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Law and Inter-disciplinary Research

I argue there that when legal research goes beyond research on legal doctrine and legal institutions, it is necessarily drawing on other disciplines. Therefore, explicit discussion on interdisciplinarity is essential for anyone undertaking legal research. I first briefly describe what I consider to be the scope of the discipline: what legal research involves and its forms of publication/dissemination. I then offer my reflections on law and inter-disciplinary research.

In Sri Lanka, research within the discipline of law itself requires review and debate. Some of the questions that the legal community ought to be debating include questions related to research on the gap between legal doctrine and law as experienced in society as well as questions related to long standing categorizations of law, such as the categorization of law as public and private law. At the same time, it is necessary to also consider the ways in which the ongoing debate on inter-disciplinary research relates to law. I therefore, strongly welcome the initiative of the ERCSSH of the Faculty of Arts of the University of Colombo to bring scholars of different disciplines from within the University of Colombo and outside for this discussion.

What is unique about law as a discipline? We can identify at least four characteristics that are unique to the law. These four characteristics come together to form the internal logic of law as a discipline. One is that the discipline of law is tied to the legal profession. The legal profession is a central interpretive community that determine the scope of the discipline and drive the development of the law. It is also the community for which much of legal research is published. A second unique characteristic of the law is legal doctrine. By legal doctrine we mean legal concepts such as grounds of judicial review in administrative law or grounds of divorce in family law. A third unique aspect of the law is the law that creates and governs legal institutions, the state being the ultimate example of a legal institution. A fourth characteristic is that law is jurisdiction specific, that is to say, that it applies in unique ways within the territory of a state.

Centrality of Reason and Writing

Each of the above-described unique characteristics of the law manifest largely through reason and writing. It is through writing and reasoning that legal doctrine is explained and developed, legal institutions are created and the application of the law is determined. Most aspects of the work involving the legal profession is undertaken through speech and writing. In law, research is developed through the writing and reasoning process, even when it involves empirical research.

Interpretive Communities in Law

Just as much as reason and writing is central to law, so is interpretation. The law

comes alive through interpretation and there are different interpretive communities that engage in such interpretation: law academics, litigators (arguing for petitioners and respondents, accused and victim(s)), judges, legislators and citizens (to name a few). It is useful to remember here that each of these interpretive communities interpret the law in different ways, for different purposes and with diverse normative commitments. Anyone undertaking legal research is expected to interpret the law, primarily as a truth-seeking exercise.

Methods

Within the law, broadly speaking, we can identify at least five methods of research. They are the descriptive, the doctrinal, the analytical, the comparative and the normative. These methods can and often do overlap. Even when we engage in what we would consider to be legal research, I think there are some assumptions we make about knowledge developed through other disciplines. Language and history are two easy examples that can be used to illustrate this point.

Forms of publication

In publication and dissemination of legal research there are at least four different forms that we use. First, original research is published in the form of monographs or journal articles. Second, knowledge for instruction is published in the form of textbooks or case materials. Third, research and knowledge as relevant for a particular law reform project is published in the form of policy briefs. Fourth, knowledge for broader consumption is published as newspaper articles, blogposts, etc. Separate from all of these types of publication that are broadly common to scholarly work, the legal community additionally shares knowledge through forms that are unique to the discipline. These are legal forms that, if effectively developed, requires significant amounts of legal research. They include written submissions submitted in litigation, legal opinions and even draft laws and judicial determinations. However, these forms of publication of legal research are not considered to be research in the academic sense.

Dissemination

There are two ways to think about how legal research is disseminated. One is to think about the different ways of sharing knowledge, that is to say, the different forms (as discussed above). The other is to think about the use of these different forms of dissemination within a specific research exercise. The value of thinking about different forms of research within a research exercise is that it complements the idea that 'writing is the method' of legal research.

Within a research exercise, three inter-related and cascading stages can be identified. At the preliminary state a draft paper may be shared, circulated for

discussion and feedback. Several colleagues make the point that the development of legal knowledge requires that work in progress be presented to different scholarly communities several times during the process of writing. It is only then that a final paper can be developed. Then follows the regular process of review of scholarly work and here, the gold standard in social sciences and humanities applies to law as well. Double-blind peer review remains a well-tested method for assessing originality and rigor of legal research. Subsequent to such validation, research may be published in academic form (as a journal article). Additionally, shorter versions of such academic articles may be published for a broader audience in the form of blog posts, newspaper articles etc. The third stage is where such research is translated into policy recommendations including law reform. This would involve translating and transforming legal research into draft policy, action plans or draft law.

Interdisciplinary Research

While the law is unique and has an internal logic, it exists in society and is entangled with social realities. Moreover, even these unique characteristics of the law depend to a significant extent on other bodies of knowledge. Even though lawyers, judges, law academics and other members of the legal community are primarily trained in studying and interpreting legal doctrine, we are constantly interacting with other disciplines and other bodies of knowledge. The law, as I see it, is embedded in other disciplines to a great extent.

Let me take history as an example to illustrate this point. In law, there are at least four ways in which we use history. One is the use of history in determining judicial precedent. This is where we trace legal doctrine as developed by judges over time. We do this by tracing and interpreting case-law over a period of time. Second is the study of the history of legal institutions where we trace and critique origins of a legal institution, its reform over time etc. Third is the use of accounts of history in one and two above. This is where we draw on history to explain legal doctrine or legal institutions. The fourth is the use of history more broadly in any law-related work. As we move from the first to the fourth way, increasingly, we are invoking history. Legal historians as well as historians more broadly would remind us that in invoking history, if we are not mindful of historiography, we run the risk of using history selectively and in ways that are not rigorous.

This is but one example that illustrates the entanglement of law with other disciplines. The risk here is that often, this entanglement is not identified and made explicit. Different scholarly movements in law have attempted to make this entanglement more explicit by developing different approaches to legal research. Socio-legal studies, critical legal studies and the law ‘and’ movements are examples of such developments.

How to do interdisciplinary research

In Sri Lanka and in many other parts of the world, lawyers are trained only in law. But, as I try to argue here, much of the law is necessarily entangled with other disciplines. How do we then meaningfully engage in our research? I think that particularly when we go beyond legal research on legal doctrine and legal institutions we need to be mindful and cautious of the ways in which we rely implicitly on other disciplines whether they be history, economics, political science or medicine. Collaboration with scholars from other disciplines is one way in which we can meaningfully engage in interdisciplinary research. Where that may not be possible, I think it is important to suitably qualify and limit the application of the arguments we make in legal research. For instance, when asking the question as to whether abortion should be de-criminalised in Sri Lanka, law academics would have to engage not just with legal doctrine but also with medical science and sociology. If we fail to do so, we should then be transparent and self-reflective about that gap.

Institutional Support

A final note on institutional support for interdisciplinary research. Where universities are structured around discipline specific departments, including in teaching as well as course offerings, it is very difficult to think of practical ways of fostering interdisciplinarity. Moreover, in the Sri Lankan context, where the marking scheme for promotions drives much of the choices made by academics, we need to consider ways in which co-authoring and collaboration across disciplines can be incentivized.

Dinesha Samararatne

Professor, Department of Public & International Law, Faculty of Law, University of Colombo

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