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Interdisciplinarity as Colonization

J.M. Balkin*

This Article arose out of a very enjoyable conference on interdisciplinary legal studies held at Washington and Lee University School of Law, and I cannot resist beginning my discussion by describing the conference brochure. This brochure, obviously prepared with some care, offers an interesting story about interdisciplinarity. It features a field of question marks of various sizes with the words "Writing Across the Margins" superimposed across them in large letters. I think it is a Courier typeface, the kind you would see on a typewriter, and it invokes the image of margins set by a typewriter. Below the title, in Times New Roman typeface, appears a question whose distinctive setting indicates its central importance: "What can go wrong," we are asked, "when a legal scholar tries to escape confinement and write about constitutional law from the perspective of the humanities?"

There are several assumptions worked into this question. For example, it assumes that:

- (1) There is some sort of problem here — hence all the question marks;
- (2) There is such a thing as a "legal scholar";
- (3) These creatures are somehow confined by their discipline; furthermore,
- (4) They sometimes attempt to escape from their confinement for well-intentioned reasons;¹
- (5) One means of escape from this confinement is to write from "the perspective of the humanities," which further assumes;
- (6) Writing from the perspective of the humanities is not itself a form of confinement, or if so, is a relatively more acceptable form, perhaps like a minimum security prison in which the food is somewhat better; and finally,
- (7) There *is* a "perspective of the humanities."

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1. I am of course reading this benign motivation into the brochure, but then I suspect I am reading in many other things as well.

Ironically, at the bottom and the top of the brochure — at the margins, we might say — we find additional text that bears a curious relationship to what is going on in the middle. The margins of the front page state that this conference on interdisciplinarity is being held at Washington and Lee University School of Law. Moreover, it is being jointly sponsored by the Frances Lewis Law Center and the *Washington and Lee Law Review*.

Does this sponsorship — which is at the margins of the brochure, but is in no sense marginal — undermine the assumptions implicit in the brochure? Or, put in currently trendy interdisciplinary terms, does the brochure deconstruct itself? I think, in fact, that the brochure is symbolic of the way in which interdisciplinary scholarship appears in the law. It is precisely the existence of "law *and*" — not merely *not* opposed, but actively subsidized and supported by the institutions of law and legal education — that is the most interesting feature of legal interdisciplinarity. Moreover, it is precisely the terms upon which this support is offered — the idea that there is "interdisciplinarity," rather than "disciplinarity," and that this interdisciplinarity is expressed as "law *and*," rather than just "law" — that symbolizes the ongoing power of law as a professional discipline distinct from that which it offers to support. The very expression "law *and*" paradoxically signifies both law's welcoming of other disciplines and its continued separation from them. The brochure symbolizes both the illusion of a threat and the threat of an illusion that is interdisciplinary legal scholarship.

Two things strike me as particularly interesting about interdisciplinary legal scholarship. First, these days there is a profound sense of questioning about the purposes of legal scholarship, a profound sense of concern about the fracturing of legal scholarship into mutually incomprehensible camps, and a profound sense of worry about the increasing and, for many, undesirable isolation of legal scholarship from the concerns of the legal profession, the bench, and the bar. From this standpoint, interdisciplinary scholarship might seem to be a threat to the self-identity of the law professor and the legal academy, and is consequently embattled or under siege.

Second, at the very moment this is going on, interdisciplinary scholarship seems to be all the rage. Interdisciplinary scholarship is now an expected part of a serious scholar's work at most of the elite law schools in this country. Because these schools generally are looked up to as leaders of academic fashion and because they produce most of the new law professors, one would think that the future of interdisciplinary scholarship looks exceedingly bright. Indeed, I want to emphasize that at most elite schools today a bright young scholar who professed no interest whatsoever in interdisciplinary scholarship would find it very hard to get a job.

It is important to recognize that the picture is somewhat different at non-elite law schools. Interdisciplinary scholarship has gained less of a foothold there; it is not hegemonic in the way it has become at some of the fancy schools. Rather, it is in an ongoing competition with other visions of legal scholarship and other ways of being a law professor, some of which, I might add, do not stress producing lots of legal scholarship at all. This competition is the source of considerable tension and anxiety at non-elite schools. This tension is partly generational and is due to the different expectations of younger and older faculty members. It is also partly due to the fact that law schools increasingly hire almost all of their new law professors not from their own local law schools and their own local legal cultures, but from a handful of schools in which interdisciplinary scholarship is the norm rather than the exception. This suggests that some of the problems experienced in the production and reception of interdisciplinary scholarship are tied to issues that are not about the substance of this scholarship. They are tied to generational anxieties, the stratification of law schools in a relatively rigid hierarchy, and the differences between the expectations about scholarship at schools that produce most law professors, and the expectations and needs existing at the places where most law professors actually teach.

Nevertheless, as interdisciplinary scholarship becomes more and more the norm, it infiltrates itself into our expectations about ordinary legal scholarship. It becomes increasingly part of what ordinary legal scholarship is. It no longer becomes writing across the margins — it becomes writing within the margins. Indeed, it starts to constitute the margins themselves, or at least resets the margins.

In fact, there is one type of interdisciplinary scholarship that has been wildly successful, and that is law and economics. If you are going to be hired to teach certain subjects in many fancy schools, and increasingly at many nonfancy schools, you have to do law and economics scholarship. I assume that when the organizers of the conference thought of the problems of writing across the margins of different disciplines, they did not primarily have law and economics scholarship in mind. I conclude this partly because the brochure says that the conference is about the special problems of the humanities and constitutional law, and partly because they invited me to come talk and not my colleagues Ian Ayres or Alan Schwartz. But, I also suspect it may have something to do with the sense that law and economics is not currently an embattled or marginal interdisciplinary movement.

This suggests that some forms of interdisciplinarity are more successful, more mainstream, and have evoked wider acceptance, or at least respect, than other forms of interdisciplinary scholarship. Yet even so, what is striking is that despite its many successes, law and economics is still re-

garded as interdisciplinary, as the addition of something to law, rather than simply as the basic methodology of legal study to which other methodologies might be added.

In this Article, I want to offer a rather unsentimental model of interdisciplinary scholarship. According to this model, interdisciplinarity results when different disciplines try to colonize each other. If the takeover is successful, work is no longer seen as interdisciplinary; rather, it is seen as wholly internal to the discipline as newly constituted. Interdisciplinary scholarship, then, is the result of an incomplete or failed takeover.

At any point in time, some disciplines are more vulnerable than others to methodological takeover. And, for various reasons, legal scholarship has for some time seemed ripe for the picking. Yet, I shall suggest that colonization of legal scholarship can never be entirely successful because law is at heart a professional, and not an academic, discipline.²

Law's status as a professional discipline and its corresponding inability to be fully colonized rest on three factors. First, most American law professors are drawn from the ranks of those educated in American law schools. Second, most of the people educated in those schools are trained to be lawyers. Third, social forces outside of the academy — including, in particular, the bench and the bar — demand that people who go to law schools be trained to be lawyers, whether they end up being lawyers or not. These external constraints on professional education make law different from other academic disciplines that have been taken over in the past. They permit disciplinary invasion, but not disciplinary conquest; influence, but not capitulation; innovation, but not revolution. Instead, the corpus of academic law is divided among rival disciplines of history, philosophy, economics, and the like, each grasping for its share, but none powerful enough to vanquish the natives or each other. Yet, even though the assault on the legal citadel is doomed to failure, it nevertheless produces its share of casualties: piles and piles of papers, stacked like corpses in the pages of American law reviews. The products of this failed assault have a special name. We call them "interdisciplinary legal scholarship."

I. Discipline and Punish

If we are going to talk about the problems of interdisciplinary scholarship, we first have to get some idea about what disciplines are. I always find

2. See generally JOHN H. SCHLEGEL, *AMERICAN LEGAL REALISM AND EMPIRICAL SOCIAL SCIENCE* (1995) (making similar point in his diagnosis of problems that faced American Legal Realism). I have greatly benefitted from Schlegel's perceptive analysis, which has influenced much of what I have to say here.

etymology helpful here. The word "discipline" comes originally from the Latin word *discipulus* (pupil). From this root we also get the word "disciple," as in Jesus's disciples, and the verb "to discipline," which is what one does with contrary children. As is so often the case with etymologies, these concepts have important relationships to each other. Consider the successive definitions of the word "discipline" that I found in a dictionary:

- (1) Training expected to produce a specific character or pattern of behavior, especially training that produces moral or mental improvement;
- (2) Controlled behavior resulting from disciplinary training; self-control;
- (3) (a) Control obtained by enforcing compliance or order;
(b) A systematic method to obtain obedience: a military discipline;
- (c) A state of order based on submission to rules and authority: a teacher who demanded discipline in the classroom;
- (4) Punishment intended to correct or train;
- (5) A set of rules or methods, as those regulating the practice of a church or monastic order; and
- (6) A branch of knowledge or teaching.³

There is an interesting progression here. We move from a form of behavioral control to a form of mental control; to a system of mental control; to a system of submission to authority, which is a system of mental control; to a system of punishments designed to produce this mental control; to a set of rules that bind together a group or order, which shares this system of mental control; and finally, to a branch of learning. Thus, a discipline is the discipline of a group, a group which enforces this discipline by punishments that discipline its members to discipline themselves to adhere to the discipline.

In like fashion, the verb "to discipline" is defined variously as to teach self-control, to teach one to obey rules or to accept authority, to punish in order to gain such control or obedience, and finally, to impose order upon one's thought, as a parent might do with a child's study habits.⁴

Disciplines, in turn, give rise to disciples. Disciples "embrace[] and assist[] in spreading the teachings of another."⁵ They are "active adherents . . . of a movement or philosophy."⁶ A disciple is a member of a group that

3. AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (3d ed. 1992).

4. *Id.*

5. *Id.*

6. *Id.*

is organized around the purpose of spreading its message and hence its influence.

Academic disciplines, therefore, are about authority, and in particular, about authority within particular groups of persons who think alike through training and discipline. As such, this authority must be enforced by punishments and rewards to ensure that the lessons of the discipline become as second nature. If these lessons cannot or will not be internalized and if punishments and rewards fail, the apostate must be excluded forthwith.

Thus, disciplinarity is not simply a matter of individual choice, the pursuit of individual interests, or an individualized search for truth. Rather, it is the product of a set of social forces of normalization and education, reward and punishment, through which the academic's head gets constructed, and the academic becomes the kind of academic that he or she is. If you wanted a fancy cite, you would describe disciplinarity as a classic version of Foucauldian power/knowledge.⁷ If you did not want a fancy cite, you could call it a sort of intellectual boot camp followed by an extended tour of duty. Of course, many academics do not like military metaphors — they do not like to think of themselves as foot soldiers in the struggle of groups — and they do like to think of themselves as dispassionate investigators of truth. But these predispositions, after all, are part of what makes them academics. One might say, then, that it is part of the discipline of academics to have them think of themselves as particularly and uniquely undisciplined.

If disciplinarity works this way, then in any discipline we are likely to see relationships of power and authority that help preserve the discipline and reproduce it in others, just as there are relationships of power and authority in boot camp or in relations between parent and child. And it also suggests that attempts to work outside the boundaries of the discipline may be met with resistance and disciplining. Members of the discipline may attempt to establish and to enforce the boundaries of the discipline, and discipline and punish those who attempt to transgress disciplinary boundaries.

At first glance, this might seem a rather authoritarian vision of disciplines and disciplinarity, a sort of academic bondage and discipline. It smacks of brainwashing and totalitarianism, of intolerance and narrow-mindedness, of ideological blinders and witch-hunts. It seems to make discipline the enemy of reason. As Barbara Tuchman once observed, "reasonable orders are easy enough to obey; it is capricious, bureaucratic or plain idiotic demands that form the habit of discipline."⁸

7. See generally MICHEL FOUCAULT, *POWER/KNOWLEDGE: SELECTED INTERVIEWS & OTHER WRITINGS 1972-1977* (1980).

8. BARBARA W. TUCHMAN, *STILWELL AND THE AMERICAN EXPERIENCE IN CHINA:*

But quite the opposite is the case. For the authority of discipline is not the enemy of reason. It is its fountainhead. A discipline organizes and empowers thought. It makes having certain kinds of thoughts possible. Disciplines create forms of reasoning by the very organization they impose on the mind. Disciplined thought is organized thought, and the flip side of its organization is a necessary degree of structuring and preconception. It could not be otherwise, for an undisciplined mind would be unable to proceed very far. As Stanley Fish tells us, an open mind is an empty mind.⁹

Disciplines offer the academic forms of cultural know-how, or what I like to call "cultural software."¹⁰ Disciplines involve not only shared subject matters and shared problems, but shared ways of thinking and talking. They shape not only writing style, but even such seemingly mundane questions as when and how to cite to authority. Disciplines focus not only on particular subject matters, but offer opinions on what is interesting and worth pursuing and what is tedious and boring. They prescribe not only what books and articles to read — and thus construct their own canons — but also what books and articles to ignore. They suggest not only what to criticize in others, but also how to criticize, whether ruthlessly and directly or gently and indirectly. They offer assumptions about what is a good argument, what is an interesting problem, and what constitutes good enough evidence or a good enough proof.

More important than jargon or vocabulary are the ways in which disciplines direct the asking of questions and the course of study. Disciplines provide their members with tools of understanding. By providing people with some tools rather than others and by enhancing some skills at the expense of others, disciplines necessarily push their members toward asking the kinds of questions with which these tools are best equipped to deal and treating all other questions as variants of these. A tool opens up the world to the person who uses it. Yet, it opens up the world in a particular way. The world begins to resemble and seems to be organized around the intellectual tools that lay to hand. As the saying goes, when all that you have is a hammer, everything starts to look like a nail.

Finally, each discipline has its own history, its own sense of its origins and progress, its own heroes and villains, and its own fathers to slay. This history is often extremely important in determining what is a useful insight

1911-1945, at 13 (1970).

9. STANLEY FISH, *THERE'S NO SUCH THING AS FREE SPEECH (AND IT'S A GOOD THING TOO)* 117 (1994).

10. See J.M. Balkin, *Ideology as Cultural Software*, 16 *CARDOZO L. REV.* 1221, 1225 (1995) (invoking metaphor of cultural software to describe cultural know-how).

or a tedious point, what "moves the ball," and what is unimportant or irrelevant.

The different cultural software installed in members of different disciplines often leads to a sense of bewilderment when people from different disciplines meet. It is the sense not only of having to wade through a strange and abstruse vocabulary, but also the sense of puzzlement as to "why does he or she find *that* interesting?" or "why was so much effort wasted on showing *that* or discussing *that*?" To chance upon a discussion among persons of a different discipline can be like arriving at someone else's family reunion. Each discipline has its own ongoing controversies, its own distinctive debates to rehearse, its own characteristic points to score, and its own private demons to exorcise.

But disciplines are not only Wittgensteinian language games and forms of life.¹¹ They are also ongoing, self-regenerating enterprises. They instill cultural software in their members so that their members can instill software in their successors. Disciplines, in other words, are reproductive mechanisms, and one who interferes with this mechanism is likely to be attacked as surely as one who tries to disturb the eggs in a mother eagle's nest.

The cultural software that constitutes each discipline is produced and reproduced through education and disciplinary ritual. Each discipline has a stake in the reproduction and survival of its own cultural software. And within each discipline there will be a stake in the survival of different research projects, different bodies of scholarship, and different paradigms of research. Cultural software that is effectively reproduced survives, and that which does not loses out. From this quasi-Darwinian perspective we can think of disciplines as the battleground of competition between different varieties of cultural software instantiated in individual academics. Our minds and the minds of our students are the terrain of this struggle for cultural reproduction.

Although authority is central to a discipline, even more central is the reproduction and survival of the discipline's cultural software: a body of learning, a style, a set of approaches, and a mechanism of problem formation, recognition, and solution that is passed on from one generation to the next. Disciplines reproduce themselves through education; they construct the cultural software of new members in order to perpetuate themselves. This image of reproduction calls to mind the relationship between parent and child. Parents, after all, do not only pass on their genes to their children; they also transmit cultural know-how. The parent rears, punishes,

11. See generally LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* (G.E.M. Anscombe trans., 1953).

and molds the child in a world in which the child is subject to a multitude of other competing cultural forces. If the child is raised properly, it can withstand or beneficially assimilate these foreign elements. If the discipline does not hold, the child may go astray and be lost.

The reproductive aspect of academic disciplines makes the mentoring system of graduate education extremely important. It also explains, I suspect, why hiring and tenure decisions at law schools are often seen as one of the most important parts of what legal academics do, and for that reason, one of the most contentious. Hiring debates are fights over who controls the means of reproduction. Different law professors want their ways of thinking and conceptualizing, their sense of what is important and unimportant, and their notions of proper and improper academic behavior memorialized in the next generation of scholars.

Hence, we can look at disciplines in several different ways. First, we can understand disciplines from the perspective of an individual who is trying to discover and express what is interesting, good, true, or just. So viewed, disciplines seem to be something external to the self. Second, we can think about disciplines as involving skills that constitute individuals. In this sense, the discipline is internal to the individual, and the compulsion of the discipline an internal compulsion. Third, we can view disciplines in terms of a group or a community that constitutes the discipline, and that has an interest in the production and reproduction of its cultural software in a succeeding generation of scholars.

II. Is Interdisciplinarity Possible?

If a discipline is a form of authority, providing both norms for thought and punishments for straying from them, what could interdisciplinarity mean? As the New Testament tells us, no person can serve two masters.¹² From this perspective, interdisciplinarity means being beaten by two different sticks, or subjected to two contrary and conflicting punishments.

On the other hand, if disciplinarity is authoritarian, then perhaps interdisciplinarity is rebellious, even romantic. It is a form of intellectual martyrdom, a self-sacrifice against mindless authority; it offers a vision of independence of mind and spirit highly flattering to the average academic's self-conception. Interdisciplinary scholars are romantic rebels: they question authority by transgressing disciplinary boundaries. They are champions in the service of a greater truth that transcends scholastic categories. This is a familiar and appealing image among interdisciplinary scholars.

12. *Matthew* 6:24.

It is one that I have succumbed to on occasion. But the interesting question is to what degree this image is just that — an image.

If disciplines are forms of cultural software that organize and construct the academic's mind, we must throw cold water on this romantic view. Indeed, we must ask whether interdisciplinarity is at all possible. From the perspective of the individual scholar, interdisciplinarity is a scholar's attempt to use the information, approaches, questions, and professional norms of another discipline and combine them in some way with her own disciplinary tools. There are many different ways one might do this. But the real question is whether any of them are truly interdisciplinary.

Consider some different forms that interdisciplinary legal work might take: First, one might try to solve problems determined by and through the norms of legal scholarship by means of information from other disciplines. For example, one might use information from other disciplines to determine the best rule of constitutional protection against libel or the best assignment of decisional authority between state and federal governments, and so on. Here, the basic categories of questions to ask are already determined by legal scholarship; one looks for answers to doctrinal questions that could be formulated in terms of a legal rule or doctrinal innovation. There is a sense in which this work is interdisciplinary, but in another sense it does not stray very far from two familiar lawyerly tasks: arguing over which rule better serves public policy and finding additional citations to put in the footnotes of one's brief.

A second form of interdisciplinary work would involve treating legal materials as though they were the sorts of materials studied in other disciplines. For example, one might read a legal opinion as if it were a literary text. But even here, we would need to identify what the point of this exercise is. Law professors who do this sort of thing are still likely to be asking at the end of the day: Is such and such a good doctrine? Is it consistent with other doctrines? Would a different rule be better? Moreover, the choice of object to read — for example, a Supreme Court opinion — may still betray the law professor's fascination and identification with the work of courts. This version of interdisciplinarity still leads back to the sorts of questions that law professors traditionally ask themselves and the kinds of answers that they traditionally seek.

A third approach would try to solve problems determined by some other discipline by applying the other discipline's methods to an aspect of the legal system or to materials that happen to be legal materials. An example might be the work of a criminologist or a political scientist who learns how to read cases or to examine court records in order to study certain social phenomena linked to the legal system. Yet, this study would

still not be interdisciplinary in the sense of combining two disciplines or changing the questions asked by either. It would simply bring to bear the assumptions and questions that are characteristic of a particular social science.

A fourth approach would attempt to create a space for an entirely new discipline with new questions and new assumptions by merging and marrying the questions and assumptions of different disciplines. Yet, this task would be the hardest and most unusual of all, because without a community of disciplinary adherents, there really can be no discipline. Hence, such attempts are likely to be transformed into one of the other versions of interdisciplinary work that employ the disciplinary assumptions and ask the characteristic questions of an already existing discipline.

As a result, much of what people call interdisciplinary work often involves answering questions in one discipline by applying its disciplinary methods to the materials usually studied by another, or by selectively invoking techniques found in one discipline to answer questions posed wholly within another. Thus, Stanley Fish, in an essay aptly entitled, "Being Interdisciplinary Is So Very Hard to Do," suggests in a typically Fishian paradox that "interdisciplinarity," strictly speaking, is impossible.¹³ One is always within whatever discipline one is in, and one simply assimilates and feeds information from and about other disciplines into one's pre-existing disciplinary matrix.¹⁴

So stated, Fish's argument, like many of his other arguments, is yet another version of Zeno's paradox, designed to show that change or motion is impossible. It is a version of Parmenideanism: there is only the One, and all things are already contained within it.¹⁵ Of course, as is true of most of Fish's arguments of this form, the claim becomes much less surprising once one acknowledges that disciplines are always changing. A discipline is not a homogenous unity and is always in flux at any given time. It is produced by the interaction of the various members of the discipline, each of whose cultural software is slightly different. Their interaction will differ as they are exposed to different influences. Moreover, their cultural software is reproduced in others with considerable variation and change. So it is quite possible that exposure to different disciplines, new information, and new skills can lead to disciplinary change. This is especially so if the exposure affects the future reproduction and transmission of the discipline's information and skills, and this is always

13. FISH, *supra* note 9, at 231-42.

14. *Id.*

15. See G.S. KIRK & J.E. RAVEN, *THE PRESOCRATIC PHILOSOPHERS* 274-75 (1957).

possible because disciplines are always in a state of ferment and change. Fish's argument really amounts to this: Changes in a discipline may be less striking than they appear on the surface because the basic assumptions and questions a discipline asks may be quite robust, even as new information and skills are constantly being absorbed by its adherents.

III. Disciplinarity, Group Struggle, and Colonization

This brings me back to the idea of disciplines as groups of like-minded individuals. If we think about disciplines as groups, we can arrive at a somewhat more detailed model than Fish offers us. Moreover, we can avoid the overly sentimental pictures of interdisciplinarity as romantic heroism, revolution against oppression, or a form of martyrdom. The picture of interdisciplinarity that I would like to offer is a conflict between self-replicating groups that is worked out through the competitive construction of individuals.

In one sense, it is hardly surprising that different disciplines are in competition with each other. After all, economists and sociologists, for example, often seem to have nothing good to say about each other. They engage in stereotypical judgments about what the other is doing, why the questions being asked in the other discipline are the wrong questions, and so on.

But my larger point is that we can think of disciplines as populations of relatively similar cultural software competing for limited space in the minds of academics. Like the complexes of genes found in organisms, we can say metaphorically that disciplines have "interests" in their own reproduction and spread. To put it another way, those disciplines that fail to reproduce themselves with sufficient success in their environment — human minds — will become marginalized and possibly extinct. Of course, we cannot take this analogy too far. Disciplines can also combine with other "species" — that is, other disciplines — to enhance their survival, although they certainly will be changed in the process. But this simply reveals an important difference between biological evolution and cultural change.

From a group-based perspective, then, interdisciplinarity is simply more than a search for truth by adventurous individuals. It is an attempt by disciplines to expand their empires, to colonize and to take over other disciplines by extending their sphere of influence over them. If this colonization is sufficiently successful, it will not even be understood as a colonization. It will simply be seen as part of the general methodology of the colonized discipline. The old discipline continues to exist, but with a new methodology, a new set of questions for study, or new criteria of Kuhnian

"normal science."¹⁶ Alternatively, the colonized discipline will simply seem to disappear, absorbed into the conquering discipline or reconceptualized as a subspecialty.

But things need not happen this way, and indeed, things usually do not happen this way. Large chunks of a discipline can be transformed, but others may remain stubbornly in place. And, as conquering nations often discover, victory leads to unexpected reciprocal influences between the conquerors and the conquered — an unintended mixture of customs and peoples that affects the victors as much as the vanquished.

The process of colonization can also work in the opposite way. One part of a discipline can declare independence and secede from another larger discipline, much as psychology separated from medicine in the nineteenth century. The result can be a completely new discipline or a semiautonomous one. Finally, struggles over disciplinary influence can result in permanent shifting of disciplinary boundaries, or even the creation of new disciplines, like cognitive science or chaos theory.

From this group-based perspective, the interdisciplinary scholar takes on a wholly different aspect. She is no longer simply a person seeking after the truth, wherever it may lead her. Rather, she is part of the vanguard of disciplinary colonization. She is canon fodder in a larger struggle in which, depending on how the history works out, she will emerge either as hero or humbug. It is simply her job to be spat upon, laughed at, or ignored. If she is successful, she will gain additional converts and take over. If she is not successful, she will be marginalized and dismissed.

There is a continuum between two basic kinds of interdisciplinary scholars, whom I will provocatively call turncoats and invaders. Invaders are primarily members of the colonizing discipline who plan to teach the colonized discipline a thing or two by virtue of their superior expertise. An example would be a political theorist who attempts to advise constitutional lawyers about justice or democracy, or an economist who argues that anti-trust law should be structured in a particular way. Invaders often cannot get very far on their own because they are likely to be dismissed as people who do not know anything about the other discipline. Most of the interdisciplinary struggle, therefore, is carried on by turncoats. (Because I fall into this category, I hope no one will mind too much my tongue-in-cheek use of this word. A less pejorative expression would be "importers.")

Turncoats are members of the discipline to be colonized who seek to import lessons from a potential colonizing discipline. They are the first wave of arbitrageurs carrying approaches from one discipline to another.

16. See THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 5-12 (1970).

They do most of the boundary crossing, and as a result, they take most of the bullets. If turncoats are successful, they create a space in which invaders from other disciplines can exercise increasing influence on the colonized discipline. As is so often the case, it is only after espionage and internal strife have weakened the city's internal defenses that the conquering army arrives to take advantage of the situation.

The relationship between invaders and turncoats, however, is very complicated. It is quite unlike that between generals and spies. The latter do not simply take orders from the former. Turncoats may seek to use their interdisciplinary expertise to improve the work of their own discipline or, more cynically, as a form of product differentiation that will enhance their status in that discipline. However, turncoats normally have no desire to have their discipline disappear or to become a subspecies of a larger one. Indeed, they might be shocked and appalled at such a result. Some turncoats may want to contribute to the colonizing discipline. They may even hope to invade the colonizing discipline themselves.

Of course, interdisciplinary scholars do not usually see themselves in this way. They are more likely to see themselves as evangelists for truth. But at the same time, they are part of a larger struggle for reproduction, a struggle over what academics find interesting, what kinds of questions they ask, and how they go about answering them. Interdisciplinary scholars' social function in this larger struggle is not at all inconsistent with their genuinely being involved in a search for truth or their sense of being oppressed and marginalized within a particular discipline. Indeed, these phenomena are two sides of the same coin.

If interdisciplinarity involves colonization of other disciplines, what makes a discipline likely to be successful in its aggressions? Conversely, what makes a discipline ripe for colonization and conquest? My preliminary hypothesis is that, with many exceptions and qualifications, a discipline is more likely to be an aggressive and successful colonizer if it has a strong, centrally shared methodology that is rigorously reinforced in its educational process. Moreover, such a centrally shared methodology will have to be fertile and robust in the sense that it is capable of producing lots of work and lots of interesting results. It must feature a successful research paradigm that can produce lots of Kuhnian normal science.¹⁷ Conversely, a discipline is more likely to be ripe for colonization or conquest or both if it lacks a consensus about its central methodology, or if it is in a moment of crisis and self-doubt about its integrity as a discipline.

17. *See id.*

I must offer two caveats immediately. First, I want to emphasize that I am only speaking of what makes colonization more or less likely, because it strikes me that there is no reason why a discipline could not be colonizing while it is being colonized. Literary theory is a good example. Indeed, I suspect that susceptibility of the colonized discipline may be a much more important factor than the cohesion of the colonizing discipline.

Second, I should emphasize that I am speaking about ideal types. All disciplines are, at any moment, in a state of flux. Their degrees of methodological cohesion and consensus vary from generation to generation. At one point a discipline may have no central methodological cohesion, but later, a powerful methodology may arise and sweep aside all its competitors. That methodology may then gain control of the reproductive process and ensure that other research agendas are either expelled, marginalized, or forgotten. At this point, it forms a newly cohesive discipline — cohesive because the discipline has been taken over by one model of research and one set of interpretive assumptions. This newly constituted discipline may then become aggressive and imperialist.

The most obvious example of a relatively cohesive discipline at the present moment is economics, which is exporting its rational actor models in a seemingly unstoppable march throughout the university. The most obvious examples of relatively susceptible disciplines are political science and literary theory. I do not mean to suggest that economics is completely cohesive. After all, in the past twenty years or so economics has gone through a revolution in which game theoretic approaches and related rational actor models have been in the ascendant, replacing older equilibrium-based approaches. Moreover, economics has itself been successfully colonized by other disciplines, particularly mathematics and statistics. Its previous colonizations — by the mathematical theory of games, for example — have helped to give it its current robustness. I am merely pointing out that, in contrast to many other disciplines, economics has become comparatively unified in its methodological assumptions, although I freely concede that from the inside it may not appear so.

By contrast, political science is badly divided. There are political theorists, strong quantitativists, soft empiricists, rational actor modelers, and scholars with no fixed methodology, but who mainly identify themselves by the country or part of the world they discuss — for example, Asian studies — or by the institution of American government they study — the Congress, the Presidency, or the courts. Of course, at some point one model or another may achieve dominance — that is the hope of positive political theorists — but at present we simply have a mess.

English departments and departments of comparative literature have always been asking themselves what exactly they are supposed to be doing. And there are as many answers to this question as there are different schools of literary theory. People have often complained that literary theory — now merged or overlapping with critical or cultural theory — has been too faddish. Yet, to be blown about by the winds of fashion is the necessary consequence of lacking the ballast of a fixed and cohesive methodology.

IV. *The Colonization of Law*

But I have been playing *Hamlet* without the prince. My subject is interdisciplinary legal studies. And so the natural questions to ask are: What kind of discipline is the academic study of law? Is it more like economics or more like political science and literature? The simple answer is also the obvious one. Law is much more a place to be colonized than a colonizer. But the question is more complicated, and I want to go into its complications in some detail.

First, consider academic law as a potential colonizer. Although law seems to be an especially susceptible discipline for invasion, it does not appear to be very good at exporting its own concerns into other fields. In this respect it differs from, say, literary theory, which is both an importer and an invader. This is not to say that other disciplines are uninterested in law. Often they are very interested. However, they tend to be interested in law because they associate law with power or because they seek legal examples as grist for their particular theoretical mills. Other disciplines do not seem particularly interested in lawyers' doctrinal disputes or in importing lawyers' professional skills of crunching and organizing cases and statutes.

The reason why law is a seemingly easy target for invasion is related to the reason why it is an unlikely exporter of disciplinary invasion. Law is less an academic discipline than a professional discipline. It is a skills-oriented profession, and legal education is a form of professional education. Because law is a professional discipline, it lacks a robust academic methodology that can easily be imported into other disciplines to colonize them.

The traditional study of law does not produce knowledge in the same way that other disciplines do. Rather, it mostly collects knowledge about what various legal decisionmakers have done and teaches the rhetorical skills of how to manipulate and present this knowledge in front of courts, legislatures, and other legal decisionmakers. Of course, in saying this, I am referring to what law students studied in law schools before the present

interdisciplinary invasion. But I suggest that, in many ways, the basic premises of legal education have not changed very much.

Thus, precisely because of its professional status, the study of law looks like a sitting duck for a disciplinary takeover. And indeed, the story of the past twenty to thirty years in legal scholarship seems to have been one of continual invasion, as turncoats have attempted to import insights from many different fields, most prominently including economics, history, philosophy, political theory, and literary theory. Sociology and psychology have made less, although not insignificant, headway.

Ironically, some approaches have been more successful as invaders of law than they have been in their own homelands. Continental philosophy and critical social theory are excellent examples. In the United States, the analytical tradition in philosophy has been largely successful in driving out its competitors, as reflected in the number of graduate students trained in nonanalytic traditions, as well as the number of jobs available to these students when they graduate. Similarly, American sociology has become predominantly empirical, leaving little room for large scale social theory, which nevertheless still thrives in Britain and Europe. Yet, both of these research programs have found niches in left-wing legal scholarship, as well as in area studies and departments of comparative literature. The newly emerging field of cultural studies is an amalgam of a number of disciplinary approaches that, fleeing the relentless onslaught of rational actor models and empirical social science, have taken refuge in disparate areas of the academy.

Nevertheless, even though law seems to be fertile ground for invasion, no invasion of law can ever be fully successful. Law as an academic discipline always puts up enough resistance to prevent complete colonization. As a result, we see "law *and*" but no science of law; for if law had been successfully colonized, the new methodology would simply be thought of as part of legal methodology. It is often said that law is in crisis. But if so, the experience of crisis is not the experience of Rome before the sack thereof. It is rather the experience of Vienna, continually under siege by Suleiman the Magnificent, but never quite conquered. Law is weak enough to perpetually tempt invaders and turncoats, but strong enough to resist capitulation. It is this resiliency, I suspect, that drives many latter-day interdisciplinarians crazy.

The reasons for law's surprising strength, I shall argue, have less to do with a central academic methodology than with the amazing resiliency of the seemingly moribund forms of legal education, and the deeply felt norms of professional identity that both produce and bind together the vast majority of law professors. This resiliency and these deeply felt norms

stem from the most obvious and mundane source — the fact that all law professors spend their formative years in a professional school, a category which includes, believe it or not, even interdisciplinary havens like the Yale Law School. Law schools tend to get prospective law professors early, and after three years of learning to think like lawyers, they are, from the standpoint of other disciplines, ruined for life.

But matters are even worse. For after completing their education, these budding law professors take up residence in (shudder) professional schools of law. There, they are expected to train students, the vast majority of whom plan to become lawyers, not academics. These law professors, immersed and re-immersed in legal culture, and required to immerse still others in the same culture, are given no graduate students from other disciplines to assist in their research. Indeed, in most cases they are given no graduate students at all. Instead, they grade legal examinations and supervise law-related papers written by would-be lawyers, mostly about legal doctrine.

Thus, to continue the metaphor of colonization, we might think of law as a subaltern discipline, which seems to accept and even to welcome invasion while secretly resisting and subverting it.¹⁸ Legal scholarship plays a sort of intellectual rope-a-dope, allowing other disciplines to punch away until they grow weary and retire exhausted.

And so, the secret can now be revealed. Academic law can continually be colonized by any number of disciplines because law is not, strictly speaking, an academic subject. As an academic methodology that might be subverted or replaced, there is, strictly speaking, no "there" there. Legal knowledge is professional knowledge. The study of law is part of a professional practice, a set of professional skills that are taught to new professionals in professional schools. Law is, moreover, a deceptively strong professional practice, and its modes of reproduction are amazingly resilient. Thus, even though law professors continually absorb ever new and exotic forms of theory from without, they continue to teach their students the same basic skills using the same basic methods. They say one thing in their law review articles, but do another in their classrooms. They teach their students to parse cases and statutes (still mostly cases), and they teach them to argue about what rules would best promote sound social policy. In short, they prepare them rhetorically to be lawyers. Spending three years doing this has to have some effect on a young mind. And it does. It

18. Hence, the most appropriate comparison might be to studies of peasant resistance. See, e.g., JAMES C. SCOTT, *WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE* (1985).

produces the sort of mind that can accept new invasions from the academy, but continually turns them to old habits and transmutes them into familiar rhetorical forms.

V. *Professionalization and Its Discontents*

In order to show how law's status as a professional discipline leads it to resist complete colonization, I offer the example of law and economics. I choose law and economics because it is by far the most successful interdisciplinary invasion. It has the most obvious connections to the work of lawyers, and therefore would seem on its face to have the greatest chances for colonization. If economics cannot successfully colonize law, one might think that no other discipline can.

Almost a decade ago, Judge Richard Posner wrote a hopeful essay about the decline of autonomous conceptions of law and, conversely, the ascendance of economics in the legal academy. He suggested that economic methods, which were at first most salient in antitrust, torts, and contracts, would eventually come to dominate most of the fields of legal study.¹⁹ Posner has not only been a central contributor to law and economics, but one of its greatest popularizers. By 1987, he had every reason to be optimistic about the eventual colonization of law by economic approaches.

In hindsight, we can see why Posner's optimism was misplaced. It is precisely the problems inherent in popularization that placed roadblocks in the way of complete colonization, and that guaranteed that we would have many professors practicing something called law *and* economics, but not a general methodology of law *as* economics. Instead of completely taking over legal study, law and economics has become an important specialty of legal research that demands increasingly specialized training to do important new work. Moreover, much of the most important new work is increasingly incomprehensible to the remainder of the legal professoriat. Economics has been highly successful in affecting the language of legal academics, if not practicing lawyers. But the rest of the academy employs watered-down, simplified forms of economic analysis, if at all; they can hardly be said to be on the cutting edge of economic research.

The professional training of academic lawyers and their intimate connections to the professionals they train has simultaneously co-opted and circumscribed the invasion of economic methodology. It has co-opted economics because popularization demands that economics be fitted to the existing skills and limitations of the vast majority of legal academics. It has

19. See Richard A. Posner, *The Decline of Law as an Autonomous Discipline*, 100 HARV. L. REV. 761, 767-78 (1987).

circumscribed economics because cutting edge work increasingly demands skills and abilities that cannot be gained in a three-year J.D. program. And J.D. programs cannot become Ph.D. programs in economics because J.D. programs are necessarily designed for the needs and interests of practicing lawyers, not for those of prospective academics.

Economic analysis of law spread into legal scholarship as a new way of carrying out the basic research programs of American legal scholarship: the rational reconstruction of existing doctrine and the evaluation of competing rules in terms of what best served public policy. But the most important factor that helped the spread of economic analysis by law professors, especially in its early days, was that it required little or no empirical research. Rather, one mastered a relatively small handful of basic concepts and arguments, and then applied them systematically to various areas of law. When one side offered arguments, the other offered counterarguments with slightly different empirical assumptions. If one side proposed that consensual agreements alone would produce an efficient result, the other might insist that transaction costs were high so that a regulatory solution was required, and so on.

In short, for law and economics to spread into the legal academy, it first had to transform economic science into a form of policy rhetoric that could be easily learned and adopted by reasonably intelligent law professors with little or no previous training in the field. Economics had to be translated into a style of argument compatible with the basic skills academic lawyers already possessed. For if it could not be so translated, it would not spread widely into a culture of people trained primarily as lawyers.

Lawyers are particularly good at applying principles worked out in one fact situation to different fact situations, but not particularly good at statistical or empirical study. They are good at simple mathematical reasoning, but not particularly good at more complex models. They are good at reading books that have facts in them, but not particularly good at designing and implementing studies or experiments that would discover new facts. The kind of economic analysis that spread most easily and effectively through the legal academy reflected the comparative advantages of lawyers. It was a sort of rhetoricized, arm-chair law and economics. It was an economics in which one made certain empirical assumptions, and one's opponent countered by making different empirical assumptions, but neither was actually going to go out and test the assumptions because neither was trained to do any such thing.

Of course, this is precisely what the quasi-evolutionary model of disciplinary invasion I have offered would predict. Disciplines colonize primarily not through invaders but through turncoats — that is, through

persons trained primarily in the host discipline. Interdisciplinary study will be employed for the purposes and expectations of the host's existing paradigms of scholarship. And it must be adapted to the skills that members of the host discipline already possess.

To be sure, law professors have always given lip service to the importance of empiricism. Although law professors often claim to be empiricists, they actually do not really want to do any empirical research. Legal academics feel about empiricism the way that most men feel about housework: They are extremely glad that someone else does it. Moreover, despite their statements of the high regard they place upon it, they are neither going to start doing it themselves nor do they particularly want to pay for it.

This too makes perfect sense from the standpoint of a model of disciplinary colonization. Turncoats all go to law school, and they are instilled with certain kinds of skills and certain ways of thinking. These ways of thinking do not vanish despite the turncoats' fervent desire to be interdisciplinary. Rather, they affect the ways that they can be interdisciplinary. The point is not that legal education fails to teach lawyers how to engage in empirical research. The point is that it teaches lawyers how *not* to think empirically. Law school teaches lawyers to be quick on their feet and to look for the sort of things that can be cited in the footnotes of briefs. As an empirical science that might convert the vast majority of lawyer-academics, economics never had a chance.

Of course, there is another route available to lawyer-economists that does not involve empiricism. Academics can move toward increasingly complicated mathematical models. Nevertheless, this trend equally limits and forestalls the complete colonization of law by economics. This sort of work increasingly demands specialization and graduate training outside of law school. And most prospective academics are simply not going to get Ph.D.s in economics.

Economic analysis of law thus faces a quandary produced by its own success coupled with the limitations of the lawyer's professional role. As the discipline advances, more and more sophistication is demanded from lawyer-economists to do interesting work and to get tenure, but the nature of legal education guarantees that these skills will not be sufficiently provided in the J.D. program. The demand for these new skills thus tends to limit the spread of the methodology because not every law professor can do this sort of work. The result is a relatively small, hard core of people doing sophisticated work surrounded by a larger core of people using basic economic concepts, but with little or no acquaintance with more sophisticated economic methods. A fully successful colonization and takeover

requires widespread acceptance and practice of a new methodology. Yet, the more that economic analysis of law requires mathematical sophistication and graduate training in economics, the less it will spread because professional constraints on legal education prevent the necessary changes in the basic training of legal academics.

A similar story, I think, can be told about many other disciplines. To the extent that they require graduate training outside of law, not all lawyers will get that training. And law schools will not offer that training because they are too busy training future members of the bar. So instead of a single methodology sweeping the board, different disciplines will make limited inroads. The law school will look like what it increasingly resembles: a sort of selectively organized mini-university in which lawyer-economists rub elbows with a few legal philosophers, a few legal historians, and a bevy of unreconstructed J.D.s.

What I have said about law's resistance to colonization will probably come as cold comfort to many. Proponents of interdisciplinary scholarship will hardly be delighted to learn that their struggle is never ending. More traditional scholars will surely grumble that, even if law will not be completely colonized by any one discipline, it still has been colonized by many. Despite the unsentimental methods of this Article, I remain more optimistic. I believe that we are currently living in one of the most exciting eras of legal scholarship. The legal scholar now confronts a dizzying array of competing disciplines and approaches. Law has become a sort of meeting ground for academic ideas and trends. And because it has become an interdisciplinary crossroads — affected and infected by so many different influences — law has become, as perhaps never before in American history, one of the most absorbing intellectual subjects.

This is not a time of peace, but one of ferment. In all such eras of ferment, there will be much that is valuable, as well as much that is merely voluble, much that is scintillating, as well as much that is silly. But the balance on the whole, I think, is decidedly positive. Law's encounter with other disciplines has not replaced law, nor could it; but it has made law deeper, richer, more exciting, as well as more puzzling and more exasperating. Academic law has undergone a mutation, and I think that it is a hopeful monster.