The Transformation of an Academic Discipline: Law Professors in the Past and Future (or Toy Story Too)

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The academic discipline of law is undergoing a transformation that has law professors confronting a profound crisis of identity. To probe this identity crisis, one must first understand the historical development of the legal academic as a professional. With that foundation in place and the crisis analyzed, one can begin to envision a worthwhile future for the legal academic. To facilitate this examination of the past as well as the future of law faculty, I begin with the movie Toy Story. One theme of the movie revolves around Buzz Lightyear's confrontation with his own identity crisis. Law professors could learn much from Buzz and from how he handles his predicament.

Toy Story opens with eight-year-old Andy playing in his bedroom. Andy's cowboy rag doll, Sheriff Woody, is always the hero in imaginary adventures. Whenever Andy leaves the room, Woody still stands tall as the leader of all the toys, who magically come alive. One day Andy bursts into his bedroom, brushes Woody from his customary perch of honor on the bed, and replaces him with a new toy. When Andy once again leaves the room, Woody starts to introduce himself to the new toy, who interrupts. "I'm Buzz Lightyear, space ranger, Universe Protection Unit," he says earnestly. "My ship has crashed here by mistake."

Woody and the other toys realize that, unlike them, Buzz Lightyear does not know he is a toy. Buzz believes he truly is a space ranger whose purpose is to save the evil Emperor Zurg. Before long, Woody has grown frustrated with Buzz's confident insistence that he is a real space ranger. But Buzz, too, has become distraught. "Because of you," he yells at Woody, "the security of this entire universe is in jeopardy!"

"What?" Woody exclaims. "What are you talking about?"

"Right now, poised at the edge of the galaxy, Emperor Zurg has been secretly building a weapon with the destructive capacity to annihilate an entire

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planet! I alone have information that reveals this weapon's only weakness. And you, my friend, are responsible for delaying my rendezvous with Star Command!"

"You are a toy!" Woody rages. "You aren't the real Buzz Lightyear! You're—an action figure! You are a child's plaything!"

Buzz remains unshaken. "You are a sad, strange little man," he tells Woody, "and you have my pity."

Through a series of misadventures, Woody and Buzz eventually find themselves trapped in the house of Andy's nasty next-door neighbor. Trying to escape, they separate. Buzz then hears a voice from another room: "Calling Buzz Lightyear. Come in, Buzz Lightyear. This is Star Command."

Thrilled, thinking Star Command finally is responding to his entreaties, Buzz follows the sound of the voice—only to discover a television. Stunned, he watches a commercial for Buzz Lightyear action figures. The commercial ends unequivocally: Buzz is a toy, "available at all Al's Toy Bar outlets."

Buzz is shaken by an identity crisis of seismic magnitude. The foundation for his life's meaning has crumbled. He becomes despondent, enervated. "You were right all along," he mumbles to Woody. "I'm not a space ranger. I'm just a toy. A stupid little insignificant toy." Buzz's past has been false, and his future seems to him hopelessly bleak.

My thesis is that law faculty today, as a collectivity, are facing an identity crisis much like Buzz Lightyear's. As we begin the new millennium, we must confront a change in our self-understanding equal in severity to his change from space ranger to toy. For his entire life Buzz had understood the world from the perspective of a space ranger. That worldview shattered in an instant, and Buzz had to confront an uncertain future as a toy. His previous frames of reference, his certainties and assumptions, would no longer provide support and sustenance. Anyone would find such a prospect frightening and dispiriting.

Since the post–Civil War era law professors have perceived themselves first and foremost as lawyers. For the most part, during that time, we were lawyers teaching students about the law and about how to practice law. But we were not merely lawyers teaching apprentices. We were law professors, mostly in university-affiliated law schools, who wrote scholarly articles and books. Even so, our scholarship revolved around our perception of ourselves as lawyers. We wrote to reform and to improve the law. Through our scholarship we

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directly participated in the legal system, in legal and judicial practices, by advising lawyers and judges, or at least so we imagined.

Today law professors' sense of themselves as primarily lawyers is crumbling. Our claimed connection to legal and judicial practices, our imagined participation in the legal system, increasingly appears spurious. Recent recommendations for the future direction of legal scholarship reflect our uncertainties. But if we are not lawyers, what are we? The most likely answer—our new or future self-identity, so to speak—appears to be that we are university professors. But this answer provides a future that seems, to many, as uncertain and frightening as Buzz's prospective life as a toy. If, after all these years, we recognize that we really are more university professor than lawyer, then exactly what type of university professor might we be? What are our purposes?

The first part of this article traces the emergence and development of the university-affiliated law school and law faculty. It stresses, in particular, the role played in this development by a drive to professionalize the legal academic, and the way that professionalization was manifested in legal scholarship. The second part begins by exploring a recent breakdown in law professors' traditional self-identification. After about a century when most legal academics thought of themselves primarily as lawyers, an increasing number today identify themselves chiefly as university professors. Given this transformation of the academic discipline of law, what about its future? What type of university professors can legal academics be, particularly if they no longer write scholarship oriented around the practices of lawyers and judges? One answer lies in interdisciplinarity. Law schools already tend to be more interdisciplinary than other departments, and law professors might stake out a new expertise, as interdisciplinarians.

The Development of the Law Professor

The Law School Emerges

Antebellum Legal Education and Postbellum Universities

From the nation's inception through the Civil War, the usual route to becoming an attorney was through an apprenticeship, "the purely practical training of young law students in the office of a judge or practising attorney." The first American law schools developed in the late eighteenth century in those law offices that were most proficient at teaching their apprentices. Instruction at these proprietary schools was by practicing lawyers and judges who taught mainly through lectures, sometimes reading their notes verbatim to the students. Similarly, the first American legal scholars were practicing lawyers and judges, including St. George Tucker, James Kent, and Joseph Story. James Wilson, one of the original Supreme Court justices, delivered the


first lectures on American constitutional law, drawing widely from political philosophy, moral theory, and history. For him and for other early American scholars, law could not be understood in isolation. The scholar needed to understand all aspects of society and nature (no small task) to gain a grasp on the operations of the legal system.

In the early years of the nation, some American colleges also provided legal training as part of a liberal education; students learned law as much to be good citizens as to be lawyers. Likewise, during the late eighteenth and early nineteenth centuries, the first college-sponsored law schools, such as Virginia, William and Mary, and Maryland, attempted to teach law consistently with the broad humanistic aspirations of scholars like Wilson and Story. But during the era of Jacksonian democracy, from the 1820s through the 1840s, populist pressures to liberalize bar admissions forced legal educators to adjust their goals. The populist sentiments of that period led many states to reduce or even to eliminate the requisite apprenticeship training for admission to their respective bars. By 1840 only eleven of thirty states and territories required any period of apprenticeship. In reaction, legal educators, even at the best colleges, were pressured to lower their aspirations and goals and to focus on professional training.  

After the Civil War, however, during a time of rapid industrialization, professions in general came of age as lay people sought expert guidance for new technologies. Unsurprisingly, this era saw the rapid growth of professionalization in law. Even before the war many states had begun to reverse the Jacksonian lowering of standards for bar admission. After the war the development of large corporations led to the emergence of an elite corps of lawyers dedicated to servicing the new well-heeled clientele. These elite practitioners spearheaded the creation of “city and state bar associations, capped in 1878 by the American Bar Association.” The goal of these organizations supposedly “was to institute stricter standards of admission to the bar and to curb what they saw as unprofessional behavior.” Simultaneously, though, professionalization in law and in other occupations entailed the control of a specific type of knowledge and allowed the members of the profession to monopolize a segment of the economic marketplace.

Postbellum professionalization was intertwined with the emergence and growth of a new type of American university. The old antebellum colleges had focused on the liberal arts and the classics. Education had been designed to

5. Alfred Zantzinger Reed, Training for the Public Profession of the Law 142-43, 148-50 (New York, 1921); Bloomfield, supra note 2, at 38.
6. Larson, supra note 2, at 104; see Bloomfield, supra note 2, at 39 (on experts).
7. Reed, supra note 5, at 90-91; Bloomfield, supra note 2, at 38-39.
10. Andrew Abbott, The System of Professions 2 (Chicago, 1988); see Larson, supra note 2, at xvi-xvii.
inculcate "mental discipline," as well as "piety and strength of character." The new universities instead emphasized culture, service, and research. American higher education itself, one might say, became professionalized. The postbellum educational emphasis on culture signaled the strongest link to the antebellum college; educators did not totally repudiate the old concern for the liberal arts, the classics, and the nurturing of mental discipline. But in the new universities the dominance of that older view diminished vis-à-vis the growing emphasis, fueled by industrialization, on service and research. To a large degree, the universities were expected to serve "in a utilitarian fashion" the "emerging industrial technological society." For many educators, however, the key mission of the new universities was research: "the pursuit of truth . . . for its own sake."

Many of these postbellum researchers cloaked themselves with the authoritativeness of science; they claimed to discover objective truths through the use of formalistic methods, focusing on axiomatic principles and logically ordered and coherent systems. Regardless, from the perspective of the practitioners of a profession like medicine or law, the greatest virtue of university education typically lay not in educational service or research, but in legitimation: academic training and knowledge gave professional practices an aura of scientific rigor and rationality—even if the professionals did not actually conduct their practices along such lines.

The Modern Law School

The modern law school began to emerge in 1870. The president of Harvard, Charles Eliot, a leader in developing the new universities, had personally selected Christopher Columbus Langdell for the law school faculty in 1869. Langdell became dean a year later and began to implement Eliot's vision of a university discipline within the law school. Not incidentally, because of the advantages that would accrue to practicing lawyers and judges, as professionals, leading members of the bar favored the development of university-affiliated law schools. Reciprocally, educational pioneers like Eliot would benefit, as they worked to build the new universities, if they could enlist the support of elite professionals, including lawyers and judges. But from the perspective of Eliot and other educators, like Andrew Dixon White of Cornell, if professional schools were to be included within the new universities, then the professional schools would need to fit within the model of a university discipline. Being a man of his times, Langdell understood precisely what was necessary: law teaching and research would have to be scientific. "[I]f law be

12. Id. at 12, 58; Laurence Veysey, Higher Education as a Profession: Changes and Continuities, in Professions, supra note 2, at 15, 18-20, 27-29.
13. Veysey, supra note 12, at 18-19; Marsden, supra note 2, at 155.
15. Abbott, supra note 10, at 56-57; Larson, supra note 2, at 17.
not a science," Langdell said, "a university will best consult its own dignity in declining to teach it. If it be not a science, it is a species of handicraft, and may best be learned by serving an apprenticeship to one who practices it." 17

The Langdellian conception of the science of law corresponded closely with the contemporary general view of science dominant within the universities. Langdellian legal scientists, in both their teaching and their research, sought to discover objective legal truths through the use of formalistic methods. They focused on axiomatic principles and a logically ordered and coherent system of law. To teach the science of law, as he understood it, Langdell introduced the case method of teaching. Instead of presenting legal principles and rules through lectures, as typified antebellum legal teaching, the case method required the teacher to cover a series of judicial cases or, more specifically, a series of appellate opinions. By using a form of Socratic questioning, the teacher was to lead the students through an analysis of the cases and help them recognize the legal principles supposedly immanent in the cases. The case method was the best way to teach, Langdell thought, because the students learned how to handle the cases themselves, "the ultimate sources of all legal knowledge." 18 The law professor was qualified to teach the students since, as a legal scientist, he was experienced, not in the practice of law, but rather in the learning of law—in the discovery of the principles from the cases. 19

In the Preface to his first casebook on contracts, Langdell not only revealed why he was devoted to the case method of teaching but also implicitly delineated a methodology for scholarship beyond the writing of casebooks. Langdellian scholars would begin either by stating, in the abstract, a small number of axiomatic principles or by analyzing a series of cases to discover, through inductive reasoning, the necessary axiomatic principles. Those principles then could govern all possible disputes within the relevant field of law. More specific legal rules and the correct resolutions of legal issues could be deduced, through abstract logical reasoning, from the principles. Ultimately the common law could be logically arranged into a formal and conceptually ordered system. 20

What was the point of this research methodology? Most often, the Langdellian scholar aimed to discover and articulate high-level principles, to


19. Id. at 124.

deduce more specific legal rules, and to criticize judicial decisions that had failed to follow this abstract doctrine. The very first article published in the *Harvard Law Review*, in 1887, archetypically illustrates this scholarly approach. Written by Langdell's protégé James Barr Ames, the article, after a brief introduction, states an abstract principle of property law: "A court of equity will not deprive a defendant of any right of property, whether legal or equitable, for which he has given value without notice of the plaintiff's equity, nor of any other common-law right acquired as an incident of his purchase." The remainder of the article largely elaborates, through deductive logic, the application of this principle in specific factual circumstances. Along the way, Ames criticizes the leading case on this issue as well as other cases, which he at one point denounces as "hopelessly irreconcilable."  

Not all Langdellian scholarship conformed to this archetype exactly, but most followed it to a large degree. Some articles focused on the historical development of an abstract principle in the case law, with the purpose of clarifying the precise nature of the principle. Others were devoted more to the abstract rational classification and systematization of principles and rules, again for the purpose of clarification and precision. Regardless of the exact focus of the scholarship, the premises of Langdellian legal science were clear: by carefully parsing cases, discovering axiomatic principles, and applying those principles with rigorous deductive logic, the scholar could discern specific legal rules as well as the single correct result in any judicial dispute, whether hypothetical or real. In sum, Langdellian scholarship was distinctly normative: it was oriented toward the correct statement of substantive legal principles and rules so as to prescribe judicial outcomes. The Langdellians confidently believed that they could denounce judges’ decisions that were substantively wrong—as a matter of law and logic (which were integrally entwined)—and could enjoin the proper resolution of future cases. As Ames explained, "the chief value . . . of legal literature" was to correct or prevent judicial error.

In terms of professionalization, both for law teachers and for lawyers and judges, the conception of law propagated by Langdellian legal science was exquisitely expedient. The Langdellians presented the common law as an arcane yet perfectly rational system of principles and rules. The implication was that only lawyers and judges trained in university-affiliated law schools could truly understand the law. And only Langdellian legal scholars, the professors at the university-affiliated law schools, were competent to train future lawyers and judges and to conduct the scientific research necessary for

23. E.g., C. C. Langdell, Classification of Rights and Wrongs, 13 Harv. L. Rev. 537 (1900); C. C. Langdell, A Brief Survey of Equity Jurisdiction, 1 Harv. L. Rev. 55 (1887).
From this perspective, in the increasingly industrialized and complicated society of late-nineteenth- and early-twentieth-century America, university law faculty, lawyers, and judges fulfilled necessary functions—and they were the only ones capable of performing those functions.

An additional component of the Langdellian conception of law contributed heavily to the professionalization of legal academics: Langdellians viewed the legal system as autonomous from other aspects of society, so the science of law was necessarily purified of nonlegal considerations. Supposedly, lawyers, judges, and legal scholars were never to consider the social consequences of a legal principle, legal rule, or judicial decision. Policy considerations, that is, were deemed outside the ambit of the law. To apply the law, one must discover the principles and apply them in a rigorous logical fashion. Because of the autonomy of the legal system, the Langdellians reasoned, the study of law required a highly specialized university department or discipline that was separate and independent from other disciplines, such as history or government. And, of course, such a specialized university department of law required professional experts—lawyers—to constitute its faculty. When Ames succeeded Langdell as the dean at Harvard Law School, Ames unequivocally linked the Langdellian conception of law and the need to have lawyers as professors: “We are unanimously opposed to the teaching of anything but pure law in our department. . . . We think that no one but a lawyer, teaching law, should be a member of a Law Faculty.”

This desire for a purified discipline, it is worth noting, was not (and is not) unique to law. Each academic department needs to legitimate its existence, and specialization in a unique discipline is a propitious means for doing so. If law faculty were to teach and research subject matter already covered adequately in, for instance, literature, anthropology, or history departments, why would we need law schools? The Langdellians were merely following suit, so to speak: they sought to show that the law school, as much as any other department, belonged in the new university. Moreover, this academic differentiation and specialization would need to be reproduced with each new generation of faculty, or the discipline and the department would be threatened. Indeed, academic disciplines often tend to become increasingly isolated, specialized, and parochial.

Although the postbellum emergence of the new universities, with their professional schools, benefited the professions of law and medicine, “the organized professions by no means conceded control of these university schools; they were in the university but not of it.” Especially in law, elite practitioners and university leaders pushed for different types of schools.


26. Quoted in Stevens, supra note 2, at 40 (emphasis added); see, e.g., C. C. Langdell, A Summary of the Law of Contracts, 2d ed. (Boston, 1880).

27. Abbott, supra note 10, at 207.
Practitioners wanted law schools that emphasized legal practice—"ideal law office" schools that combined "theoretical instruction with a wide range of practice courses . . . ." Meanwhile, university leaders sought to develop highly theoretical and academically selective law schools that would mirror the rest of the university, bolstering the dominant view of science as well as the prestige of the university. They recognized, moreover, that the case method of teaching, supposedly grounded scientifically, enabled law school classes to remain large, with as many as 150 students, which for the universities was economically more profitable than having smaller practice-oriented classes. These two competing visions of a law school—the practical and the theoretical—struggled for supremacy from around 1870 to 1900, when a number of forces combined to propel the theoretical model to dominance.

The Langdellian law professors, finding themselves in effect standing between these opposed camps, tried to keep one foot on each side, though they leaned more toward the practitioners. They preferred the theoretical and selective type of law school, but they nonetheless primarily identified themselves as lawyers. The perspective of James Barr Ames underscores this self-identity. Langdell hired Ames, a former Harvard Law School student, as an assistant professor even though Ames had had no practice experience. Yet, as already mentioned, Ames declared that "no one but a lawyer . . . should be a member of a Law Faculty." Apparently Ames, the prototypical professional legal academic, viewed himself primarily as a lawyer, despite his lack of experience practicing law. University law schools, Ames explained, should draw their faculty from "the best legal talent in the country." There were at least two reasons to see oneself as more lawyer than university professor. First, the Langdellian law professors had been educated to be lawyers. Second, there was an economic incentive: if law faculty maintained their identities as lawyers, they could insist that the university pay them as elite lawyers rather than as ordinary university professors. Unsurprisingly, then, because they thought of themselves as lawyers (and because they often received higher salaries than their university colleagues), law professors were never completely accepted or comfortable in the universities, though they also were never fully accepted as legal practitioners (because, after all, they were not the same as other lawyers).

28. Johnson, supra note 17, at 83.
29. Kalman, supra note 2, at 12; Redlich, supra note 4, at 50–51. The economic profitability of the case method became even more pronounced as legal education became postgraduate. At Harvard, "[i]n 1896 an undergraduate degree became a requisite for entering the law school, a requirement which did not become effective until 1909 and did not begin to be followed by other leading law schools until 1916." Larson, supra note 2, at 171. While undergraduate classes might more commonly have 150 students, this certainly is not true of graduate education in general.
31. Quoted in Stevens, supra note 2, at 40; cf. LaPiana, supra note 2, at 15.
32. Ames, supra note 24, at 369 (emphasis added).
So, with one foot on each side, law faculty struggled to mediate the tension between their dual positions as university professors and lawyers. And very quickly legal scholarship emerged as the most important means of mediation. Through their research and writing, Langdellian law professors attempted to establish their credentials as scholarly university professors. Like their university colleagues, the law professors were engaged in scientific research. Moreover, as already discussed, the Langdellians' formalistic conception of the science of law corresponded closely with the dominant contemporary views of science. Yet the specific method and form of Langdellian legal scholarship overlapped extensively with the practices of law and judicial decision making. Langdellian law professors believed that through their scholarship they directly contributed to and participated in the legal system—in legal and judicial practices. First, they imagined that the audience for their normative scholarship was the community of practitioners. They earnestly sought to discover axiomatic legal principles and to prescribe their application, all for the benefit of practicing lawyers and judges. Second, the Langdellian professors believed that they were using the same research and writing skills that practicing lawyers and judges used. The sources for the Langdellians' research were nothing but the cases in the books—the very same cases that practitioners relied upon. The only difference was that the professors were more rigorous and refined in their pursuit of scientific truth. After all, it was their experience at and devotion to the scientific study of law that qualified them to teach, or at least they so believed.

In sum, the method and form of their scholarship allowed the Langdellians to identify themselves as lawyers first, but also as university professors. They researched and wrote as if they were lawyers, and they wrote for lawyers and judges. At the same time, the Langdellian conception of the science of law resonated with the contemporary intellectual commitments to formalism and objectivity. And the Langdellian scholars appeared to fulfill at least two general goals of the new universities: they were researchers pursuing truth, and simultaneously they saw themselves as doing a practical service for the community, helping lawyers and judges better perform their jobs.

Challenges and Responses

Why did the Langdellian model of a university law school eventually defeat the ideal-law-office model? In 1900 twenty-five university law schools joined together to form the Association of American Law Schools. It was intended to serve the legal academy just as the American Bar Association served practicing lawyers and judges. The AALS explicitly established and attempted to enforce minimum standards for legal education, particularly with regard to students' prelegal education and the length of legal study. During its first two decades of existence, the AALS raised its minimum standards several times, lengthening the required period of legal study and undermining part-time and night-school programs. The implicit purpose was clear: "to promote the continued Harvardization of legal training throughout the country." Contrary to the
methods of the ideal-law-office schools, law was to be taught through the case method as a rigorous science.

At first the AALS did not enjoy great success. In fact, "enrollment in AALS-member schools dropped from 52 percent of all law students [in 1900] to 35 percent a quarter-century later . . . ."\(^{35}\) Yet during this time "the number of member schools had more than doubled," so the primary reason for the decreasing proportion of students attending AALS schools was "the growth of nonmember proprietary and part-time schools."\(^{36}\) Over time, though, the AALS cause gained strength as practitioners became increasingly supportive.

The ABA and leading lawyers and judges, including many corporate attorneys, had been struggling for a number of years to institute more rigorous standards for the practicing bar. The reasons were varied. To be sure, some elite practitioners "were committed to an ethical, educated bar."\(^{37}\) Just as certainly, other and less noble reasons motivated the elite lawyers and judges. For economic reasons, leading practitioners worked to control the work of lawyers and the marketplace for it by regulating who could practice law and in what manner. And for xenophobic reasons many lawyers and judges sought to preclude Jews, African-Americans, recent immigrants, and women from joining the bar.\(^{38}\) Small-town lawyers had initially opposed professionalization as a ploy of the corporate bar, but after the United States entered World War I, xenophobia persuaded them to join with the urban elites.\(^{39}\)

As lawyers and judges pushed for higher professional standards, their interests merged with those of the university law teachers and the AALS. This unification was furthered by an unexpected event. The ABA had asked the Carnegie Foundation in 1913 to undertake a detailed study of legal education, with the expectation that the final report would condemn proprietary and part-time schools. But the report, *Training for the Public Profession of the Law*, written by Alfred Z. Reed and published in 1921, concluded that the pluralistic American population required diverse law schools. So instead of recommending, as anticipated, that every school follow the Langdellian model, Reed recommended that support be given to the lower-echelon schools, particularly those with part-time programs—those schools, in other words, that catered to "workingmen, women, blacks, and ethnic minorities . . . ."\(^{40}\)

Despite Reed's intentions, his final report did not spark support for the part-time law schools. To the contrary, it solidified the professors' and practitioners' joint opposition to the marginal schools and immigrant lawyers.

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36. *Id.* at 47; Stevens, *supra* note 2, at 97–98.
37. Stevens, *supra* note 2, at 100.
When economic depression swept the country in the early 1930s, the combined forces of the established bar and the university teachers finally ensured victory for the Langdellian model of the law school, pruned the bar of immigrants, and muted economic competition. Many unaccredited schools were driven out of business, and the case method of teaching spread into even the remaining lower-level schools.41

Despite the victory of the Langdellian model, neither the case method of teaching nor the Langdellian conception of legal science went unchallenged or unchanged. Early on, the dean of Columbia Law School, Theodore W. Dwight, was an outspoken critic of the case method. While it might be pedagogically effective with the best students, Dwight argued, it was ineffective with the majority, who either avoided participating in Socratic exchanges or simply failed to glean their benefits. In 1914 Josef Redlich published a sustained critique of the case method. He echoed Dwight's criticism and added that the case method hampered law teachers in the production of worthwhile scholarship.42 Others criticized the case method for not adequately preparing students for the actual practice of law. In fact, even some of Langdell's disciples had subtly shifted the purported central aim of the case method, from teaching chiefly substantive legal principles to teaching "legal thinking"—that is, thinking like a lawyer.43

Vigorous criticisms also were directed at the Langdellian conceptions of legal science and scholarship. Perhaps the earliest critic of the Langdellians was Oliver Wendell Holmes Jr., who in 1880 denounced Langdell's unswerving devotion to deductive logic.44 Then in 1890 Louis D. Brandeis and his law partner Samuel D. Warren published an influential article, "The Right to Privacy," in the Harvard Law Review. Without expressly criticizing the Langdellians, Brandeis and Warren departed from their methodology by invoking societal changes as a basis for modifying the law. Specifically, Brandeis and Warren argued that because of "[r]ecent inventions and business methods," the courts ought to recognize a right "to be let alone," or in other words a right of privacy.45

In the development of legal scholarship the article was significant in several ways. Brandeis and Warren implicitly suggested that, contrary to the Langdellian view, considerations of social policy could be legitimately invoked at appropriate points in legal arguments. In the early twentieth century this viewpoint would develop into the sociological jurisprudence of scholars such as Roscoe Pound, and then in the 1920s and 1930s sociological jurisprudence would

41. Johnson, supra note 17, at 154-55; Larson, supra note 2, at 174-75; Stevens, supra note 2, at 112-23.
42. Redlich, supra note 4, at 50-52; Stevens, supra note 2, at 57, 67 n.27, 117-18.
43. Reed, supra note 5, at 370; Stevens, supra note 2, at 162; see Redlich, supra note 4, at 24 (discussing Langdell's successors); Stevens, supra note 2, at 120 (discussing transformation of case method).
44. 14 Am. L. Rev. 233-34 (1880) (reviewing C. C. Langdell, A Summary of the Law of Contracts, 2d ed. (Boston, 1880) (citation omitted)).
45. 4 Harv. L. Rev. 193, 195 (1890).
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evolve into American legal realism. Pound, who himself eventually would become dean of Harvard Law School, denigrated Langdellian legal science in 1908 as “mechanical jurisprudence” for its arid and abstract formalism. He thought common law judges should sometimes perform social engineering, making law for the good of society.\(^4^6\)

Despite this significant departure from the Langdellian approach, “The Right to Privacy” was equally important for the two ways in which it resonated with Langdellian legal science. First, Brandeis and Warren devoted most of the article to the parsing of precedents.\(^4^7\) In doing so, they suggested that they were not advocating a radical change in the law but rather were teasing out an obscure yet already existent principle. Their incipient sociological approach modified but did not repudiate the Langdellian methodology.

Second, whereas Langdellian writing already was normative, “The Right to Privacy” and subsequent sociological jurisprudence established that the normativeness of legal scholarship could (and should) be manifested in overt recommendations for law reform. While the sociological jurists might have been inspired to favor law reform partly because of their political commitments to Progressivism, the urge to recommend legal reforms, whether through judicial decision making or legislative enactment, became a hallmark of legal scholarship for nearly a century. Often a law review article seemed little different from a glorified appellate brief: it specified an issue, identified and parsed the relevant cases, and recommended a solution that typically entailed some reform of the legal doctrine.\(^4^8\) In 1920 Dean Thomas Swan of Yale Law School declared that law schools “should aim... to aid in improving the law.... It is the duty of a university law school to emphasize through research and publication by its faculty and through the character of its instruction, this broader base of legal education, as well as to give the merely professional training.”\(^4^9\) As recently as 2000 a Michigan Law Review article stated: “Reform scholarship is what law academics do; it is their calling and their substance.”\(^5^0\)

One of the most serious challenges to the Langdellian model of the law school came in the 1920s. Inspired by the emergence of the empirical social sciences, American legal realists began arguing that the Langdellians’ devotion to abstract formalism should be replaced by a commitment to empirical research. The realist critique of Langdellian legal science stressed that the Langdellians’ so-called axiomatic principles and logically deduced rules were often no more than “transcendental nonsense”—concepts with no basis in

46. Mechanical Jurisprudence, 8 Colum. L. Rev. 605 (1908); The Theory of Judicial Decision, 36 Harv. L. Rev. 940 (1923); The Scope and Purpose of Sociological Jurisprudence, 25 Harv. L. Rev. 489 (1912).

47. Brandeis & Warren, supra note 45, at 201-14.


49. Quoted in Stevens, supra note 2, at 135 (citation omitted).

social reality. As Karl Llewellyn fiercely declared: "[G]eneral propositions are empty. . . . [R]ules alone . . . are worthless." To the most radical realists, somewhat arbitrary stimuli, such as the hair color of a witness or the inflections of an attorney, seemed to produce idiosyncratic judicial decisions. But most realist legal scholars believed that, by turning to social science research methods, they could remake the legal system so that it would become more firmly grounded on empirical reality. According to Walter Wheeler Cook: "Only empirical observation can give one postulates useful in any particular science, including legal science."

An early hotbed for realism was Columbia Law School, where in 1926 the faculty initiated a two-year study directed toward the improvement of legal education. The results were summarized in a report written by Herman Oliphant. His analysis revolved around the dual roles of the law teacher: as lawyer and as university professor. Whereas law professors had traditionally thought of themselves primarily as lawyers, Oliphant and the other realists urged a stronger identification with the university. "The time has arrived for at least one school to become a 'community of scholars,' devoting itself 'primarily to the non-professional study of law, in order that the function of law may be comprehended, its results evaluated, and its development kept more nearly in step with the complex developments of modern life,'" Oliphant explained. Oliphant and his realist colleagues sought to free themselves from the scholarly constraints imposed by their ties to practitioners. They advocated an interdisciplinary approach to the study of law: the methods of the social sciences would enable this new breed of legal scholar to gain a truly objective understanding of the operation of law in society.

Three points about this challenge to the Langdellian paradigm bear emphasis. First, the realist challenge at Columbia failed. Dean Young B. Smith confessed that, because of its ties to the legal profession, Columbia Law School had too much to lose—by way of money, prestige, and usefulness—if it oriented itself more closely to its parent university than to practitioners. Second, while the Langdellian legal scholars had originally been consonant with the intellectual trends of their times as manifested in other university disciplines, by the time of the realists those legal scholars who remained committed to a Langdellian or quasi-Langdellian research approach were bucking the dominant intellectual trends. The realists, to be sure, echoed their contemporaries, but many other law professors of that time did not. Though law teachers never had been completely accepted or comfortable in

53. Legal Logic, 31 Colum. L. Rev. 108, 113 (1931); see Feldman, supra note 2, at 105-15 (discussing American legal realism as second-stage legal modernism).
55. Stevens, supra note 2, at 139.
the universities, an even greater distance now stretched between many of
them and their university colleagues in other departments.

Third, even the realists can be reasonably understood as merely modifying
and not repudiating the Langdellian approach to legal scholarship. While the
Langdellians had sought objectivity in abstract formalism, the realists sought
objectivity in empiricism. Regardless of their critique of Langdellian legal
science, then, most realists still sought objective truths about the law. Further-
more, they endorsed the commitment to normative law reform scholarship.
For instance, William O. Douglas undertook an empirical study of the causes
of bankruptcy with the express purpose of recommending useful reforms of
the Bankruptcy Act.\(^5\) Karl Llewellyn aimed at reforming commercial law
along realist lines, while Felix Cohen sought to do the same for American
Indian law. For them, such reform translated into, first, replacing Langdellian
abstractions with narrow rules reflecting real-world situations and, second,
encouraging judges to pay closer attention to specific factual contexts.\(^7\) In
short, the scholarship of many realists still revolved around the practices of
lawyers and judges; these realists believed they were directly contributing to
and participating in the legal system.

By World War II condemnations of realism had become commonplace.\(^5\)
After the war a new approach to legal scholarship and jurisprudence rose to
dominance—"legal process," which reasserted the importance of the study of
pure law. The Langdellians had focused on the purity of the substantive law,
the axiomatic principles and the logically deduced rules. The legal process
thinkers, as their name suggests, instead sought purity through legal and
democratic processes. Henry M. Hart Jr. and Albert M. Sacks sounded the
clarion call of legal process: "[Governmental] decisions which are the duly
arrived at result of duly established procedures . . . ought to be accepted as
binding upon the whole society unless and until they are duly changed."\(^5\)
For instance, legal process scholars maintained that a court's decision should be
deemed legitimate if the judge or judges followed the appropriate processes
or procedures for judicial decision making, called "reasoned elaboration."\(^6\)
As explained by the legal process scholars, reasoned elaboration required a
judge to give reasons for a decision, to articulate those reasons in a detailed
and coherent manner, and to relate the decision to a relevant rule of law
applied in a manner logically consistent with precedent.

Significantly, the legal process thinkers believed they had managed to
rescue the rule of law from the realist critique of Langdellian formalism.
Judicial decision making, when done properly, was not arbitrary: it was a

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56. Wage Earner Bankruptcies—State vs. Federal Control, 42 Yale L.J. 591 (1933); Some Func-
tional Aspects of Bankruptcy, 41 Yale L.J. 329 (1932).
58. See Feldman, supra note 2, at 115–20 (discussing attacks on realism). But see Kalman, supra
note 2, at 145–87 (arguing realism continued to be important at Yale Law School).
59. The Legal Process: Basic Problems in the Making and Application of Law, Tentative ed., 4
60. Id. at 164–67.
legitimate, rational, and objectively constrained governmental procedure. Yet simultaneously the legal process scholars brought a diluted form of realism into the mainstream of legal thinking. They explained that a judge, in appropriate circumstances, should apply the law "in the way which best serves the principles and policies it expresses." In other words, in the postrealist years, many legal scholars (and lawyers and judges) readily acknowledged that policy considerations are legitimately invoked at appropriate points in legal arguments. We are familiar with the platitude that "we are all realists now." Yet from this perspective the law still remains pure. The processes of reasoned elaboration neatly and safely enclose policy considerations so that they come into play only in certain narrowly defined circumstances.

To a great degree, the legal process scholars were once again attempting to mediate the opposition between their dual roles as lawyers and university professors. In contrast to the Columbia realists' efforts to align themselves more strongly with the university, the legal process scholars reasserted their identities as primarily lawyers. They did so by incorporating the methods of ideal legal and governmental actors into their conceptualizations of the appropriate processes for different governmental institutions. For judicial decision making, legal process scholars in effect imagined an ideal judge who made an ideal judicial decision. They then solemnized the professional skills and craft norms of that ideal judge as the processes for reasoned elaboration—that is, for acceptable judicial decision making. Moreover, the legal process scholars understood themselves as playing an important role in the legal system: advisers to the Supreme Court justices. For many years, starting in 1951, the legal process scholars used the Harvard Law Review Forewords to send the Court an annual report card and to explain to the justices the niceties of reasoned elaboration. The legal process thinkers, that is, remained fully committed to the conventions of normative law reform scholarship. At the same time, the legal process view of scholarship reaffirmed the propriety of the law school and the lawyer-professor within the university. Because legal scholarship revolved around the professional skills of practitioners, the law faculty appeared to possess an expertise unique among other university faculty—exactly because they had themselves been trained in law schools to be practicing attorneys and judges.

For more than a century, then, since the origins of the legal academic during the Langdellian years, law teachers have largely retained their self-

61. Id. at 165; see id. at 166-67.


identities as lawyers first and university professors second. Despite challenges to and modifications of the Langdellian model of the law school, law professors have produced scholarship oriented toward their contribution to and participation in the practices of law and judicial decision making. The early-1980s dispute over critical legal studies illustrates the vigor of that self-identification. Critical legal scholars saw themselves as the intellectual descendants of the realists; they sought to demonstrate the indeterminacy of traditional legal reasoning, just as the realists had sought to show that Langdellian formalism was nonsensical. The crits went beyond the realists, though, by insisting that the law is ideological: the law claims to be neutral and apolitical, but in reality it favors powerful individuals and groups who already dominate American society. To elaborate their attack on the American legal system, the crits—again like the realists—were interdisciplinary. They invoked social theorists like Marx, Weber, and Durkheim, continental philosophers like Heidegger and Sartre, anthropologists like Levi-Strauss, and numerous other intellectuals outside the traditional legal canon.  

Of course the CLS critique of the legal system generated hostility within large segments of the legal professoriate. Paul D. Carrington of Duke Law School exemplified this reaction. Labeling the crits "nihilist[s]," he declared that if they taught their scholarly views to law students, they would destroy their students' belief in the rule of law. When the students became attorneys, they would lack professionalism and competence. Having been nurtured on cynicism rather than "intellectual courage," they would practice "the skills of corruption." Carrington's conclusion was especially telling: any crit who professes "that legal principle does not matter, has an ethical duty to depart the law school, perhaps to seek a place elsewhere in the academy."  

The message was clear. If crits did not sufficiently identify themselves with and as lawyers, they should not teach in American law schools. A law professor has a duty to maintain her own as well as her students' professional faith in the law.

Law Professors in Crisis

An Uncertain Identity

Today a growing gulf stretches between legal scholarship and the practices of lawyers and judges, who regularly lament the inadequacy of legal scholarship and decry its uselessness for their work. In 1992 the ABA Section of Legal Education published a report declaring, "Practitioners tend to view much academic scholarship as increasingly irrelevant to their day-to-day concerns . . . ."  

That same year Harry T. Edwards proclaimed "that judges, administrators, legislators, and practitioners have little use for much of the


scholarship that is now produced by members of the academy.\textsuperscript{67} More recently Alex Kozinski, echoing this complaint, criticized legal scholars for insufficiently attending to the practical needs of lawyers and judges.\textsuperscript{68} Supreme Court justices have even taken to denigrating law professors in their published judicial opinions.\textsuperscript{69} The dissatisfaction of lawyers and judges with law schools and law faculty is, of course, not new. A basic tension between practitioners and academics emerged as early as the Langdellian period. But something is different today. On the practitioners' side, many lawyers and judges may no longer sense a strong need for the cultural legitimation that the law schools once provided for the legal profession. When lawyers and judges were trying to establish and strengthen their own professionalism after the Civil War, the advent of university-affiliated law schools and Langdellian legal science proved most advantageous. But today the legal profession is so well entrenched in the structures, culture, and economy of American society that the scholarly productions of law professors may seem beside the point. Unsurprisingly, then, empirical evidence supports the conclusion that courts look to legal scholarship for guidance less often than in the past. A survey of court opinions from 1975 to 1996 revealed "a 47.35\% decrease in overall citations [of law review articles] by the federal courts and state supreme courts combined."\textsuperscript{70} Another study found that the U.S. Supreme Court had decreased its citations to legal periodicals over a ten-year period, while yet another study concluded that the "federal courts of appeals infrequently cite legal periodicals."\textsuperscript{71} On the academic side, an increasing number of contemporary legal scholars no longer write with the explicit or even implicit hope of influencing the direction or reform of the law, either in courts or in legislatures. Some scholars analyze and critique areas of the law, such as the First Amendment, but nonetheless refuse to conclude with any traditional overt recommendation for law reform.\textsuperscript{72} Others either argue expressly that legal scholarship should refrain from recommending law reforms or maintain that such recom-

mendations, for better or worse, are irrelevant to the practices of lawyers and judges. Sanford Levinson, for one, admits that at least some of his writing "is in no serious sense meant to be a contribution to the discussion of any of the contemporary doctrinal issues. . . . I can't honestly say that I expect many judicial readers nor am I willing to redirect my writing in ways likely to increase the number."

The current rage among law faculty to write interdisciplinary scholarship underscores the acute tension between academics and practitioners. Today interdisciplinary work is more pervasive than ever before. In fact, as J. M. Balkin reports, "Interdisciplinary scholarship is now an expected part of a serious scholar's work at most of the elite law schools in this country." By drawing on the methods and sources of other disciplines, ranging from economics to continental philosophy, from literary criticism to anthropology, interdisciplinary legal scholars distance themselves ever further from the skills and concerns of practitioners.

As we law professors gaze across this growing chasm between practitioners and the academy, we strangely and uncomfortably seem to resemble Buzz Lightyear. Buzz had devoted his life to being a space ranger, saving the universe from evil. When he discovered that he was not a real space ranger, the foundation for his life crumbled away. He sank into ennui: how could his life be meaningful if he were not a space ranger? What was the point of his existence? Like Buzz, law faculty see the traditional foundation for the meaningfulness of their work-lives—familial self-identification with practitioners—crumbling away. For over a century, law professors have thought of themselves, first and foremost, as contributing to and participating in the practices of lawyers and judges. But just as Buzz earnestly kept calling Star Command while nobody was listening, law professors now write to lawyers and judges who are not listening. But if we stop writing to and for practitioners, if we stop writing the normative law reform scholarship that draws almost exclusively on the methods and norms of practitioners, then who or what are we? Just as Buzz was forced to face a future where his previous frames of reference, his certainties and assumptions, could no longer provide support and sustenance, we very well might need to do the same. This prospect may leave many of us dejected and daunted. What, after all, is the point of our professional existence?

What might Toy Story suggest to us? What happens to Buzz when he realizes that he is not a space ranger? At first, he is despondent and enervated, but after a period of adjustment, he realizes that he still has an identity, as a toy. And a toy can have a point or purpose in life, even if it is not to save the world. Indeed, as Buzz accepts his new identity, he recognizes that his life can be

74. Edwards, supra note 67, at 96 (quoting anonymous letter); see Steven Lubet, Is Legal Theory Good for Anything? 1997 U. Ill. L. Rev. 193, 210 & n.101 (saying that Sanford Levinson had acknowledged writing the anonymous letter quoted by Edwards).
meaningful exactly because he is a toy. As a toy action figure, Buzz has a
distinct reason for living: to play with Andy. This realization invigorates Buzz,
so that when he and Woody are struggling to escape from the nasty neighbor
boy, Buzz proclaims, "There's a kid over in that house who needs us!"

Well, if law faculty today are not primarily practitioners, then what are we?
The obvious answer: we are university professors. Remember, though, Buzz's
identity crisis consisted, in a sense, of two stages. First he recognized that he
was not a real space ranger. This recognition was sudden and, to say the least,
life shattering. But then, second, he had to accept his future as a toy, or in his
own words, a "stupid little insignificant toy." To overcome this initial self-
denigration took some time. At the outset, he just did not understand or
perceive the significance of being a toy. Law professors might well need to pass
through similar stages of crisis. In other words, we might first need to recogn-
ize that we are not primarily practitioners. But then, once we recognize
ourselves as university professors, first and foremost, many of us might still
question the significance of being a university professor. What is the point or
purpose of being a university professor of law?

In earlier times, particularly during the Langdellian era, law faculty could
readily mediate their dual roles as university professors and practitioners.
Their primary identification with the practices of lawyers and judges provided
the ballast that kept them stable and well directed. For over a century, they
largely could use the skills and methods of practitioners to fulfill their univer-
sity obligations as scholars. This convergence of the dual roles of university
professors and lawyers was indeed expedient. Law faculty, after all, had been
educationally trained to be lawyers and judges, so they were, as scholars,
merely using the tools or methods that were, in effect, ready at hand.

But today, as law professors self-identify increasingly as univcrsity profes-
sors, their mediation of the dual roles of academician and practitioner is not
as easily achieved for at least three reasons.

First, as I've said, some law professors no longer believe it is worthwhile or
effective to write normative reform scholarship, which is typically patterned
on legal and judicial practices. After all, what is the point of writing law reform
scholarship if judges so rarely pay attention?

Second, and perhaps more to the point, many law faculty now lack the
requisite faith in the objectivity and effectiveness of lawyers' and judges' tradi-
tional methods and norms. To be sure, significant technological, cul-
tural, and social changes have transformed legal and judicial practices over
the past thirty years. The influx of women and minorities has changed the
demographic makeup of the profession, and the introduction of the com-
puter has revolutionized research. Nevertheless, to a remarkable degree, legal
and judicial practices resemble those of a century ago. "Judicial opinions still
purport to derive the legally required result from a correct statement of the
correct legal doctrine," Steven D. Smith observes. "They still engage in the
same citing and distinguishing of precedents, the same search for the mean-
ings or intentions or purposes of statutes, and the same effort to extract from
this disparate mass of materials univocal statements of what 'the law' is."\textsuperscript{76} Whereas the continued use of traditional legal rhetoric and reasoning might make sense for practitioners, its use for legal scholarship seems increasingly suspect. Despite the practices of lawyers and judges, overwhelming evidence supports the view that legal reasoning does not lead to determinate conclusions. As Smith notes, "for many or perhaps most legal issues, arguments using the standard techniques of legal discourse can be constructed to justify inconsistent conclusions. One hardly needs any fancy theory or Derridean perversity to recognize this fact."\textsuperscript{77} Arthur J. Jacobson adds: "Not one rule suffers from determinacy in the United States today. . . . I know. I've litigated."\textsuperscript{78}

Law professors today cannot easily mediate the dual roles of practitioner and academic for a third reason: recent broad intellectual trends. Starting with the development of the new universities after the Civil War and continuing at least into the post–World War II decades, scholars in most academic departments aimed to develop and apply discrete disciplinary methods that supposedly produced objective knowledge. Around the 1970s, however, their consensus on the goal of academic research began to collapse. Spurred by the same technological, cultural, and social changes that have altered the legal profession, scholars in a variety of fields began to invoke concepts like multiculturalism, postmodernism, deconstruction, hermeneutics. Strong reactions against these ideas then led to open hostilities between competing factions within departments and disciplines.\textsuperscript{79} Regardless, many scholars now question the worthiness of particular disciplinary methods and even the existence of objective knowledge and truths. These changes "have circulated through every domain of academic discourse and have challenged and transformed intellectual practice in a plethora of fields, including science."\textsuperscript{80} Partly for this reason, then, interdisciplinary work is popular not just in law schools but in departments across the university.

Besides their direct influence on the legal academy, these intellectual trends have further driven a wedge between law professors' roles as academicians and as practitioners. From Langdell's time through the legal process era, the goals of the traditional legal methods—objectivity and determinacy—were consonant with the goals of scholars in most university disciplines. Legal scholars could invoke those legal methods and still remain, to a reasonable degree, within the mainstreams of intellectual thought. But today law faculty who merely use traditional legal methods in their scholarship risk seeming dangerously out of touch with contemporary intellectual trends. The earnest

\textsuperscript{76} Smith, \textit{supra} note 3, at 1086.

\textsuperscript{77} Id. at 1073.


\textsuperscript{79} For examples of such critical reactions, see Allan Bloom, \textit{The Closing of the American Mind} (New York, 1987); Arthur M. Schlesinger Jr., \textit{The Disuniting of America}, rev. & enlarged ed. (New York, 1992).

claims to neutrality, to objectivity, that typify legal argumentation are discordant with much university-produced scholarship.

No longer able so readily to mediate their dual roles, many law professors likely will be pushed ever further into their academic role. They will become increasingly aware of the distinction between, on the one hand, practitioners’ methods, litigation strategy, and judicial rhetoric and, on the other hand, scholarly methods. As Stephen M. Griffin recently wrote, specifically referring to constitutional law scholars, “[t]hey can certainly write as lawyers or as scholars, but not both at the same time.” Lawyers (in litigation) aim to win, but legal scholars do not, except maybe to win publications and citations. Judges must, for the most part, resolve disputes, no matter how complex the case, so that one litigant wins and the other loses, but scholars need not reach such reductive solutions.

So we come back to the question: what is the point or purpose of being a university professor of law? What type of scholarship should we write? What is our expertise? What gives our professional lives meaning? Once we remove our ties to practitioners as the foundation for our scholarly existence, what’s left?

A Possible Future for Law Professors

If law professors no longer base their writing predominantly on lawyers’ and judges’ methods, what will ground legal scholarship? One possible answer is interdisciplinarity. Interdisciplinary work is in vogue with scholars in many university departments who recognize that disciplinary boundaries are historically contingent and often developed for reasons more related to professionalization than to the discovery of truth or production of knowledge. Steve Fuller puts it starkly: disciplinary “boundaries are necessary evils that become more evil the more they are perceived as necessary.” Therefore, Fuller explains, interdisciplinary scholars maintain “that certain sorts of problems—increasingly those of general public interest—are not adequately addressed by the resources of particular disciplines, but rather require that practitioners of several such disciplines organize themselves in novel settings and adopt new ways of regarding their work and co-workers.” Interdisciplinary scholarship, done well, can generate creative methods and original insights in previously stale areas of thought.

While interdisciplinarity is popular in many university departments, it is especially robust in law schools. To a degree, law faculty merely are following the contemporary trend. Just as the Langdellians sought to secure their professional positions in the universities by conceptualizing legal science in accordance with the then-dominant general views of scientific research, interdisciplinary legal scholars of today can be understood as seeking to establish and reinforce their professional worthiness among their university colleagues.

82. Steve Fuller, Philosophy, Rhetoric, and the End of Knowledge 36 (Madison, 1993).
83. Id. at 33.
But law schools are interdisciplinary leaders more than followers. Law schools include faculty trained in other disciplines—economics, sociology, philosophy, history, or whatever—far more often than those other departments include faculty trained in law.

Several factors seem to be converging to make the law schools a seething ferment of interdisciplinary activity, like some primordial sea spontaneously sprouting new forms of life. First, law professors (as well as lawyers and judges) have long been branded as generalists, and this image, insofar as it is true, would seem to reinforce any urge to draw from whatever sources or disciplines are useful for current scholarly needs. Second, some interdisciplinary legal scholars undoubtedly are driven by the romantic appeal of exploring uncharted intellectual waters, rebelliously pushing the edges of the envelope, and courageously treading on new ground (or whatever metaphor of experimentation strikes your fancy) 84. Third, and most important, the disintegrating consensus on the proper methods for legal scholarship is likely to nurture interdisciplinary approaches. 85 The current lack of methodological unity leads many legal academics to experiment with alternative methods, often drawing inspiration from other academic disciplines. In turn, then, to bolster their own interdisciplinary approaches, some of these scholars occasionally “disparage doctrinal scholarship as part of their general denial that law can be an autonomous field of study”—grounded on the methods of practitioners—and even go so far as to express “an ethic of disdain or contempt for the practice of law . . . .” 86

Exactly because some law professors are such prolific interdisciplinary scholars, they might be able to establish themselves within universities as the experts on interdisciplinarity. A functional need for interdisciplinary experts is readily discernible: the current spread of interdisciplinary research throughout numerous university departments opens a potential domain for experts who could provide guidance to interdisciplinary neophytes. Some law professors might be motivated to try to establish themselves as interdisciplinary experts not only because of the romantic appeal of being on the vanguard of intellectual thought but also because of their concerns (both conscious and tacit) about professionalization. Like other professionals, law faculty still need to legitimate their own societal position—their status, their income, their power over others. To do so, they need to claim an area of thought where they can produce and control knowledge, where they can provide expertise. If, as posited, they no longer hold themselves out as experts in the methods of legal and judicial practices (which for more than a century has been a tenuous claim anyway, since many professors rarely if ever practice law), they need to identify some other realm of thought and knowledge as their own. For the growing cadre of law faculty who are prolific interdisciplinary scholars, a likely province of expertise is interdisciplinarity itself. 87

84. See Balkin, supra note 75, at 957-58; Schlegel, supra note 17.
85. See Balkin, supra note 75, at 962; Byrne, supra note 16, at 322-23.
87. Balkin, supra note 75, at 970 (describing law as “an interdisciplinary crossroads”).
Indeed, such interdisciplinary legal writing might be useful both to university colleagues and to society at large. The professional nature of academic disciplines drives university faculty to legitimate their positions by generating methods, jargon, and knowledge that distinguish their own discipline from others. To be sure, the generation and protection of disciplinary standards is not all bad. Disciplinary standards constrain those working within a field, but simultaneously they enable those people to approach and understand difficult problems. Training in a discipline provides one with certain tools—the basic methods, jargon, and knowledge of the field—so that one is empowered to perform the characteristic tasks of a professional in that discipline. Despite such benefits professionalism constantly pushes disciplines to become ever more specialized and isolated—and, therefore, often of less practical importance. For instance, three centuries ago philosophers frequently wrote about practical problems in language accessible to reasonably well-educated people. But now that philosophy is entrenched as a university discipline with specialized training and methods—think of analytic philosophy—it has become increasingly irrelevant to anyone outside the field. Ironically, those within a discipline work to make the discipline more arcane so as to strengthen the fences around it but in doing so often render it less accessible and important to those outside the fences. Legal scholars, as interdisciplinary experts, could help remedy this feature of academic professionalism by helping to transfer the arcane insights of various disciplines to practical matters outside the disciplinary fences. Legal scholars, after all, are aptly placed to perform this function because they are university professors who focus on another societal (extra-academic) profession, the law.

To imagine legal scholars as interdisciplinary experts, one should recognize that interdisciplinary scholarship does not entail the straightforward adoption and mechanical application of methods from other academic disciplines. Few interdisciplinary law professors merely adopt the external behaviorist perspective of judicial decision making so popular among political scientists. If many of them were to follow such an approach to interdisciplinary scholarship, they would fail to differentiate themselves from professors of political science or whatever other discipline they robotically appropriated. Good interdisciplinary scholarship, in law or otherwise, is more creative and synthetic than mechanical. Steve Fuller recommends moving “away from the common idea that interdisciplinary pursuits draw their strength from building on the methods and findings of established fields. Instead ... interdisciplinary research [should] call into question the differences between the disciplines involved, and thereby serve as forums for the renegotiation of disciplinary boundaries.”

Law schools committed to interdisciplinary scholarship need to do more than hire faculty with doctorates in fields other than law. Law faculty with degrees in other disciplines, even those who also have J.D. degrees, are likely to have strong commitments to maintaining the professional integrity of their particular doctoral field and might, instead of encouraging interdisciplinary scholarship
creativity, be inclined to insist upon strict adherence to the discrete methodology of that discipline. Even if not blatant protectors of professional turf, many might be quick to condemn interdisciplinary efforts by any scholars lacking the credentials of a Ph.D. Therefore, in addition to hiring faculty with professional credentials from outside the law, a law school committed to interdisciplinarity should encourage anyone interested, including those faculty with only a J.D., to experiment with scholarly approaches that combine and alter disciplinary methods, including traditional legal methods.

Much interdisciplinary legal scholarship produces insights that never would have been realized if scholars had remained confined within the narrow borders of well-defined disciplines. And yet much interdisciplinary experimentation is likely to be fruitless. Experimentation is difficult, and failures will be many. Criticisms of interdisciplinary legal scholarship are not necessarily either manifestations of disciplinary turf protection or reactionary efforts to maintain the study of pure law. Some interdisciplinary legal scholarship deserves denunciation as dilettantish, jejune, jargon-filled, or banal (or all of the above). To be sure, a hazy line separates the amateur generalist from the interdisciplinary expert. Nonetheless, criticism of interdisciplinarity should be directed at the substance and quality of the scholarship rather than at the educational credentials of the scholar. Fuller suggests that interdisciplinary research should be evaluated by criteria that emerge from the interdisciplinary work itself, not from the entrenched standards of the already established disciplines.

Regardless of the prevalence and success of interdisciplinary legal scholarship, at least four forces seem likely to insure the continued vitality of doctrinal law reform scholarship. First, law professors will continue to teach law students, most of whom expect to become attorneys. This shared function—the teaching of prospective lawyers—will continue to help bind legal academics together into a single profession (as law professors) despite their otherwise diverse interests. The teaching function also protects law professors from possible extinction, even without scholarly cohesion within the profession. No matter what and even whether law professors write, they still teach and produce lawyers. The economic profitability of law schools seems likely to induce universities to maintain them. In short, like the legal profession in general, the law schools might be so firmly entrenched in the structures, culture, and economy of American society that they are not seriously endangered. And, most important in terms of the connection between teaching and scholarship, a reasonable number of law faculty probably will continue to


91. Fuller, supra note 82, at 87.
teach law with the traditional emphasis on cases, rules, and principles—indeed, often using the case method—for the simple reason that the practice of law still largely entails the manipulation of precedents (and statutes) and doctrine. Their traditional approach to teaching, then, will likely lead at least some of them (though not all) to write traditional scholarship—scholarship that resonates closely with the practices of lawyers and judges.

Second, most law faculty were trained in law schools to become lawyers. Many, before joining academia, practiced for several years, and at least some of them continue to practice part time. Some identified themselves so firmly as professional attorneys before they became academics that they will continue to identify themselves primarily as lawyers and only secondarily as university professors. When they write, they likely will produce traditional normative legal scholarship. The persistent self-identification as a lawyer is likely to be more widespread at lower-level schools, where interdisciplinary legal scholarship will therefore be less than at higher-level schools.92

Third, once academic disciplines become established, they tend to “follow trajectories that isolate them increasingly from one another . . .”93 Faculty in the sundry academic disciplines will generally be inclined to protect their professional status within the universities, as already established. Quite simply, faculty in all fields, law faculty included, are apt to protect their own turf. While this article speculates that law faculty can stake out a new turf, as interdisciplinary experts, many are likely to continue to see the traditional methods of lawyers and judges as delineating their appropriate domain. These professors too will continue to write traditional legal scholarship.

Fourth, practitioners likely will continue to press law professors to teach and write in a more practical (lawyerly) fashion. Even though a yawning chasm now stretches between practitioners and professors, and even though practitioners might sense a diminished need for the cultural support and legitimation previously provided by law schools, lawyers and judges still want to control law schools and law faculties for their own professional purposes. So long as law schools exist, lawyers and judges would just as soon have them bolster the professional status of practitioners. In short, lawyers’ and judges’ primary interest in legal education remains the legitimation of the legal profession (read: practitioners), not the production of original or interesting scholarship. From the perspective of practitioners, the best type of scholarship remains the traditional variety, which reinforces and celebrates the methods and norms of lawyers and judges.

92. Balkin notes that at “non-elite schools,” interdisciplinary scholarship “has gained less of a foothold . . .” Balkin, supra note 75, at 951. Some reasons that faculty at lower-level law schools might more strongly identify as lawyers than as university professors are as follows. At less prestigious universities the law faculty naturally will accrue less prestige and often less money from their universities. Also, law teachers at these schools might have been more likely both to have practiced longer before joining academia and to continue practicing while in academia. Furthermore, at such schools the university community as a whole is likely to provide less support for scholarship in general. Finally, at such law schools there is probably more of a sense of urgency to prepare students for the bar examination.

93. Fuller, supra note 82, at 33.
Understanding the interests of practitioners vis-à-vis professors illuminates lawyers' and judges' criticisms of legal scholarship. Lawyers and judges who criticize legal scholarship often suggest that law professors are too impractical, that their scholarship is all abstract theory—whether deconstruction, hermeneutics, civic republicanism, or whatever. Yet hundreds of law journals still publish innumerable practical articles that parse cases, emphasize legal doctrine, and recommend law reforms. If lawyers and judges actually wanted practical guidance from the legal academy, many law faculty remain more than willing to provide it. But despite their complaints about theoretical scholarship, lawyers and judges seem just as uninterested in the more practice-oriented writing. To be more precise, lawyers and judges are interested in having professors write practice-oriented scholarship, but primarily because the scholarship can lend legitimation to the legal profession (even if such legitimation is no longer necessary). Lawyers and judges are not actually interested in reading and learning from the professors. Putting this differently, lawyers and judges would prefer that law faculty think of themselves primarily as members of the (practitioners') legal profession—albeit subordinate members—rather than as members of a separate and independent profession or as university professors.

To Infinity, and Beyond!

Among the legal scholars focused on interdisciplinarity, different scholars will favor different disciplines. Law and economics scholars are unlikely to jettison their methodology for that of law and history scholars, or for that of law and philosophy, or for that of anything else. At least for the foreseeable future, law teachers will almost certainly not unite in a consensus about scholarly methods and goals. One possible resolution of this discord might be the compartmentalization of the legal academy according to interdisciplinary orientation rather than substantive field (such as torts, contracts, and constitutional law). After an extended period of jousting among the various types of interdisciplinarians as well as the more traditional legal scholars, we might see the formal or semiformal establishment of subdisciplines of legal study. Leading law reviews might have subsections with articles devoted to, among other areas, doctrinal law reform, interdisciplinarity (in general), law and economics, legal history, and legal philosophy. Such a future already has started to take shape. A number of specialized journals, defined by interdisciplinary methods rather than by subject matter, have recently emerged, including the *Yale Journal of Law and the Humanities*, the *Southern California Interdisciplinary Law Journal*, and *Legal Theory*. Such an eclectic future seems far more

appealing than having one group of legal scholars harass and defeat all other types. 95

I do not mean to suggest that, as law faculty today, we now can freely choose our future—that we can, for example, autonomously choose to identify ourselves primarily as university professors. Just as a constellation of social, cultural, and economic forces have influenced the conception of the law professor throughout American history, the future of the law professor will be similarly shaped. Of course, as individuals, we might experience a sense of freedom to choose our own directions. Will my next article be a strict doctrinal analysis of recent Supreme Court cases on equal protection, or will it be a historical piece on American jurisprudence? Yet, our individual choices are themselves inevitably shaped by social and cultural forces, only some of which are apparent. My choice for a next article will be influenced by current broad intellectual trends, by what the Supreme Court has recently decided, by recent law review articles, and by a host of other factors of which I may or may not be fully cognizant.

What, then, might law professors learn from Buzz Lightyear about the future? In Toy Story Buzz Lightyear did not freely choose either to be or to self-identify as a toy. If freedom of choice came into play at all, it was in Buzz’s changing attitude toward being a toy: from despair to enthusiasm. Law faculty face a similar choice. We can brood about how we are trained only to be lawyers and thus are ill-equipped to be university professors, first and foremost. Or we can make the most of our current situation in a time when disciplinary fences are collapsing, for better or worse. As interdisciplinary experts, we may flourish on our university campuses as few law professors have done before. As Buzz Lightyear exclaims, “To infinity, and beyond!”

95. For what it’s worth, I would like law school curricula to emphasize equally three different areas: substantive law, practice-oriented skills, and law in society (philosophy, history, social theory, and so forth). Before graduation a student would take roughly the same number of courses in each of these areas. Graduate law programs (beyond the J.D. degree) could afford students more of an opportunity to specialize.