board nor our expert advisers are aware of the author's identity. They don't know whether the author is a young or an established scholar, whether they come from a Russell Group university or not. They make their judgments based only on what they see in the text. Right now, we are increasingly receiving articles from abroad, articles authored by women, but from the UK we mainly receive articles from the top universities. It would be good to publish scholars from the newer law schools. I talk to people about getting published. I do workshops on getting published, trying to give inexperienced staff insights on how journals are run and not to be frightened. Have a go.

HERE AND NOW – AND PROSPECTS

The JLS has integral links with the broader community of socio-legal scholarship. We have a very strong historical relationship with the Socio-Legal Studies Association (SLSA). We obviously are obliged to respond and reflect upon what the community offers us. But at the same time, we seek to make our own contribution to it. The JLS co-funds PhD studentships, research fellowships, we promote bursaries, we funded a socio-legal chair in Cardiff, currently held by Professor Dan Wincott, and we are close to launching a Centre for Law and Society at Cardiff University. So, apart from publishing what is 'out there', the journal in some ways takes a proactive role to try and say 'well, this is important'. There are ways in which you can help shape the future of socio-legal studies but you cannot drive into the middle of a constituency and say okay guys, this is what you have to do.

Today, despite the growth and success of socio-legal scholarship, I think that doctrinal law continues to be dominant. Socio-legal studies was always

oppositional, you could almost define it as something that is not doctrinal – as something that *isn't*, the 'other', rather than something that *is*. So, one of the ongoing challenges of socio-legal studies is what is it? Are we talking about society or sociology of law? Is it interdisciplinary/multidisciplinary? Is it a new discipline? Does it represent a paradigmatic shift? Is it something which is breaking a mould? There's a lot written about this, and I think different people understand different things – it's a floppy term. It is not clearly defined so as it's become more popular, more commonplace, and more accepted, it's also become less visible. I think there's a real issue about its function and boundaries. I don't have the answer but neither do I lose sleep over it.

For me, socio-legal scholars have an important role to play in addressing social issues and contemporary challenges. There are 'law jobs' to be done. I think there are too many academics who are just interested in promotion or hanging on to a job. They don't actually see what their function could be, or, in fact, what their function is. Some are writing scholarship which, I think, is meaningless, its only purpose is to be published in a journal, for REF purposes, job promotion or retention, but doesn't really achieve anything outside academia. I think that's a challenge for the contemporary scholar, especially in these times of crisis and social upheaval, to say: should I be writing about this or, should I contextualise what I'm writing so that it connects with broader social issues and interests? It comes back to the question of engagement and commitment.

Similarly with the JLS. I would like to think that there is a direction of the journal, but I'm continually restless about it. I would like to see ever more critical bite in its content. I would like the JLS to continue to be a vehicle for scholarship which has something special to say about the issues of the moment or the emerging issues. Right now for me that means a concern about the challenges to democracy and democratic processes, including the importance of participation, constitutional development, federalism, and so on. Other crucial areas are human rights, changes to the structure and composition of the judiciary, access to justice and the diminution of Legal Aid, issues around the secret and also the corporate state, and the contemporary role of legal education and the University within a changing society. I want the JLS to be publishing work about the growing gap between rich and poor within society and the myriad different ways in which it affects people, not only financially. The unseemly consequences are wide and varied. Unfortunately, we are not short of issues, I wish we were . . . I would like the JLS to publish socio-legal work that addresses contemporary pressing matters, and not necessarily cutting-edge reflections on little known jurisprudences! Although this interview focuses on my historic and current involvement with the JLS I also gratefully acknowledge the contribution of present and previous members of the Editorial Board. I describe us as a collective of like-minded scholars but additionally I believe that the JLS is a product of the wider national and international community of scholars for without them and you the reader the JLS would not exist.