

Survey of Property Law Academics relating to Research Approaches 2013

Summary of Findings

This is a summary report of a survey of property law academics conducted in March and April 2013. In outline, the survey was designed to provide information about the ways that property law research is conducted today, and how researchers would classify their own approach to research.

We invited responses from anyone who considered that their research fell within property law as they understand it. Although the survey was administered from the UK, it was distributed internationally by email with a link to a Survey Monkey questionnaire. We distributed this link widely, making use of a distribution list that we composed (based on contacts and some internet research), as well as asking a number of academic networks to send the link via their own mail-lists. We are very grateful to those networks and to all who took the time and effort to respond. In total there were 195 respondents; the majority from the USA (70) and England (71).

For the purposes of the survey we asked respondents to place their research approach into a particular category, and also into substantive areas. Selecting categories is problematic and we debated which categories to provide as options, and whether to offer any definitions of them. At the outset our survey acknowledged that categorisation is very difficult and that respondents' approaches to property scholarship may not match the categories we used, but we asked them to select what they considered the closest match and to use the 'other' text box to offer a different category or to comment in any way on categorisation.

This summary report gives initial overall findings, based on the raw data, and is necessarily selective. We do offer some comparative analysis based on the jurisdictions in which respondents are employed but mainly for the USA and England as the response rates from jurisdictions outside of the USA and England were not statistically significant.

We intend to publish a fuller analysis of this survey in the future with a discussion of themes and trends.

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Approaches to Property Law Research

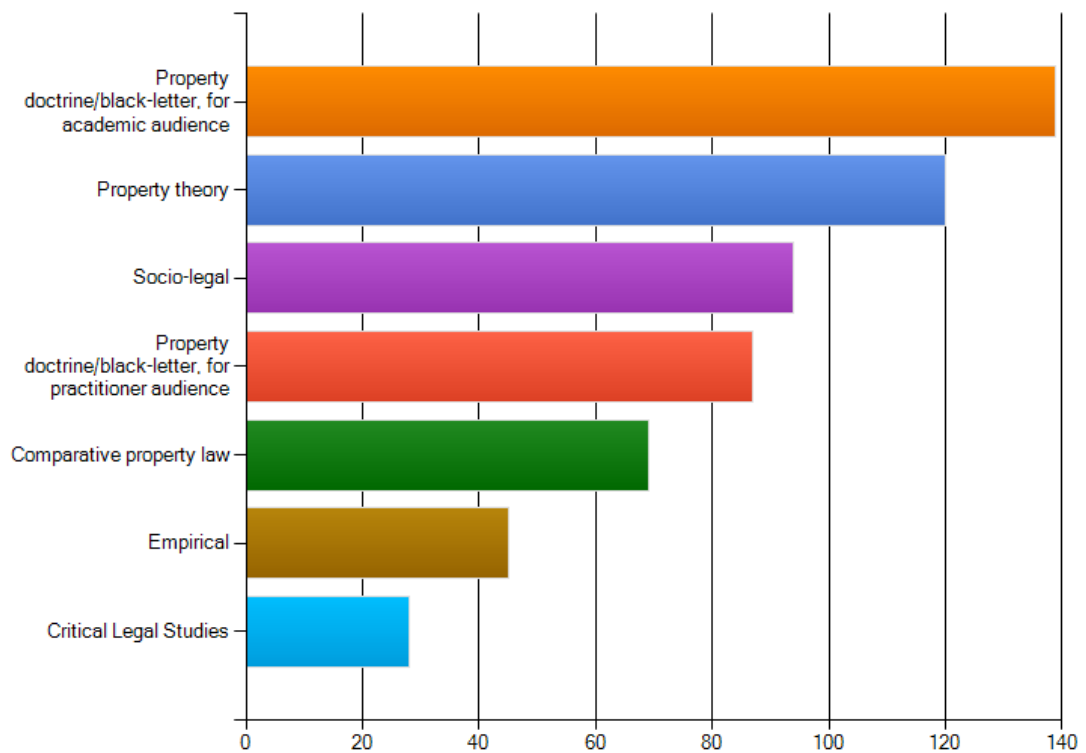
In asking about approaches to property law scholarship, we offered the following categories: property theory; doctrine/black-letter for academic audience; doctrine/black-letter for practitioner audience; socio-legal; empirical; comparative property law; critical legal studies; and other. We know that some potential respondents felt excluded by this but we hoped that 'other' would enable them to have a voice.

We asked questions designed to discover:

- 1) whether researchers use multiple approaches (choice of more than one category allowed)
- 2) which is the dominant approach followed (response restricted to only one category)

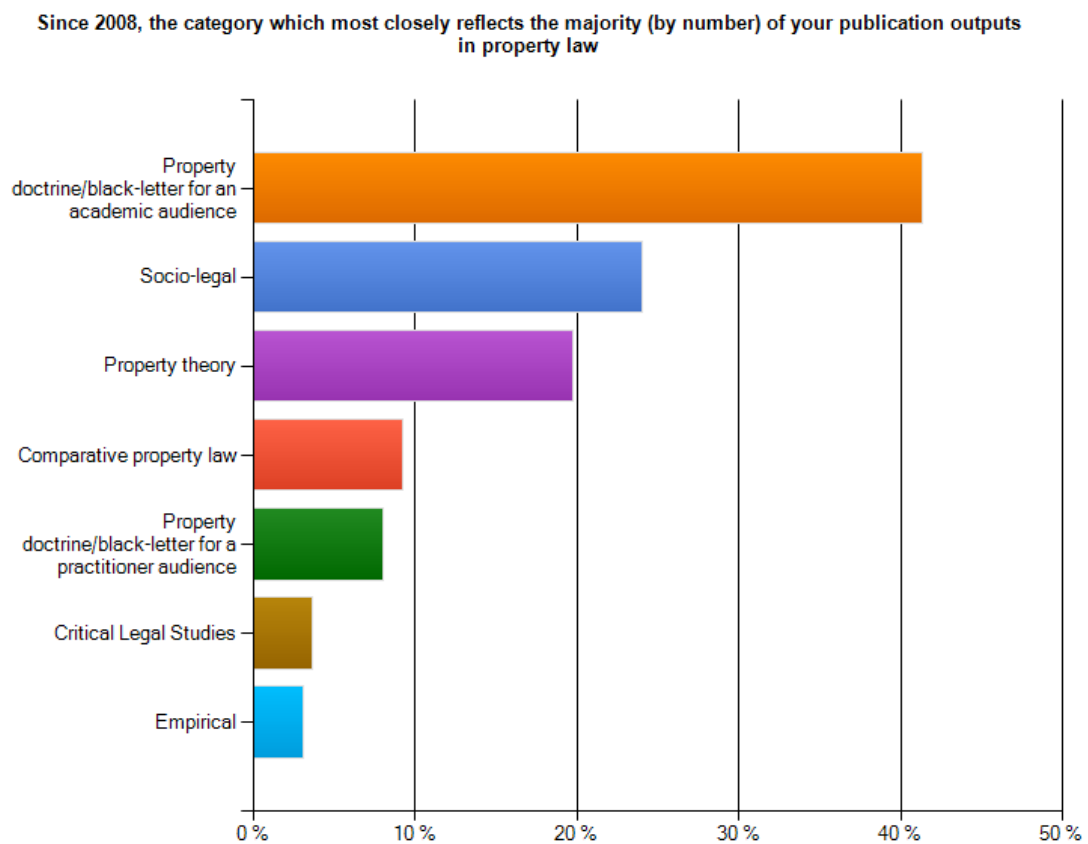
The chart below shows which research approaches have been used during the last 15 years. Respondents were able to tick multiple answers so that, for example, someone who has conducted research that is doctrinal, and also research that is empirical, can tick both responses. Only 4 respondents skipped this question. The results show that the two most common approaches are doctrinal and theoretical.

Property law research over the past 15 years which falls in any of the following categories. (Can tick multiple categories)



A variety of other approaches were mentioned, the most frequent being legal history, but also mentioned were: law and geography, law and development, and critical race studies. There was no mention of law and economics, although we note that this is a strong tradition, particularly within the USA. Some of the other responses provided are, we think, more appropriately regarded as areas of law rather than approaches, eg, intellectual property, and European property law.

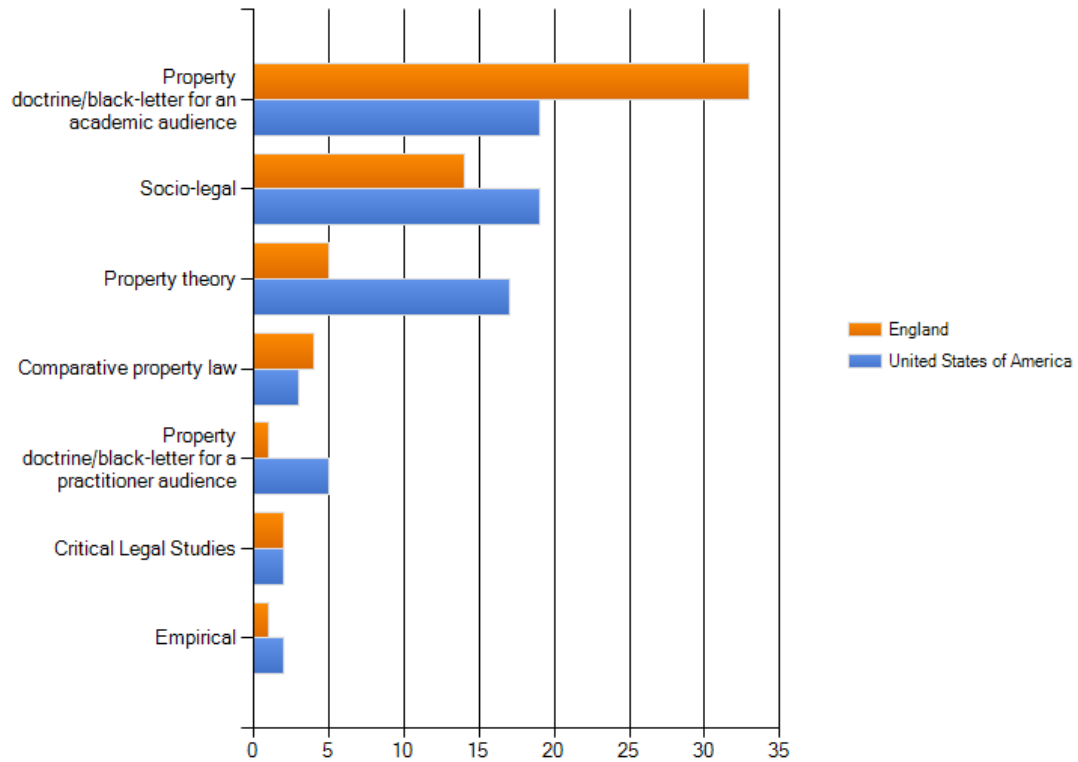
When asked to select only **one** approach that reflects the majority of their published work in the period since 2008 (that is, during a shorter period), the doctrinal approach appears even more dominant, and theory falls into third place behind socio-legal.



It should be noted that 33 respondents skipped this question, and some ticked more than one box, notwithstanding the instructions.

When this is broken down between England and the USA more differences emerge. English scholars are most likely to see themselves as primarily property doctrinal scholars, or, less frequently, as socio-legal scholars. American scholars are fairly evenly split between theory, doctrine and social-legal.

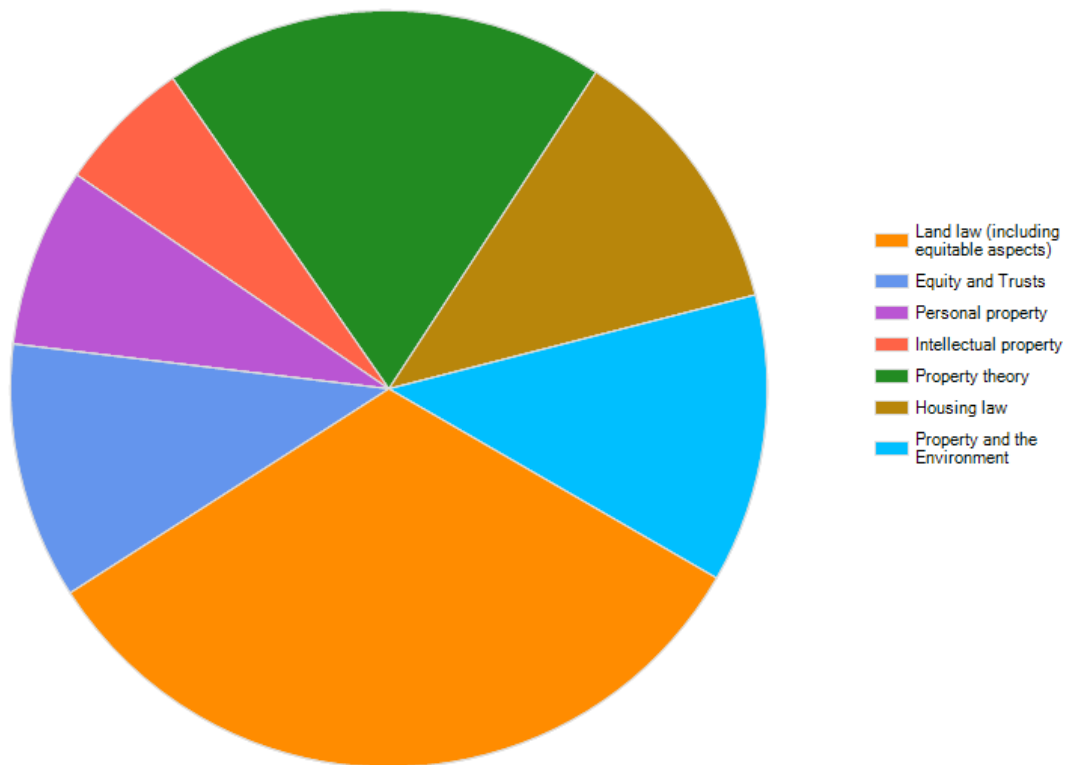
Since 2008, the category which most closely reflects the majority (by number) of your publication outputs in property law



Area of property law

We also asked respondents which area of property law they publish in. Again, for this issue we listed 7 areas, recognising again that respondents may prefer to describe it differently and thus to describe the area in the open text 'other' box. The first question on this topic asked respondents to tick *all* areas that they had published in since 2008, allowing multiple areas to be returned. Although this shows a good spread of subject areas being covered, by far the most common area to publish in was land law (including equitable aspects); 2/3 of those who answered this question had published in this area.

Since 2008: the areas of property law published in (allowing multiple areas to be ticked)



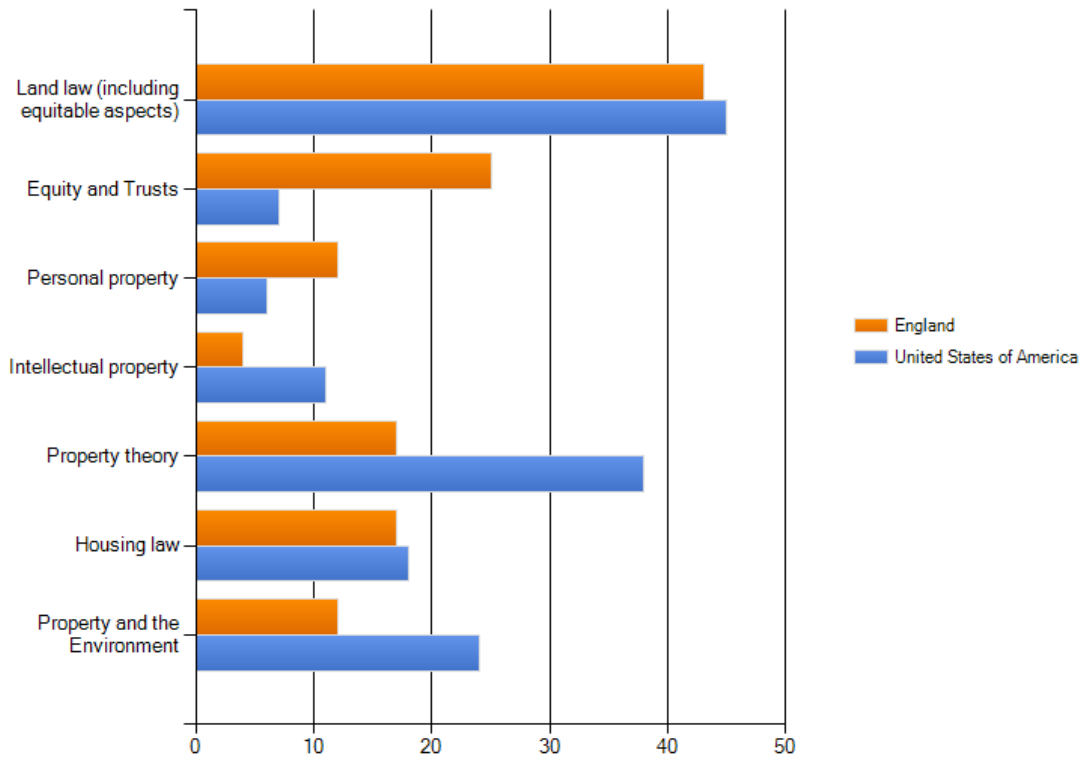
A large number of areas were listed in the open text box, some essentially 'subsets' within those which were listed in the question, some very narrow and specialist, but some did not clearly fit within any of the suggested areas. 16 respondents skipped this question.

It is also apparent that there are differences in the way that subject areas are thought about between different jurisdictions. One comment was made, for example, that leases are regarded as contracts (and thus, according to the respondent, personal property) in Europe. Another more detailed comment was made about the way things are packaged together in the USA:

"Actually in the U.S. a more appropriate subject title would be Real Estate Transactions. This is a mix of real, personal, and finance law focused on private market development activities. Related to it would be land use and zoning law as the public regulation of real estate transactions. From my experience academics in the UK do not really think of or cover this aspect of property in the way we do in the States. This is interdisciplinary and transactional thinking about a mix of property topics all in one subject area. For example we don't really teach what you call land law as that is just a slice of other course topics."

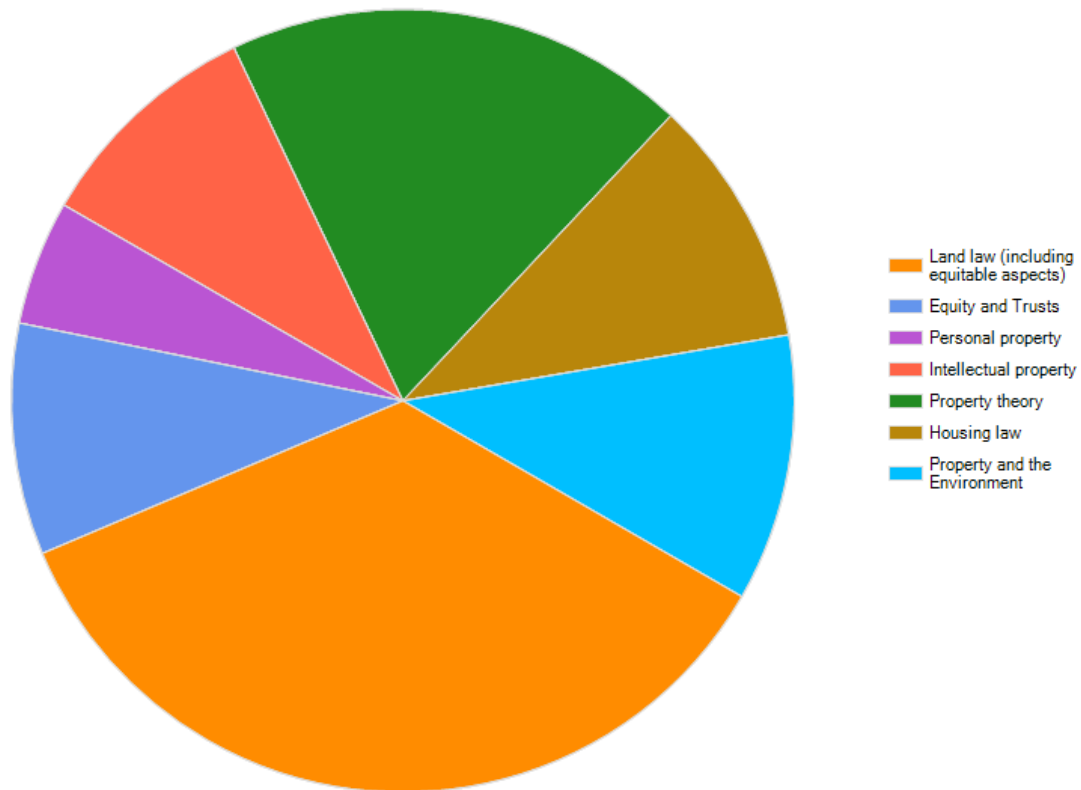
When broken down between England and the USA it is interesting that although roughly equal percentages work in land law and in housing law, there is a divergence in other areas. Significantly more English scholars research and publish on equity and trusts, and personal property, and significantly more USA scholars work in the area of property theory, the environment, and intellectual property.

Since 2008: areas of property law published in (allowing multiple areas to be ticked)



The second question on the issue of publication asked respondents to select the *main* area of work (selecting only one area). This did not alter the spread of areas of work a great deal. Almost one third of respondents skipped this question.

Since 2008, which is the main area your property law publications are in?



Pressure to change

We asked if respondents had experienced any influence or pressure from their institutions to change their research approach; the majority had not but a sizeable minority said that they had (14%). This became more interesting when we broke the results down between jurisdictions. Of the 25 respondents who said that they had experienced pressure, 19 were from the UK, 3 from the USA, 2 from Australia and one from an undisclosed jurisdiction. Looking at England and Northern Ireland, 1 in 4 of respondents reported having experienced pressure.

There were a large number of comments made in the open text box accompanying this question. Although not all in the same vein a good number of respondents suggested that doctrinal land law was not favoured in their institutions (comments included that it was not seen as 'the way forward', 'not perceived in a favourable light', 'not of international quality', 'inferior, not even genuinely academic'; while in contrast one respondent felt that their research 'ought to be more doctrinal and black letter'). Several references were made to the REF (the Research Excellence Framework that is used for assessing the quality of research in UK higher education institutions), including the need for

publications to have 'impact' and to be 'REF-friendly'. Several comments suggested that more of a socio-legal focus was preferred.

We also asked if respondents had changed their research approach as a result of what they understand to be the current priorities of funding bodies. Twelve per cent said that they had; more than half of these being from the UK. Only 2 respondents from the USA said that they had.

Research Funding

We asked if respondents had applied for research funding for a property law based project since 2008. Almost half (46%) had. We did ask a number of follow up questions on this, and analysis of these will be given in our fuller report on the survey findings.