Between a Rock and a Hard Place: Legal Studies Beyond Both Disciplinarity and Interdisciplinarity

Mariana Valverde*

Abstract

The label “interdisciplinary” has been very useful for critical legal scholars seeking to distinguish their work from doctrinal research and teaching. Its pragmatic value, however, is not matched by precision in meaning, largely because it is not clear whether law is a discipline that could or should be synthesized with other disciplines. After a reflection on the difficulties of determining whether law is indeed a discipline, the article concludes that critical legal scholars could benefit from abandoning both disciplinary ambitions and interdisciplinary claims as anything other than gestures conveying institutional projects and priorities. The term that is suggested as a replacement is the more modest “infradisciplinary,” which has the virtue of evoking law’s venerable pre-disciplinary past.

I. Introduction

Doctrinal law professors have long sung the praises of the discursive and practical riches of law and decried the risks of law’s colonization by various “law and …” enterprises, from economics to philosophy. The CAL project is being promoted by people who have long critiqued doctrinal legal scholarship, but who are, for different reasons, arguing for a certain return to law. The CAL project, as I understand it, arises from the perhaps surprising fact that a number of critical sociolegal scholars who spend much of their time absorbed in philosophical and/or historical inquiries are now beginning to question the kinds of external readings of law that the Law and Society Association, legal philosophy, and the law and economics movement have variously popularized.

At Irvine, noted legal historian Chris Tomlins has organized two important workshops—and is currently organizing a third event for March 2014—that incite scholars to question the “Law as something else” habits of thought promoted since the 1960s by sociolegal scholars. Somewhat earlier, a workshop organized by the law schools at Tel Aviv and Cornell generated critical reflections that, while not sharing any one epistemology or

* Professor, Centre for Criminology & Sociolegal Studies, University of Toronto.

1 For a moderate version of this see Jack Balkin, Interdisciplinarity as Colonization, 53 Wash. & Lee L. Rev. 949 (1996).

2 See Symposium, “Law As . . .”: Theory and Method in Legal History, 1 UC Irvine L. Rev. 519 (2011); a second volume is in preparation as of this writing.
Critical Analysis of Law 1:1 (2014)

political perspective, have questioned the tendency, pioneered by legal realism, to reduce legal phenomena as well as legal doctrine to the status of products or effects of something else. In one of the contributions arising from that workshop, Shai Lavi, whose own work is nothing if not interdisciplinary, notes that there are three main ways to understand law as something other than law: law as science, law as policy, and law as culture. Lavi recognizes the achievements that have resulted from these three different ways to study law and legal processes, but expresses a wish to go beyond the “law as …” move. He certainly does not advocate a return to “pure” doctrine; but he notes—in an argument that resonates with recent publications by a number of “law and society” scholars, including the writer of these lines—that reducing law to an instance of culture or to the product of socioeconomic forces does not do it justice. Among other things, he points out that law is much older than any of the disciplines implicated in the “law as …” move first performed by legal realism. For that reason, he states (though this point is not developed in that article), law’s own resources can be used to shed a critical light on the basic modernist assumptions that are shared by all modern Western disciplines, from Kantian philosophy to contemporary economics.

Despite some concerns and caveats that will be developed in the second part of this essay, I am in sympathy with what one could call the post-interdisciplinary sensibility of the CAL project. The label post-interdisciplinary has now become appropriate because, as the “CAL. minifesto” points out, invoking the term “interdisciplinary,” within legal studies, is not nearly as useful as it once was. Too many scholars have waved the flag of interdisciplinarity to justify or describe projects that did not generate new insights but merely applied the ready-made categories and logics of a particular discipline (economics, most successfully, but also philosophy and sociology) in order to redescribe law and legal processes. Legal events and processes lose at least some of their specificity as they come to be described either in the language of a particular discipline or in the language of a once new but now institutionalized interdisciplinary enterprise (e.g., cultural studies, women/gender studies). Showing that legal doctrines or processes are heavily shaped by dominant cultural sensibilities or dominant race and gender power structures was and remains a very important task, given that much law teaching and scholarship has remained blind to interdisciplinary research; but over time, the “law and …” approach has in some quarters become a somewhat mechanical move that sheds light exclusively on those aspects of law that are shared with other, extralegal systems, hence obscuring law’s particularities. Law and economics is probably the best example of this reductionism, but there are numerous other examples, from legal philosophy to the sociology of law. In the latter field, those who in-


voke Bourdieu and those who invoke Niklas Luhmann often argue with one another about which sociology best describes law, but what they have in common is that for both groups, law is just another social field (for Bourdieu) or another social system (for Luhmann), and explorations of legal processes are simply opportunities to find examples that shore up each sociologist’s general theory. Therefore, after four decades of “law and society” work, taking a break from the “law and …” exercise, and paying more attention to law’s own logics and law’s own epistemologies and ontologies, is a timely and important project.

But if we are to move towards what one could call a post-interdisciplinary approach, we need to understand that from which the CAL project seeks to distinguish itself a little better than has been the case thus far. A first question that could be useful—in order to set the parameters for future research—is this: in a return to law, are we claiming that law is a discipline unto itself, and thus requires no more interaction with other disciplines than, say, anthropology might require from history? Or are we saying (as I think Shai Lavi intimates) that law is best seen not as a modern autonomous discipline but rather as a more ancient and intellectually heterogeneous enterprise, an enterprise to which the term “infra-disciplinary” or “pre-disciplinary” would perhaps apply better than the more fashionable interdisciplinary label? The issue of disciplinarity—and inter-, infra- and pre-disciplinarity—will be addressed in the first part of this essay, in an argument that will conclude that “infradisciplinary” may be a usefully modest label at the present time. Such a label, which has the advantage of not taking itself too seriously, avoids both the largely positivist epistemologies of modern disciplinary knowledges and the often pretentious and confusingly vague denotations and connotations of the term “interdisciplinary”—a term that has done a great deal of important work, especially institutionally, but that in my view should now be pensioned off.

The second, and related (but more practical, indeed institutional), question that emerges as we contemplate a possible return to law (or perhaps more accurately, a Hegelian-style Aufhebung of the kind of interdisciplinarity we have now) is the following: how will the ever-present tension between law as a profession and law as a field of scholarly study interact with and shape the scholarly project of post-interdisciplinarity? Should we as critical scholars be careful about the potential institutional and pedagogical effects of an intellectual move that could be recuperated by those who were never interdisciplinary in the first place? As I will discuss in the second part of the essay, lessons could be learned from the short but lively—and ultimately not very successful—history of feminist scholarship in the academy. Those of us who pioneered what was then called “Women’s Studies” in the 1970s and early 1980s began to feel, after a decade or so, that it was necessary to move beyond a reductionist focus on women, and some even experimented with the politically dangerous phrase “post-feminist” (though by and large we did not use this phrase in published writings). This intellectual move made sense at the theoretical level, for reasons that are similar to the CAL project’s wish to move beyond “law and ….” However, institutionally, an argument could be made that what some called the post-
feminism of feminist thinkers such as Judith Butler, Wendy Brown, and Janet Halley unwittingly enabled post-feminism of a very different sort amongst the (much more numerous and powerful) colleagues who had never taken more than a reluctant and superficial interest in gender analysis.

The moral of this story—which, put simplistically, could be something like “be careful about critically questioning the basic categories of our own, minoritarian critical projects, at least in full view of colleagues with more power”—is relevant to the CAL project, in my view. Whether an effort to question the verities of law and society scholarship by those of us who are on the margins of the legal academy ends up empowering law deans who were never interdisciplin ary in the first place is of course not fully predictable; but it may be useful to ponder some lessons that I at least have drawn from the rise and fall—or break-up, at any rate—of North American feminist legal thought.6

II. The Dilemmas of Legal Studies: Disciplinarity, or What?

In the article already cited, Shai Lavi notes that law is much older than the disciplines, whether we trace the disciplines back to the scientific revolution of the seventeenth century or to the rise of the social sciences in the second half of the nineteenth century.7 Sticking to the direct antecedents of today’s Western legal systems only, there is no doubt that semi-autonomous legal experts and semi-autonomous legal mechanisms existed centuries before the rise of the sciences, indeed since Roman times, if not earlier. Law is thus pre-disciplinary, chronologically speaking.

But has modern Western law become a discipline? That question does not have a clear, consensus answer. Indeed, the question of whether anything is a discipline is not one that can be answered objectively, since there is no consensus about whether a discipline is to be defined by reference to scientific concepts or rather by empirically documenting institutional networks and resources. It is clear that for centuries, law was a professional craft with a body of arcane knowledge that existed quite independently of other knowledges (e.g., physics, astronomy, geography). An indication of its craft and/or profession status is the fact that law began to be taught in universities much later than the other ancient high-knowledge and high-prestige profession, that is, medicine. But has law now become a discipline? There is no way objectively to settle this issue. Many scholars, including sociolegal scholars, would find such an empirical investigation of institutional resources irrelevant or inadequate, focusing instead on the theoretical and methodological features of legal research, and asking questions about the boundaries between legal thinking and other kinds of thinking. Other scholars, however, in and out of law schools, would take a pragmatist approach and proceed to document the institutional networks and resources developed by law teachers to see how they compare to those of established disciplines, counting up scholarly journals, tenure track jobs, professional associations,


7 Lavi, supra note 3, at 837-38; on law and the social sciences see also Christopher Tomlins, Framing the Field of Law’s Disciplinary Encounters: A Historical Narrative, 34 Law & Soc’y Rev. 911 (2000).
etc., and drawing conclusions about law’s disciplinarity on the basis of such an empirical study of institutions.

Greatly simplifying the complicated history of science and of academic knowledge in Western Europe, it is safe to state that to a large extent, disciplines were created retroactively: the creation of a professorship at Oxford or Cambridge might lead to a particular revision of intellectual history, for example, that acted to constitute a field after the fact. This revisionist history was then taught to subsequent generations as gospel truth, in such a way as to naturalize a particular set of knowledge claims and intertextual connections. This process of discipline creation was still going on around the turn of the twentieth century, when a few pioneers created sociology, political science, and economics departments. The new, fragile social science “disciplines,” which, importantly, found homes not in the old prestigious colleges (Oxford, Cambridge, Harvard, Yale) but rather in places like the new London School of Economics and the University of Chicago, needed ancestors, as all enterprises do. This need for an instant but respectable past led to a wholesale retroactive classification of safely dead intellectuals, that is, writers who could not complain that their work was being misinterpreted. Most notably, radically anti-disciplinary intellectuals (Henri de Saint-Simon and Auguste Comte in France, for example, or, later, Karl Marx himself) were turned into forefathers of sociology.

To shed some light on the question of what it might mean to say that law is a discipline (from the admittedly pragmatist, empirical perspective I adopt) it may be helpful to briefly recount the story of the institutionalization of sociology in the final decades of the nineteenth century.

One of the most influential and most overt efforts ever made to invent, justify, and secure a new discipline, intellectually and institutionally, was that led by Emile Durkheim in France. It is not sufficiently appreciated that Durkheim’s intellectual efforts were firmly grounded in institutional projects, and that these institutional efforts can be seen as laying the basis for other, newer social sciences (e.g., political science). Having started his career teaching teachers, at the École Normale, Durkheim proceeded to lay the intellectual and the political foundations for the world’s first chair in sociology (to be occupied by himself, of course). But he was simultaneously careful to not alienate his former colleagues and students—a feat performed in large part by defining state schooling as the fundamental tool of what he called “moral education,” that is, the social cohesion required by capitalist systems that would otherwise generate competitive, isolated individuals with no “collective consciousness.”

Having achieved success by offering a bottled, patented scientific remedy for the illness that he had himself diagnosed (or rather invented), that is, capitalism’s anomie, Durkheim marked out a distinct domain for sociology that was not only an intellectual edifice but also a convenient answer to the French state’s considerable anxieties about

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what would happen as the Catholic church lost its monopoly on education. Marking out a specific scientific field was not easy; even today, after decades of institutionalized sociology departments, much sociology appears to the outside observer as simply a mix of economics, politics, and psychology, with a bit of political science and anthropology thrown in. To forestall the disappearance of sociology into the other sciences of the social, Durkheim’s discipline-founding argument was that while social problems and social issues were clearly being studied by all manner of other people (political economists, mainly, in his own time), sociology was or could be a distinct discipline because “social facts” are actually quite different from economic facts or psychological facts. “Social phenomena,” he famously stated, “constitute a reality sui generis.”

Legal scholars who use sociological studies of law drawing more or less loosely on Durkheimian assumptions, assumptions so deeply embedded in the discipline that they are not footnoted, might not appreciate that Durkheim was an adamant, indeed extreme, objectivist. The “social facts” about something such as crime are for Durkheim actually, objectively, distinct from the facts about that same phenomenon unearthed by other knowledges (law, religion, psychology). Sociology constituted itself as a discipline by setting aside individual pathologies and individual desires and motives, economic facts, religious knowledges of the soul, and legal knowledge. This differentiation generated a number of distinct, purely sociological realities, among which suicide rates and crime rates have figured very prominently, from Durkheim’s own days to the present.

For Durkheim and for his descendants, suicide rates and crime rates are objects, real objects whose properties can be studied—they are not mere statistical constructs or abstractions. While studying why particular people commit suicide might lead one into psychological inquiries into depression or into economic inquiries into poverty, studying suicide rates and crime rates, Durkheim believed, tells us about how particular societies are held together, quite independently of both economic and psychological data. And in the end it is social cohesion—solidarity, in the language of the nineteenth century—that is presented as sociology’s distinct object, not so much the “social problems” that had occupied assorted philanthropists, political economists, and socialist thinkers from the 1830s onward, and that therefore, on their own, could not suffice to constitute a new discipline.

Is law a discipline, from this point of view, that is, the highly influential Durkheimian view? The answer is “not really.” It is true that there are some similarities between Durkheim’s approach and many common understandings of law’s own processes.

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9 Emile Durkheim, Rules of Sociological Method 54 (W.D. Halls trans., 1982). The phrase “sui generis” has also been used in legal contexts to mark out a new domain of knowledge without clearly specifying just how the new field is distinct or why the old one won’t do—for example, in the Supreme Court of Canada’s jurisprudence on aboriginal rights and the Crown’s fiduciary duties. It could be argued that for both Durkheim and the Supreme Court of Canada, the almost contentless phrase “sui generis” acts to mark out a field in advance of any substantial evidence that the situation actually requires a new/different knowledge.

10 See Mary Poovey, A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society (1998) for the longer-term broader intellectual history of the kind of “facticity” that underpinned nineteenth-century social science.
For example, an anthropologist might well spend his or her life studying disputes and their resolution, but many would happily agree that he/she would not be studying “legal facts” unless legal discourse and legal processes, rather than the particularities of the disputes and their solutions, becomes the object of study. A legal scholar who wanted to uphold a Durkheimian view of law as a discipline would have to claim that the legal account is no mere legal construction of reality: he/she would have to claim that legal facts actually exist and do not depend on the actions of individual humans.

The Durkheimian view clearly has affinities with, indeed overlaps with, the positions associated with legal formalism and legal positivism. It is thus not impossible to hold a Durkheimian view of law and remain firmly within the boundaries of the legal academy. And yet, the attempt to see law as a Durkheimian discipline has a tendency to undermine itself. The reason for that is that what counts as a legal fact varies across time and space more obviously than is the case for sociological facts. At some point, even the most positivist of legal scholars has to ask: why is it that when one goes to a different jurisdiction there are differences in what counts as a legal fact, with the difference appearing quite abruptly as one crosses a border? Questions about the origins of the legal system and about its roots in political and other events, not to mention all the classic questions of comparative law, questions that are by no means marginal or reserved to intellectual elites within law schools, will undermine any effort to make law into a discipline by borrowing Durkheim’s epistemology and focusing on what one would have to call “legal facticity.” It has been difficult for mainstream sociology to maintain, in the face of multiculturalism, that underneath the diversity of cultural practices and social norms one can discern some fundamental laws of social motion that explain how societies develop and diverge from one another; but it seems to me that holding that there is some fundamental structural dynamic that shapes all legal systems and that applies across time and space would be even more difficult. One can indeed give cross-cultural definitions of law, as H.L.A. Hart, for example, famously did; but such definitions have to be extremely abstract and thin, almost contentless. It would be very difficult for any legal scholar today to claim that the rich variety of legal systems found throughout human history and in the present can be scientifically explained by means of a few fundamental laws of motion.

Within the parameters established by Durkheim’s influential approach, therefore, the term “discipline” (in the sense of a specific scientific area of study that has its own unique objects) is not a good fit for law.

However, the obvious alternative, the term “interdisciplinary,” is also problematic. Beyond using the tools of an established discipline (e.g., economics) to redescribe legal thought or legal processes, a move that as argued at the outset has been useful but is at risk of overstaying its welcome, can the label “interdisciplinary” be of much use?

The term “interdisciplinary” has never had specified content, and continues today to be more of a gesture than a scientific claim to stake a particular definite ground. There are a variety of projects to which the term can properly be applied. Some important ones are: a) combining methods and theories from two disciplines (e.g., political sociology, so-
cial psychology); b) using the methods and theories of one discipline to study the objects usually left to another discipline (e.g., the sociology of finance, or the literary study of law); and c) sampling a variety of disciplines in such a way as to fill a toolbox that is specifically designed for the study of a particular issue or phenomenon.

These three types of project, all well represented in law and society circles, are quite different from each other. Indeed, it would probably be more useful, at this point in intellectual history, to distinguish them, rather than continuing to lump them together under the almost completely negative category of “interdisciplinarity.” All three approaches have been used by legal and sociolegal scholars; and one plausible response to the challenge posed by the CAL minifesto would be to identify examples of each of the three versions of interdisciplinarity and draw some conclusions about which one is more or less adequate to today’s questions and research projects.

The tenor of the CAL minifesto and associated literature suggest that some scholars, seeking to go beyond “law and society,” are aiming for something along the lines of the third approach: that is, sampling a variety of disciplines and borrowing tools from them that are particularly suited to the analysis of legal phenomena, legal texts, and legal processes. But is such a project likely to succeed in creating a new knowledge, a recognizable interdisciplinary field? Scholars can and do borrow a variety of intellectual tools that seem appropriate to the study of a particular issue or substantive area, but whether this kind of enterprise can ever be more than a pragmatic and tactically oriented improvisation exercise is not clear.

The lessons learned from the once exciting, now forgotten, quest for a feminist methodology may be useful here. If I can draw on personal experience for a moment, I was involved, in the 1980s, in the early stages of three different Women’s Studies programs. One such program did not appear to suffer from existential anxieties, and followed a “let a thousand flowers bloom” eclectic approach. The other two programs were more ambitious, however, in part because they were either developing or dreaming of developing a graduate program. A consensus slowly emerged, in both of the universities involved, to the effect that Women’s Studies should expand beyond the study of women and include studies of masculinity and gender relations. While the “gender perspective” (replacing the old “studying women” mandate) made intellectual sense, and was very much in keeping with changes taking place in the policy world (e.g., UN bodies promoting gendered perspectives on development), adopting it created difficulties. Women’s Studies scholarship had emerged from the simple desire to document the lives and struggles of women. If feminist intellectual work was now to be more ambitious and encompass, say, studies of all-male institutions, what would then be the specific object of such an enterprise? How would “gender studies” be different from sociology or anthropology, if it no longer focused on actual women?

In one particular institution, discussions along these lines led to the conclusion that even if we could not define our specific object of study with any precision, we could perhaps design a mandatory common course that would teach students something we
called feminist methodologies (or, even worse, feminist methodology). This novel approach pleased many, especially conventional social scientists, whose own graduate departments emphasized methods training. In this redefinition, what came to be called Women/Gender studies (with the forward slash being the eventual product of many rather fruitless debates whose details do not concern us here) became not a substantive area of inquiry—as the old Women’s Studies had been—but rather an approach that could be applied to virtually anything. If Durkheim had his famous “Rules of Sociological Method,” we had our graduate course in feminist methodologies. We had arrived.

The quest for a feminist methodology was a chapter in a very exciting history. However, to make a very long (and often painful) story short, once we moved beyond dreaming up the title for a new graduate course and began to think about the potential content of the course, it became clear that the only way one could claim to have elaborated a feminist methodology was by making questionably essentialist assumptions about what is and is not feminist, or (to invoke another 1980s word) “woman-centered.” For instance, many of the feminists with whom I worked dismissed statistics, as such, in general, as a masculinist project, justifying this by pointing to feminist work in the history of science emphasizing the links between masculinity and the objectification of nature. Adopting the feminist critique of the objectification of nature by science as a criterion to label some research methods as feminist and others as not turned out to be a very unproductive move, however. A number of important feminist enterprises (e.g., the fight to make domestic violence visible and actionable) required both collecting data that had not yet been collected and learning how to use statistical methods. To dismiss scholars engaged with the technical details of documenting violence against women as not feminist simply because they used numbers and statistical procedures was not only a destructive move, collegially, but also reproduced the worst gendered stereotypes about women not being good at math.

The conclusion that I drew from the protracted and unfinished debates about what is and is not a feminist method is that the very question should never have been asked. The attempt to isolate feminist methods—in the abstract, in general, as opposed to methods that are useful for feminist researchers in particular contexts—was a useful tactic in the quest to institutionalize women/gender studies as a respectable discipline with its distinct methodologies. It is likely that the new courses on feminist methodologies helped to gain university approval for new programs, especially at the graduate level. But intellectually, can we now honestly say that there are some methodologies that are suited to study gender and others that are not, regardless of the specific question or context at hand?

The politics of the feminist methodology debates are obviously specific. However, a lesson that goes beyond those politics can be drawn from that story. The lesson that can be drawn for the purposes of the CAL project is that while it is useful to have interdisciplinary courses, both for law students and for students in sociolegal studies programs, that expose students to a variety of approaches to the study of legal powers and legal knowledges, it is not the case that there is a unique toolbox that is inherently, permanently,
more useful for legal studies than some other somewhat differently constituted toolbox. If legal studies is an interdisciplinary enterprise, then, the meaning of “interdisciplinary” is tactical and site-specific.

To repeat: if legal studies is not an enterprise that can be easily labeled as a discipline (though it has some of the relevant attributes, intellectually and institutionally), neither is it a distinct, self-identical interdisciplinary enterprise with a particular unique toolbox that can be used for the study of any and all legal processes. Different scholars will use different tools, and not the same ones for every project; and whether some are more useful than others depends completely on the particular questions being asked.

In turn, whether calling this kind of pragmatic borrowing of analytical tools “interdisciplinary” is useful or not depends completely on the context. In some doctrinally dominated law schools it is probably very useful to label certain courses or certain research projects as interdisciplinary, simply to distinguish them from the mainstream. But we would be wise to remember that the label functions best as a gesture away from something—doctrinalism—and is otherwise almost empty of distinctive semantic content.

And, returning now to Shai Lavi’s reminder about the premodern origins of law as we know it, it may be helpful to think a little more deeply than we have collectively done about the interesting fact that law—like medicine—is a type of knowledge whose intellectual and institutional history is much more ancient than that of the classic nineteenth-century disciplines (biology, sociology, etc.). As a matter of historical fact law is predisciplinary. And in the present, I would say that it remains largely infra-disciplinary, in the sense that there are many intellectual habits that are part of law (e.g., argument by analogy) that have long been left behind in scientific reasoning. As I’ve argued at length elsewhere, legal discourse generally (perhaps especially in common-law jurisdictions) makes ample room for premodern knowledge moves, from analogy to the invocation of what the reasonable person ought to know, that science, in its quest for a pure epistemology, has long cast out into the darkness.\footnote{Mariana Valverde, Law’s Dream of a Common Knowledge (2003).}

Given that now, as expressed by the CAL\textit{ minifesto}, noted sociolegal scholars are expressing doubts not only about the older quest to make law into a scientific discipline but also about the 1960s project to create legal studies as a distinct interdisciplinary field, it may therefore be a good time to pay close attention to the history and the current workings of law’s premodern, infradisciplinary knowledges and try to map their unpredictable interactions with modern and even postmodern knowledges. Such research projects marginalize or bracket the question of disciplinarity and interdisciplinarity from the start, which in my view is a productive move, since the question of whether law is or should be a discipline, and the related question of whether interdisciplinary studies of law are inherently superior to doctrinal analysis, are, like the question of feminist methodology, questions that can never be answered and that are better left unasked.
III. The Institutional Basis and Effects of Epistemological Preferences

Intellectual movements do not take place in a vacuum. The current environment for legal studies, especially within law schools in the US, is one of anxiety. At the practical level there is a great anxiety to retain good students and the law school’s all-important rankings, especially in the face of declining applications. In this context, legal history and legal philosophy, which in any case have always been largely confined to elite law schools, seem increasingly irrelevant. And while law-and-society approaches are by no means losing adherents in the academy (membership in the Law and Society association has been growing every year), government organizations are now unlikely to hire significant numbers of policy-oriented sociolegal scholars, and equally unlikely to provide solid funding to non-government organizations working on poverty law, civil rights, and labor and immigration legal issues, the bread and butter of practitioners of socially informed, critical legal work. It seems to me that if the dearth of policy jobs, in NGOs and in government, added to the dearth of sustained funding for rights-related legal work—not only in the US but also in Conservative-ruled Canada and in austerity-stricken Europe—the law and society movement will hit an institutional, practical wall, probably sooner rather than later. Sociolegal thought has always been a collective “organic intellectual” that cannot exist without the social movements and the public policy work from which it was born.

From 2010 to 2013, applications to law school fell significantly all over the US, year after year. In many US states there are now fewer registered lawyers than was the case a few years ago. If this trend continues, there will likely be a sharp “back to basics” move, such that only a tiny minority of law professors will have the luxury of research time and research freedom, the essential preconditions of interdisciplinary legal scholarship. Law school enrolments are more stable outside of the US, especially in places such as Canada, Australia, and much of Europe, which have public-only university systems. But trends in the US will have an effect beyond its borders. Among other things, elite US law schools have long played a role throughout the English-speaking world and beyond, particularly through graduate programs that, not being professionally oriented, are havens for interdisciplinary scholarship. Thus, if it is indeed true that the great US legal boom of the decades from the 1960s to around 2008 is over (something which will only be known over the next couple of years), it may be that the institutional currents will move in such a way that the CAL manifesto ends up being counterproductive. We may face a situation similar to that encountered by poststructuralist feminist scholars in the 1990s, which was to see our own move away from gender reductionism turned, unwittingly, into support for research agendas that were pre-feminist rather than post-feminist.

Intellectually, I am supportive of moves to take law’s mechanisms and law’s own history more seriously, in keeping with recent writings by scholars such as Chris Tomlins, Annelise Riles, and Shai Lavi. Thus, I fully embrace the call issued by the editors of this new journal, to the effect that after forty-odd years of sociolegal scholarship, it may be time to ask whether the pendulum has swung so far that the complexities of law’s own logics and mechanisms are not sufficiently appreciated.
However, the students I teach (in criminology and sociolegal studies) share a basic problem with students taught by my law school colleagues: they all have much dimmer job prospects than was the case twenty or even ten years ago. Governments are not hiring policy analysts and are curtailing funding for legal aid, poverty law, and human rights work. And while legal scholarship in Canada and in the UK, as far as I can tell, has not turned in a “doctrinalist” direction, the trends that are apparent in many US law schools—including pressures to focus on practical legal training rather than pursue “elitist” intellectual agendas—may soon become visible elsewhere as well.

Declining government support for practical sociolegal work and declining university support for teaching that is critical and does not promote professional employment are the main features of the practical context within which this journal is being born. The context is by no means fixed—for example, the crisis of big law firms could, theoretically, lead to a resurgence of purely scholarly interest in law—and the effects of social and institutional contexts on intellectual enterprises are never fully predictable. But even if we are no longer historical materialists in the vulgar Marxist sense, we ignore institutional trends at our peril. The institutional context within which this journal is being born is one characterized by insecurity and instability. We therefore have to be careful about having our own internal, intellectual critiques of “law and …” unwittingly contribute to neoliberal institutional agendas that have in recent years brought declining support for poverty- and inequality-related research and policy work. This article is more of an opinion essay than a research paper; I hope that subsequent issues of the CAL journal will contribute to documenting the complex relationships between scholarly trends and institutional realities, preferably comparatively, so that we can have better information about the consequences of taking up different views on what legal research and legal teaching are, could be, or ought to be.