

Impact case study (REF3b)

<p>Institution: University of Exeter</p>
<p>Unit of Assessment: Law</p>
<p>Title of case study: Cohabitation, marriage and the law: informing and influencing policy debates on legal reform in a changing society</p>
<p>1. Summary of the impact Research undertaken by Barlow at Exeter into cohabitation, marriage and the law has shaped, informed and influenced long-running public and policy debates in Britain over the need to reform aspects of family (property) law, in light of widespread public confusion and on-going societal shifts. The research findings on attitudes to cohabitation and marriage, community of property and pre-nuptial agreements and the law, each cited in public consultation papers and reports advocating reform, have influenced the Law Commission and judiciary in the UK and informed German policymakers. The cohabitation research in particular has-</p> <ul style="list-style-type: none"> • shaped public information and legal advice; • informed and stimulated high-profile law reform lobbying campaigns and media debates; • strongly influenced Law Commission legislative proposals on cohabitant intestacy, and • shaped national policy in use by government to oppose reform in parliamentary debates. <p>2. Underpinning research After joining Exeter in August 2004, Anne Barlow, Professor of Family Law and Policy, AcSS, co-authored a well-reviewed and influential book <i>Cohabitation, Marriage and the Law</i> (Barlow et al, 2005) and directed two related projects on cohabitation, marriage and law reform (2006-2009) which built on her earlier Nuffield Foundation-funded research on the ‘common law marriage myth’. She then undertook and published from two further funded family property-focused studies on Community of Property (2004-2006) and Pre-nuptial Agreements (2010-2012). This research underpins the significant impact her research has achieved in the fields of family law and policy with a range of users.</p> <p>Her 2005 book advocated legal and policy responses (including a public information campaign as one contributory option (pp. 107-110)) to reflect the changing social realities of marriage decline and cohabitation growth. Having proved national confusion over ‘common law marriage’, a term that has wide social usage but no legal force, her work had previously convinced policymakers to launch a three year public information campaign to dispel the myth that legally, cohabitants had marriage-equivalence (<i>The Living Together Campaign</i>). Barlow was then selected to evaluate this in terms of its effects on legal awareness and cohabitant behaviour and decision-making. This evaluation was one of two related projects, conducted when debates over cohabitation law reform reached their height (2006-2009), which underpin her impact on cohabitation law and policy, namely- <i>The Living Together Campaign – An Evaluation</i> and <i>The Common Law Marriage Myth Revisited</i>. Working with Burgoyne (Senior Lecturer, Psychology), and Research Fellow, Smithson (Law), Barlow employed mixed methods approaches, including longitudinal quantitative and qualitative techniques to evaluate the impact of <i>The Living Together Campaign</i> and to ascertain more in-depth understanding of changing public attitudes to marriage, cohabitation, current law and possible reform. She concluded the campaign’s attempt to inform cohabiting couples of their legal rights had resulted in successes: 51% of the general public and 53% of cohabitants believed the common law marriage myth in 2006 (down respectively from 56% and 59% in 2001); 61% of the public also correctly believed marriage offered greater financial security (up from 48%). Yet she also found the campaign had increased uncertainty rather than directly improved legal understanding. Her analysis concluded that most people marry according to emotion rather than issues of legal and financial status on relationship breakdown or death and that most cohabitants exhibit an optimism bias about their relationship, the possibility of them or their partner dying and about their ability resolve disputes amicably on relationship breakdown. This prevents couples taking appropriate protective legal action, such as making wills and/or cohabitation agreements. Public support for legal reform was very strong with 90% believing a long-term cohabiting partner should be entitled to financial provision on separation if children are involved and 66% agreeing a cohabitant without children should inherit the family home owned by their partner on their death where no will was made after just two years of living together (Barlow et al 2008, 2010). MoJ published the campaign evaluation in 2007 (Barlow et al, 2007) after Ministry scrutiny. The related Nuffield study’s findings appeared in the prestigious 2008 24th British Social Attitudes Survey (Barlow et al, 2008) and a joint</p>

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further analysis of both projects was subsequently undertaken by Barlow and Smithson and published in a highly regarded peer-reviewed specialist law journal (see 'Legal assumptions, cohabitants' talk and the rocky road to reform' *Child and Family Law Quarterly* (2010) **22**(3):328-350).

Barlow's research into reforming financial provision on relationship breakdown continued through two socio-legal empirical studies on family property issues. With Cooke (PI) and Callus (Reading University), she investigated whether a system of European-style community of property – formalising a 50/50 property split on divorce/separation/death – would improve the uncertain discretionary approach in England and Wales in a peer reviewed Nuffield Foundation study (£89,000). Published in 2006, it concluded that whilst attractive, it risked the loss of contextually important flexibility (see Cooke, E., **Barlow, A.** and Callus, T. (2006) *Community of Property: A Regime for England and Wales?: Bristol: Policy Press*). Drawing on this study and on her cohabitation and marriage research findings alongside doctrinal analysis of case law, Barlow, at the invitation of the Max Planck Institute and the German Ministry of Youth and Families, provided a socio-legal analysis of the inconsistent treatment in English family and welfare law of the value of non-financial contributions to married, cohabiting and single parent relationships. She concluded that family and welfare law should work in tandem, not pull in opposite directions, to avoid relationship-generated disadvantage. This was published as evidence in Germany's discussion of options for reform of their community of property system and possible effects on state welfare provision (Barlow, 2008).

Her later Nuffield Foundation-funded peer reviewed project *Exploring Pre-Nuptial Perceptions* was undertaken with Smithson (Law/Psychology, Exeter) at a time when the Law Commission was conducting reform considerations on marital agreements. This used mixed methods, combining analysis of a nationally representative survey with a purposive, qualitative follow-up study, to explore for the first time public perceptions of binding pre-nuptial agreements as a mechanism to address this financial uncertainty on divorce in England and Wales. Findings published in a specialist peer-reviewed law journal in 2012, showed support for such agreements to become binding in some circumstances but significant reservations in others, with a noted gendered division of responses on some issues but not others (Barlow and Smithson, 2012).

3. References to the research

Books and Reports

1. **Barlow, A.**, Duncan, S., James, G. and Park, A. (2005), *Cohabitation, Marriage and the Law: Social Change and Legal Reform in 21st Century Britain*: Oxford: Hart Publishing.
2. **Barlow, A.**, (2007) *The Living Together Campaign: An Investigation of its Impact on Legally Aware Cohabitants* (with C. Burgoyne, E. Clery and J. Smithson), London: Ministry of Justice, available at <http://bit.ly/1aYWHwN>

Book Chapters

3. **Barlow, A.**, Burgoyne, C., Clery, E. and Smithson, J. (2008) 'Cohabitation and the Law: Myths, Money and the Media' (with) in *British Social Attitudes – The 24th Report*, Park A, Curtice J, Thompson K, Phillips M and Clery E (eds), Sage: 29 – 51.
4. **Barlow, A.**, (2008) 'Self-Responsibility, Private and Public Solidarity-A Comparative View of Gender Role Models In Family Law and Social Law - A Perspective from the United Kingdom' in *Forschungsreihe Band 3*, Berlin: Nomos Verlag (published in German) as part of a Research Series for the German Ministry of Families and Youth in association with the Max-Planck Institute for Foreign and International Social Welfare Law.

Refereed Journal Articles

5. **Barlow, A.** and Smithson, J., (2010) 'Legal assumptions, cohabitants' talk and the rocky road to reform' *Child and Family Law Quarterly* **22**(3):328-350.
6. **Barlow, A.** and Smithson, J., (2012) 'Is Modern Marriage a Bargain? Exploring Perceptions of Pre-Nuptial Agreements in England and Wales' *Child and Family Law Quarterly* **24**(3): 304-319.

Peer Reviewed Externally Funded Grants

Community of Property, A Regime for England and Wales (Nuffield Foundation) (£89,000) 2004-6
The Living Together Campaign – An Evaluation Ministry of Justice (MoJ) (£15,000), 2006.
The Common Law Marriage Myth Revisited (Nuffield Foundation) (£106,000), 2006-8.
Exploring Pre-Nuptial Perceptions (Nuffield Foundation) (£104,000), 2010-13.

Research quality: the outputs all derive from rigorously reviewed peer-reviewed funded research and funders (Nuffield Foundation and MoJ) expressed great satisfaction with the final reports. The book (1) was very well reviewed. The report (2) was published on the MoJ website at their specific request following review. The chapter (3) is included as part of the prestigious *British Social Attitudes* series and is highly cited internationally. The chapter (4) was based on a conference presentation given and selected for inclusion in research papers presented to the German Ministry by the highly regarded Max-Planck Research Institute for Foreign and International Social Welfare Law. The articles (5) & (6) are published in a highly regarded specialist peer reviewed academic family law journal.

4. Details of the impact

Barlow's research at Exeter on cohabitation, marriage and the law has been at the forefront of the fiercely contested public and policy debates over cohabitation law reform – an issue central to the lives of 2.9 million cohabiting couples and their children. It has also **strongly influenced** and/or **informed policy thinking** and **public information**¹ around family property and financial provision on relationship breakdown here and in Germany and was **used by government** to oppose cohabitation law reform in parliamentary debates.

The Law Commission's 2007 report on *The Financial Consequences of Cohabitation* cited Barlow's Exeter research 20 times to underpin its recommendations for reform to enhance legal remedies for cohabiting couples². The report's impact continued well into 2008 as the government deliberated over the Commission's recommendation to introduce new legal rights for cohabiting couples upon separation. Barlow was active in **influencing the reform debates**. In January 2008, she presented her conclusions at the media launch of the 24th British Social Attitudes Survey. National media including *The Guardian* and Radio 4's *Woman's Hour* reported the findings, highlighting continuing public ignorance over common law marriage.⁷ The Nuffield Foundation invited Barlow to deliver her findings to policymakers, lawyers, judges and academics. In March 2008 she gave a public lecture at the Institute of Advanced Legal Studies, London. As a result of this dissemination, **the research became widely known and was used by Resolution**, (the Solicitors' Family Law Association), to support its national campaign **to call for reform** of cohabitation law.⁸

The government announcement in March 2008 that it would take no action on the Law Commission's recommendations until research evaluated the similar scheme in Scotland prompted Resolution, in a statement covered by BBC News, to accuse the government of being "seriously out of step with public opinion", citing Barlow's research. The debate continued into 2009, culminating in a Private Member's Cohabitation Bill by Liberal Democrat peer Lord Lester, supported by Resolution. Resolution and Lester's offices contacted Barlow after her Nuffield seminar and **the research informed the Bill's contents**.⁸ A briefing paper summarising her research was sent to MPs and peers to inform the parliamentary debates and proved instrumental to both sides. During the second reading of the Bill in the Lords on March 13, 2009, **the Attorney General cited Barlow's findings of improved public awareness resulting from the Living Together Campaign to justify government policy opposing the Bill**, which consequently did not progress beyond Committee stage, stating, 'The *media campaign Living Together is now in its fourth year. A study by Professor Anne Barlow has assessed that campaign, and she says that it is very positive.*' (Hansard 13 Mar 2009 : Column 1441).⁶

In 2009, One Plus One, a UK charity that aims to strengthen relationships through the provision of online educational resources, cited the research across its publications. Warnings that common law marriage has no legal basis – drawn from Barlow's Exeter research findings – currently feature prominently on the website of Directgov, the official UK government website providing digital information to citizens, and AdviceNow, a not-for-profit website providing legal advice to 450,000 visitors each year.¹ Thus her research has **shaped legal advice and information**. Barlow's Living Together Campaign evaluation was published on the MoJ website in 2007; it is still available and its contents **secured further funding for the campaign**. A legal aid leaflet published in 2009 by the Legal Services Commission references Barlow's continuing common law marriage myth. A 2012 Home Office report on cohabitation for all Members of Parliament (available in the House of Commons library) **drew on Barlow's Exeter data**, stating⁹, '*Generally...there is no specific legal status for what is often referred to as a "common law marriage". Studies have shown that many cohabiting couples are unaware of this fact.*'

Lady Hale in the Supreme Court in *Gow v Grant* [2012] UKSC 29 exhorted government to reform English cohabitation law in line with Scots Law and at para. 51 **cited Barlow's findings to call on policy makers** to take account of cohabitation very often being a prelude to marriage, saying, 'This case also illustrates the fact, well-established by research, that many, even most, couples do not deliberately reject marriage (A. Barlow et al, 2005).'

Barlow's cohabitation and community of property research alongside her analysis of the value given by law to unpaid caregiving within different styles of family has **informed policy debates** in Germany, where following her 2007 lecture to academics and policymakers, it formed a chapter in a 2008 policy document by the German Ministry of Families presented to government to inform its review of the valuation of domestic contributions to family life in family/welfare law (Barlow, 2008). Other research by Barlow has been central to Law Commission activities. The Commission's 2009 consultation paper on intestacy referenced Barlow's Exeter cohabitation research 10 times, with its 2011 report citing it in five places. **Her research** showing the continued existence of the common law marriage myth (Barlow et al 2008) was confirmed as **'a powerful factor'** in the Commission **recommending and drafting a Bill giving qualifying cohabitants automatic succession rights** from their deceased partner's estate on intestacy (Law Commission, 2011).³ The Community of Property research and Barlow's recent Pre-nuptial Agreements study are cited in the Commission's 2011 and 2012 consultations on Marital Property Agreements some six times.^{4,5} Their 2012 paper confirms **'We were assisted by research ...carried out by Professor Anne Barlow and Dr Janet Smithson of the University of Exeter'**.⁵ The Commission plans to use the academics' data in its final report, anticipating that it will provide "important indications" of public attitudes towards pre-nuptial agreements and organised a joint conference with Barlow for policymakers, academics and practitioners on 4 December 2012 to discuss reform in the light of research evidence.

Her pre-nuptial agreement research is also **influencing the judiciary**. Mr Justice Coleridge invited Barlow to present this research at a Marriage Foundation conference to a large audience of practitioners and policy makers on 15th February 2013 and Lady Hale indicated in her plenary address to the SLSA conference in March 2013 that if it had been published in time, she 'would no doubt have referred to it' in her dissenting judgment in *Radmacher v Granatino* [2010] UKSC 42.¹⁰

5. Sources to corroborate the impact (Numbers below refer to superscript numbers above)

1	Report references	Braverman, R., (2007 & updated 2010) <i>The Living Together Project Report</i> - http://bit.ly/17HdOVd and http://bit.ly/1b696xq
2	Report references	The Law Commission (2007), <i>Cohabitation: The Financial Consequences of Cohabitation. Report</i> (Law Com No 307, Cm 7182) London: TSO. - http://bit.ly/1fe0BF5
3	Report references and e-mail	The Law Commission (2011), <i>Intestacy and Family Provision Claims on Death Report</i> (LAW COM No 331) London: TSO - http://bit.ly/Hq6C5y Law Commissioner email 19/04/12 confirms research as powerful factor
4	Report references	The Law Commission (2011), <i>Marital Property Agreements (Consultation Paper No 198)</i> London: TSO - http://bit.ly/1hcPOzj
5	Report references	The Law Commission (2012), <i>Matrimonial Property, Needs and Agreements, A Supplementary Consultation Paper (Consultation Paper No 208)</i> London: TSO - http://bit.ly/1hGMfPA
6	Hansard	Attorney General – Speech to House of Lords reported in Hansard 13 Mar 2009 : Column 1441- http://bit.ly/17Hf22G
7	Newspaper	Ward and Carvell, British Social Attitudes research discussed in <i>The Guardian</i> , 23 January 2008 p. 11 –, 'Goodbye married couples, hello alternative family arrangements' - http://bit.ly/Hw2Pnx
8	Letter and press statement	Resolution (2008)– contact - Head of Policy, letter 12/11/13; e-mail 29/10/13 and see http://bit.ly/1cz5ESV and http://bit.ly/184i8Kv
9	Reference to myth as issue	Fairbairn, C., (2012) <i>'Common law marriage' and cohabitation</i> , London: Home Office, Home Affairs Section - http://bit.ly/17By6S5
10	Public plenary address	Lady Hale (2013)– <i>Should Judges be Socio-Legal Scholars</i> , Plenary address to SLSA Conference, University of York, 26 March 2013 (at p. 7), available at http://bit.ly/1fe21zo .