

2014

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Judith McCormack

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## Citation Information

McCormack, Judith. "Not So Dangerous Liaisons: A Clinical Perspective on Interdisciplinarity." *Journal of Law and Social Policy* 23. (2014): 9-29.

<http://digitalcommons.osgoode.yorku.ca/jlsp/vol23/iss1/2>

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## Not So Dangerous Liaisons: A Clinical Perspective on Interdisciplinarity

JUDITH MCCORMACK\*

L'éducation clinique est un champ où les enjeux juridiques rencontrent un point maximal. C'est le cas en partie parce que l'expérience clinique met en évidence les contrastes entre les écrits juridiques et la réalité sociale. Ce contraste procure un terrain adéquat pour une réflexion critique qui caractérise l'éducation clinique. La structure particulière du droit en tant que discipline entraîne les étudiants à réfléchir de manière critique et rigoureuse et à trouver que la solution peut se trouver ailleurs que dans le droit. L'approche clinique montre qu'exposer les étudiants à des enjeux de manière interdisciplinaire est cruciale si les étudiants sont capables de comprendre et d'apprécier la réalité multidimensionnelle du droit intelligemment et intégralement. Ils développeront ainsi une identité professionnelle durable. Cela est d'autant plus vrai que les étudiants souhaitent devenir des praticiens, des juges, des législateurs ou des créateurs de politiques publiques. Toutes ces carrières impliquent de créer le droit d'une manière ou l'autre. Un manque de rigueur ou de connaissances face à la réalité sociale peut avoir d'importantes implications pour la qualité, l'intégrité et la viabilité du droit en général. Dans la mesure où le problème en est un d'espace et de logistique, l'expérience de terrain d'un responsable de clinique permet de débusquer les arguments soutenant la forte présence des contenus doctrinaux et de mettre en évidence les raisons pour lesquels le paysage juridique devrait être plus fluide par l'incorporation de méthodes interdisciplinaires.

Clinical education represents a site where conflicting accounts of law are at maximum tension, in part because the clinical experience tends to highlight the startling contrast between the narratives and social realities of law. While this contrast provides some of the fodder for the critical exploration that characterizes clinical education, the idiosyncratic shape of law as a discipline means that much of what students require to handle that fodder in a rigorous, analytical way is located elsewhere. A clinical lens indicates that exposing students to interdisciplinary perspectives is crucial if students are to be able to understand and engage with the multi-layered reality of law in an intelligent and integrated manner—and perhaps to build sustainable professional identities as well. Indeed, since students usually go on to become practitioners, judges, legislators and policy-makers—all law creators in one form or another—a lack of rigorous or sound knowledge in this regard has potential implications for the quality, integrity and viability of law more generally. To the extent that this problem is one of curricular space and logistics, the “foot in each world” perspective of the clinical educator allows for the debunking of professional rationales for the current degree of doctrinal content, and points to features of a fluid legal landscape that reinforce the increasing necessity of interdisciplinary content and methods.

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\*Assistant Dean, Graduate Program, Faculty of Law, University of Toronto. I am grateful for the support of the Law Foundation of Ontario, and for the research assistance and advice of Rebecca Houwer, a Ph.D. candidate in the Faculty of Education at York University.

CLINICAL EDUCATION PROGRAMS are frequently sites of surprise for law students. They arrive at a clinic with a collection of ideas about the nature, meaning, and role of law, only to find that the social reality of law is often in marked contrast. Fran Quigley<sup>1</sup> has proposed that clinical education is a source of disorienting moments—turning points that provide opportunities for critical reassessment of beliefs, values, and norms—but for many students, a clinical course can be one long disorienting moment from beginning to end.

At least one of the reasons for this is that clinical education is a site where conflicting accounts of law are at maximum tension. Much of the contextualized legal reality that students encounter in a clinical program is not particularly consistent with the doctrines and theory that are still a major focus of first year classes. As a result, students often arrive at a clinic with a set of claims that law makes for and about itself, only to discover they have fallen down a realist rabbit hole and into a world where those claims seem faulty or unreliable. How do eviction safeguards really operate, for example, in the context of widespread rental stock conversion? What are refugee conventions worth when some countries of origin are “white-listed” out of consideration? How meaningful are employment laws when enforcement is downloaded to vulnerable employees? What do the best interests of the child have to do with child support applications instigated by welfare authorities?

Of course, students have often been exposed to some of these issues in their more traditional classes (or indeed, in their personal lives), but the clinical experience tends to highlight the contrast between the narratives of law and their operation or impact in a particularly stark manner. And the engagement with the social reality of law that takes place also creates a degree of urgency for students in this regard. Something that may have been an intriguing intellectual puzzle in the classroom may now be the source of a considerable amount of human misery—or possibly a remedy. As students come into contact with the lives of people who are affected by law, all of this suddenly matters a great deal more and in a particularly visceral way.

All to the good, one might say, at least in pedagogical terms—these juxtapositions provide some of the fodder for the kind of critical exploration and investigation that are characteristic of clinical education.<sup>2</sup> However, the unusual disciplinary shape of law means that much of what students require to grapple with this fodder in a rigorous, analytical way resides in other disciplines. The result is that students are often able to work with doctrine or legislation in an organized, structured manner, but approach broader law-related issues as matters of soft opinion, conjecture, or ideology. Absent a fortuitous background in the relevant disciplines, they tend to be less equipped to handle these issues in a manner that is either theoretically or empirically sound.

In other words, the problem is not that the encounter in a clinic is startling—it might be startling in any event, and indeed, it is this startling quality that in part, creates the conditions for critical reflection Quigley describes.<sup>3</sup> Rather, the issue is one of providing students with the tools to inform such reflection and make sense of the dissonance,<sup>4</sup> instead of leaving them to fall back on weak bromides, shibboleths, or superficial impressions.

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<sup>1</sup> Fran Quigley, “Seizing The Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics” (1995) 2:1 *Clinical L Rev* 37 at 51-56.

<sup>2</sup> See *e.g. ibid* at 51-56; and Phyllis Goldfarb, “A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education” (1991) 75:6 *Minn L Rev* 1599 at 1647-1667.

<sup>3</sup> Quigley, *supra* note 1 at 52-57.

<sup>4</sup> *Ibid* at 63.

While there is no shortage of calls for increased interdisciplinary content in the legal curriculum,<sup>5</sup> the view from a clinic suggests that this knowledge deficit is both more acute and more fundamental than might first appear. In this context, exposing students to interdisciplinary materials and methods is not optional, not something that merely offers additional enrichment, depth, or new perspective to a classroom discussion. Rather, such exposure is crucial if students are to be able to understand and engage with the multi-layered reality of law unfolding before their eyes – and to do so in an intelligent and knowledgeable manner. And needless to say, this is not just a matter of addressing the issues that arise in a clinic—here, the clinic is a proxy for the post-graduate world students will face.

If the absence of this knowledge is significant in itself, a clinical viewpoint also suggests some pragmatic consequences. Not to put too fine a point on it, students go on to become practitioners, judges, legislators, and policy-makers, who are all law-creators in one form or another. A lack of sound or rigorous knowledge on their part in regard to the operation and impact of law—or even a lack of awareness as to the range of relevant knowledge available—thus has potential implications for the quality, integrity, and viability of law more generally.

There are implications on an individual level as well, given that the social reality of law is often bleaker than more optimistic portrayals in legal narratives. The effect can be to undermine the previous self-imagining of students with respect to a meaningful professional role. Where do they fit in this new and rather startling legal landscape? How do they reconceive of themselves in aspirational terms, either in regard to justice *simpliciter* or social justice? Without thoughtful ways to make sense of the social reality of law, there is some risk that students will retreat from the challenges of creating their own authentic versions of professional role, or avert their eyes from the legal and social dilemmas before them. Indeed, students often opt for a compartmentalizing strategy in which they carry around two spheres of knowledge—the claims of law and the social reality of law—that are only partially integrated. This kind of dualism might help to explain why many practitioners are simultaneously both the most skeptical of law skeptics and hopeless romantics about law.

While interdisciplinary studies are gaining ground in legal scholarship, the curriculum—particularly for the first year—has not kept pace to the same extent, and indeed, competition for curricular space may be increasing with the recent pressures on law schools to add more professional skills and ethics education. Part of the problem is the perception that interdisciplinary studies are of marginal value to professional practice—a proposition that clinical educators, with “a foot in each world”<sup>6</sup> are in a position to debunk. In fact, it is reasonable to think that without some knowledge of interdisciplinary approaches, methods, and findings, students are likely to be seriously under-educated for the modern legal profession, and may be left intellectually (and perhaps morally) stranded.

Of course, they may be left stranded anyway—this is not intended to be a paean to either the contents or methods of other disciplines which have their own pitfalls and dilemmas. But a clinical lens suggests that the absence of this knowledge can be debilitating, both for the profession and its practitioners.

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<sup>5</sup> See *e.g.* George L. Priest, “The Growth of Interdisciplinary Research and the Industrial Structure of the Production of Legal Ideas: A Reply to Judge Edwards” (1993) 91:8 Mich L Rev 1929; A.J. Goldsmith, “An Unruly Conjunction? Social Thought and Legal Action In Clinical Legal Education” (1993) 43:3 J Legal Educ 415; and Kim Diana Connolly, “Elucidating the Elephant: Interdisciplinary Law School Classes” (2003) 11 Wash U JL & Pol’y 11.

<sup>6</sup> Douglas A. Blaze, “D’jà Vu All Over Again: Reflections on Fifty Years of Clinical Education” (1997) 64:4 Tenn L Rev 939 at 961-962.

While the connections between clinical education and interdisciplinary studies have been noted before,<sup>7</sup> and for some time,<sup>8</sup> the purpose of this article is to use the student encounter in a clinic as something of a keyhole, offering additional insight on the significance of interdisciplinary studies from a clinical education perspective. Naturally, it is only one clinical perspective, and ‘clinical education’ itself is many different things—an epistemological theory, a set of educational methodologies, an area of curricular content, and a discourse of ethics, professional role, and social justice, among others.<sup>9</sup> Here, though, it is more of a vantage point which serves to highlight both the necessity for interdisciplinary studies and some of the obstacles involved.

In the first section below, I offer a little background on these issues, briefly tracing some of the disorientation of the clinical student back to the odd shape of law as a discipline. In the second section, I take a clinical lens to some of the obstacles to interdisciplinary studies posed by a curriculum that is still structurally focused on doctrine (albeit approached from social policy or other perspectives), and in section three, I consider and reject the professional rationale advanced for this focus. On the contrary, in section four, I take advantage of the view from the clinic to note a number of features of the professional landscape that suggest an increased emphasis on interdisciplinary studies is necessary, and considers some of the relevant implications for the development of professional identity on the part of students. In the last section, I review some potential hazards involved in interdisciplinary studies, without conceding much ground.

## I. SOME BACKGROUND, OR WHERE DID ALL THAT LAW GO?

It is fair to say that the disorientation experienced by a clinic student reflects, at least to some extent,<sup>10</sup> the contrast between the social reality of law and the unusual shape of law as an academic discipline. Before law school, the student might have been forgiven for assuming that this area of study would also encompass most of the major aspects of the social reality of law, including its creation, contents, operation, and impact. The idea that early on, a relatively narrow band of investigation—doctrinal analysis and legal theory—was separated out from the sprawling enterprise of law and declared the discipline proper, while other aspects were largely ignored, is not an intuitively obvious approach to coherent study. Indeed, from a clinical viewpoint where the social reality of law looms so large, this narrowness seems close to idiosyncratic.

To be sure, the disciplinary boundaries of law have always been more ambiguous than that,<sup>11</sup> and are now more elastic than ever—more about this below. But a clinical perspective does suggest that the starting question might not be why interdisciplinary knowledge should be

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<sup>7</sup> See *e.g.* Goldfarb, *supra* note 2 at 1655.

<sup>8</sup> See *e.g.* Richard K. Neumann, Jr. & Stefan H. Krieger, “Empirical Inquiry Twenty-Five Years After the Lawyering Process” (2003) 10:1 Clinical L Rev 349 at 350-351.

<sup>9</sup> See *e.g. ibid* at 1664-1665; and James E. Moliterno, “On the Future of Integration Between Skills and Ethics Teaching: Clinical Legal Education in the Year 2010” (1996) 46:1 J Legal Educ 67.

<sup>10</sup> Of course, there are other sources as well, not the least of which is exposure to low-income living conditions and other socioeconomic inequities. See *e.g.* Quigley, *supra* note 1 at 56; and Jane Harris Aiken, “Striving to Teach ‘Justice, Fairness and Morality’” (1997) 4:1 Clinical L Rev 1 at 30-31.

<sup>11</sup> See *e.g.* Carrie Menkel-Meadow, “Taking Law and \_\_\_\_\_ Really Seriously: Before, During and After “The Law” (2007) 60:2 Vand L Rev 555 on the disciplinary history of law.

considered essential; rather, it might be why large areas of scholarship and teaching about law were hived off from the discipline in the first place.

Of course, the latter is deliberately obtuse question—the evolution of legal education in the United States, and to a lesser extent Canada, is well-known and frequently explicated, from Langdell’s scientific method onwards. Simply put, a mix of ingredients, including a specific formalist conception of law, the quest to stake out a unique disciplinary identity, the relationship to a profession, and the resistance to or assimilation of various alternative schools of thought have, among other things, conspired to shape the original disciplinary boundaries.<sup>12</sup> But reframing the issue in this manner is useful in highlighting the fact that these boundaries have been socially constructed over a period of time with all the historical contingency that this implies, rather than being necessarily inherent in or co-extensive with some obvious or natural silhouette of the phenomenon of law.<sup>13</sup>

This point is given added emphasis by the various types and areas of knowledge that could potentially be included in this field of study. Carrie Menkel-Meadow canvasses a number of possibilities in this regard, including both available objects of study and the manner of studying them.<sup>14</sup> The former might include doctrine, rules, processes, constitutionalism, institutional competence, law-making, enforcement, and compliance, and the meaning of, reason for, and purpose of law. The latter could include legal reasoning, textual analysis, predictions or principles of social allocation, and predictions and descriptions of social institutions, legal actors, or those acted upon.<sup>15</sup> In other words, a focus on doctrine and legal theory is at least rather selective. Indeed, prior to law school, a student might have been puzzled to learn that an area like “law and society,” for example, had an interdisciplinary cast, rather than being considered central to the discipline.

The reminder that the disciplinary boundaries of law have been selected from a range of possibilities allows the emphasis to shift to the value of designing particular groupings of knowledge, rather than the historic disciplinary identity or location of any particular element of those groups. Leaving aside for the moment the benefits and hazards of competing disciplinary discourses and methodologies, the question from a clinical perspective might look something like this: if the parameters of legal studies are mutable, what sorts of knowledge does a law student need for an intelligent and sophisticated understanding of law?

Admittedly, this is a highly contingent question in several ways. First, it contains a number of other questions, including those identified by Deborah Rhode: “Knowledge for what? For whom? To what end?”<sup>16</sup> Secondly, the issue of the proper sphere for the study of law is almost impossible to sever from the issue of the nature of law, and differing schools of thought on the latter have implications for disciplinary boundaries, not least because they tend to bill themselves as occupying the field. So from a formalist perspective, focusing inquiry and study on doctrine and legal theory is exactly right; from a realist or post-realist vantage point—and indeed, from a clinical perspective—this is likely to seem quite limited.

Even leaving aside the various difficulties associated with the question, the answers to it are also likely to be numerous, and in a state of continuous evolution and discovery. However, it

<sup>12</sup> See *e.g.* Steven B. Dow, “There’s Madness in the Method: A Commentary on Law, Statistics and the Nature of Legal Education” (2004) 57:3 Okla L Rev 579; and David M. Trubek, “Where the Action is: Critical Legal Studies and Empiricism” (1984) 36:1&2 Stan L Rev 575.

<sup>13</sup> Douglas W. Vick, “Interdisciplinarity and the Discipline of Law” (2004) 31:2 J Law and Society 163 at 167.

<sup>14</sup> Menkel-Meadow, *supra* note 11 at 556-557.

<sup>15</sup> *Ibid.*

<sup>16</sup> Deborah L. Rhode, “Legal Scholarship” (2002) 115:5 Harv L Rev 1327 at 1330.

does tend to confirm the wisdom of the general shift in legal scholarship to realist, instrumental, or pragmatic analyses which have engaged a broader scope of inquiry and investigation. Such broader scope includes issues with respect to how, by whom and for what purpose particular laws are created, the strength or fragility of the assumptions on which they are based, the manner in which they operate in specific contexts, the impact they have on certain communities and complex social problems, the various roles they serve as both political commodities and definers of discourse, and a host of others.

This shift has also highlighted the logic of looking to the social sciences, for example, for ways of understanding law as a socially situated phenomenon or investigating and evaluating underlying social policy goals or consequences.<sup>17</sup> Carrie Menkel-Meadow observes that the study of law is inherently multidisciplinary, and must include “the causes and effects of law and legal institutions on those whom the law seeks to influence and control.”<sup>18</sup> Even to understand and work creatively with doctrine, Phyllis Goldfarb points out, students must comprehend the “historical, social, cultural and ethical contexts” from which legal rules and principles grow.<sup>19</sup> Similarly, George Priest argues that if law is considered to be an instrument of social policy, then its efficacy must be compared to other available instruments, and if it is designed to produce a particular benefit, reflect a social value or serve a public interest, then those things are at least as important to study as the law itself.<sup>20</sup> In this regard, he observes that there is virtually universal acceptance that “the legal system can best be understood with the methods and theories of the social sciences”.<sup>21</sup> And empirical studies in particular have obvious relevance—Carl Schneider and Lee Teitelbaum argue that the case for empirical research is “embarrassingly simple;” if the purpose of a law is to further specific ends, it is important to study whether or not it does produce those ends.<sup>22</sup>

These are very broad strokes, but the point here is not to make a case for interdisciplinary studies; such a case is hardly necessary any more, given that legal scholars have been reaching into other disciplines to borrow from their theories, methodologies, and empirical data for some time now.<sup>23</sup> In essence, they have been voting with their feet on this issue, and despite the fact that the interdisciplinary studies label covers a great deal of ground—with varying degrees of relevancy for legal education—this is welcome news. From a clinical perspective, the potential result may be to bring to the study of law a shape that more closely maps this comprehensive, multi-faceted phenomenon. In other words, from this vantage point, it is *intradisciplinary* that might require justification.

Again, the clinical experience brings this into sharp relief. Students in a clinical program encounter law as a complex, socially-situated, and culturally-mediated phenomenon that cannot

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<sup>17</sup> See *e.g.* Priest, *supra* note 5 at 1933.

<sup>18</sup> Menkel-Meadow, *supra* note 11 at 560.

<sup>19</sup> Goldfarb, *supra* note 1 at 1692.

<sup>20</sup> Priest, *supra* note 5 at 1931-32.

<sup>21</sup> George L. Priest, “Social Science Theory and Legal Education: The Law School as University” (1983) 33:3 J Legal Educ 437 at 437.

<sup>22</sup> Carl E Schneider & Lee E. Teitelbaum, “Life’s Golden Tree: Empirical Scholarship and American Law” [2006] 1 Utah L Rev 53 at 62. See also *e.g.* Michael Heise, “The Past, Present and Future of Empirical Legal Scholarship: Judicial Decision-Making and the New Empiricism” [2002] 4 U Ill L Rev 819 at 826.

<sup>23</sup> Indeed, even the most traditional view of law incorporates a long-standing relationship with the discipline of philosophy, and the historical landscape is almost littered with other forays; the current trend to interdisciplinary studies is only the most recent incarnation of projects that have ranged from legal realism to legal process, critical legal studies, law and economics, and a host of other conjunctive subjects. See *e.g.* Christopher Tomlins, “Framing the Field of Law’s Disciplinary Encounters: A Historical Narrative” (2000) 34:4 Law & Soc’y Rev 911.

be explored, grasped, or made sense of using only traditional legal content or methods. In fact, clinical experiences frequently operate to kick the scaffolding out from under specific doctrines, and even legal theory more generally. Of course, in pedagogical terms, this is also a remarkable opportunity—as Phyllis Goldfarb points out, clinics offer a “contextualized approach to the study of law that provides rich data that makes all manner of theoretical and interdisciplinary inquiry possible.”<sup>24</sup> But the clinical experience does not merely make these things possible—it makes them *necessary* as well, with attendant implications for the requirements of the real world of law that clinics mirror. And leaving aside for the moment the seminars and readings offered by the clinical program itself, the gap between what students require in this regard and the tools on hand is considerable.

If interdisciplinary studies have made such inroads on the legal scholarship agenda, then why does the clinic experience reveal that many students are unaware of other perspectives and methods that might enable them to think more rigorously about the social reality of law? This is not merely a matter of being unfamiliar with particular theories, studies, or relevant data; the problem is a lack of awareness that there is even knowledge of other sorts to be had, or indeed that seeking out such knowledge is possible, advisable, or worthwhile. Students who can dissect a doctrinal proposition in their sleep can be surprisingly oblivious to the existence of coherent bodies of thought about other aspects of law.

In part, the answer may be that while interdisciplinary studies in law have gained considerable ground, they are still relatively exceptional.<sup>25</sup> But it also appears that such studies have not yet trickled down into legal pedagogy to the same extent they are reflected in scholarship, or at any rate, to the extent necessary. While there are a number of possible reasons for this—Douglas Vick identifies issues of cultural capital, ownership, control, and hierarchy that create resistance to disciplinary change, for example<sup>26</sup>—one potential suspect is the continuing allocation of so much of the law school curriculum to the analysis of doctrine.

## II. SO MUCH DOCTRINE, SO LITTLE TIME

In the various dilemmas and trade-offs that characterize curricular reforms, the study of doctrine still seems to trump other types of knowledge and learning with considerable tenacity and success. Indeed, the traditional doctrine-centered syllabus has almost legendary resilience at this point,<sup>27</sup> reflecting in part the remarkable refinement, elegance, and depth that characterize this approach to the study of law. To say that it is too narrow relative to the overall enterprise of law does not mean that it is narrow in absolute terms, and the best of it, taken on its own terms, is extraordinary. It is worth noting in passing the obvious point that the idea of interdisciplinarity in this context contemplates multiple ways of understanding law, not the de-throning of one and the elevation of another.<sup>28</sup>

<sup>24</sup> Goldfarb, *supra* note 2 at 1654-1655.

<sup>25</sup> See *e.g.* Neumann & Krieger, *supra* note 8 at 350-352; Robert Gordon, “Lawyers, Scholars and the “Middle Ground” (1993) 91:8 Mich L Rev 2075 at 2099-2101; Menkel-Meadow, *supra* note 11 at 579; although see Michael Heise, “An Empirical Analysis of Empirical Legal Scholarship Production, 1990-2009” [2011] 5 U Ill L Rev 1739 on the recent increase in empirical studies of law.

<sup>26</sup> Vick, *supra* note 13 at 167-170.

<sup>27</sup> See *e.g.* Dow, *supra* note 12 at 593-596.

<sup>28</sup> Except, of course, to the extent that a theory of law is predicated on exclusivity.



And perhaps such resilience should not be particularly surprising—the decline of the formalist framework that originally grounded this tradition has been accompanied by a rise in the use of doctrine as a vehicle for a variety of other content and critiques, with the effect of both expanding its scope and retaining its predominant position in the curriculum. In the modern law school, doctrine will often be taught in critical, innovative, or challenging ways or from a variety of perspectives, and the discussion is likely to include a substantial social policy quotient. This “new wine in old bottles” effect also ameliorates to some extent the intradisciplinary limitations of doctrinal study, and clearly offers a broader understanding of law. At the same time, a continuing focus on doctrine involves some inherent limitations that even the most talented and ingenious teacher may not be able to ameliorate.

The first is that this sustained concentration on doctrine in itself suggests to students that law is primarily a matter of doctrine, and that the central questions of law relate to whether that doctrine is good or bad—however that might be assessed. While this assessment may take place using more diverse tools, analyses, or approaches, the field of study continues to be largely aimed at a rather narrow band of what might otherwise be considered law. An implicit message is conveyed to students that this is the proper scope and subject of investigation, rendering other aspects of the legal enterprise less visible, of peripheral or secondary importance, or defined as “not law.” Even though doctrine may be treated to a searching examination—and that examination may range far afield at times—students are still largely presented with a picture of law as a doctrine-centered universe. They are not usually introduced to knowledge about other elements of law—for example, how legal institutions operate, the roles played by various legal actors, the relationship to social and economic phenomena—except to the extent that these may be relevant to an evaluation of a particular doctrinal proposition. Admittedly, this may still encompass a great deal—it is important not to overstate this point. And it may at least offer students a passing acquaintanceship with other perspectives or material from other disciplines. However, the core portrayal of law is still defined by this doctrinal architecture, regardless of what else may be mobilized in a more supporting capacity.

Not surprisingly, doctrine and legal theory are not particularly enlightening as tools for analyzing much of the social reality of law—by their very nature, they are aimed at and aspire to other things. Indeed, it has been argued that the focus on “hyper-rationalism”<sup>29</sup> involved in doctrinal analysis means it represents a denial of the legitimacy or relevancy of other knowledge. Whether or not this is so, the effect of this state of affairs is that a student walks into a clinic (and subsequently into the practice of law) equipped with a finely-honed, in-depth understanding of a relatively small part of the complex, chaotic legal world that confronts him.

A second problem has to do with the fact that this intensive exposure to doctrine means that students are inundated to some extent with formalist propositions that are often inconsistent with the social reality of law, at least in descriptive, if not in normative terms. In other words, the emphasis on doctrine means that they are learning the stuff of formalism, even if they are not necessarily learning it with a formalist perspective. The result is that a variety of formalist principles are likely to be conveyed, if only interstitially, tacitly, or inadvertently. It is fair to say that even the concept of doctrine itself is essentially formalist<sup>30</sup>—these things are so bound up together that the exercise is a little like teaching someone about eggs, while trying to avoid talking about chickens. Indeed, it is rather difficult to conceive of law without the medium of

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<sup>29</sup> Schneider & Teitelbaum, *supra* note 22 at 70.

<sup>30</sup> Pierre Schlag, “Formalism and Realism in Ruins (Mapping the Logics of Collapse)” (2009) 95:1 Iowa LR 195 at 216-217.

formalist doctrine—at a deeper level, Schlag suggests that as a matter of our “cultural and intellectual grammars,” law and formalism may be inextricably intertwined.<sup>31</sup>

But this intensive exposure means that students are likely to absorb, at least to some extent, the message that not only is law a doctrine-centred universe, but that such doctrine reflects an acontextual, autonomous set of principles that both contain a tenable moral order and provide determinate answers.<sup>32</sup> In a clinical program, they are then confronted with the fact that doctrine is only a small part of the overall landscape of law; that it is often created in legally irrational ways and with unpredictable results; that legislation is likely to be more influenced by clout than principle; that both legislation and doctrine are frequently based on casual social and economic assumptions that are either unsupported, suspect, or demonstrably wrong; that the operation and impact of law is often pernicious or skewed by race, gender, and other factors; that legal problems are embedded in a complex network of social, cultural, and economic structures and practices; and so forth.

To say that students are confronted with these conflicting accounts is not merely a figure of speech—indeed, to avoid encountering them, they would have to perform the intellectual equivalent of putting their fingers in their ears and shouting *la, la, la*. This is especially true with respect to the idea of acontextuality. Most legal problems in a clinic will be overtly interwoven with a variety of non-legal elements, and students also have a front row view on the colonization of social, cultural, and economic issues by law. The steady and continuing legalization of these issues, the repackaging of intractable societal problems in legal ways, and the function of legal fora as staging grounds or collection nets for people abandoned or adversely affected by social policy decisions are essentially occurring in real time before their eyes.

Again, these are undoubtedly rather broad strokes. Among other things, there is a considerable degree of merger and overlap between the various constituents of law, not least because of the complex interplay between social facts and doctrinal evolution. In a criminal law course, for example, it would not be unusual for even a relatively orthodox discussion of arrest powers to include references to differential policing of racialized groups, in part because “driving while black” has now entered the doctrinal lexicon. Moreover, the extent to which the teaching of doctrine may be invested with social policy issues or a more diverse array of perspectives militates against simple polarities. Nevertheless, it is fair to say that most first year courses are still generally tethered to this relatively narrow strand of the overall project of law, making it all too easy for students to equate law with the study of doctrine, and be left less than well-equipped to understand or address its other elements.

It is useful to note here that students may have academic backgrounds in other relevant disciplines which they can employ to good effect in considering the multitude of non-doctrinal elements of law. However, this is generally fortuitous, and as Randy Kandel points out, the impact of the first year curriculum is to subordinate and subsume any undergraduate perspectives students may have.<sup>33</sup> Students without such perspectives are likely to fall back on their previous assumptions or life experiences, which may be largely unexamined, incoherent, or unsubstantiated. There is often little recognition that elements of the social reality of law are—or

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<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.* at 201-204; and William M. Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007) at 186.

<sup>33</sup> Randy Frances Kandel, “Whither the Legal Whale: Interdisciplinarity and the Socialization of Professional Identity” (1993) 27:1 *Loy L A L Rev* 9 at 13-14.

even could be—the subject of more rigorous analysis or empirical data, and even less familiarity with the results of those that are.

The third problem is a deceptively simple one—there is only so much space in the curriculum, and the more that is occupied by doctrinal study, the less there is available for other methods and materials.<sup>34</sup> Even if doctrine is examined in innovative ways, the effect is still to limit the study of other areas of content. Assuming, quite rightly, that the study of doctrine merits a substantial role in any syllabus, the issue is one of proportion and balance. If one were to start from curricular scratch in 2013, it is difficult to imagine that such an extensive focus on doctrinal content would be self-evident. Of course, what the appropriate balance might be, and how it might be measured are difficult questions in themselves. Indeed, it is also difficult to assess in any methodical way what the balance is now—exactly how much of a typical first year contracts class is devoted to doctrine, for example, especially given the extent to which this might vary from teacher to teacher and school to school. Much has been said about the lack of change in law school curricula<sup>35</sup> and the Carnegie Report on Educating Lawyers<sup>36</sup> seems to indicate that doctrinal analysis using the case-dialogue method is still widespread,<sup>37</sup> but more precise and reliable information is lacking.

It is still possible to say, at least generally, that upper year classes are likely to offer more diversity in the way of analytical perspectives, content or pedagogy. At the same time, it is not obvious that these have the same initial formative power as the first year curriculum; the potent influence of the first year experience in part can hardly be contested. Not only does it constitute the initial exposure and acculturation into the legal sphere for students, it also represents a near total immersion—between three hundred and four hundred hours of classroom time alone, and countless hours of individual reading and study as well, most of which must be committed to memory under threat of academic failure. Presumably there are as many variations on this as there are teachers and law schools, but this general model still holds sway as the primary form of “cognitive apprenticeship” in first year classes.<sup>38</sup> And it works—as the Carnegie Report observes, law schools are very good at developing the analytical skills that fall under the rubric of “thinking like a lawyer,” and indeed, its authors found “unmistakable evidence of the pedagogical power” of the first year program.<sup>39</sup>

Moreover, upper year courses are usually elective, with the result that exposure to other approaches or elements of law can be rather haphazard. Many are taught by adjuncts who are practitioners, who may have less time or inclination for interdisciplinary research, even if they have more a more intimate familiarity with the real world of law. In fact, despite various (and worthy) initiatives to require perspective or other less conventional pedagogic fare, it is at least possible for a student to graduate with mostly traditional doctrinal courses, and little else. In other words, the chance that students will be exposed to either a broader understanding of law as a comprehensive enterprise or interdisciplinary theories and methods often tends to be just that – a matter of chance.

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<sup>34</sup> See *e.g.* Anthony G. Amsterdam, “Clinical Legal Education – A 21<sup>st</sup> Century Perspective (1984) 34:4 J Legal Educ 612 at 618; and Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, “Clinical Education for this Millennium: The Third Wave” (2000) 7:1 Clinical L Rev 1 at 26-30 discussing issues of resource allocation.

<sup>35</sup> See *e.g.* Margaret Martin Barry, “Practice Ready: Are We There Yet?” (2012) 32:2 B C J L & Soc Just 247 at 248; and Dow, *supra* note 12 at 593, although these are common assertions.

<sup>36</sup> Sullivan et al, *supra* note 32.

<sup>37</sup> *Ibid* at 47-56 and see also the description of the research conducted for the report at 15-17.

<sup>38</sup> Sullivan et al, *supra* note 32 at 34.

<sup>39</sup> *Ibid* at 186.

In these circumstances, it would be reasonable to turn to upper year clinical programs as a potential source for greater balance in the curriculum. As mentioned previously, such programs both highlight the need for interdisciplinary studies, and offer an organic site for their pursuit. And many clinical educators do incorporate a variety of innovative interdisciplinary or empirical approaches, including those who work in clinics offering multidisciplinary services.<sup>40</sup> Indeed, both lawyering theory and clinical pedagogy itself have been informed by interdisciplinary knowledge, such as cognitive psychology and learning theory.<sup>41</sup> To the extent, then, that clinical programs represent something of a crash course in the social reality of law, they might be expected to provide an antidote to the sustained dose of doctrine students receive in their first year, as well as an introduction to the many aspects or elements of law overlooked by doctrinal analysis and legal theory. Designers of law school curricula might, quite reasonably, point to the proliferation of clinical courses as offering the opportunities for learning about the operation and impact of law that are in short supply—or at least shorter supply—in the traditional classroom. In one sense, it might be argued that this represents a natural division of pedagogical labour.

However, there are some practical snags to this proposition. The first is that like the crowded law school curriculum, the overburdened clinical syllabus is a perennial problem, given that educators are often teaching students relevant substantive law and procedure, professional ethics, lawyering theory and skills (ranging from drafting to negotiations to trial advocacy—each an extensive area in itself), and a range of materials addressing the specific focus of the clinic—domestic violence, employment, prisons, refugee issues, and so forth. All of this is piled on top of the actual clinical work, which is often demanding for students, and correspondingly reduces the amount of reading that can be assigned. While interdisciplinary knowledge may be a natural fit for many of these topics, the extent to which more can be stuffed into a one-semester course may be quite limited. As Margaret Barry points out, clinics are already attempting to “address vast areas in legal education that are largely ignored in substantive law courses devoted to doctrine and theory.”<sup>42</sup>

Similarly, most students will take only one clinical course in law school, and an elective one at that.<sup>43</sup> A proposition that largely consigns pedagogical responsibility for the social reality of law to one course tends to underline its marginal place in the curriculum, rather than otherwise.

Of course, these are both largely logistical problems, which means they may be amenable to logistical solutions. More clinical courses of greater length are an obvious suggestion—indeed, Anthony Amsterdam has suggested that the idea that students only take one clinical course makes about as much sense as requiring students to take only one doctrinal course,<sup>44</sup> and Margaret Barry points out that the textured clinical methodology should be more broadly applied across the curriculum, given its consonance with contemporary learning theory.<sup>45</sup> Among other

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<sup>40</sup> See *e.g.* Karen L. Tokarz, “Poverty, Justice and Community Lawyering: Introduction” (2006) 20 Wash U J L & Pol’y 1 at 1-2; and Barry et al, *supra* note 34 at 65-71.

<sup>41</sup> See *e.g.* Gary L. Blasi, “What Lawyers Know: Lawyering Expertise, Cognitive Science and the Functions of Theory” (1995) 45:3 J Legal Educ 313; and Frank S. Block, “The Andragogical Basis of Clinical Legal Education” (1982) 35:2 Vand L Rev 321.

<sup>42</sup> Barry et al, *supra* note 34 at 49.

<sup>43</sup> *Ibid.*

<sup>44</sup> Anthony Amsterdam, Memorandum to Stanford Law School Faculty (July 17, 1973) cited in Mark Spiegel, “Theory and Practice in Legal Education: An Essay on Clinical Education” (1987) 34:3 UCLA L Rev 577 at 609.

<sup>45</sup> Barry et al, *supra* note 34 at 38.

things, though, this takes us right back to the amount of space available in the overall curriculum—and the extent to which it is already occupied.

### III. CLOSE ENCOUNTERS WITH THE PROFESSIONAL PRACTICE RATIONALE

One of the arguments in support of a continuing focus on doctrinal study is that separate and apart from any allegiance to doctrine as a broader epistemological proposition, students need to learn it because this is the professional medium in which they will be working; if they are not conversant and skilled in this regard, law schools will have failed to prepare them for professional practice.<sup>46</sup> In other words, this represents a vocational rationale—that is, the prioritization of legal skills and graduate employability which Nickolas James identifies as one of the intersecting discourses in law faculties.<sup>47</sup> There is something so plainly functional about this argument that it almost defies elaboration.

However, the “foot in each world” perspective of the clinic suggests that the idea that such a comprehensive emphasis on doctrine is based upon professional imperatives does not necessarily stand up to closer scrutiny. Considered as a discrete skill, doctrinal analysis is only one of a number of sophisticated and complex lawyering competencies essential to practice, including case theory formulation, client counseling, negotiating, transactional skills, trial preparation, and oral and written advocacy. In most law schools, these are taught in elective upper year courses or clinical programs, and occupy a relatively peripheral place in the curriculum. In fact, one of the major thrusts of the Carnegie Report is that the subordinate place of these other legal skills is problematic.<sup>48</sup> Moreover, doctrinal analysis is only of a number of building blocks involved in the construction of case theories, and other lawyering competencies, including the analysis of complex, fluid and ambiguous fact matrices, the iterative development of progressively more refined conceptual schemas,<sup>49</sup> and the ability to synthesize in a multi-dimensional way are arguable more challenging. In a similar vein, Anthony Amsterdam argues that law schools do not do an adequate job of teaching ends-means thinking, hypothesis formulation and testing, and decision-making in uncertain circumstances.<sup>50</sup> If the guiding idea is to prepare students for professional practice, one would expect a broader constellation of competencies might be reflected in the program, especially in first year.

Again, this is not to suggest that doctrinal analysis is *unimportant* as a professional skill. But the idea that students require much of the first year to be spent in doctrinal analysis as a practical matter—and will likely get a good deal more, considering the number of doctrinal courses in the upper year curriculum as well—seems somewhat disproportionate. As Anthony Amsterdam points out, law schools teach case reading and doctrinal analysis to the same students twenty-nine times under different names.<sup>51</sup> As a discrete skill, doctrinal analysis is simply not

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<sup>46</sup> See *e.g.* Harry T. Edwards, “The Growing Disjunction Between Legal Education and the Legal Profession” (1992) 91:1 Mich L Rev 34 at 39.

<sup>47</sup> Nickolas John James, “Australian Legal Education and the Instability of Critique” (2002) 28:2 Melb U L Rev 375 at 383-386.

<sup>48</sup> Sullivan et al, *supra* note 32 at 87-91.

<sup>49</sup> See *e.g.* Blasi, *supra* note 41; and Mark Neal Aaronson, “Thinking Like a Fox: Four Overlapping Domains of Good Lawyering” (2002) 9:1 Clinical L Rev 1.

<sup>50</sup> Amsterdam, *supra* note 34 at 614-615.

<sup>51</sup> *Ibid* at 618.

that difficult—Elizabeth Mertz’ conclusion that a semester is necessary to learn it seems on the generous side.<sup>52</sup>

Of course, even the most traditional first year curriculum is not only a matter of learning doctrinal analysis; it is also an introduction to the substantive black letter law of certain foundational areas. This again has a self-evident practical quality in terms of professional competence. Assuming that knowledge of black letter law is only one of a number of important elements of lawyering, it is still essential to know it. However, if the issue shifts to the assimilation of particular content, this has pedagogical implications as well. For one thing, doctrinal courses are often broad surveys—any particular real life case will require more fine-grained research to understand the nuances and distinctions that might operate in a particular situation, and to locate favourable and unfavourable precedent that will affect the generation of the case theory.

Moreover, lawyers will typically specialize in an area of law, or handle a particular range of cases in several areas as general practitioners. Both situations will require them to attain a post-graduation degree of familiarity with specific doctrinal propositions that far exceeds that possible in a first year course. Of course, broad surveys are still very useful in acquainting students with an overall picture of a set of doctrines, but there is often a time-sensitive aspect as well—as Margaret Barry points out, much of the doctrine so closely analyzed in class will change before the student passes the bar.<sup>53</sup> And as Anthony Amsterdam notes, both the proliferation of law and the pace at which it changes means that law schools can only “convey to students a very small and rapidly outdated portion of all the substantive law” a lawyer might require.<sup>54</sup> In addition, the case method may be an excellent way to teach doctrinal analysis, but it is a relatively inefficient and time-consuming way of delivering black letter content. The latter function would be better served by treatises, texts and summaries.

Thus to the extent that professional skill and content are marshaled in support of the current first year curriculum, they may suggest any number of other designs. For example, doctrinal analysis might be used in only one or two first year courses, black letter law might be presented in a more summary and organized fashion, lawyering theory and skills might be represented, and the whole might leave more room for other interdisciplinary content.

It is also worth noting that the professional practice rationale tends to be rather self-replicating. To the extent that doctrine is the professional currency, this is in part because the judges, legislators, and lawyers involved in crafting and working with it were educated to think that this was so.<sup>55</sup> To continue to educate subsequent generations of judges, legislators, and lawyers in a similar manner because it is necessary to prepare them for practice has a certain circular quality, and does not sufficiently take into account tectonic changes in the understanding and conceptualization of law in the meantime. It also seems reasonable to think that this self-replicating syndrome might be at least one reason for the sluggish entry of academic insights into the professional mainstream. In other words, it is a little difficult to conclude that a concern for post-graduate competency justifies a disproportionate share of the curriculum to the study of doctrine—and so little to the other constituents of law.

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<sup>52</sup> Elizabeth Mertz, *The Language of Law School: Learning to Think Like a Lawyer* (New York: Oxford University Press, Inc., 2007) cited in Sullivan et al, *supra* note 32 at 53.

<sup>53</sup> Barry et al, *supra* note 34 at 31.

<sup>54</sup> Amsterdam, *supra* note 34 at 618.

<sup>55</sup> Barry et al, *supra* note 34 at 36-37.

However, there is no doubt that law schools are facing increasing pressure to offer more professional skills education, courtesy of student demand, law firm complaints, and reviews and analyses like the Carnegie Report<sup>56</sup> and the Working Paper of the American Bar Association Task Force on the Future of Legal Education.<sup>57</sup> A recent indication that experiential education during law school might allow candidates to satisfy articling or other pre-bar requirements and thereby shorten the path to bar admission<sup>58</sup> has intensified that pressure in Ontario, and sparked some concerns about the potential impact of such a change on curriculum. From a clinical perspective, this debate is oddly situated in the sense of being both perennial and long overdue. The prospect of more professional skills training should not in itself represent a competing curricular threat—to some extent, such concerns may reflect a dichotomy that is familiar to clinical educators, that is, the proposition that the skills needed for practice are somehow divorced from theoretical perspectives or understandings of law. As Phyllis Goldfarb points out in a slightly different context, the question of whether law schools should teach professional skills or present a broad intellectual agenda is “an unintelligible inquiry.”<sup>59</sup> Moreover, properly taught, professional skills offer jumping off points for a wide range of critical inquiry and investigation that draws on a deep and varied spectrum of thought, including the insights and analyses provided by a variety of disciplinary perspectives. At the same time, it must be acknowledged that as a logistical matter, an increased focus on professional skills writ small may indeed have some potential to compete with the introduction of more interdisciplinary content and approaches for the same pragmatic reasons of time and space described earlier. All this lends a certain urgency to the idea that the more traditional doctrinal content should be condensed to make way for a more balanced curriculum.

None of this is meant to be a criticism of either the designers or teachers of first year curricula, who wrestle, often valiantly, with many of these issues, and face a variety of competing and complex pressures in the process. If anything, their efforts represent a remarkable degree of skill and ingenuity in dealing with a subject that exerts such a heavy weight on first year courses. Indeed, the lag between the increasing interdisciplinarity of legal scholarship and the less flexible curriculum means that law teachers are often engaged in a form of intellectual acrobatics, as they try to surround or invest the teaching of doctrine—perceived to be a given—with newer ideas and more current legal and non-legal knowledge. The fact that so many do it so well is impressive; the question is why they are still saddled with this format.

## IV. INTERDISCIPLINARITY AND THE PROFESSIONAL LANDSCAPE

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<sup>56</sup> Sullivan et al, *supra* note 32.

<sup>57</sup> Hon. Randall Shepard et al, *Working Paper, American Bar Association Task Force on the Future of Legal Education*, online: American Bar Association <[http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/taskforcecomments/aba\\_task\\_force\\_working\\_paper\\_august\\_2013.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/aba_task_force_working_paper_august_2013.authcheckdam.pdf)>; and John Streeter et al, *State Bar of California Task Force on Admissions Regulation Reform: Phase 1 Final Report*, online: State Bar of California, <<http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000010717.pdf>> p. 10-12.

<sup>58</sup> See for example, Tom Conway et al, *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario*, online: The Law Society of Upper Canada, <<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147489848>>.

<sup>59</sup> Goldfarb, *supra* note 2 at 1605.

If post-graduate competency requirements do not adequately explain the amount of traditional doctrinal content in the curriculum, they do highlight some of reasons why interdisciplinary studies are increasingly valuable. A law student graduating in 2013 faces a number of features of the professional landscape which point to the accelerating importance of interdisciplinary studies in legal education. The first of these features has to do with the implications that the lack of interdisciplinary content in legal pedagogy may have for the quality of law more generally. As mentioned earlier, many, if not most law students will become law-creators in one form or another. The role of judges, policy-makers, and legislators is perhaps obvious; however, practitioners select cases to bring forward, frame legal arguments—often with the express aim of creating precedent—and lobby for legislation. Without an inventory of pertinent interdisciplinary knowledge, or even a thoughtful awareness of the potential knowledge that interdisciplinary perspectives and methods may offer, their ability to make sound or effective law is likely to suffer. In essence, legal education that is still largely intradisciplinary may continue to perpetuate the isolation of legislative and jurisprudential decision-making from crucial forms of understanding and assessment, with the effect that law is still created in the epistemological equivalent of solitary confinement.

Others have commented on the segregation between criminal law and criminology,<sup>60</sup> and there are similar silo formations between labour law and the field of industrial relations, constitutional law, and political science, and so forth. This isolation lends itself to the likelihood of unsound policy assumptions reflected in judicial decisions or legislation—or at least, assumptions about which little is known, one way or another. The classic case is the assumption that punishment acts as a deterrence, which is so heavily infused into criminal law, with so little justification.<sup>61</sup> In these circumstances, the enterprise of law-making begins to look like a hit-and-miss exercise in conjecture or supposition. While this approach may undoubtedly provide grist for subsequent impact analyses, the idea that all available sources of knowledge might be brought to bear on the initial design—to the extent that this is possible—seems preferable, to put it mildly.

Of course, this engages any number of other complex questions about how law is created, the use and misuse of interdisciplinary research, the relationship between the social sciences and more mainstream discourses, and so forth.<sup>62</sup> In one sense, this problem is the tail of a much larger dog—that is, the lack of influence the social sciences and other disciplines have more generally on social policy and other forms of societal decision-making.<sup>63</sup> And this picture is more mixed than the above suggests—courts, lawyers, and even government policy analysts have begun to evince some interest in various kinds of data in the course of judicial decision-making or as a prelude to legislative initiatives, as I will point out below. At the same time, the insularity and deficiencies of law-making uninformed by relevant interdisciplinary knowledge seem self-evident.

This suggests that some of the scholarly glee with which appellate decisions are criticized for their reliance on unsubstantiated assumptions about social conditions or human behaviour may be a little misplaced. Without dismissing either the multiplicity of factors involved in law-

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<sup>60</sup> See *e.g.* Carrie Menkel-Meadow; and Robert Weisberg, “Criminal Law, Criminology and the Small World of Legal Scholars” (1992) 63:3 Colorado L Rev 521 at 527.

<sup>61</sup> Barry et al, *supra* note 34 at 364.

<sup>62</sup> See *e.g.* Elizabeth Chambliss, “When Do Facts Persuade? Some Thoughts On The Market For “Empirical Legal Studies” (2008) 71:2 Law & Contemp Probs 17 on the latter.

<sup>63</sup> *Ibid* at 19-20.



making or the relative abilities of individual judges in this regard, there is an obvious point to be made—as Carl Schneider and Lee Teitelbaum note, judges are all educated by law schools.<sup>64</sup> And even judges who are alert to their own unsupported assumptions may simply not have the requisite knowledge to employ instead. Nor will it be easy for them to obtain it as a result of adversarial processes and procedural doctrines that are inhospitable to judge-initiated evidence, although there have been some calls from the bench for more empirical evidence generally.<sup>65</sup> While it would be prudent not to over-estimate the role of legal education in these circumstances, it does seem possible that law schools might offer some potential to improve upon this state of affairs. At the very least, the consistency between a significantly intradisciplinary legal education and what Deborah Rhode calls “data-free doctrinal analysis”<sup>66</sup> is difficult to ignore. If it is true that traditional legal education is rather like studying “a geology without rocks,”<sup>67</sup> perhaps it is hardly surprising that in their subsequent professional lives, students know very little about rocks.

The importance of interdisciplinary studies is reinforced by a second feature in professional landscape presaged above, that is, that there is indeed an increase in the use of some kinds of scientific or social science data in litigation by practitioners.<sup>68</sup> If it is difficult for judges to call for this themselves, the lawyers who appear before them seem to be picking up some of this slack. Perhaps this is not surprising—both lawyers and judges are likely to have a healthy appreciation for the role and persuasive power of facts, and to the extent that this information can be characterized as expert evidence, it is something of a familiar animal. However, this creates a corresponding need for both the lawyers and judges working with this information to understand how to properly interpret it and assess its strengths and weaknesses. Whether the issue is DNA or other forensic evidence in criminal trials, psychological evaluations in family cases, financial or accounting expertise in corporate contexts, or social science data in constitutional challenges, a primarily doctrinal knowledge-set is likely to be insufficient. Others have pointed out the obvious practicality of empirical studies in particular,<sup>69</sup> which despite their shortcomings, may have a cogent bearing on the social policy choices reflected in particular doctrines or other aspects of the legal enterprise. Even leaving aside studies pertinent to specific doctrinal propositions, one might think that the empirical studies of the legal profession, judging, legal processes, and indeed, legal education<sup>70</sup> have a certain degree of presumptive relevance.

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<sup>64</sup> Schneider & Teitelbaum, *supra* note 22 at 102.

<sup>65</sup> Heise, *supra* note 22 at 831.

<sup>66</sup> Rhode, *supra* note 16 at 1341.

<sup>67</sup> Lawrence M. Friedman, *A History of American Law*, 2d ed. (New York: Simon & Shuster Inc., 1985) at 617, cited in Dow, *supra* note 12 at 586.

<sup>68</sup> *Ibid.*

<sup>69</sup> See *e.g.* Gordon, *supra* note 25 at 2086; Craig Allen Nard, “Empirical Legal Scholarship: Reestablishing a Dialogue Between the Academy and the Profession” (1995) 30:2 Wake Forest L Rev 347; and Schneider & Teitelbaum, *supra* note 22.

<sup>70</sup> See *e.g.* Robert Granfield, “Lawyers and Power: Reproduction and Resistance in the Legal Profession” (1996) 30:1 Law & Soc’y Rev 205 and works cited therein; Gregory C. Sisk & Michael Heise, “Judges and Ideology: Public and Academic Debates about Statistical Measures” (2005) 99:2 Nw U L Rev 743; Michael Heise, “Justice Delayed? An Empirical Analysis of Civil Case Disposition Time” (2000) 50:4 Case W Res L Rev 813; and Bobbi McAdoo & Nancy A. Welsh, “Look Before You Leap and Keep on Looking: Lessons from the Institutionalization of Court-Connected Mediation” (2004-2005) 5:2 Nev L J 399.

In this context, a lack of interdisciplinary knowledge may be a significant disadvantage; the misuse of social science data by the U.S. Supreme Court has been described elsewhere,<sup>71</sup> and certainly the perils of this kind of evidence can be heightened by erroneous perceptions of its objectivity, reliability, or definitiveness. The point here, however, is that the increasing use of this evidence is likely to have some implications for the kind of legal education the modern practitioner requires.

A third feature in the professional landscape pointing to the need for interdisciplinary studies is the continuing growth of specialized adjudicative fora which owe their existence in part to the idea that legal decision-making requires not only knowledge of law, but other kinds of non-legal knowledge as well. Labour, environmental, and health professions boards are examples of quasi-judicial tribunals where adjudicators are both expected and authorized to employ non-legal knowledge or experience of a particular field in their decisions. Of course, such knowledge may itself be largely anecdotal or based on flimsy assumptions, but these tribunals do embody an express recognition of the essential nature of extradisciplinary knowledge in the adjudicative process, and represent a significant departure from the model of generalist judges using only acontextual doctrine and the facts of the case before them to reach decisions.

The significance of this is underlined by the proliferation of these tribunals and the seriousness of their mandates. There is a tendency to think of tribunals as a marginal element of the justice system, with courts still retaining pride of place. However, the increase in both the numbers of these bodies and the cases brought before them indicate otherwise; it has been suggested that tribunals now hear the majority of civil justice cases,<sup>72</sup> with the implication that the ability to understand and use interdisciplinary knowledge might be important for a broad spectrum of future practitioners.

A fourth aspect of the professional landscape is the trend to the provision of multidisciplinary services—that is, legal services combined with psychological, financial, health, or other services. The acknowledgement that client problems arise in multidimensional contexts and often require similarly multifaceted solutions has prompted increasing interest in “one-stop shopping” models of client service, ranging from business and financial services for corporate clients to health or psychological services for family law cases. Janet Weinstein argues that interdisciplinary problem-solving skills are required by lawyers in a complex world, where they may need to organize, coordinate or facilitate an interdisciplinary team.<sup>73</sup> Janet Weinstein has considerable company in these views<sup>74</sup>—indeed, the multidisciplinary practice trend is significant enough to have attracted the attention of professional associations and regulatory bodies.<sup>75</sup> Similarly, the current student enthusiasm for joint degree programs that combine a legal degree with graduate programs other fields may demonstrate, at least in part, a perception on the

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<sup>71</sup> Donald S. Bersoff & David J. Glass, “The Not-So Weisman: The Supreme Court’s Continuing Misuse of Social Science Research” (1995) 2 U Chi L Sch Roundtable 279.

<sup>72</sup> Margot Priest, “Structure and Accountability of Administrative Agencies” in *Administrative Law: Principles, Practice and Pluralism* (Toronto: Carswell, 1992) at 11.

<sup>73</sup> Janet Weinstein, “Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice” (1999) 74:2 Wash L Rev 319.

<sup>74</sup> See e.g. Connolly *supra* note 5; Suellen Scarnecchia, “An Interdisciplinary Seminar in Child Abuse and Neglect with a Focus on Child Protection Practice” (1997) 31:1 U Mich JL Reform 33; and Barry et al, *supra* note 34 at 65-71 and articles cited therein.

<sup>75</sup> See e.g. Rule 6:10 on Responsibility in Multi-Discipline Practices, The Law Society of Upper Canada, *Rules of Professional Conduct*, online: <<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147489381>>; and Barry et al, *supra* note 34 at 67-68.

part of students that interdisciplinary knowledge will increase their post-graduate marketability. Again, it would wise not to draw too many conclusions from this, but the simultaneous growth in both interdisciplinary services and joint programs that may prepare students to provide those services is suggestive.

Taken together, this quick survey of various aspects of the professional environment indicates more of a trend towards the need for and employment of interdisciplinary knowledge in practice than is normally assumed. While the types of such knowledge and their various uses are quite disparate, they do reflect a professional context that is less doctrine-centric, more fluid, and more subject to complex and shifting currents.

Moving from the broader professional landscape to the professionals themselves, the disorienting encounter of the clinic also offers some insight into the development of professional identity on the part of law students, and the potential value of interdisciplinary studies in this regard. One constituent element of a clinical experience is that it marks the initiation of law students into the authentic roles and activities of lawyering – normally their first experiences of “being a lawyer.” As a result, professional role development is a significant aspect of the pedagogical menu. At the same time, the clinical experience can operate to undermine unrealistic notions of professional role as well. Students often come to law school with naïve conceptions of lawyering based on cultural narratives with fragile premises; for example, that courts are places where justice and fairness can be ultimately be obtained by a passionate and skilled advocate most of the time. As noted earlier, they are frequently waylaid by the grittiness of legal reality—clinical programs that serve low-income clients in particular tend to reveal the “majesty of the law” at its least majestic. Of course, the value of these disorienting moments (sometimes referred to as “cognitive disequilibrium” in the context of the development of moral judgment<sup>76</sup>) lies in their potential for triggering learning. However, if the social reality of law casts doubt on the notions that originally propelled student into law school, there is a risk that their more high-minded aspirations may go down with them, discarded in favour of a protective cynicism. In other words, there is a fine line between a disorienting moment and an overwhelming or paralyzing one.

Professional identity is a multi-layered thing, and any claims about the virtues of interdisciplinary studies in this regard must necessarily be modest. Indeed, a more extensive or sophisticated understanding of the social reality of law may occasionally offer an even bleaker view to the nascent lawyer. However, perspectives from moral philosophy, literary works about the role of lawyers, and empirical studies about social and economic inequality are examples that may contribute to helping students break down a rather overwhelming picture into more manageable and knowable parts, offer them some navigational reference points for renegotiating a meaningful professional role, and provide them with a stronger footing from which to reformulate a more durable and sounder idealism. Whether this will provide any support against the exigencies of billing targets, partnership hurdles, and other professional pressures, or help to insulate them from the allures of status and income, is hard to say—one would certainly want to avoid overstatement in this regard. Nevertheless, it is reasonable to think that it will be difficult for students to embark on these tasks without something beyond the often stark conflict between legal theory or doctrine and the operation of law. If professional role development requires

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<sup>76</sup> Neil Hamilton & Verna Monson, “Answering the Skeptics on Fostering Ethical Professional Formation (Professionalism)” (2011) 20:4 *Prof Law* 3 at 5.

finding some degree of moral purchase in a complex and challenging landscape, it is at least important for students to understand the terrain.

## V. SOME (NOT INSUPERABLE) HAZARDS

As compelling as the clinical encounter may be in pointing to the necessity for interdisciplinary perspectives and materials, some brief acknowledgement of the hazards is in order. Douglas Vick points out that concepts in other disciplines may be “encountered in a piecemeal fashion,” without essential nuances or subtleties.<sup>77</sup> Moreover, importing a theory into the legal context may be risky if it is not versatile enough to survive the transfer. This does not preclude the possibility that a resulting version might still shed some light on a legal issue—presumably it can stand or fall on its own terms to some extent, regardless of its pedigree or place of origin. Nevertheless, misunderstanding may affect the soundness or integrity of the theory itself, and certainly proposing or describing it as if it were the original article would be problematic.

The use of empirical data may involve other problems. Studies may be inherently imperfect,<sup>78</sup> have ambiguous results, be badly designed, or may convey the impression of scientific objectivity without being anything of the kind. As Robert Gordon observes, “social science is a value-soaked, fuzzy, messy, dispute-riddled, political enterprise like any other interpretive activity.”<sup>79</sup> Robin Feldman cautions that courts and legal scholars have a tendency to fall for the “siren song” of science when faced with difficult legal problems, looking for a certainty that does not exist.<sup>80</sup> Such studies may also raise significant problems of justiciability, given that they may not fit legal measures or concepts of proof.

Moreover, the more open-ended inquiry approach of the social scientist may be at odds with the advocacy orientation of the lawyer, leading to misinterpretation or misuse.<sup>81</sup> As Lee Epstein and Gary King point out:

While a Ph.D. is taught to subject his or her favored hypothesis to every conceivable test and data source, seeking out all possible evidence against his or her theory, an attorney is taught to amass all the evidence for his or her hypothesis and distract attention from anything that might be seen as contradictory information. An attorney who treats a client like a hypothesis would be disbarred; a Ph.D. who advocates a hypothesis like a client would be ignored.<sup>82</sup>

Richard Neumann and Stefan Krieger observe that law teachers can go wrong by overgeneralizing—that is, taking the results of a small study as more representative than they are.<sup>83</sup> Another mistake they identify is confusing association or correlation with causation, something to which lawyers and law teachers may be prone to because they are focused on

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<sup>77</sup> Vick, *supra* note 13 at 185.

<sup>78</sup> Jennifer K. Robbennolt, “Evaluating Empirical Research Methods: Using Empirical Research in Law and Policy” (2002) 81:2 Neb L Rev 777 at 778 and 802.

<sup>79</sup> Gordon, *supra* note 25 at 2087.

<sup>80</sup> Robin Feldman, “Law’s Misguided Love Affair with Science” (2009) 10:1 Minn. J.L. Sci. & Tech 95 at 95-97.

<sup>81</sup> See *e.g.* Neumann & Krieger, *supra* note 8 at 366-384; and Lee Epstein and Gary King, “The Rules of Inference” (2002) 69 U Chi L Rev 1 at 6-11.

<sup>82</sup> Epstein & King, *supra* note 81 at 9.

<sup>83</sup> Neumann & Krieger, *supra* note 8 at 368-370.

persuasion, and may not understand the highly complex structures of causal relationships.<sup>84</sup> Law teachers may not be able to evaluate the strength or weakness of the methodology employed in a particular study, and they may find it difficult to assess whether such a study represents the general weight of research in the area, or is an anomalous outlier. There is also extensive debate about the quality of the work produced by legal scholars who embark on empirical studies themselves,<sup>85</sup> as opposed to utilizing those generated by scholars in other disciplines.

All of this suggests caution is called for, and that law teachers who wish to use other disciplinary approaches would be well-advised to do so carefully – this is an area where a little knowledge may, indeed, be a dangerous thing. At the same time, the hazards of not utilizing interdisciplinary perspectives may be worse—as Robert Gordon points out, a traditional doctrinal education typically ignores the actual workings of the legal system, and unless social science studies are “hack work or ideological claptrap,” they are better than nothing.<sup>86</sup> If such studies are likely to have some degree of fallibility, Carl Schneider says that careful research at least establishes propositions “with as much certainty as is vouchsafed in human affairs.”<sup>87</sup> Presumably some of these pitfalls can also be minimized by academic rigour, interdisciplinary consultation, review or collaboration, thorough study, and the like. In other words, while the dangers here may be considerable, they hardly seem insurmountable.

## VI. CONCLUSION

Clinical programs may be sites that offer too much surprise for students at the moment, encapsulating the gap between what they learn in the classroom and what they need to know to understand the complex phenomenon of law and to prepare themselves for a shifting and variable post-graduate landscape. The necessary introduction of more interdisciplinary studies to address this gap is not likely to be easy—Judith Welch Wegner points out that the reform of legal pedagogy involves a number of “wicked problems,” that is:

[A] “wicked problem” is one that cannot be definitely described or understood (since it is differently seen by differing stakeholders, has numerous causes, and is often a symptom of other problems). “Wicked problems” cannot readily be resolved (since they are characterized by a “no stopping rule” resulting from cascading consequences that are difficult to discern at the outset), and can only be addressed in “better or worse” ways, rather than proving solutions are “true” or “false.” “Wicked problems” occur when the factors affecting possible resolution are difficult to recognize, contradictory, and changing; the problem is embedded in a complex system with many unclear interdependencies, and possible solutions cannot readily be selected from competing alternatives.<sup>88</sup>

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<sup>84</sup> *Ibid* at 374-375.

<sup>85</sup> See *e.g.* Epstein & King, *supra* note 81 at 6-10; Rhode, *supra* note 16 at 1343; and Chambliss, *supra* note 62 at 22-23.

<sup>86</sup> Gordon, *supra* note 25 at 2087

<sup>87</sup> Schneider & Teitelbaum *supra* note 22 at 72.

<sup>88</sup> Judith Welch Wegner, “Reframing Legal Education’s ‘Wicked Problems’” (2009) 61:4 Rutgers L Rev 867 at 870-871.

This rather daunting description might suggest that the only intelligent course of action for law teachers is to go home and pull the bedcovers over their heads. However, both the imagination and resourcefulness they have shown so far in pumping new life into an old curriculum and the burgeoning of interdisciplinary scholarship suggest there is also considerable reason for optimism. In these circumstances, Margaret Russell's question has a great deal of resonance: "How does one thoughtfully, rigorously, and conscientiously prepare [students] for a profession which is both yoked to convention and beckoned to metamorphosis?"<sup>89</sup>

It seems reasonable to think that a little less convention and a little more metamorphosis might be the place to start.

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<sup>89</sup> Margaret M. Russell, "Beginner's Resolve: An Essay on Collaboration, Clinical Innovation, and the First-Year Core Curriculum" (1994) 1:1 *Clinical L Rev* 135 at 137.