

Editors' Note: Law and...? Interdisciplinary Studies in the Law

This special issue of LALS showcases interdisciplinary approaches to legal research. It is based on the belief – confirmed by the different contributions – that insights and methods from other disciplines can reasonably enrich legal research.

Legal scholars who engage in interdisciplinary research tend to be non-doctrinalists, seeing law as a living and lived experience, embedded in historical, social, political, cultural, and economic contexts. They ask different questions than doctrinalists, for whom the central questions and answers that drive legal scholars must come strictly from within the hermeneutically closed legal system. The first to argue for a more open legal discipline were the US-American and Scandinavian Legal Realists, who viewed law as an empirically observable institution that is subject to continuous change.¹ Similarly, the Sociological Jurisprudence of Roscoe Pound, Eugen Ehrlich, and Max Weber acknowledged the possibility – and even need – for the systematic study of society and the importance of the societal effects of law and law-making.

In line with these traditions, various approaches to legal research which embed law into its larger context have emerged. The different branches of Empirical Legal Studies seek to mobilize the methodological standards of empirical research to investigate where the law comes from – which actors and social institutions produce law - and what effects it has on its larger social environment. The Law and Society movement seeks a deeper integration of traditional legal research with methods and theories of sociology, political science, and anthropology² in order to expose discrepancies between the 'law in books' and the 'law in action'.³ Law & Economics applies rational-actor models and the efficiency-parameter to the study of law.⁴ Recently, with coding and categorizing on the rise, Law & Technology does not

¹ LLEWELLYN (1931) 'Realism about Realism - Responding to Dean Pound' 44 *Harvard Law Review* 8, 1222-1264.

² GARTH & STERLING (1998) 'From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State' 32 *Law and Society Review* 409-472.

³ CALAVITTA (2010) *Invitation to Law and Society – Introduction to the Study of Real Law* (University of Chicago Press), 94 et subs.

⁴ EHRlich & POSNER (1974) 'An Economic Analysis of Legal Rulemaking', *The Journal of Legal Studies* Vol 3, Issue 1, 257-286; CALABRESI & MELAMED (1972) 'Property Rules, Liability Rules, and Inalienability: One View of the Cathedral', *Harvard Law Review* Vol. 85, No. 6, 1089-1128.

only analyse algorithmic decision-making⁵ but also invites more 'mechanic' and causalistic analyses of law.

This special issue presents interdisciplinary approaches to law and legal analysis that not only ask different questions than doctrinal research but also go beyond the by now classical "Law and ..." approaches. The first and last contributions by Wilson and Wilenmann, Feddersen, Gambardella and Cavieres respectively frame the special issue by inquiring about the value of interdisciplinary research as a field of academic activity. The contributions by Rengifo and Gamonal, in turn, are examples of the use of other disciplines in legal research. But all contributions elucidate issues and problems that have hitherto been unduefully neglected in legal research.

In the opening piece, Wilson takes on the relationship between law and history in the Americas. He identifies a theoretical and methodological divide between North and Latin American legal history mainly due to significant institutional constraints in Latin America. While in the U.S., a critical strand of historical legal research had emerged, in Latin America, legal history did hardly any role beyond a 'history of contingencies'. Wilson argues that historical approaches can and should do much more than that: provide deeper historical explanations, explain the law's role in creating present structures of social relations, and – most of all – help us to be doubtful and de-naturalize current institutional arrangements to avoid constant repetition of the past.

We hope that Wilson would be contend with Rengifo's contribution to this volume. It shows how a feminist approach to family law can shed light on the societal function of divorce in the 19th century as a means of protection of women from mistreatment. Rengifo makes it clear – by analysing almost 600 divorce cases from the second half of the 19th century – that divorce was used by women to ensure their fundamental rights, such as the rights to life or personal security, in which the 'home' plays a pivotal role as, on the one hand, the frontier between family life and the state, and a space in which the rights of both spouses antagonistically interact. To use Wilson's language in this volume: by doing so, Rengifo 'demystifies' the concepts of 'home' and 'marriage' and contributes to both feminist and historical analyses of law as a critical exercise.

Gamonal, in turn, invites us to look at – and defends the use of – utopian studies for the analysis of labour law. Broadly aligned with the movement of Law & Literature, he identifies the place of unwanted work in Renaissance literature and 19th century utopian socialist accounts. By doing so, he unearths labour law's character as a partial dystopia, which operates to the benefit of the stronger and

⁵ For example ACQUISTI, TAYLOR & WAGMAN (2016) 'The Economics of Privacy' 52 *Journal of Economic Literature* 2; BROWSNWORD (2008) *Rights, Regulation and the Technological Revolution* (OUP).

detriment of the weaker workers, as well as its utopian character in the sense of a transformative project for society. In the later vein, he proposes novel ideas for dealing with unwanted labour, thus highlighting labour law's potential in the 21st century.

In the last contribution to the Special Issue, Wilenmann and colleagues come back to Wilson's pledge for a confident interdisciplinary legal discipline. They bemoan the separation of the legal discipline from other social sciences in the study of institutional crises in Chile. While social scientists have shed light on the corrosive effect of the persisting neoliberal ideology on the relationship between individuals and the state and the rise of what has been called 'agentic individualism' as an experience of institutional weakness and disenchantment, the legal discipline in Chile has remained disconnected to these developments. By discarding such crises as a non-legal issue, the law might have lost influence in other disciplines and developed methodological deficits, lacking the information necessary to analyze institutions and crises.

As these contributions show, it is not only possible to engage in interdisciplinary legal research but also extremely enlightening. All contributors invite us to set aside our preconceptions and take us on a journey in which we can learn to see the law not as an antagonistic, closed, and abstract area for intellectual reflection, but as a field of narratives, histories, and ideas that reflect and influence social, political, cultural, and historical processes. In this way, they draw our attention to hitherto societal neglected actors – slaves, indigenous people, workers and women. And sometimes ignored even by the legal system. Such perspectives can help law to assert itself as a discipline relevant for the analysis of processes and relations that it helps to shape and has the potential to change. Here lies the value of interdisciplinary research.

Guest Editors

Irina Domurath

Sergio Gamonal

Javier Wilenmann