Fostering interdisciplinarity in legal education: The quest for autonomy

William Gabriel Rioux[1]

RÉSUMÉ

Cet article se penche sur les débats qui agitent la littérature existante concernant la place de l'interdisciplinarité dans les facultés de droit et sa contribution à une époque où l'enseignement du droit est remis en question. Les défis auxquels les futurs étudiants en droit seront confrontés au cours de leur carrière exigeront une prise de conscience collective des connaissances qui leur sont enseignées. Dans le contexte actuel où la question de savoir si le droit est une discipline fait encore débat, il existe une mince frontière entre autonomie et interdisciplinarité. Nous soutenons que le droit, afin de s'intégrer à l'interdisciplinarité, et non en dépendre, doit acquérir et développer une plus grande autonomie et indépendance par rapport aux autres disciplines. Dans cet article, nous proposons des moyens de parvenir à l'interdisciplinarité sans dépendre d'autres disciplines, mais plutôt en acquérant de l'autodétermination.

MOTS-CLÉS : Enseignement du droit, pédagogie, réforme, tradition, pratique, interdisciplinarité, humanisme, culture juridique.

ABSTRACT

This article wades into the debates in the existing literature on the place of interdisciplinarity in law schools and its contribution at a time when legal education is being brought into question. The challenges that future law students will face during their careers will require a collective awareness of the knowledge they are taught. There is a fine line between autonomy and interdisciplinarity in a context where the question of whether law is a discipline is still being debated to this day. We contend that law, so as to integrate with and not depend on interdisciplinarity, must acquire and develop greater autonomy and independence in regard to other disciplines. In this article we propose ways to achieve interdisciplinarity without depending on other disciplines, namely by gaining self-determination.

KEYWORDS : Legal education, Pedagogy, Reform, Tradition, Practice, Interdisciplinarity, Humanism, Legal culture

1 Université de Sherbrooke

> « L'innovation c'est sortir du cadre, de ses propres frontières, avoir la capacité de collaborer avec d'autres domaines d'expertises que le sien, car l'interdisciplinarité favorise l'imprévu, l'innovant, la sérendipité », Michel Serres

1. Exploring boundaries: interdisciplinary perspectives on law and scholarship

"When it feels threatened or in crisis, a discipline may become closed and self-limiting."[1] This quotation, sadly familiar because of the Arthurs Report,[2] describes a situation that is neither an option nor a viable solution for any scholarly community in such circumstances. A commentary on the legal community's experiences following the publication of that famous report, this quotation has long reflected the legal community's image, and nearly 40 years later, not much has changed.[3] Law, like other post-professional domains, needs to draw on other disciplines, since its mission is to solve complex problems requiring many types of knowledge. However, while this contact with other disciplines brings a certain wealth, it also creates insecurity about the discipline's boundaries and where one stands in relation to those boundaries.[4] The fragility associated with interdisciplinarity originates from the illusion that we have of sharing something, and collective action is essential if we are to test this illusion and perhaps even transform it into a positive experience. Indeed, collective action will reveal the presence or absence of convergence. The cross-fertilization that can result does not stem entirely from one discipline or another but is rather the fruit of joining forces on a common project. Interdisciplinarity happens when actors think

[1] See Violaine Lemay & Michelle Cumyn, "La recherche et l'enseignement en faculté de droit : le cœur juridique et la périphérie interdisciplinaire d'une discipline éprouvée" in Georges Azzaria, ed., *Les nouveaux chantiers de la doctrine juridique* (Montréal : Yvon Blais, 2016) at 94.

[2] Published in 1983 by Canada's Social Science and Humanities Research Council, the Report on Law and Learning, commonly referred to as the "Arthurs Report," was intended to make recommendations on legal scholarship, research, and education in Canada. The report generated strong reactions from the Canadian legal community and is still heavily criticized today. See generally: SOCIAL SCIENCES AND HUMANITIES RESEARCH COUNCIL OF CANADA, LAW AND LEARNING: *Report of the Consultative Group on Research and Education in Law*, Ottawa, The Council, 1983 at 11-22.

[3] Note: "Legal education reform efforts have persisted for over one hundred years, supported by substantive expertise, empirical data, cutting-edge curricula, and effective pedagogy. But today, the normative face of legal education remains essentially unchanged." See Sara K. Rankin, "Tired of Talking: A Call for Clear Strategies for Legal Education Reform: Moving Beyond the Discussion of Good Ideas to the Real Transformation of Law Schools" (2011) 10: 1 Seattle Journal for Social Justice 11.

[4] See Michèle Lamont and Virág Molnár, "The Study of Boundaries in the Social Sciences" (2002) Annual Review of Sociology 167-195. "[…] a discipline is 'bounded' by its procedure for adjudicating knowledge claims. This procedure consists of an argumentation format that restricts (i) word usage, (ii) borrowings from other disciplines, and (iii) appropriate contexts of justification/discovery (for example, some claims may be grounded on 'reason alone,' some on unaided perception, some on technically aided perception). A discipline that is fully bounded is autonomous: it controls its own academic department, program of research, historical lineage, and so forth."

through and take tangible action on common grounds. This necessary impetus of reciprocation between law and other disciplines presupposes judgment and expertise. Unfortunately, the processes and very nature of interdisciplinarity are misunderstood with confusion between multidisciplinarity, interdisciplinarity, and transdisciplinarity. These misconceptions are frequently held by the various actors involved in the law. If law is to be considered a discipline, then it is the responsibility of the legal community—comprising both practitioners and scholars—to delineate its boundaries and define its future.[5]

Interdisciplinarity has been presented to lawyers, especially since the Arthurs Report,[6] as a platform of salvation leading to scientific status and academic legitimacy. The report, publicly criticized for its scientific naivete, advocated interdisciplinarity by borrowing the theoretical frameworks of other disciplines to accede to the sought-after academic virtues of reflexivity, critical distance, and the formation of meta discourse.[7] This approach results in a loss of autonomy for the legal sector, as other academic communities are left to decide how legal knowledge should look. From our perspective, reflecting on the specificity of a discipline today invariably means questioning its academic history, the reasons for its choice of methods, and the criteria of excellence it has championed over time—and which gives value to its own knowledge. The "good knowledge" of philosophers is not necessarily the "good knowledge" of sociologists, and the same applies to the law. To reflect on the specificity of law as a discipline is to begin by pondering what we are doing at the epistemological and methodological levels: What are our processes of knowledge? What are the characteristics of our research?[8] However, while it is crucial for law to question itself about its research practices and methods, it is all the more important to understand that ignoring the methods of others leads to looking at them, wrongly, as ignorant.

The knowledge generated by other disciplines needs to be incorporated into research without giving up the specific legal point of view. This entails maintaining a clear focus on the aims of one's own legal research, while acknowledging that knowledge from other disciplines is

[5] On the peculiar question of whether law is a discipline or not, see notably: Finn Makela, "Is Law an Academic Discipline?" (2016) 50: 2 RJT 433 at 440.

[6] Note: More recently, the Federation of Law Societies of Canada has constituted a Program Approval Committee to evaluate whether law faculty programs are compliant with national requirements that specify "the competencies and skills graduates must have attained and the law school academic program and learning resources law schools must have in place." See Federation of Law Societies of Canada, "National Requirement for Approving Canadian Common Law Degree Programs", online: <http://www.flsc.ca/>.

[7] See Arthurs Report *supra* note 2 p. 11-22; Innis Christie, Janice D. McGinnis and David Fraser, "Reaction to the Arthurs Report," (1985) 65 Dalhousie Review 5; Constance Backhouse, "Revisiting the Arthurs Report Twenty Years Later," (2003) 18 CJLS 33.

[8] Note: Even today, these issues are debated, and there seems to be no clear consensus about them. On this tenuous question and especially on the question of whether law is a discipline, see Finn Makela, "Is Law an Academic Discipline?" (2016) 50(2) RJT 433.

often essential to do fruitful research in law. For instance, a legal scholar doing research on a reform of the law of evidence in civil procedure cannot ignore psychological research on the dubious quality of human memory, and furthermore needs to incorporate these results into the assessment of witness testimony.[9] However, this can still be done while maintaining an internal point of view in which the legal values of procedural law remain the core standard of assessment. While interdisciplinary knowledge is valuable, it is crucial to remember that the tribunal must remain the ultimate authority on evidence, especially in sensitive matters such as the testimony of children or expert evaluations. For many legal scholars, the challenge presented by interdisciplinarity will cause them to conclude that the internal point of view can no longer be maintained in isolation.[10] For some, it means that they become more aware of the specific internal perspective of their legal research without concluding that they must do interdisciplinary work themselves.[11] The close relationship between scholarship and practice has one particularly profound consequence for the nature of legal scholarship: Its perspective is internal to the practice of law.

Entertaining an internal perspective means that scholars regard the subject matter of their research from the same point of view as the people who engage in the subject.[12] An internal perspective on law means sharing the perspective of judges, lawyers, legislators, or citizens who engage in legal practice. Taking this first step to distance legal researchers from the practical decision-maker raises more difficult questions about the perspective of legal scholars; for instance, is it possible for a legal scholar to take an outside perspective while still working within the discipline of law? Or to phrase it differently, does engaging in *legal* research necessarily entail adopting an internal perspective?[13] This brings us to the contested boundaries of the discipline. In the narrow view of the discipline, only doctrinal research with its internal perspective and the attendant legal

[9] On the importance of psychology in the legal sphere, see Ancireas Kapardis, *Psychology and Law: A Critical Introduction* (Cambridge: Cambridge University Press, 1997); Ray Bull & David Carson, *Handbook of Psychology in Legal Context* (West Sussex, John Wiley & Sons, 1995); Paul Appelbaum, Lisa Uyehara & Mark Elin, *Trauma and Memory: Clinical and Legal Controversies* (New York: Oxford University Press, 1997); Stephen J. Ceci & Mame Bruck, *Jeopardy in the Courtroom: A scientific analysis of children's testimony* (Washington: American Psychological Association, 1995).

[10] See notably Mark Weisberg, "On the Relationship of Law and Learning to Law and Learning," (1983) 29 McGill LJ 155 p. 160; Douglas W. Vick, "Interdisciplinarity and the Disciplinarity of Law," (2004) 31 J. L. and Society 163 184.

[11] See Harry T. Edwards, "The Growing Disjunction Between Legal Education and the Legal Profession," (1992) 91 Michigan L Rev 34 p. 36.

[12] Scott J. Shapiro, "What Is the Internal Point of View?" (2006) 75 Fordham L Rev 1157 p. 161.

[13] Note: "Scholarship from the internal point of view—often described as formalist—is necessarily bereft of a certain kind of objectivity that is generally valued in other disciplines, in the sense that it doesn't make, *can't make*, empirical truth claims about law. Furthermore, in so far as such scholarship characterizes legal reasoning as essentially deductive and the most important premises are taken as given (since the law is accepted as authoritative by the scholar), it is essentially conservative; dependent for its legitimacy on the maintenance of the authority of the system of which it is a part and disinclined to advance positions that call it seriously into question. In other words, like theology, scholarship from the internal point of view is open to charges of being both dogmatic and doctrinal." See Finn Makela, *supra* note 8.

theory that studies the presuppositions of the doctrinal research count as legal research. Others engaging in research concerning law do not fall into the same category; they do philosophy, history, or sociology—not law. In the broad view, however, these other types of research are indeed legal: they are legal philosophy, legal history, and legal sociology as subdisciplines of law, distinct from philosophy, history, or sociology in general. Debate is still ongoing in each of these disciplines and interdisciplines.[14] There is no easy answer to this question, other than to say that most legal research is done from the internal perspective and that it depends on one's definition of the discipline of law as to whether legal research is restricted to that internal perspective.

The lines between the legal doctrine of formal law and other social orders become blurred once it is acknowledged that law is just one form of social control shaped by culture, social structure, custom, tradition, and a variety of reciprocal obligations and duties that exercise control over human behaviour. This legal pluralist perspective has resonance with the sociologist Eugen Ehrlich's concept of "living law,[15] " Oliver Wendell Holmes' sociological jurisprudence,[16] and Karl Llewellyn and Jerome Frank's legal realism[17]—each of which also brings attention to the sociopolitical influences that shape law and its application. The importance of social context was also at the heart of the charge, brought by the critical legal studies movement, that legal formalism's claim of the independence and neutrality of law was a "big lie," as law and its application are shaped by politics, and then subsequently rationalized by judges' decisions.[18]

With the new theories of knowledge, we have arrived at an era of relativism and plurality, especially with postmodernism and post-structuralism. By observing the history of various scholarly projects, we can easily see that each possesses a set of processes, such as methods and techniques, built especially for it. The fantasy of a universal method is now

[14] Note: On the issue of recognition of sub-disciplines and inter-disciplines, see Valerie V Peterson, "Against Interdisciplinarity" (2008) 31:2 *Women and Language* 42; Jonathan Kramnick, "The Interdisciplinary Fallacy," (2017) 140 *Representations* 67.

[15] See Michel Coutu, "Book Review: Living Law: Reconsidering Eugen Ehrlich, by Marc Hertogh (ed)" (2009) 47: 3 Osgoode Hall L J 587; James F O'Day, "Ehrlich's Living Law Revisited--Further Vindication for a Prophet without Honor" (1966) 18 W Rsrv L Rev 210; Brian Z Tamanaha, "Review: A Vision of Social-Legal Change: Rescuing Ehrlich from Living Law" (2011) 36:1 Law & Social Inquiry 297.

[16] See A Javier Trevino, "The influence of sociology on American jurisprudence: from Oliver Wendell Holmes to critical legal studies" (1994) 18:1 Mid-American Review of Sociology 23; C Perry Patterson, "Jurisprudence of Oliver Wendell Holmes" (1947) Minnesota L Rev 933.

[17] See Karl N Llewellyn, "Some Realism about Realism—Responding to Dean Pound" (1931) 44 Harvard L Rev 1222, 1236; Dan Priel & Charles L Barzun, "Legal Realism and Natural Law" (2015) Osgoode Legal Studies Research Paper Series 92; NEH Hull, "The Romantic Realist: Art, Literature and the Enduring Legacy of Karl Llewellyn's "Jurisprudence" (1996) 40 American Journal of Legal History 115, esp 117–23, 140–45; Jerome Frank, Law and the Modern Mind, 6th printing (Garden City: Anchor Books, 1949); Jerome Frank, 'Mr. Justice Holmes and Non-Euclidean Legal Thinking' (1932) 17 Cornell Law Quarterly 568, 586.

[18] See Stephen M Feldman, "Free-Speech Formalism Is Not Formal" (2020) 12:4 Drexel L Rev 691; Paul N Cox, "An Interpretation and (Partial) Defense of Legal Formalism" (2003) 36:57 Indiana L Rev 57; Richard Delgado, "Rodrigo's Thirteenth Chronicle: Legal Formalism and Law's Discontents", (1997) 95 Mich L Rev 1105.

a thing of the past. As Professor Mark Van Hoecke acknowledges, a method does not develop from outside a discipline, its theoretical framework or its research questions. "A method is a way in which the answer to research questions is found and depends on the research questions."[19] In other words, a method is not a "ready-to-wear" accessory, as claimed in the Arthurs Report:[20] it is "made to measure." Law, like any discipline, possesses epistemological characteristics peculiar to its history, its social functions, and its knowledge. It is therefore up to law, and law alone, to identify and cultivate the method best suited to it, and the actors from the legal community must assume their responsibilities in this regard. However, it is obvious that law struggles to identify and to articulate its own procedures at a theoretical level, even though such an articulation is necessary in order to consolidate the disciplinary autonomy of jurists, particularly in the face of pressures and contempt from external approaches that are deemed superior.[21] The difficulty of constructing a consensual definition of research or knowledge "in law" is bound up with the endless quest for the ontology of law, namely: *What is law?* Centuries of reflection have not produced consensus or universal truth. A consensual definition of "knowledge in law" will probably only emerge when the traditional ontological reflex is set aside to make room for a different intellectual exercise: identity construction.[22]

Law is autonomous insofar as it adopts its own orientation rooted in a system of rules and principles, its own core values, and its own language and institutions. Because of these distinct characteristics, we can point to law as a separate domain of society.[23] However, law is also closely connected to other social practices, not only because it regulates activities in many other practices, but also because the values and principles of law always refer to the values of other practices. The relative autonomy of the practical domain of law has important consequences for the enterprise of legal scholarship. If we want to gain a meaningful understanding of what law is, legal research must consider the connections between law and other social practices. Of course, it is possible to limit the scope of these connections in order to keep individual research manageable, but in most cases, interesting research questions do require paying attention to the intertwinement with other domains. As such, legal scholarship is relatively

[19] See Mark Van Hoecke, "Methodology of Comparative Legal Research" (2015) *Law and Method* 1.
[20] ARTHURS REPORT, *supra* note 2, at 165.
[21] Note: When we refer to "higher approaches," we are thinking in particular of traditional approaches specific to the social sciences such as the sociological approach, the anthropological approach or even the economic approach. On that question see notably Harry Arthurs and Annie Bunting, "Socio-legal Scholarship in Canada: A Review of the Field" (2014) 41:4 Journal of Law and Society 487.
[22] Note: The law must take a step back from the processes that it uses to be able to compare and analyze its own approach to that of other disciplines from a pedagogical and not in a competitive perspective. On *What is Law?* See notably Finn Makela, *supra* note 8.
[23] See Hanoch Dagan, "Law as an Academic Discipline," in Helge DeDek and Shauna Van Praagh, ed, *Stateless Law: Evolving Boundaries of the Discipline*, Surrey, Ashgate, 2015 at 45.

autonomous insofar as it depends on input from other disciplines, both empirically (to validate the facts dealt with by the law) and theoretically (to fully understand both the normative principles and the theories and concepts of law that are connected to values and theories related to other practices). Because both the relationships with other disciplines and with legal practice can be characterized as relatively autonomous, there exists a wide range of positions on legal scholarship. For instance, a legal scholar can focus on doctrinal research that has a strong focus on legal practice and that emphasizes the autonomy of other disciplines and the openness toward practice. All such positions are defensible provided the choices being made are acknowledged. Good legal scholarship requires a reflexive awareness of one's limitations as a legal researcher coupled with the willingness to try to overcome them when necessary. Keeping an open mind toward everything relevant to one's own research is the first step. Good legal research makes at least some use of insights from other disciplines.

Another way in which legal scholarship is relatively autonomous is in relation to the practice of law. Accepting that the perspective of legal scholarship is internal to that of the practice of law means that the relevance of legal scholarship is always measured to some extent by the contribution it makes to the purposes of law in a practical sense. This by no means implies that legal scholarship should not be critical of practice; on the contrary, well-argued criticism is one of the most valuable contributions legal scholarship can make to practical concerns. However, it does mean that legal scholarship needs to present its arguments in a way that they can be understood, and responded to, by participants in the legal practice. Law and legal studies illustrate one approach to interdisciplinarity whereby two disciplines join to form a hybrid, such that concepts, theories, and applications emerge from the nexus of the two disciplinary traditions. Examples of this approach are found in the interdisciplinary subfields of law, which include law and psychology, law and society, anthropology of law, economics and law, feminism and law, critical legal studies, historical approach to law, masculinities and law, semiotics and law, law and literature, etc. There are not only professional associations for these hybrid disciplines, but also journals and courses taught by specialists in these fields. Interdisciplinary approaches to law have much to do with the idea that law exists in a sociopolitical context, rather than—as argued by legal formalists and legal positivists—an independent system of rules.

2. Navigating the intersection of law and literature: exploring interdisciplinary connections

One of the most manifest—or arguably controversial, considering the postmodernist dialectical approach to law and literature, where the destiny of law was suggested to be literature—examples of these interdisciplinarity subfields are law and literature. There are myriad connections between both disciplines, and current research is just beginning to trace the outlines of this innovative approach.[24] In the narrow sense, the term "literature" refers to "all written works which are recognized to have aesthetic value."[25] However, this definition is not universally agreed upon, as what is considered "literature"—and, more importantly, what "deserves" the title—is not shared by all scholars in the field. For instance, references to authors such as Ost, Posner, West, and Beardsley each represent distinct worlds, and these variations highlight a lack of consensus within the literature itself. For many practitioners and scholars, it is almost inconceivable that these two disciplines—often recognized as being opposed—could benefit from each other. There is no doubt that this amalgam is likely to challenge and shake up the certainties of jurists; indeed, literature itself—which sometimes offers troubling representations of the law and the realities to which the law is applied—often shocks and disturbs. Literature invites jurists to question their understanding of law, leading them to rethink and criticize their discipline. While literature opens worlds, the law codifies reality. In a positivist and legalistic culture, a *rapprochement* with the literary world is not easy; and although this rapprochement has been pursued by a community of proponents, a considerable part of the legal community does not share their enthusiasm.[26] However, one of the greatest virtues of law and literature lies in its educational potential.[27] What is frequently emphasized in this field is not merely the intellectual critique it engenders, but rather its figurative potential—whether in a sensory or abstract form—in offering new insights into the law.

---

[24] Note: The interest the law and literature has come rather late. After a false start at the end of the 19th century, which resulted in controversy and debate when certain authors began scratching the surface of the approach, the systematic study of the relationship between law and literature only really took off in the 1980s, after Professor Richard Posner published a series of essays that sought to make connections between these two disciplines. A wave of enthusiasm followed a few years later, driven by the works of François Ost and Richard Weisberg, considered to be the "founding fathers" of the law and literature approach. In Europe, particularly in France and Germany, François Gény is recognized for making the first reflections and analyses on law and literature. Indeed, in the 1920s, François Gény studied the literary forms and the fiction underlying the legal discourse and the rhetoric used by practitioners. French research was then dominated by social science specialists, in particular by the Hellenists. In Anglo-Saxon countries, John Wigmore, the creator of legal fiction, and Benjamin Nathan Cardozo, a United States Supreme Court Justice, were particularly prominent thinkers in the first third of the 20th century. From then on, collective works, special issues of journals and various articles on the subject multiplied.

[25] Monroe C Beardsley, "Aesthetic Value in Literature (1981) 18:3 Comparative Literature Studies 238 at 239.

[26] See François Ost, "Droit et littérature : variété d'un champ, fécondité d'une approche" (2015) 49:1 RJT 1; Robin West, "Communities, Texts, and Law: Reflections on the Law and Literature Movement" (1988) 1 Yale J L & Human 129.

[27] Ian Ward, *Law & Literature – Possibilities and Perspectives* (New York: Cambridge University Press, 1995) at 26.

According to cultural studies, contact with literature leads to the acquisition of human qualities.[28] The study of literature is said to help develop essential skills such as the ability to listen, the art of convincing people, and the ability to give a speech that takes into account the sensitivity of the listeners.[29] By engaging with literature, future jurists stand to both acquire technical skills and develop the moral capacities required by the profession of jurist. Indeed, recent studies have even claimed that a joint study of law and literature could lead to a more refined sense of justice, the acquisition of a sense of political responsibilities inherent to the functions of judge and lawyer, a more expansive acceptance of diversity (especially the most marginal populations), and above all, the improvement of written and oral communication.[30] In addition to the acquisition of personal, moral, and technical skills, this contact with literature also fosters the development of diverse forms of reasoning directly related to legal rationality itself.[31]

Other aspects of law and literature are worth teaching, including interpretation, the use of literary techniques in legal writing, the claimed humanizing effect of literature on law, and the regulation of literature by law.[32] Literature can provide lawyers, judges, and law students with valuable background knowledge concerning subjects of legal regulation and with fascinating hypothetical situations for testing legal principles. But tighter boundaries need to be drawn around the field.[33] Not every work of literature should be considered fair game for the law and literature scholar, and nor is every legal document a fruitful subject for literary analysis. To admire a particular work of literature or to be interested in a particular legal issue is not a good reason to drag the work or the issue under the lens of law and literature scholarship. The exploration of the other side of the legal decor, which will have revealed its fictions and its trompe-l'oeil constructions, its artifices, and its stage effects, will produce, by the same token, a critical knowledge of legal constructions and the beginnings of a foundation of these based on a broader knowledge of the powers of language, as well as the twists and turns of practical reason.[34]

---

[28] See in particular Marta Andruszkiewicz, "The Heritage of Cultural Determinants of Law and Literature: Methodological Findings" (2021) 34 International Journal for the Semiotics of Law 611–621; Tony Bennett, "Cultural studies and the culture concept" (2015) 29:4 *Cultural Studies* 546-568; John Erni, *Law and Cultural Studies: A Critical Rearticulation of Human Rights* (London: Routledge, 2020).

[29] See Robert Weisberg, "Proclaiming Trials as Narratives: Premises and Pretenses," in Peter Brooks and Paul Gewirtz, eds, *Law's Stories: Narrative and Rhetoric in the Law* (New Haven: Yale University Press, 1996) 61.

[30] See Richard A Posner, "Relations between law and literature" (1999) 34 Irish Jurist – New Series 18.

[31] *Ibid.*

[32] See James R Maxeiner, *Education Lawyers: Now and Then* (Lake Mary: Vandeplas Publishing, 2007).

[33] On the question of boundaries, see Jane Baron, "Law, Literature, and the Problems of Interdisciplinarity" (1999) 108:5 Yale Law Journal 1059.

[34] See Bernadette Meyler, "The Myth of Law and Literature" (2005) 8:2 Legal Ethics 318; Karen Petroski, "Fictions of Omniscience," (2015) 103: 4 Kentucky Law Review 477; Robert A Ferguson, *Practice Extended: Beyond Law and Literature*, (New York: Columbia University Press, 2016).

At the heart of legal and literary cultures, there are individuals. Despite this common root, there is a major aspect which opposes them, and which must not be forgotten. The humanism of literature is much more permissible than legal humanism: Literature can say what it wants, but this is not always the case with law. Imagination is powerful, but so too is the law; combined, they can achieve extraordinary things. But without boundaries or limitations, or when misused, the consequences of their union can be devastating.[35] Nevertheless, there remains an important thread of constancy: both law and literature come from the thoughts of humankind and like any thought, they have always, through time and places, entertained a vibrant dialectic. There is no better introduction to the understanding of human behaviour and passions than an immersion in the work of the great writers who have been working on this task for millennia.[36] As such, what better preparation for all professions based on human relationships? If we understand literature in this way and if we steer its teaching accordingly,[37] we can tap into an immensely valuable resource for future lawyers, social workers or psychotherapists, historians, or sociologists.

Interdisciplinarity, as a new cross-cutting competence of law, is valuable to legal knowledge—a statement that appears to have reached consensus by now. However, engaging with interdisciplinarity while adopting a poor methodological reflection of one's discipline is sure to lead to a plethora of critical issues. Perhaps the most striking finding is that lawyers are ill-prepared to do interdisciplinary research.[38] When the boundaries of a disciplinary tradition become more flexible, it creates new research avenues. The best will seize this opportunity to make a name for themselves, but those who are poorly prepared and insufficiently anchored in classical landmarks will stumble and fall, resulting in poor methodological rigour when engaging in interdisciplinarity.[39] Instead of locating the

[35] See Richard A Posner, "Law and Literature: A Relation Reargued" (1986) 72:8 Virginia Law Review 1351; Richard H Weisberg, "Wigmore and the Law and Literature Movement" (2009) 21:1 Law & Literature 129; Dieter Axt, "Entretien avec François Ost : Droit et littérature : Les deux faces du miroir" (2017) 3:1 Anamorphosis – Revista Internacional de Direito e Literatura 249.

[36] Note: According to the basic premises of law and literature, major literary works can embody the illustration of legal entities. *The Merchant of Venice*, for instance, illustrates the intangibility of the contract in a society where it represents a major issue of trust. In *Robinson Crusoe*, we bear witness to the initial act of assertion of a personal right, which would be at the origin not of the right itself, but of the consciousness that each has legal relationships with others. *Antigone* by Sophocles illustrates the separation between the divine law and the law written by men.

[37] Note: Judith Resnik, a professor at Yale Law School, confronts her students with literature to show them what jurists cannot yet imagine: the stories the law has yet to invent, the rights yet to be discovered, and the treatment of problems that have been updated but in the painful face of which we are speechless.

[38] On the impact of legal education, see Paul Maharg, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-first Century* (London: Routledge, 2016); John O Sonsteng, *A Legal Education Renaissance: A Practical Approach for the Twenty-first Century* (Lake Mary, Vandeplas Publishing LLC, 2006); Harry T. Edwards, "The Growing Disjunction Between Legal Education and the Legal Profession," (1992) 91 Michigan L Rev 34 at 36; Martha Rice Martini, *The Crisis of American Legal Education* (New York, University Press of America, 1996).

[39] See Violaine Lemay and Benjamin Prud'homme, "Former l'apprenti juriste à une approche du droit réflexive, critique et sereinement positiviste : L'heureuse expérience d'une revisite du cours « Fondements du droit » à l'Université de Montréal" (2011) 52:3 Les cahiers de droit 581.

different bodies of knowledge and the methods from their respective scholarly context, the researcher falls into a form of syncretism.[40] Because of its structure, the clumsiness resembles that of not being able to pass adequately from English to French—improperly importing rules, words or syntax from one to the other, resulting in bad French and bad English. Similarly, this state of affairs produces both bad science and bad law. Unaware of the characteristics of their own method, too little inclined to reflexivity, modern legal practitioners set out to seek the sources of law as unconsciously as they draw breath, without even thinking about what they are doing.[41] These examples constitute only an overview of the consequences of interdisciplinarity, when poorly understood, and especially when poorly taught. Interdisciplinarity is a matter of distance.[42] It presupposes the existence of a certain distance between at least two disciplines. It requires the necessary effort to take the step, to cross the borders that delimit the territory of each discipline. It commits to reducing the distance separating them—a distance that must nonetheless not be abolished since distance defines interdisciplinarity. To take that necessary distance, the ability to identify and understand the contours of one's own discipline is crucial.

3. Unraveling legal evolution through a historical lens: understanding the interplay of context, precedent, and social transformation

To grasp the formation, expression, and meaning of the law, an understanding of the scope and evolution of legal rules is an essential asset to contemporary jurists. The rules applicable at any given moment in history are the result of political, economic, moral, religious, and social contexts. Rules are often formed through the accretion of successive contributions, but in some cases, they also result from a process of borrowing from other states or jurisdictions. By knowing where the law comes from, researchers and jurists can acquire a better knowledge of it, and eventually grasp its current debates and legal evolutions. History shares common borders with many disciplines. This peculiar characteristic makes it easier to implement a multidisciplinary approach that is today a necessary tool for the interpretation of complex problems that the law alone cannot solve. As the bearer of a great deal of freedom compared to the traditional disciplinary divisions, history enriches and complexifies knowledge, but, above all, it

[40] Note: By "syncretism," we mean attempting a cohabitation or union of different or opposing principles, practices, or philosophical doctrines. The cohabitation of these abstract and disparate elements leads in most cases to confusion.
[41] *Ibid* at 588.
[42] See Bernard CK Choi "Multidisciplinarity, interdisciplinarity, and transdisciplinarity in health research, services, education and policy: Discipline, inter-discipline distance, and selection of discipline" (2008) 31:1 Clin Invest Med 41.

questions the conceptions generally "expected" and "accepted" by society.

Law has every interest in engaging with different approaches and methods to achieve an argumentative dialogue in which a collective search for truth takes place, accepting the diversity of opinions and assuming the uncertainty of the result. The historical approach encourages reflection on the law in its social and political dimensions, as well as on its methods of elaboration.[43] Understanding the present through the lessons of the past and studying the past through the looking glass of the present are the two things that continuously occur in the study, application, and reform of the law. Since the legal system is a living social phenomenon and an ever-growing entity, the historical approach is unavoidable. When considering the law's responsibility to accommodate and initiate social transformation, there are serious limitations to being beholden to the past. History may provide wise lessons, but to apply them blindly and unreflexively without looking at the changed social context is a step backwards; the past cannot govern from the grave.[44] However, given the continuum of social facts, economic realities, and cultural traits, we nonetheless depend upon the past to at least know the type of remedy required to right historical errors and faults. Proper application of the historical method for legal research will facilitate the profession's task.[45]

Unlike other disciplines that seek to mark the required independence of the knowing subject and the object of analysis, history constantly builds the bridges that connect them. History is not just descriptive; it is, first and foremost, comprehensive.[46] However, it is important to exercise caution here, as the practice of history is not monolithic, and such an assertion may overlook the diversity of historical methodologies. A historical perspective has an obvious claim in law as the system is built around the idea that the past has intrinsic significance. Most saliently, precedent, the practice of *stare decisis*, is precisely the idea that we should follow a decision simply because it is anchored in the past. We are so accustomed to the idea of precedent that we have stopped noticing how strange it is in some ways. Precedent tells us to decide disputes in a certain way simply because that

[43] Wilfrid Robertson, *Making Legal History - Approaches and Methodologies* (Cambridge UK, Cambridge University Press, 2012) at 210.
[44] See Julie Thompson Klein, *Crossing Boundaries – Knowledge, Disciplinarities and Interdisciplinarities* (London: University Press of Virginia, 1996).
[45] Note: The method specific to the historical approach comprises two series of operations: First, the study of the present fact, understood as the culmination of past facts; and second, the grouping of past facts into a methodical construction to uncover the relationships between them and to form connections, comparisons, and parallels with the present fact. At first glance, this method, specific to the historical approach, may seem very theoretical and somewhat complex, but we must bear in mind that it is generally applied intuitively by researchers.
[46] Note: History is not confined to one period, country or nation. It deals with all aspects of human life—political, social, economic, religious, literary, aesthetic and physical, providing a clear sense of the subject matter.

is how matters were conducted before.[47] Under precedent, one is bound to decide in a particular way, not because the way things were done before worked out very well; not because the decision was made by well-known or especially wise decision-makers; and not because the prior decision was right. Indeed, one of the significant points of precedent is that one must follow the past decision, even if it was not made by a wise judge and even if the current court thinks the past decision was mistaken. Of course, even without precedent, the past decision may create a reason for treating the next case the same way, treating like cases alike; and in a normal practical reasoning context, it would be overridden in many situations if the prior decision was considered seriously wrong. And even precedent is not history as a historian would understand it. Precedent is using the past on the terms of the present: How does this old case apply to these new facts? A historian would want to understand the past in terms of their own time, e.g., how intention, or *mens rea*, or consideration, or interstate commerce were understood in the legal system and society of that time.[48] Concepts and categories of a previous period can frequently be "applied" to current circumstances only by ignoring or discounting important aspects of the context in which they arose.

The passage of time does not necessarily equate to an improvement in law and society. By focusing on the different layers that comprise the object of study, this approach proves that the object not only has a history but also a memory that permeates it—a history that must be acknowledged.[49] The study of the law is not restricted to the study of its rules and the legal structures; it also means studying deviations from the rules, non-compliance, and instances of resistance to its application. In this context, the historical approach provides a field of experimentation—something of a natural laboratory—revealing the specificities as well as the difficulties of imposing the rule. In so doing, people, events, and temporalities play an active part in the very understanding of what the rules and structures of society are. Hence, this approach stands in contrast to analyses that promote a linear progression, insisting on dynamic and procedural aspects of the evolution observed over the long term. The historical approach makes it possible to historicize reasoning; in other words, introducing a study of history emphasizes contextualized analysis and opens the door to incredible pieces of information that can be used in modern and complex contexts. History challenges the assumptions that inform and underpin modern legal scholarship. It is commonplace for legal arguments to refer to the historical pedigree of a particular rule or institution as an indicator of its strength and value. Since the nineteenth century, legal

[47] See Oliver Wendell Holmes, *The Common Law* (New York: Dover Publications, 1991) at 2.
[48] See Wolf Lepenies, *Les Trois cultures : Entre Science et Histoire. L'avènement de la Méthode* (Paris, Éditions de la Maison des Sciences de l'Homme, 1990); Arthur Leff, "Law and" (1978) 87 Yale Law Journal 989.
[49] See notably G. R. Elton, *The Practice of History* (New York: Fontana Brooks, 1967).

pluralism and legalism have influenced the conception of the sources of law and their contours, proving that the creative forces of law are not limited to the legislator alone.[50] The historical approach to law helps to highlight that the sources of law are varied and dynamic and demonstrates how the legal actors participate in and influence the formation of legal rule. It is the search for the historical dimension of the law that makes it possible to better understand the complexity of the law and its evolution in relation to the diverse contexts that have been established over the years.

4. Rethinking legal education: balancing theoretical, political, and professional dimensions

Each new approach to law comes with its own inherent criticism of the teaching model in force and the promotion of another, consistent with the new ontological and epistemological premises. But the question of legal education also has an axiological dimension: What is the purpose of legal education? What type of lawyer do we want to train? It is obvious that the two aspects—theoretical and political—are closely linked. If we share an instrumental conception of legal reasoning, the teaching of law will aim, first, to train good legal technicians, capable of translating into effective legal language the interests and values of those who address the market law. If, on the contrary, we adhere to a teleological conception of the legal reasoning, legal education should aim to train critical and responsible jurists, concerned with the ethical and political issues of the legal profession.[51] In this case, opening the teaching of law to other forms of knowledge that study humankind and its natural and social environment is not a possibility but a necessity. The question of the teaching of law is far from being a mere technical one, linked to the type and number of subjects, the hours of lessons, the way of teaching, or the texts and the modes of examination. Questioning the legal teaching model means, much more, questioning the methodological orientations and the content of legal science in future decades. Furthermore, if the law is ultimately what lawyers think it is and what is done in daily practice by legal professionals, it follows that the choice of a given teaching model instead of another turns out to be decisive for the very future of the law. Over the past few years,

[50] Note: On the question of legal pluralism and legalism, see notably Julia Eckert, "From subjects to citizens : legislation from below and the homogenisation of the legal sphere" (2006) 38:53 The journal of legal pluralism and unofficial law 45; Baudouin Dupret, "Legal Pluralism, Plurality of Laws, and Legal Practices" (2007) 1 European Journal of Legal Studies 1; John Goldring, "Book Review: Without the Law I - 'Without the Law:' Administrative Justice and Legal Pluralism in Nineteenth Century England, by Harry W Arthurs." (1986) 24:2 Osgoode Hall Law Journal 405; Peer Zumbansen, "Transnational Legal Pluralism" (2010)1:2 Transnational Legal Theory 141.

[51] On the instrumental and the teleological conceptions of legal education, see notably Douglas G Ferguson, "The Great Disconnect: Reconnecting the Academy to the Profession", (2014) 51 Alberta LR 819; Laura I Appleman, "The Rise of Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped our System of Legal Education," (2005) 39 New England L Rev 251; W Wesley Pue, "Common Law Legal Education in Canada's Age of Light, Soap and Water," (1995) 23 Man LJ 654, 657-60; Julian Webb, "Academic Legal Education in Europe: Convergence and Diversity," (2002) 9 Intl J of the Legal Profession, 139, 148.

there has been a growing chorus of criticism of legal education.[52] For several decades, the professional world has been demanding that the classical curriculum be updated to introduce the study of sectors that are quantitatively important in practice but underrepresented in training. The traditional categories of legal thinking are dominant, while the emerging areas and spheres of practice[53] remain underrepresented or even non-existent. This way of approaching legal education suggests that law, as it has been conceived at a specific period, should be perpetuated forever, regardless of the socio-legal novelties of a rapidly changing world and potential future legislators State sovereignty is hollowed out when it requires nothing more from its judiciary than mechanical repetition. Practitioners and theorists, adopting critical stances, have called for a revision of legal education to help lawyers acquire the new scholarly skills required by emerging areas and spheres of practice.[54] As it stands, the modern practitioner must learn "on the job" to combine disciplines and to interact appropriately with other scientific worlds. It is not uncommon for legislators to enshrine various techniques relating to other sciences within a law, thus implicitly entrusting new duties to contemporary jurists. The latter must consequently shoulder non-legal obligations, requiring them to temporarily leave the legal system to fulfill the requirements of the legislator properly. These new obligations are an accessory of interdisciplinarity, which has become a complementary scientific necessity. In teaching the lawyers of the future, educators will need to design programs that can respond to modern challenges. This includes the need to produce graduates who are more adaptable to change and better able to deliver legal services by thinking in terms of creativity, innovation, imagination, and technology. Jurists must become "agents of change." Multidisciplinary approaches, technological advancements, and other forms of active experiential learning will likely inform the future of legal learning.

---

[52] Note: Very few law schools in North America, particularly in the United States, are taking the leap and significantly reforming the curriculum provided to students, despite constant demands for revision. One of them has set up an innovative new program. After years of reflection, in fall 2021, Yale Law School began a new chapter of its history with the opening of its Tsai Leadership Program, which aims to prepare students for both traditional legal practice and non-traditional career paths. "The program establishes new courses and opportunities for professional development. Coursework in the program includes accounting, corporate finance, statistics, ethics, and emerging issues related to technological change, Big Data, and globalization." See <https://tinyurl.com/2zakbws9>.

[53] Note: As an example of underrepresented areas or spheres of practice, one could cite family law in Quebec: Following the coming into force of the *Youth Protection Act*, RSQ, c P-34.1 in 1977, lawyers from all over the province called for the learning of interdisciplinarity in order to better protect children. Concurrently, the Barreau du Québec also called for the establishment of a new specialty in family law and published two memoranda on the subject. See COMITÉ SUR LA REPRÉSENTATION DES ENFANTS PAR AVOCAT, "La représentation des enfants par avocat : 10 ans plus tard" (Montréal: Barreau du Québec, 2006).

[54] Note: These emerging areas and spheres of practice, which include new types of laws, require specific skills. In particular, they demand a strong capacity for judgment, as well as the ability to shift appropriately from one system of reasoning to another at the right time. Examples of such emerging spheres of practice include the regulation of artificial intelligence, which presents novel legal challenges; the regulation of the impact of businesses on society through the concept of double materiality; and developments in family law, where the concept of family is increasingly being redefined through the recognition of non-traditional family structures that evolve in response to social changes.

Legal education has come a long way from the time when the case method was the pedagogical ideal adopted by the leading law schools. However, there does not appear to be a consensus today regarding which legal pedagogical framework should replace it.[55] Academics and practitioners alike are unsure about what needs to be changed; they only agree that the *status quo* must be challenged.[56] Law schools must adopt a visionary outlook for the future, but above all, they must determine the values and principles they want to inculcate in their students to equip them to face the changes to come. Law schools must assume a formative role in promoting their students' identities as legal professionals, and they must reflect upon which teaching methods and structures are suitable to transform conceptual knowledge, skill, and moral discernment into a capacity for judgement guided by a sense of professional responsibility. Law professors need to provide the knowledge and teach the skills required by the professions.[57] Not surprisingly, their research interests parallel their course topics. However, this constitutes only part of the explanation, as the connection to the professions extends beyond the integration of teaching and research. A second, more comprehensive explanation lies in the fact that the audience for legal research, produced by legal scholars, is not confined to legal practitioners but spans a broader spectrum of professionals and academics. For such research to remain relevant, it must engage both with professional practice and academic inquiry. This complexity is further compounded by the frequent dual roles individuals occupy: legal scholars may have prior experience as practicing lawyers, while practitioners often contribute to scholarly work as well.

Law school produces not only jurists but also the law itself. Through decisions about faculty composition, student admissions, research and curriculum, law faculties determine the knowledge, skills and priorities that define and constitute the law to a greater extent than they tend to acknowledge.[58] Law schools transmit and assimilate the norms, behaviours and ethics that shape professional identity, but above all, they convey values and principles that are reflected in the future practice of lawyers

[55] Note: In 2016, experts disagreed on which guidelines to adopt and were still arguing about the curriculum and philosophy that American law schools should adopt. See notably Mary Beth Beazley, "Finishing the Job of Legal Education Reform" (2016) Scholarly Works 1061.

[56] See Charles Sampford and Hugh Breakey, *Law, Lawyering and Legal Education: Building an Ethical Profession in a Globalizing World* (London: Routledge, 2016); Hilary Sommerlad, Sonia Harris-Short, Steven Vaughan and Richard Young, *The Futures of Legal Education and the Legal Profession* (Oxford: Hart Publishing Ltd, 2015); Caroline Strevens, Richard Grimes and Edward Phillips, *Legal Education: Simulation in Theory and Practice,* (London: Routledge, 2014); Fiona Westwood and Karen Barton, *The Calling of Law: The Pivotal Role of Vocational Legal Education,* (London: Routledge, 2014).

[57] See John C Coates, Jesse M Fried and Kathryn E Spier, "What Courses Should Law Students Take?" *Harvard Public Law Working Paper*, 14-20 (February 17, 2014); Rhonda V Magee, "Legal Education and the Formation of Professional Identity: A Critical Spirituo- Humanistic – "Humanity Consciousness" – Perspective" *University of San Francisco Law Research Paper No. 2009-12* (29 August 2007); Nancy P Johnson, "Best Practices: What First-Year Law Students Should Learn in a Legal Research Class" *Georgia State University College of Law, Legal Studies Research Paper* 2009-04 (12 February 2009).

[58] Kyle P McEntee and Patrick J Lynch, "A Way Forward: Transparency at American Law Schools" (2012) 32 Pace L Rev 1.

and legal practitioners. The role of law schools and, more broadly, universities must be taken with great seriousness, since, by controlling access to the profession and how future lawyers are trained, they play a leading role in establishing the standards for tomorrow's legal actors. Through their behaviours, lawyers and legal practitioners contribute to societal perceptions of the legal system as well as its actual operation—they help to shape the culture of the law, including the need for improving access to justice and identifying issues in need of law reform. In the words of a well-known French author:[59] "Lorsqu'une chose évolue, tout ce qui est autour évolue de même."[60] These words reflect the current problem in North American law schools and corroborate the points of view of many academics: for decades, legal principles have been taught in the same way to generations of students who have evolved and changed over the years, and who live in a society in a continual state of transformation. What if it were possible to prove that the acquisition of external knowledge[61] is not only useful for the professional practice of law but even profitable, since creativity and openness to empirical problems are a hallmark of the better paid—and also urgent, in terms of justice and conservation of the planet?

Conclusion

Entering interdisciplinarity is a delicate process that relies above all on an attitude of openness, acceptance, dialogue, and the search for co-creation opportunities. The process of interdisciplinarity can resemble that of a careless bather who pays no notice to the currents, drifting dreamily on the waves. When he finally starts swimming again, the swimmer turns around and realizes he can no longer see the coast. He is dumbfounded. All his bearings have vanished, and he has lost his sense of direction. He berates himself for having strayed too far from shore and the safety and reassurance of the lifeguard-patrolled beaches. Yet there can be no learning without travel, without allowing oneself to go adrift. We must therefore let ourselves be carried away while trying to avoid drowning in the deep unknowns of other disciplines. This is the beginning of a transformative experience. As we have demonstrated, the integration of interdisciplinarity into law is a complex matter that raises many questions and requires the genuine involvement of its main actors. To illustrate our point of view, we repeatedly rejected the remarks made by the Arthurs Report. We have concluded that law, as a discipline, must undoubtedly learn to know itself and especially gain more autonomy and confidence to dissociate itself from other disciplines and to then be able to integrate

[59] Note: The quote is from author Paulo Coelho.
[60] Gilbert Pons, *Dictionnaire des Citations* (Paris: Ellispes, 2010) at 28.
[61] Note: By external knowledge, we are referring to the "non-law" disciplines.

them.[62] At first sight, there may appear to be a certain duality or even some form of opposition in this assertion, but interdisciplinarity cannot be practiced by legal actors if they cannot describe what they do in a precise and assertive way. It is crucial to understand that law has always suffered from this conjuncture. It will take significant effort for legal actors to disassociate themselves from this complicated stigma; and we firmly believe that this challenge must be taken up by the entire legal community in order for interdisciplinarity to be practiced, understood and especially taught in a suitable, modern and current way. Given these conclusions, we have attempted to shed light on the reasons why lawyers now find it so difficult to name and describe the methods that characterize their discipline. By revealing the dangerously vague outlines of the discipline of law, we have highlighted some of the problems involved in the shift toward interdisciplinarity. It is now up to the current legal community to effect a paradigm shift concerning the very foundations of its existence—to provide it with the wings that it needs to discover the new possibilities that the twenty-first century has to offer.

[62] Note: This necessary opening of legal research and education to other forms of knowledge must not be pushed to the point of losing all methodological specificity of the science of law, in a general confusion of objects and modes of discourse. Rejecting the assumptions of the autonomy of law and the purity of legal science should not lead to the nihilistic idea that law is a set of social choices, that law school is merely training in policy making, or that legal scholarship is a branch of applied social science.