

It's about time: investigating the temporal in socio-legal studies through unstructured interviews

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Abstract

This article looks at a methodology that is often neglected in discussions about gathering qualitative data in socio-legal circles in favour of the ubiquitous semi-structured interview.

We argue that the unstructured interview is underpinned by distinctive ideas about the autonomy of the subject in research and is particularly well suited to the ‘bottom-up’ approach favoured in much law and society scholarship. The unstructured interview, with its focus on interviewee-led narratives and structure, is ideal for elusive or under-researched

concepts. In this article, we outline its benefits by using the example of researching the highly subjective notion of time. In doing so, we make the case that methodologies can never be discussed in isolation but rather only in response to the issues thrown up by a particular set of research questions.

1 INTRODUCTION

Since we know time in our everyday life in a completely unproblematic way, we can get to the depth of its secrets only by asking questions that lead to further questions, and questions beyond these.¹

This article began its life as a discussion between three scholars who are all undertaking empirical work on how video hearings transform the dynamics of adjudication.² Our shared interest in the ways in which online proceedings speed up journeys to court and change the nature of waiting raise a series of questions about the impact of acceleration, velocity, and the compression of time on how people experience legal process. This article does not provide answers to those particular questions, but it does address two foundational issues about epistemology and methodology that we hope will be of interest to other socio-legal scholars researching time or any equally elusive social phenomenon. The first of these issues relates to how people experience and understand time. The second is how we study time once we have identified the ways in which it manifests itself. Together, these questions draw attention to an important insight about the preparatory work that socio-legal scholars undertake when

¹ B. E. Adam, *Time* (2004) 52.

² L. Mulcahy, 'The Unbearable Lightness of Being? Shifts towards the Virtual Trial' (2008) 35 *J. of Law and Society* 464; L. Mulcahy and E. Rowden, *The Democratic Courthouse: A Modern History of Design, Due Process and Dignity* (2019); M. Rossner, 'Remote Rituals in Virtual Courts' (2021) 48 *J. of Law and Society* 334.

designing any empirical study. More specifically, they make clear that methods are not chosen at random but must be thoughtfully selected for the topic under investigation. In part, the goal of this article is to examine the process by which empiricists move from identification of research focus and questions to consideration of their implications for choice of methodology and method. In charting this trajectory, we hope to make clear that questions of method cannot be separated from theory or epistemology.

The investigation of time provides an interesting case study in a volume dedicated to socio-legal methodologies because of the way in which it has been largely neglected by socio-legal empiricists. Recent years have, however, seen a burgeoning of interest in the topic and the emergence of an exciting new research agenda that focuses on the mutually constitutive nature of law and time.³ Excellent work is now being conducted on such topics as moments of accession in the acquisition of rights,⁴ legal quickening and the politics of speed in the courtroom,⁵ the temporality of care and framing of women's time in family proceedings,⁶ the conceptualization of time in constitutions and international law,⁷ the transcendent nature of legal time,⁸ the role of critiques of time in the process of

³ S. M. Beynon-Jones and E. Grabham (eds), *Law and Time* (2018); E. Grabham, *Brewing Legal Times: Things, Form, and the Enactment of Law* (2016); M. Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (2015); T. D. Peters et al., 'Disruption, Temporality, Law: The Future of Law and Society Scholarship?' (2017) 26 *Griffith Law Rev.* 459.

⁴ E. Grabham, 'Governing Permanence: Trans Subjects, Time, and the Gender Recognition Act' (2010) 19 *Social & Legal Studies* 107.

⁵ J. Hambly and N. Gill, 'Law and Speed: Asylum Appeals and the Techniques and Consequences of Legal Quickenings' (2020) 47 *J. of Law and Society* 3.

⁶ E. Gordon-Bouvier, 'Crossing the Boundaries of the Home: A Chronotopical Analysis of the Legal Status of Women's Domestic Work' (2019) 15 *International J. of Law in Context* 479; C. S. Hargita, 'Care-Based Temporalities and Parental Leave in Australia' (2017) 26 *Griffith Law Rev.* 511.

⁷ C. Djeffal, 'International Law and Time: A Reflection of the Temporal Attitudes of International Lawyers through Three Paradigms' (2014) 45 *Netherlands Yearbook of International Law* 93; S. Ranchordás and Y. Roznai (eds), *Time, Law, and Change: An Interdisciplinary Study* (2020); K. McNeilly, 'Are Rights Out of Time? International Human Rights Law, Temporality, and Radical Social Change' (2019) 28 *Social & Legal Studies* 817.

⁸ L. Cabatingan, 'Time and Transcendence: Narrating Higher Authority at the Caribbean Court of Justice' (2016) 50 *Law & Society Rev.* 674.

decolonization,⁹ and the relationship between legal time, space, and ritual.¹⁰ We now have at our disposal a rich catalogue of the ways in which notions of time are wrapped up with such concepts as order, process, cyclicity, transition, transience, past, present, future, speed, repetition, journeys, memory, duration, and encoding.¹¹ This body of work illustrates a multitude of ways in which time is inextricably linked to how legal systems discipline legal subjects.

This article seeks to make a different but complementary contribution to socio-legal accounts by focusing on the neglected topic of how time can be studied by an empiricist.¹² Drawing on the rich understandings of social and legal time mapped out by existing work, it asks how socio-legal scholars can discover the ways in which time is understood and experienced by those on whom temporal legal regimes are imposed. More specifically, we ask three questions. How might legal subjects experience time? What methodologies can we use to capture these experiences? What dilemmas are presented to empiricists when conducting research and writing about time? In answering these questions, the authors draw on their past experiences of conducting qualitative studies of disputes, virtual courts, restorative justice, and migration. More particularly, we consider the possibilities offered by unstructured interviews in producing rich data about how time is experienced. We argue that while much has been written on the structured or semi-structured interview, far less attention has been paid to the value of the unstructured interview. This in itself raises important questions about the positivistic leanings of socio-legal research in the United Kingdom. Many

⁹ R. Mawani, *Across Oceans of Law: The Komagata Maru and Jurisdiction in the Time of Empire* (2018); P. Kotiswaran, 'Valverde's Chronotopes of Law: Reflections on an Agenda for Socio-Legal Studies' (2015) 23 *Feminist Legal Studies* 353.

¹⁰ Rossner, op. cit., n. 2.

¹¹ Adam, op. cit., n. 1.

¹² Two of the authors have come to recognize the validity of critiques of their work that have highlighted a lack of attention to time. Valverde has commented on this in her critique of Mulcahy's work on legal architecture and Crawford has done likewise with respect to Rossner's work on restorative justice. Valverde, op. cit., n. 3; A. Crawford, 'Temporality in Restorative Justice: On Time, Timing and Time-Consciousness' (2015) 19 *Theoretical Criminology* 470.

of the claims that we make on behalf of this methodology are relevant beyond the study of time and are equally applicable to any socio-legal phenomenological accounts of how law is understood and experienced. Like feelings, pain, and other highly subjective phenomena, time is not a tangible thing; it cannot be seen, heard, smelt, touched, tasted, or counted.¹³ This has important implications for choice of methodology and method.

2 TIME AND THE SOCIAL SCIENCES

The concept of time has long troubled a range of disciplines including theology, philosophy, physics, and history. It is often seen as a highly abstract but inescapable conceptual tool – an important puzzle that continues to puzzle us. Along with space, it is understood as the key to understanding the world around us by making perception possible and providing a frame in which we can order phenomena into a conceptual schema. Despite this, it has been argued that the social sciences have generally taken temporality for granted, treating it as a universal constant or backdrop against which other events play out, instead of as a force that organizes and governs current and future social and political lives.¹⁴ This is equally true of socio-legal scholarship, which until very recently neglected the critical role that temporality plays in the way in which lawyers think and legal systems are structured.¹⁵ For Valverde, the spatial turn in socio-legal studies has meant that legal geography has become popular at the expense of more in-depth accounts of the temporal.¹⁶ This lack of serious attention paid to the subject within socio-legal circles is surprising given the ways in which time-related assumptions are

¹³ This is, of course, with the exception of clock time, which is a very specific and external measure of the temporal, as is explained in the later sections of this article.

¹⁴ Adam, op. cit., n. 1; B. Adam and C. Groves (eds), *Future Matters: Action, Knowledge, Ethics* (2007); M. Bastian, 'Fatally Confused: Telling the Time in the Midst of Ecological Crises' (2012) 9 *Environmental Philosophy* 23.

¹⁵ However, see R. Mawani, 'The Times of Law' (2015) 40 *Law & Social Inquiry* 253; Adam, op. cit., n. 1; D. M. Engel, 'Law, Time and Community' (1987) 21 *Law & Society Rev.* 605; E. Stokes, 'Beyond Evidence: Anticipatory Regimes in Law' (2021) 43 *Law & Policy* 73.

¹⁶ Valverde, op. cit., n. 3.

embedded in, and often synonymous with, legal process. Statutes, documents, procedural rules, evidence, case files, and ritual are all used to construct a temporal architecture for law on a daily basis.¹⁷ The tyranny of the legal timetable can, for instance, be seen in the ways in which the Civil and Criminal Procedure Rules instruct us on how we should calculate time and what days do and do not count for the purposes of that calculation; how time can be ‘varied’ or ‘extended’, or times for trials ‘fixed’; how witnesses are compensated for ‘loss’ of time; the point at which time begins to ‘run’; and what constitutes ‘reasonable’ time.

Social scientists have challenged many of the assumptions made in theoretical accounts of time as being inaccurate or insufficiently nuanced when tested empirically, but several arguments about time have influenced our approach to data collection. The first of these is the well-rehearsed observation that ‘clock time’ has come to dominate the ways in which temporality is conceived in industrial nations. Measurements of clock time can serve a valuable purpose in producing temporal accounts of legal proceedings, such as how judges manage time pressures in getting through their ‘list’,¹⁸ but focusing on standardized or clock time has also been found to have its limitations. Since Isaac Newton first published his works on time in the seventeenth century, the clock has come to permeate science, trade, and social life, objectifying time by presenting it as quantifiable, invariant, asituational, divisible, and measurable. But it is also political. The Industrial Revolution both relied on and reinforced the importance of clock time as the standardization of the working day began to be seen as key to the development and sustainability of capitalism as a form of political ordering. For Marx, the commodification of time came to be equated with monetary units, exchange, and

¹⁷ I. van Oorschot, ‘Doing Times, Doing Truths: The Legal Case File as a Folded Object’ in *Law and Time*, eds S. Beynon-Jones and E. Grabham (2018) 229; A. Riles, ‘Collateral Expertise: Legal Knowledge in the Global Financial Markets’ (2010) 51 *Current Anthropology* 795.

¹⁸ K. Mack and S. R. Anleu, “‘Getting Through the List’: Judgecraft and Legitimacy in the Lower Courts’ (2007) 16 *Social & Legal Studies* 341.

the value of labour.¹⁹ Technology continues to reinforce this process, as speed has come to be valued above all else and changed the nature of society.²⁰ In a socio-legal context, for example, researchers have drawn attention to the ways in which the efficiency agenda has speeded up trials and undermined their gravity and legitimacy.²¹ The preoccupation with speed is also reflected in a renewed interest in ‘slow’ justice discussed in the context of therapeutic jurisprudence, restorative justice, procedural justice, environmental justice, or transformative mediation in which time is taken to give ‘voice’ to participants.

The commodification of time has also created temporal hierarchies, producing a ‘political economy of waiting in which “time is money” and waiting is seen as a “waste of time”’.²² These ways of thinking about time are apparent in the expectation that lawyers account for their time in small blocks of minutes and in the increasing expectation that the judiciary should manage the pace of litigation. The commodification of time has also created people with greater or lesser ‘time sovereignty’,²³ meaning that the lower an individual is within a power hierarchy, the longer they are likely to be made to wait.²⁴ This is easy to observe in the context of trials and hearings in which timetables are organized around judges and lay participants are kept waiting in holding cells, remand centres, and waiting rooms, which leaves people in a state of limbo while they wait for the law,²⁵ struggling to assert time frames that have meaning for them.²⁶

¹⁹ K. Marx, *Capital: Volume One* (1867, reprinted 2019). See also E. P. Thompson, ‘Time, Work-Discipline, and Industrial Capitalism’ (1967) *Past & Present* 56; C. J. Greenhouse, ‘Just in Time: Temporality and the Cultural Legitimation of Law’ (1989) 98 *Yale Law J.* 1631.

²⁰ P. Virilio, *The Great Accelerator* (2012); H. Rosa, *Social Acceleration: A Theory of Modernity* (2013).

²¹ Mack and Anleu, op. cit., n. 18; Hambly and Gill, op. cit., n. 5.

²² G. Hage, *White Nation: Fantasies of White Supremacy in a Multicultural Society* (2012) 3.

²³ M. Elchardus, ‘In Praise of Rigidity: On Temporal and Cultural Flexibility’ (1994) 33 *Social Science Information* 459, at 466.

²⁴ B. Schwartz, ‘Waiting, Exchange, and Power: The Distribution of Time in Social Systems’ (1974) 79 *Am. J. of Sociology* 841; P. Bishop, ‘Surveying “the Waiting Room”’ (2013) 18 *Architectural Theory Rev.* 135.

²⁵ L. Mulcahy, *Disputing Doctors: The Socio-Legal Dynamics of Complaints about Medical Care* (2003); Hambly and Gill, op. cit., n. 5; A. Tsalapatanis, ‘Encountering Bureaucracy, Imaginaries, and Address: Understanding Citizenship through Lived Lives’ (2017), at <<https://openresearch-repository.anu.edu.au/handle/1885/133823>>.

²⁶ S. Mulla, ‘Topological Time, Law and Subjectivity: A Description in Five Folds’ in *Law and Time*, eds S. Beynon-Jones and E. Grabham (2018) 247.

In contrast to the notion of clock time, it has been argued that time is much more accurately understood as a highly subjective construct with qualitative rather than quantitative dimensions. Virginia Woolf eschewed narrative fiction for precisely this reason, because it failed to account for the ‘extraordinary discrepancy between time on the clock and time in the mind’.²⁷ While the day may be organized into identical units when measured by clock time, temporality is often experienced as stagnant, fast, structured, or chaotic. In her work on hospital complaints, for instance, Mulcahy has drawn attention to the fact that even when a response to a complaint was speedy by reference to clock time, complainants regularly referred to time as ‘standing still’, being ‘caught like in amber’, or having their life put on hold.²⁸ Lee has suggested that such temporal ‘anomalies’ in which everyday understandings of quantifiable time are rendered problematic are often produced in situations involving intense emotional experiences such as divorce or personal injury.²⁹ Rossner’s observations of restorative justice conferences and interviews with participants revealed such moments, where a slow build-up of rhythm and entrainment often resulted in a sharply focused ‘emotional turning point’ where participants experienced intense feelings of solidarity and shared emotion.³⁰

Insights from the existing literature also illustrate ways in which the same event may be experienced differently in temporal terms. Rossner’s research into video hearings in the civil and family courts revealed alternative interpretations of the ‘virtual waiting room’.³¹ Lay users welcomed a 60-second countdown timer that appeared on participants’ screens just before the hearing as an opportunity to make themselves ‘camera ready’. By contrast, judges

²⁷ V. Woolf, *Orlando: A Biography* (1928, reprinted 1995) 47. See also V. Woolf, *Moments of Being* (1985, 2nd edn).

²⁸ Mulcahy, op. cit., n. 25.

²⁹ R. M. Lee, *Unobtrusive Methods in Social Research* (2000); M. Andrews et al. (eds), *Doing Narrative Research* (2013, 2nd edn).

³⁰ M. Rossner, *Just Emotions: Rituals of Restorative Justice* (2013).

³¹ M. Rossner and M. McCurdy, *Video Hearings Process Evaluation (Phase 2): Final Report* (2020).

used to having a hearing start the moment that they walk into a courtroom found the 60-second wait too long. Individuals' experiences of time may also involve multiple subjectivities over a period of months and years as stories about past events are regularly re-worked in ways that may not be apparent from a single interview. Socio-legal accounts of disputes have, for instance, drawn attention to the ways in which disputing narratives change as disputants recount them to a range of audiences, reconsider them in light of new information revealed to them, and move between emotional responses.³² This body of work highlights the limitations of working with a register framed by reference to 'universal' concepts of clock time.

Existing studies also suggest that researchers should be sensitive to the cultural specificity of time. Early advocates of the importance of the issue in the law and society movement drew attention to the fact that concepts of legal time vary significantly around the world,³³ and in other contexts linguists have since explored the many distinctive ways in which different languages capture and express time.³⁴ Of particular significance is the observation that the concept of linear time, which assumes progress from past to present, is largely a Western construct that in part draws on the ways in which the early Christian church was organized around prayer.³⁵ By contrast, Thompson has famously argued that the notion of time in agrarian cultures is more likely to be task orientated and place emphasis on cycles of days, seasons, ageing, growth, and decay.³⁶ Others have since drawn attention to the rich

³² W. L. F. Felstiner et al., 'The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...' (1980–1981) 15 *Law & Society Rev.* 631; L. Mather and B. Yngvesson, 'Language, Audience, and the Transformation of Disputes' (1981) 15 *Law & Society Rev.* 775; D. Black and M. P. Baumgartner, 'Toward a Theory of the Third Party' in *Empirical Theories about Courts*, eds K. O. Boyum and L. Mather (1983) 84. In a similar vein, qualitative longitudinal research (QLR) is a methodology that attempts to place temporality at the centre of empirical inquiry. See R. Thomson et al., 'Longitudinal Qualitative Research: A Developing Methodology' (2003) 6 *International J. of Social Research Methodology* 185.

³³ Engel, op. cit., n. 15; Greenhouse, op. cit., n. 19.

³⁴ M. Bittner, 'Future Discourse in a Tenseless Language' (2005) 22 *J. of Semantics* 339; J. Tonhauser, 'Temporal Reference in Paraguayan Guaraní, a Tenseless Language' (2011) 34 *Linguistics and Philosophy* 257.

³⁵ Greenhouse, op. cit., n. 19; Adam, op. cit., n. 1.

³⁶ Thompson, op. cit., n. 19.

diversity of perceptions of time within both industrial and agrarian societies and to the ways in which gender, race, and class impact on how time might be variously conceived and experienced.³⁷ It is not only that different conceptions of time exist, but that they have frequently been enforced on people in ways that systematically distort, misrepresent, or undervalue particular alternative modes of seeing. Debate about epistemic injustice is particularly rife in post-colonial contexts in which Indigenous concepts and categories have been replaced or marginalized by those imposed by colonizers.³⁸ Post-colonial theorists have reacted against the assumption that Western or European ways of thinking about time are universal by illustrating how alien they can be to the colonized.³⁹ In this vein, Kotiswaran has highlighted how the ahistorical and spiritual temporalities of Aboriginal communities have been largely ignored by scholars interested in time and place.⁴⁰ Work in this mould has considerable implications for the methodology adopted in a study. It calls for methodological openness in allowing research subjects the opportunity to present their own understandings of time and to structure their accounts in ways that they consider legitimate. For example, in his work on the colonization of time, Nanni used oral history, poetry, and music alongside official records to unearth the ways in which Indigenous peoples responded to, resisted, and accommodated societal order imposed by British missionaries, entrepreneurs, teachers, and bureaucrats.⁴¹

³⁷ K. Davis, *Periodization and Sovereignty* (2012); P. Glennie and N. Thrift, 'Reworking E. P. Thompson's "Time, Work-Discipline and Industrial Capitalism"' (1996) 5 *Time & Society* 275; V. Ogle, 'Time, Temporality and the History of Capitalism' (2019) 243 *Past & Present* 312; M. S. Champion, 'The History of Temporalities: An Introduction' (2019) 243 *Past & Present* 247; A. Oakley, *The Sociology of Housework* (1974). See also M. Casassus et al., 'Time Perception and Autistic Spectrum Condition: A Systematic Review' (2019) 12 *Autism Research* 140.

³⁸ R. Bhargava, 'Overcoming the Epistemic Injustice of Colonialism' (2013) 4 *Global Policy* 413.

³⁹ R. Mawani, 'Specters of Indigeneity in British-Indian Migration, 1914' (2012) 46 *Law & Society Rev.* 369; Mawani, op. cit., n. 15; G. Nanni, *The Colonisation of Time: Ritual, Routine and Resistance in the British Empire* (2012); B. Boateng, 'The Hand of the Ancestors: Time, Cultural Production, and Intellectual Property Law' (2013) 47 *Law & Society Rev.* 943.

⁴⁰ Kotiswaran, op. cit., n. 9.

⁴¹ Nanni, op. cit., n. 39.

Critiques of the Western concept of time as linear have also prompted debate about polytemporality: the notion that time is variously and asynchronously produced by a multitude of things such as physical circumstances, historical events, social placement, and expectations, each of which has its own archaeology.⁴² Scholars have increasingly rejected any notion of time as a series of nows, instead seeing the living present as containing elements of both what has been and what is anticipated. In his critique of linear time and reflections on temporal complexity, Mulla draws our attention to the ways in which Serres has described time as contingent and heterogeneous or ‘folded’.⁴³ The idea of ‘folded time’ is apparent when judges apply the doctrine of precedent, which requires them to engage with the opinions of long-dead jurists, while also thinking about how to apply rules to the case before them and bearing in mind unknown litigants in the future. In his work on restorative justice, Crawford has also drawn attention to the fact that this form of conflict management requires people to look backwards and forwards at the same time.⁴⁴

3 CHOICE OF METHODOLOGY

These various accounts of time challenge the empiricist to remain open to a multitude of ways in which time is conceived, experienced, and explained to others. However, being conscious of temporality’s diverse manifestations does not make it any easier to design a project. It soon becomes clear that experiences of time may be much easier to theorize than to capture empirically. The problem of how to research time is, however, far from new.

Reflecting on the impact that the shift in emphasis from ontology to epistemology had on

⁴² Glennie and Thrift, *op. cit.*, n. 37.

⁴³ Mulla, *op. cit.*, n. 26.

⁴⁴ Crawford, *op. cit.*, n. 12.

theories of temporality after the Enlightenment, Adam makes clear how time became inextricably bound up with the philosophy of social sciences:

The focus changed from questions about what time is to one's knowledge about time: is time to be sought in external phenomena or human existence, in conceptualizations or a priori intuitions, in consciousness or reflexivity, experience or language, culture or Being. The range of choices from dualistic modes of explanation was equally bewildering: analytic or synthetic, nominalist or realist, logical or empirical, idealist or materialist, rational or experimental, ideographic or nomothetic.⁴⁵

There is undoubtedly important work being done on time by quantitative researchers, such as on the concept of the unequal distribution of time and its use in relation to gender, race, and social class.⁴⁶ However, while these approaches document the amount of time that people spend on different activities, they cannot capture subjective understandings of time.⁴⁷ One reason that statistical methods have dealt poorly with the intricacies of time is the privileging of measurable variables, such as static time, over processes that need to be documented and understood, such as ongoing time.⁴⁸ While a variety of sophisticated statistical techniques have been developed to measure changes in variables over time, an emphasis on causality prevents a deeper understanding of social process. In Abbott's words, '[o]ur normal methods parse social reality into fixed entities with variable qualities. They

⁴⁵ Adam, op. cit., n. 1, pp. 33–34.

⁴⁶ K. J. Drotning, 'Alone Time in the United States by Gender and Race-Ethnicity' (under review); A. B. Krueger et al., 'Time Use and Subjective Well-Being in France and the US' (2009) 93 *Social Indicators Research* 7; A. Sayer, *Why Things Matter to People: Social Science, Values and Ethical Life* (2011).

⁴⁷ However, see Strazdins and colleagues' work on 'rushing': L. Strazdins et al., 'Not All Hours Are Equal: Could Time Be a Social Determinant of Health?' (2016) 38 *Sociology of Health & Illness* 21.

⁴⁸ A. Abbott, *Time Matters: On Theory and Method* (2001). On this point, see also R. Coleman, 'Inventive Feminist Theory: Representation, Materiality and Intensive Time' (2014) 25 *Women: A Cultural Rev.* 27; R. Coleman, "'Things that Stay": Feminist Theory, Duration and the Future' (2008) 17 *Time & Society* 85.

attribute causality to the variables – hypostatized social characteristics – rather than to agents; variables do things, not social actors. Stories disappear.⁴⁹ Other more qualitative methods such as observation can be valuable in recording temporal states of mind such as boredom or impatience as reflected in physical behaviour when people fidget, look bored, or constantly check their watch.⁵⁰ Observation can also play a part in understanding how temporal cycles are marked by mundane tasks and rituals, and the relative importance assigned to them.⁵¹ Indeed, there is a long ethnographic tradition in criminology and socio-legal studies that captures the boredom, anxiety, and uncertainty routinely felt by those in the liminal spaces of court and prison waiting rooms.⁵² The personal reflections of the ethnographer offer another way to explore the political economy, cultural contingency, and non-linearity of time.⁵³ Auto-ethnographic accounts of this kind have been used to produce thick personal descriptions of attempts to navigate work–life balance⁵⁴ or of ‘queer time’ as non-linear.⁵⁵ However, once again, these methods are generally more suited to studying behaviour and activity than the feelings or experiences of others. In the remainder of this article, we draw on the tradition of symbolic interactionism and micro-sociology to explain the reasons why we have turned to the unstructured interview as a method that circumvents these problems.

4 THE MINIMALIST OR UNSTRUCTURED INTERVIEW

⁴⁹ Abbott, id., p. 428.

⁵⁰ Lee, op. cit., n. 29.

⁵¹ D. Silverman, *Interpreting Qualitative Data* (2014, 5th edn).

⁵² P. E. Rock, *The Social World of an English Crown Court: Witness and Professionals in the Crown Court Centre at Wood Green* (1993); J. Jacobson et al., *Inside Crown Court: Personal Experiences and Questions of Legitimacy* (2015); E. Goffman, *The Presentation of Self in Everyday Life* (1973) 56; P. Carlen, ‘The Staging of Magistrates’ Justice’ (1976) 16 *The Brit. J. of Criminology* 48; Hambly and Gill, op. cit., n. 5.

⁵³ Goffman, id. See also S. Wall, ‘Easier Said than Done: Writing an Autoethnography’ (2008) 7 *International J. of Qualitative Methods* 38.

⁵⁴ L. Anderson, ‘Time Is of the Essence: An Analytic Autoethnography of Family, Work, and Serious Leisure’ (2011) 34 *Symbolic Interaction* 133.

⁵⁵ M. Kennedy, ‘Some Things Are Worth Losing to Become./? Trans Masculinity | Queer Autoethnography | Where Theory and the Body Collide’ (2020) 50 *Irish University Rev.* 39; E. L. McCallum and M. Tuhkanen, *Queer Times, Queer Becomings* (2011).

Within the social sciences, there has been much discussion of the structured or semi-structured interview, but the unstructured interview has in Ewick and Silbey's view been consciously marginalized as a result of fidelity to notions of replicability and scientific method.⁵⁶ Much more attention has been paid to the narrative interview in recent years, and the resulting debates are in many ways also relevant to the unstructured interview format discussed here. Narrative research is, however, a broad church; while many experts impose no comprehensive formula on data collection or analysis, there are significant differences in the sources of narratives, the extent to which the agency of the storyteller is recognized, and the focus on psycho-social and unconscious narratives.⁵⁷ The more post-structuralist, post-modernist, and de-constructionist methods that we draw on here focus more on the multiple and varied ways of understanding concepts such as time and the role that the individual, the social, and the cultural play in the ways in which people tell stories. However, our work has been enriched by this emerging field of narrative interviewing and the ways in which it is urging the social sciences to develop new theories, methods, and modes of talking or questioning established dualisms between self and society.⁵⁸

It goes without saying that the completely unstructured interview is almost impossible. Even when interventions are deliberately kept to a minimum, the interviewer is expected to tell the interviewee enough about the themes of their project to elicit informed consent and to begin the interview with an opening question. As the interview progresses, interviewees are prompted and encouraged to speak by even the most cursory non-verbal cues such as affirmatory nods, smiles, and expressions of sympathy. In even the most

⁵⁶ P. Ewick and S. Silbey, 'Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative' (1995) 29 *Law & Society Rev.* 197.

⁵⁷ M. Andrews et al. (eds), *The Uses of Narrative: Explorations in Sociology, Psychology and Cultural Studies* (2017); Andrews et al. (eds), op. cit., n. 29.

⁵⁸ Andrews et al. (eds), op. cit., n. 29.

minimalist of interactions, the interviewer provides an audience that plays a part in the sort of performance rendered. As such, we are not seeking to claim that interviews can ever be totally unstructured. Rather, we argue that, while the structured interview is much understood and discussed, and the ubiquitous semi-structured interview is left to cover a range of methodological nuance rarely described in depth, the unstructured interview remains the poor relation.

Our interest in relatively unstructured approaches to the study of how time is understood derives from our personal experiences of undertaking empirical research on legal systems in which data about the temporal emerged unprompted during unstructured interviews. These experiences brought to the fore the ways in which varied concepts of time frequently serve as a device to structure stories and find their way into data uninvited. For example, in Tsalapatani's work investigating how individuals with dual citizenship navigate multiple statuses, time was an unanticipated theme that came out of the narratives produced by participants.⁵⁹ Following a grounded theory approach, and asking very open interview questions around key themes, she realized that questions of time and waiting surfaced alongside accounts of clock time but were all integral to accounts of how visa and citizenship applications were managed. It was only when faced with the undeniable presence of the temporal, and the diverse ways in which it emerged, that she began engaging with the literature on the topic.

This bridge between time and the unprompted accounts of phenomena that emerge from unstructured interviews is an important one because of the potential to generate narratives constructed on the interviewee's terms in which temporality is frequently critical. Narrative involves the interviewee in a selective appropriation of past events and characters

⁵⁹ Tsalapatani, *op. cit.*, n. 25.

that may be temporally ordered, the components of which relate to each other.⁶⁰ Viewed from this perspective, narrativity complements theoretical accounts of time by recognizing the importance of the cognitive process through which people organize experience into meaningful episodes. While narrativity is far from a mainstream method in the social sciences, it has nonetheless long been recognized that naturally occurring stories are one of the primary ways in which human experiences are made meaningful.⁶¹ Narratives of this kind are present in myths, fables, novels, epic tragedies, mime, cinema, and comics across eras and cultures. Underpinned by very different methodological foundations to positivistic approaches to the study of law and legal phenomena, a focus on the production of interviewee-led narratives is becoming increasingly popular within the social sciences. Recent examples of this approach can also be found in the flourishing field of narrative criminology.⁶² For example, Crewe and colleagues have drawn on in-depth interviews with people serving life sentences to foreground an understanding of time based on prisoners' stories about how they pass time and how they think about time when faced with the prospect of life in prison.⁶³

Jovchelovitch and Bauer explain the increasing popularity of narrative by specific reference to the growing awareness of storytelling as being shaped by, accounting for, and also shaping social phenomena such as time.⁶⁴ This way of eliciting data assumes that events

⁶⁰ Ewick and Silbey, op. cit., n. 56. For others, however, the notion of narrative can be a slippery one. Andrews and colleagues have argued that it is difficult to arrive at a robust shared definition of the concept, claiming that attempts to do so divert us from what is most interesting about the work itself. Andrews et al. (eds), op. cit., n. 29. In addition to the use of narrative as a method, scholars have also drawn attention to the ways in which the production of narrative can be an object of inquiry and also a product of inquiry as researchers produce stories through data analysis. Ewick and Silbey, op. cit., n. 56.

⁶¹ J. S. Bruner, *Actual Minds, Possible Worlds* (1986); J. Bruner, 'The Narrative Construction of Reality' (1991) 18 *Critical Inquiry* 1.

⁶² S. Maruna and M. Liem, 'Where Is This Story Going? A Critical Analysis of the Emerging Field of Narrative Criminology' (2021) 4 *Annual Rev. of Criminology* 125; L. Presser, 'Criminology and the Narrative Turn' (2016) 12 *Crime, Media, Culture* 137.

⁶³ B. Crewe et al., *Life Imprisonment from Young Adulthood: Adaptation, Identity and Time* (2019).

⁶⁴ S. Jovchelovitch and M. W. Bauer, 'Narrative Interviewing' in *Qualitative Researching with Text, Image and Sound: A Practical Handbook*, eds M. W. Bauer and G. Gaskell (2000) 57.

do not have a natural narrative structure of their own that can be captured in pre-determined questions but instead only come into being through reflection, ordering, and attempts to understand. At times, narrative structure is in place before the social science interview is conducted as a result of frequent rehearsals in discussion with other people.⁶⁵ In other instances, the interviewer witnesses it coming into being in the course of the interview as the interviewee imposes order on experience and understanding. This approach has important implications for how we do research. In a socio-legal context, Ewick and Silbey's pioneering work on how people talk about law has also demonstrated the value of listening rather than structuring.⁶⁶ Perhaps most importantly, it has underlined the value of stories in helping to frame research questions and develop inductive theories. This approach to interviews seems particularly well suited to remaining open to surprise or providing spaces for stories that sit in opposition to those that we might be socialized to expect. Narratives can function to illustrate the ways in which hegemony is sustained, but it has been argued that they can also subvert accepted ways of thinking about law and reveal perspectives on legal worlds that have been flattened or silenced in doctrinal scholarship.⁶⁷ In this sense, lack of structure opens up particularly fruitful possibilities for producing new or counter-intuitive ways of seeing or thinking.⁶⁸

We argue that prompting narratives or storytelling through relatively unstructured interviews is of value because of the focus that it places on the interviewee. It might be argued that for socio-legal scholars who seek empirically informed, 'bottom-up' accounts of experiences of the legal system, it may not only be more appropriate but also more ethical to privilege the stories that research subjects choose to tell. Key questions for any researcher to

⁶⁵ Mather and Yngvesson, op. cit., n. 32.

⁶⁶ P. Ewick and S. S. Silbey, *The Common Place of Law: Stories from Everyday Life* (1998). See also P. Ewick and S. Silbey, 'The Common Place of Law' in *Conducting Law and Society Research: Reflections on Methods and Practices*, eds S. Halliday and P. D. Schmidt (2009) 214.

⁶⁷ Id. (2009).

⁶⁸ Andrews et al. (eds), op. cit., n. 57.

pose in this context are whether they consider themselves or the interviewee to be the expert and how they should mitigate against the danger of imposing an objectified, Western, gendered, classed, or ethnically specific framework on research subjects. The notion of sovereignty in the interview remains critical to this approach. Ceding control to the interviewee to tell a story in the way in which they see fit and to raise issues that they consider important fundamentally changes the dynamics of interviews in which social scientists are typically expected to manage structure. In ways outlined in Bryson's and Whittingdale's contributions to this Special Supplement, minimizing the influence that the interviewer has on the way in which stories are produced requires them to position the interviewee as expert.

This approach has a number of implications for socio-legal research. It means that while the interviewer might open up the interview by posing a general question, they must cede authority to the interviewee to structure their account in the way in which they see fit. For example, Mulcahy's interviews with victims of medical accidents typically started with a very general question about the nature of the complaints that they had about a local hospital.⁶⁹ While it was initially intended as a 'warm-up' question, it soon became apparent that this general and open question was generating a lot of unanticipated data, with responses frequently taking up to an hour. Characterization of this behaviour as 'going off on a tangent' was soon abandoned as it was soon realized that rich and nuanced data was being offered up unprompted.

We acknowledge that the stories produced in interviews can never be entirely personal as they often bear a strong relationship to other stories that are 'out there'. Narratives are shaped by historical, social, cultural, political, and institutional contexts and

⁶⁹ Mulcahy, *op. cit.*, n. 25.

constrained by conventions about pace, content, and performance.⁷⁰ Myths, epics, and storytelling rely on traditions or patterns that are prevalent in a particular culture. Stories told to researchers may have been rehearsed and constructed around claims and representations that allow the interviewees to present themselves in ways that are considered legitimate or disruptive depending on the purpose or strategy of the story.⁷¹ Some scholars have contended that the complexity of stories – their incoherence, contradictions, and ambiguities – can serve to reveal fissures that allow interviewees to regain individual and social agency.

Researchers interested in the production of narratives have drawn attention to a host of techniques that minimize researcher intervention. These include the echoing back of phrases and vocabulary used by the interviewee or what Flick refers to as the production of a coda by the interviewee.⁷² It may also involve asking questions, focusing on what an experience meant for the interviewee or on the meaning that they attribute to certain events or periods. Significantly, these techniques give interviews a particular rhythm and pace that is ideally set by the interviewee. Narratives can be rich in indexical reference points that relate to a whole host of time-related phenomena such as clock time, calendars, age, or waiting periods. In these ways, the use of narrative techniques, and particularly unstructured narrative techniques, allows researchers greater possibilities for empirically analysing the temporal in a way that moves away from the enforced rationality of clock time. It allows participants to dictate their own temporal frame, giving them the freedom to not only decide on the beginning and end of their own narratives, or even the absence of each, but also to articulate the ways in which the future, present, and past co-exist to connect what may otherwise seem like disparate elements.

⁷⁰ Ewick and Silbey, *op. cit.*, n. 56.

⁷¹ Goffman, *op. cit.*, n. 52.

⁷² U. Flick, 'Episodic Interviewing' in Bauer and Gaskell (eds), *op. cit.*, n. 64, p. 75.

Within the unstructured interview, visual methods can also be used to prompt the articulation of narratives structured by the research subject.⁷³ This fits well with the need for the analytic openness required for understanding elusive concepts such as time that may be constrained solely through the use of spoken language. There is a diverse and increasing range of visual methods, but some of the most commonly used to supplement an unstructured interview include drawing or sketching or the drawing of timelines, which are often not linked to dominant temporal scale but instead illustrate a journey or process.⁷⁴ Other researchers have used photovoice techniques to give non-verbal creative control to participants to take photographs, which are later included and discussed in the interview.⁷⁵

Sensitivity to cultural differences may mean that the openness of the unstructured interview may not be suitable for all participants. An example of this is the yarning or dialogue circle, which facilitates a ‘conversational process that involves the telling and sharing of stories and information’.⁷⁶ It allows for storytelling that moves beyond the individual unstructured interview by enabling a group to openly engage around an issue. It is both a process and an exchange,⁷⁷ and has been used in research with Indigenous participants in Australia and elsewhere.⁷⁸ Researchers claim that through yarning Indigenous people are able to talk freely about their experiences in a format that facilitates information exchange that more formal research would be unlikely to produce.⁷⁹

⁷³ J. Bradbury, ‘Creative Twists in the Tale: Narrative and Visual Methodologies in Action’ (2017) 55 *Psychology in Society* 14, at 19.

⁷⁴ F. Guenette and A. Marshall, ‘Time Line Drawings: Enhancing Participant Voice in Narrative Interviews on Sensitive Topics’ (2009) 8 *International J. of Qualitative Methods* 85.

⁷⁵ See for example F. McNeill, *Pervasive Punishment: Making Sense of Mass Supervision* (2018).

⁷⁶ M. Walker et al., ‘“Yarning” as a Method for Community-Based Health Research with Indigenous Women: The Indigenous Women’s Wellness Research Program’ (2014) 35 *Health Care for Women International* 1216, at 1217.

⁷⁷ B. Fredericks et al., ‘Engaging the Practice of Indigenous Yarning in Action Research’ (2011) 17 *ALAR: Action Learning and Action Research J.* 12.

⁷⁸ D. Bessarab and B. Ng’andu, ‘Yarning about Yarning as a Legitimate Method in Indigenous Research’ (2010) 3 *International J. of Critical Indigenous Studies* 37.

⁷⁹ Id., p. 47.

However these unstructured interviews are conducted, the narrative approach to data collection should not be adopted lightly, especially by those trained in law. In her description of narrative research, Sclater explained how in her early work

I was clumsily feeling my way, trying to find the best means to get people to talk at length, always coming up against my own (lawyerish) tendency to ask too many questions, interrupt, guide the direction of talk, take sides and so on. It was a painful learning process for me; good lawyers don't necessarily make good research interviewers, I soon discovered.⁸⁰

Unstructured approaches to interviews can also generate vast amounts of shapeless data. While structured approaches to interviews impose order from the outset, the unstructured approach advocated here requires intense and time-consuming inductive analysis after the data has been collected. The idea of an unstructured interview can be particularly daunting for inexperienced early-career researchers keen to maintain some control over the unfamiliar process of data collection and analysis. It can also be an uncomfortable approach when interviewees are shy, distrustful, or unwilling to talk at length. As a highly subjective form of data, narratives provide valuable insights into how people experience and understand law and legal process. However, for some researchers, there is also a danger of being seduced by the narratives produced in ways that blind us to the silences and gaps in the stories that people choose to tell. In telling one story, it may well be that they are repressing or avoiding another.⁸¹

⁸⁰ M. Andrews et al., 'Narrative Research' in *Qualitative Research Practice*, eds C. Seale et al. (2003) 101.

⁸¹ *Id.*

Ideas produced through unstructured interviews make it difficult to compare across interviews, generalize, or meet the test of reproducibility so often privileged in some social scientific circles. However, at a more nuanced level, the general expectation that researchers should split data up into segments by reference to inductive codes may also need to be questioned when analysing data and writing about time. As Jovchelovitch and Bauer explain,

narratives live beyond the sentences and events that form them; structurally narratives share the characteristics of the sentence without ever being reducible to the simple form of its sentences or forming events. In the same vein, meaning is not at the ‘end’ of the narrative; it permeates the whole story. Thus to understand the narrative is not merely to follow the chronological sequence of events ... it is also to recognize its non-chronological dimension.⁸²

In her work on how migrants experience bureaucracy, Tsalapatanis reacted to these issues by experimenting with modes of data presentation in the social sciences.⁸³ Conscious of the ways in which the forms of presentation can influence how we convey the impact of the temporal, she included almost 2,000 words of unedited text from the transcript of a single interview, which engaged with multiple aspects of the temporal from a single participant’s experience. These included the way in which his experiences evoked elements of his past and future selves in how his narrative was constructed; the idea of being ‘out of time’ with those around him; the impact of waiting, as well as how these periods of stasis, rather than being empty, were constantly filled with processes of sense making as well as small acts of resistance; the rupture that occurs when things are demanded urgently after long periods of

⁸² Jovchelovitch and Bauer, *op. cit.*, n. 64, p. 59.

⁸³ Tsalapatanis, *op. cit.*, n. 25.

inaction; and how we are made to account for our time. This raises important questions about the extent to which a narrative can comfortably be divided into the sorts of segments and quotations that frequently appear in descriptions of qualitative research.

5 CONCLUSION

This article began its life as a discussion of the ways in which video hearings disrupt legal time and the intimate relationship between time and place in disciplining legal subjects. However, as discussions about the design of future projects on virtual hearings developed, we became aware of the need to articulate what we meant when we talked about experiences of time and the extent to which our previous research maximized opportunities to uncouple experiences of time from standardized concepts of clock time that dominate our society. As we became increasingly aware of the complex, nuanced, cyclical, gendered, and culturally specific concepts of time discussed by theorists, we began to realize the importance of identifying a methodology that was sensitive to, and respectful of, these dynamics. The unstructured interview, which draws on the tradition of symbolic interactionism, is the solution that we consider best suits the theoretical frameworks on which we have drawn and the research questions that we seek to answer.

As a neglected topic in the social sciences, and in socio-legal studies more specifically, we argue that there is much to be gained from a more in-depth analysis of the possibilities of the unstructured interview. Word constraints have prevented us from discussing a range of additional issues raised by this method, including the complex relationship that the unstructured interview has with the maturing field of narrativity, its intellectual roots in the symbolic interactionist and post-modernist theories of self and society, the complex process of analysing unstructured data, and the many ways in which

unstructured interviews both challenge and complement quantitative methodologies and methods. Our goal has been to prompt further debate about these and many other issues, including the ways in which the unstructured interview can better respond to the important epistemological issues raised by complex socio-legal phenomena such as time than other forms of data collection. In the course of doing so, we hope that we have also made clear the complex relationship between decisions about the nature of the thing to be studied and methodological choices. At its heart, we believe that the unstructured interview presents us with an opportunity to both identify and interrogate the many frames that determine how and why we see the world in the way in which we do and how we begin to understand the multi-layered perspectives of others.