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# In Praise of Tents: Regulatory Studies and Transformative Social Science

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## Abstract

What are the virtues of institutions we take for granted—universities, the study of the social sciences and humanities, and scholarship on professions such as law? What are the vices of the disciplinary structure of the social sciences, even in the law and society movement and criminology that started as interdisciplinary projects? Research on regulation within an interdisciplinary structure, the Regulatory Institutions Network, is used to illustrate the difficulties of attempts to change direction in the social sciences. The article advocates the creative destruction of disciplinary structures by organizing in tents that study institutionalization (rather than buildings that study categories of institutions). To keep pace with social change, pulling tents down and endlessly pegging out new ones is a path forward. A politics of defending universities and opposing the disciplines that have captured them does not mean advocacy of restructuring. If more interesting work issues from poorly funded tents than from disciplinary edifices, reformers can advance creative destruction.

## INTRODUCTION

This article extols the virtues of universities as potentially emancipatory institutions that can sustain transformative ideas and movements like feminism. It considers just two mainstays of the university: social science and law. First it advocates for social science, then law, while seeing them as overly disciplined into the study of categories of institutions. Then it conceives of the law and society movement as a light on the hill that faded, jaded, but can be renewed by creative destruction (Schumpeter 1962). The institutional struggles, failures, and limited successes from the Institutional Design Project to the Regulatory Institutions Network (RegNet) at the Australian National University are then diagnosed in search of an alternative future.

## VIRTUE IN DEDICATING LIVES TO UNIVERSITIES

Those of us in universities have special responsibilities as their citizens. If we cherish the values of universities, we become dejected by the managerialism of counting skewed performance indicators. We lament chronic displacement of energy from our fundamental objective of coming up with new insights about how the world works and transmitting them to our students. Yet for all their problems, universities are the most resilient of institutions. A millennium from now, Australia will probably not exist; it will be part of some Asian federation or empire. But the Australian National University will. Microsoft, IBM, and Toyota will no longer exist, but the University of Bologna will. It is a noble form of politics to fight for the souls of our universities, to keep them on track—focused on big ideas for making the world a better place. It is hard to resist the temptation to be careerist about our university lives, hard to focus on an other-regarding contribution that matters to important debates rather than on building the right kind of curriculum vitae.

To be effective in that quest, we best approach it in a spirit of humility. First we must understand that the contributions our students make will always be much more important in aggregate than our own. If we succeed in our job, what they do will also be better because they do it standing on older shoulders that include our own. We also must not lose sight of the fact that undergraduates are great change agents of modern history. Afghanistan illustrates. Afghanistan has suffered four decades of wars triggered by the political ambitions of two social movements: communism and Islamic fundamentalism. Where did these social movements start? One answer is the University of Kabul. That university in the 1970s was an intellectual battleground between communist and Islamist groups with violent millennial agendas. A lesson from Afghanistan is about the comparative quiescence of intellectuals at the University of Kabul in the 1970s with nonviolent, democratic visions for their nation.

Think about the role of Beijing universities in the events of Tiananmen Square in 1989 and of great universities of the Arab world in the fraught journey of the Arab Spring (again on the side of both nonviolent resistance and violent tyranny). Undergraduate activism is a seedbed of so much of the transformative politics that changes the world for good or ill at times of crisis. We who participate in the community of conversation among the world's universities are privileged with the obligation to be useful voices in that conversation.

I say to Australian students that they should not take their university for granted. I ask them to see it as an institution worth defending. Then I tell them two stories from universities involved in Indonesia's violent transition to democracy of a decade ago, the first about an attack on the values of the university from within, the second of external attack. The first is of an incident at the Cenderawasih University in West Papua after the rector directed that no debates on independence

for West Papua would be allowed on campus. Students responded by burning his new rectory to the ground, with a number of students killed by riot police during the protest. The second story is of the military attacks that occurred on the largest state university in Ambon during Indonesia's democracy struggle and Christian-Muslim conflicts. Tanks fired on the university and troops burned it to the ground. Every book in the university library was lost. With a lot of international help, remarkably in two years the university was completely rebuilt, and the library restocked. Then conflict flared again, and the tanks arrived at the university again. Students rallied standing nonviolently in front of the tanks, pleading bravely that they had a right to their university. The tanks turned their turrets toward the university buildings again and fired through the students to destroy the university a second time, burning all the library's books again. I ask our students if they feel the importance those Ambon students felt in the university as an institution, if they would be capable of standing in front of those tanks. Then I ask them to ponder what is therefore missing with political engagement in Australian universities.

Universities must be on the front line of engaging critically with crises. Because universities have the role of being centers of political ferment, we must cultivate the kind of intellectual environment in universities that will identify looming crises before they arrive and supply reformers with options for democratic transformation that can be deployed when the ripe moment for response to the crisis arrives. Braithwaite & Drahos (2000) call this "model mongering" with many transformative ideas, most of which sit on the back burner waiting for that ripe moment of crisis.

In universities we are privileged to lead lives of casting seeds in many directions that will grow into interesting future lives. Whether our own visions for transformation in the face of crisis are duds or ideas that take off is not as important as our role in being part of an institution that is a creator of alternative visions, robustly tested through data and debate. That contentment in leading the scholarly life comes only so long as we can cultivate a long-term and communal vision, as opposed to a careerist strategy, of why an intellectual life matters. Of course universities are more than places where dissent and contestation flourish, where the humanities and sciences flourish. They are also sites where professions are learned, including law, but also musicianship, accountancy, architecture, medicine, and many others. Good reason for professions to be taught in universities is the desirability that professions open to influences from the humanities and sciences and the hope that students of the professions are embraced by the politics of dissent that occurs at good universities.

## FOR SOCIAL SCIENCE

This section is about why social science has a potential well captured by the contributions of John Maynard Keynes and feminism. Then the next section considers how contemporary social science disciplines narrow that potential. One way that social science is more important than the physical and biological sciences is that if we cannot learn how to craft institutions that prevent violence and environmental excess, we are likely to destroy tolerable human survival on the planet in the centuries ahead. Yet when social scientists are honest, they concede that their insights have been puny in the past century compared with those of the physical and biological sciences. Until the social sciences get their house in order, one can understand universities steering resources to areas of the physical and biological sciences where breakthroughs keep coming. Of course, many fields of science also remain narrowed by disciplines that inhibit a grasp of complexity that cannot be seen looking up from the silo of a science discipline.

It is not that it is easier for the hard sciences to make breakthroughs at the hands of transformative theorists like Charles Darwin or Albert Einstein in a way that is beyond the social

sciences.<sup>1</sup> In recent decades we have seen new institutions such as multidimensional UN peacekeeping operations often failing in individual cases like Rwanda, yet shown by good quantitative social science to have a large effect overall in preventing the recurrence of war (Call 2012, Doyle & Sambanis 2006, Fortna 2008, Gilligan & Sergenti 2008, Quinn et al. 2007, Walter 2002). Civil war deaths have declined hugely during the past quarter-century. The trouble is that it is hard to attribute the idea of multidimensional UN peacekeeping to any social science theory of the past century, although we might give philosophers of previous centuries, such as Kant (1795), some credit. With other institutions that have had even bigger impacts like elected legislatures, we can nominate philosophers and lawyers such as Montesquieu and Aristotle from past centuries who had major theoretical impacts on institutional design. Lawyers in sites like Bologna also had an impact in creating the very institution that is the focus of this article, the modern university. The philosopher Adam Smith, who later came to be called an economist, but who was actually as much sociologist as economist, also had a theoretically profound impact on a transformative institution, the market. Perhaps the most recent social scientist to have a comparably profound theoretical impact was Keynes in laying the foundations for the New Deal and what some of us call regulatory capitalism (Braithwaite 2008, Levi-Faur 2005) today.

Like Smith (1863), Keynes (1936) was read narrowly as an economist, although the large sections of his general theory that discuss business confidence as a social contagion were a sociology of the emotions (Barbalet 2001). Once Smith and Keynes were branded as economists, work that did not fit the mold of the discipline of economics, such as the social theory that helped Keynes to see solutions to the Great Depression, and *The Theory of Moral Sentiments* with Smith (Keynes 1936, Smith 1761), were excised from the narrative of what these theorists posited. In appropriating excellence, economics narrowed it.

Great social science like that of Keynes has helped transform large social injustices such as poverty, war, crime, and environmental destruction through innovative theory and evidence-based practice. Of course there have been theorists of previous centuries like Marx whose work hugely transformed institutions, followed by a twentieth century that failed to achieve the outcomes Marx sought. To recognize this is not to deny that improving social science theory matters or that important insights are still being learned from Marx.

Notwithstanding that hope and promise, transformative social science today is less likely than ever. When Smith and Keynes were thinking about how market institutions might lift people out of poverty, neither thought purely in terms of “economic man” in the style of contemporary economics. When Montesquieu conceived his theory of the separation of powers, he was not thinking as a political scientist reflecting upon “political man”; he pondered as the philosopher and lawyer that he was. Max Weber, now seen as a founding father of sociology, did not think only in terms of “social man”; he was also interested in *Law and Economy in Society* (Weber 1954).

Feminism is the lead example of an interdisciplinary movement that helps because it transgresses boundaries. Feminism critiques economics for the narrowness of rational economic man, criminology for the narrowness of criminal man (Naffine 1997). It casts a critical eye across blind spots common across the disciplines, offering alternative ways of seeing. It follows from the analysis of this article that feminist theory is most likely to flourish in tents, not through women’s studies becoming a new discipline. Constantly emerging new centers inspired by diverse feminist theory insights is the more promising path. Tents are not meant to last; they help us be

<sup>1</sup>Darwin and Einstein are just figureheads for the accomplishment of a community of scholars. Had they died before adulthood, someone else would have become the figurehead for kindred breakthroughs.

nimble in continually moving into exciting new spaces at the right moment. Before beginning to detect a glimmer of hope in the positive interdisciplinary contributions of something like feminism, however, we must more fully diagnose the depth of the pathologies of contemporary social science.

## AGAINST SOCIAL SCIENCE DISCIPLINES

Disciplinary myopias have dug the social sciences into deep holes. Citation counts captured by disciplines drive us to keep digging deeper into the abyss. The next section considers law and society as a great movement in the 1960s and 1970s that started to dig toward the light, but in the end its scholars found it professionally more comfortable to huddle together digging at the bottom of their new hole. Many social sciences are not as promising as they were in the middle decades of the twentieth century. By contrast, biology and information technology, which have experienced remarkable intellectual renewal, reorganized their intellectual communities around breakthrough ideas like networked cyberspace and the new molecular biology and somewhat older ones like evolutionary biology and ecology. Starting with Darwin, theoretical breakthroughs drove the formation of completely new networks, breaking away from and then transcending dysfunctional old disciplinary structures such as zoology, botany, anatomy, entomology, microbiology, computer science, and engineering. These old science disciplines were organized around the study of categories of objects—insects (entomology), plants (botany), microbes (microbiology), human bodies (anatomy), and computers (computer science). A major practical breakthrough like designing aircraft that flew more safely without pilots drew on the old entomology and anatomy (how the eye-brain interaction of a fly or a bee judges speed and space more accurately than a human brain in being able to land at speed on the rim of a teacup; Srinivasan & Zhang 2004). And of course this breakthrough drew on the old discipline of computer science. This was a case of new biologies assisting engineering breakthroughs, and physicists were also provoking breakthroughs in neuroscience.

One might say that the social sciences can learn nothing about the way certain sciences have dug out of their holes because social projects are different from physical ones. One important difference is that the social sciences have doubly dug themselves into darker holes. Like botany and zoology, economics, politics, education, criminology, and law study categories of objects. These objects are economic institutions (banks, money, stock markets) for economists, political institutions (parties, parliaments) for political scientists, educational institutions (schools) for the education faculty, criminal justice institutions (prisons, police) for criminologists, and legal institutions (courts, constitutions) for law scholars. These social science disciplines discipline us not only to study those particular kinds of overly abstracted institutional objects, but also to buy into particular overly abstracted models of “man” (at least before second-wave feminism). The economists study “economic man” (who makes rational choices), political scientists “political man” (who votes and otherwise pushes political preferences), and lawyers “the man on the Clapham omnibus” (who reacts to the justice of cases). It is not just that the theory at the foundation of these models is narrowing; it is that there is not much theory involved. How much theory is in the frame that a human is a political animal? Perhaps there is less than in the insight that humans are storytelling animals, an alternative foundation we turn to soon.

Geography is somewhat different in the way it studies space and history in focusing on time. This allows geography and history to study many categories of institutions and other objects through the lens of multiple models of the social. They are a source of hope for the social sciences when at their theoretical best. Because anthropology and sociology at their best are capable of studying contested models of the social across space-time (Mills 1959), they also hold out hope

of escape from those doubly dug holes that dig deeper into the study of particular kinds of institutions through the lens of a particular model of action. Anthropology and sociology are not, however, organized around theoretical breakthroughs in the way evolutionary biology is organized around Darwinian insight or the new molecular biology around the discovery of DNA. The Canberra scholars at the Commonwealth Scientific and Industrial Research Organisation who invented Wi-Fi did so in the process of developing methodologies aimed at finding and understanding black holes, rather than via the discipline of computer science (see Dep. Ind. 2009). These inventors of Wi-Fi were doubly blessed: by being free of disciplinary strictures and driven by theory.

Anthropology and sociology departments in universities also have the virtue of teaching students to be excellent in an important social science methodology that other disciplines neglect—ethnography. Specialization in methodological excellence is a virtue that most social sciences have. Any transformation must salvage this. Some would say that tents can stand buffeting only through grounding in disciplines. I take the view that the tent pegs they need are methods and theories found within extant disciplines rather than the disciplines themselves. History promotes methodological excellence in digging out primary records of past texts, archaeology in digging physical traces of past human activity, linguistics in revealing the structure of languages from utterances and texts, criminology in comprehending crime statistics across space-time, law in analyzing legal texts, psychology in randomizing controlled trials, economics in performing econometrics, geography in conducting mapping and GPS analyses. A transformation of the social sciences that would benefit the world would see students emerge from PhD programs literate in all of these forms of methodologies and expert in one or two. More than that, they would be literate in the methodologies that have allowed the nonsocial sciences to make breakthroughs, especially mathematics, without becoming expert in them. It follows from this that university departments cannot have anywhere near the methodological expertise in-house that they need to do best by their PhD students. Contracting coursework out to networks like the Australian Consortium for Social and Political Research and the Interuniversity Consortium for Political and Social Research housed at the University of Michigan can meet that challenge. Indeed, I would argue that these two interdisciplinary method networks are more sophisticated custodians of methodological excellence in the methods they teach than are disciplinary departments in the universities I know. Methodological training in the buildings of disciplinary departments was necessary in an age before these method networks and connection to their nodes through air travel and internet learning. Today that model is ripe for creative destruction, especially in the South, but in the North as well.

A new generation of PhDs who cut a pathway to a transformed social science would also benefit from literacy in foundational humanities, especially philosophy. A good example of positive influence from the humanities is the study of narrative. Restorative justice is a transformative approach that prioritizes listening to the stories of victims and perpetrators of bullying in schools, crimes, wars, or environmental destruction. Restorative justice seeks transformation by transforming institutions and restoring people's humanity. Another law and society contribution that draws on narrative insight is Shearing & Ericson's (1991) notion that police culture is not a rule book, but a storybook. So, if you wish to transform police culture, you will not get there by rewriting the police procedures manual; you might by changing the stories police swap in the lunchroom and the patrol car. Then there is the impact of narrative therapy on psychology (White & Epston 1990).

Sustaining all these forms of methodological excellence is a large challenge for those who would break out from extant disciplinary straightjackets. Law and society, as argued next, has been one of those breakouts that has not fared well against the objective of promoting rather than eroding extant disciplinary methodological competence.

## AGAINST LAW AND SOCIETY

I used to think elite law schools were bastions of hope for the social sciences. Particularly in the United States and Canada, but increasingly in my own country and Europe, the more high ranking the law school, the less I found them to be absorbed with doctrinal Northern law, and the more I would find in their midst wonderful anthropologists, historians, political scientists, philosophers, and economists, sharing social science insights. This was an invigorating growing movement of social science into law schools that started in the 1960s. In mediocre American law schools, professors were still little interested in insights from Australia, especially if they were not from the law; in elite law schools, they were if they saw the insights as interesting. Here was hope for law schools as respected institutions that attract many of the brightest, most politically engaged students, to be nodes to lead fertile new directions in interdisciplinary social science. In the decades when I was in the Law Program of the Research School of Social Sciences at the Australian National University, I was in the business of putting this hope about law and social science into practice, serving as a Trustee of the Law and Society Association, regularly attending its meetings, and as a visiting fellow at the American Bar Foundation, publishing in American law and society journals. Personally, I benefitted greatly from the journey, learning so much from Northern law and society scholars, and my work was welcomed generously by the law and society movement.

Yet there were four reasons this hope may have been misplaced. The first worm in the apple, and the least important one, was that the law and society movement became or remained imperially American. All social science disciplines are dominated by the United States. Some of the disciplines that scholars of my interdisciplinary ilk might find the least pernicious, such as sociology and the professional discipline of social work, not only are dominated by the United States but also were mostly formed there. Yet a difference is that sociology and social work have globalized in such a way that Indian or New Zealand social work or sociology have their own distinctive character, forms, and national professional auspices (Connell 2007). That is less true of the law and society movement in India or New Zealand. They are rather a group of people from India and New Zealand who go to meetings of the Law and Society Association, mainly in the United States. Over the decades there have been attempts, with formidable leadership that included great American law and society figures like Terry Halliday, Malcolm Feeley, and Bill Felstiner, to reconstitute law and society as a global movement promulgated by a global association that promotes local competitors to attendance at the Law and Society Association (in the way the American Society of Criminology promoted the formation of the European Society of Criminology, the Asian Criminological Society, and national associations in the South). These attempts to de-Americanize law and society failed, although of course there remain important non-American institutions like the Oñati International Institute for the Sociology of Law.

A deeper problem was that the law and society movement was not very deeply interdisciplinary. Law was a kind of master discipline. If you were not presenting a paper that people in law schools would find interesting, what were you doing there? I still drink coffee from my twenty-fifth anniversary mug from the Law and Society Association meeting in Madison, Wisconsin. And I ponder how plural the association seemed to be when I sipped from it in the 1980s. At that time the law and society movement was still leading big, productive shifts in Anglo-Celtic law schools. Today the criminologists who were in the law and society tent then have mostly gone, the economists have mostly left, and those from many other nonlaw, nonsociology disciplines, such as psychology, are more marginalized. This was not mainly the fault of leaders of the law and society movement. It was a structural process of progressive specialization in the social sciences. If you were a criminologist, especially an American one, you were punished in the promotion stakes

if you did not publish in the right criminology journals. You were punished if you did not have prominence in a criminology that had become more of a discipline, less a substantive focus on crime by scholars from many disciplines. If you were a law and economics person, your careerism beckoned your attendance to law and economics gatherings, where you conspired to replace law and society scholars in law schools with economists. Notwithstanding this competition, the deepest pathology of law and economics and law and society was shared. This was that if you started to find something of great social scientific import that was not of interest in law schools, that was less career enhancing. The discipline of law would become a straightjacket smothering the promise of interdisciplinary social science in law schools.

A third failing of the social sciences in law schools was failure to develop high-quality graduate school cultures. Frequently, the doctoral program culture was more an SJD than a PhD culture. Law school intensity of interaction with doctoral students was low relative to social science doctoral programs in top universities. In Australia, PhD programs in law expanded greatly. The reason is that PhD programs in law can be highly profitable so long as schools refrain from investing in them to science or social science standards. Most of the students do doctrinal PhDs, which are cheap in the way that a philosophy PhD is cheap compared with training in how to be a research scientist. For the most part, the growing social science PhDs cranked out of Australian law schools are not outstanding. Students regularly speculate about empirical questions without doing any empirical work. If they do quantitative empirical work, they often do it without relevant quantitative training. "Fieldwork lite" is common to justify fieldwork travel during a PhD program. Scholars from fieldwork-oriented social science disciplines look at the work and training of law PhDs with alarm and rarely appoint them to academic jobs in such disciplines. Getting a law PhD is not like doing a PhD in a top Middle Eastern studies program, where candidates are required to have mastered two languages of the region before they can even enter the program so they're equipped for fieldwork. Law PhD programs in Australia are driving down the standards of Australian social science PhDs, which were already low by international standards. I fear Australia is not the only country where this is an unintended consequence of the global law and society movement.

A fourth way that the hopes of the law and society movement have been disappointed is that interdisciplinary impetus acquired a disciplinary character over time. Young minds are disciplined by the law and society movement to believe that certain questions are not important. If your question does not pass the test of being of interest in a seminar in an American law school, then it will not deliver your work the citations that the law and society movement can offer. Those citations can be generated in large numbers only through the North Atlantic citation market. Sadly, for scholars from developing countries, structural dependence is the best path to recognition, by joining the global division of labor that places the production of theory in the metropole and gives the periphery the roles of gathering data and applying theory (Connell 2013, Hountondji 1997).

All my critique of disciplines must be counterbalanced with the virtue of mainstream disciplines, which is much less a virtue of the law and society movement, that they inculcate certain forms of methodological rigor into students. If you do a psychology PhD, you must learn how to run an experiment; if an economics PhD, you at least learn econometrics. At their worst, interdisciplinary movements risk jettisoning guarantees of excellence in methods.

## **VIRTUES OF LAW**

It would be wrong to dismiss law schools because they have not realized early promise in the social sciences. Law schools are important mainly in producing great lawyers. It would have been a bonus if they had also become an engine for renewal of social science. It is wonderful when music schools

produce brilliant musicologists, but more important that they educate musicians who transfix us; splendid when architecture schools deliver exciting histories of architecture, more important that they inspire architects who invent great structures.

More than that, the greatness of a law school like Harvard is advanced less by the brilliance of the law and society scholars it produces, more by its production of young lawyers who transform paradigms of social activism, such as a Ralph Nader, who in turn provide activism experiences that leaven the political and caring vision of a young lawyer like Barack Obama (Obama worked for Nader as a student). There can be rich connections, of course, between legal anthropology and indigenous rights centers in law schools, between urban sociology and housing rights centers, and between the feminist academy and refuges. Although we can be disappointed in law and society as a front line of the battle for social science to realize its potential, we must not sell short the virtue of law school social science in helping to leaven political engagement, dissent, and contestation as core functions of universities. Law schools are unusually strategic sites for this engagement.

Productive social science broadening of law schools and exciting activist broadenings go hand in hand. Philosophically, we might conceive of law schools as institutions with the core value of contesting what justice could mean. They need not be places where students are socialized to believe that justice means a standard Western conception of rule of law. They should seek not consensus on what justice means, but deep contestation of it. That means argumentative engagement with the virtues of Sharia law and its vices, comparing and contrasting them with the virtues and vices of Western rule of law. This has actually happened with feminist contestation of the gestalt of the man on the Clapham omnibus and much more. It has happened little with Aboriginal law, Pacific law, or Sharia law in Australian law schools.

This insight is not restricted to law as a professional discipline in universities. Social work as a profession was launched on an inspiring beginning in Chicago through the agency of great first-wave feminists and antiwar activists, notably Jane Addams. Philosophically, we might conceive of social work schools in universities as places that enliven the public sphere over what social justice should mean and how poverty and disadvantage should be confronted in a way that connects micro family practice to macro transformation. That kind of normative mission can energize social work schools as engines of a productive kind of social science and a rich form of political engagement, simultaneously. And of course law schools that are excellent at contesting what justice might mean are actively engaged with social work schools that are engaged with what social justice might mean, each enriching the conversations of the other about restorative justice, transformative justice, and more.

### **MICRO-MACRO PATHOLOGIES OF THE STRUCTURE OF SOCIAL SCIENCE**

Consider the micro-macro quality of the social science and activism of great social work and law schools. These micro-macro paths are productive ones not taken by the social sciences in other domains. A good example is Lawrence Lessig's (1999) learning from a sister profession that architecture can be as important a source of regulatory ordering as law, social norms, and markets. At RegNet today, Marie-Eve Loiselle and Michelle Burgiss-Kasthala study walls in international affairs as attempts to steer the flow of events, such as the state of Israel seeking to regulate terrorism and create new facts on the ground for peace negotiations by building the West Bank wall. Shearing & Stenning (1987) showed how the Foucauldian architecture of bars, guard rails, and other barriers regulate Disney World. Other criminologists have shown how architecture can configure natural surveillance to prevent crime. Lessig (1999) himself revealed how there is regulatory power in the self-executing properties of architectures of the Internet that the United States and firms

like Microsoft seek to put in place to ensure that certain commercial interests are advantaged, and others suppressed.

Some though by no means all in the law and society movement and criminology (starting with Edwin Sutherland) have subverted micro-macro synthesis by being antipsychology. Consequently, psychologists often feel unvalued in supposedly interdisciplinary forums such as criminology. So most psychologists have retreated to their own journals and forums, leaving social science pathologically truncated on the micro side of micro-macro explanation.

The worst offender in being myopically macro is not economics, which has seen a turn to behavioral economics, but the discipline of political science. Its statist bias is foundational. If it is not something a state or a state politician does, it is probably not very important. This bias has mellowed in many quarters with political scientists integrating the micro and the macro to transcend statism, joining with sociologists with an interest in constructivist approaches to the importance of social movements, nongovernment organizations, and global institutions.

Statist imperialism particularly infects policy science, which becomes overwhelmingly defined as public policy. It has been a constant threat to the alternative kind of social science of RegNet discussed in the next section. University leaders sometimes see what RegNet does as public policy. So perhaps it should be bundled into the public policy school. At other times there have been suggestions that RegNet should move to the law school because our faculty includes some of the most distinguished lawyers of our university. There has not yet been an attempt to push us into the business school because many of us do work on corporate social responsibility, business self-regulation, and hybrid business-state regulatory institutions. The relevance of regulatory scholarship to the law school and business school worlds of course illustrates the narrowness of corralling it into “public policy,” where performance indicators are about influencing the thinking of the state. The next section ponders RegNet as a case study of a program designed to deliver good social science that will sometimes be good public policy, sometimes incisive business policy, sometimes fine law and society scholarship, but mostly none of those things—that is, mostly just useful social science. So what might good social science be organized around, if not any of these institutions or contemporary disciplines?

## **SOCIAL SCIENCE TENTS FOR TRANSITION**

I was a professor of the Law Program in the Research School of Social Sciences from 1988. Valerie Braithwaite served in many programs across four schools before she headed the Centre for Tax System Integrity and then RegNet itself after the Center was merged into it. Val and I discussed during the 1990s with our colleagues what ideas good interdisciplinary social science might be organized around.

We did not have convincing answers and still do not. Our problem was that we had no Darwins among us who could invent something theoretically transformative. We became convinced that a way forward was a process of iterated failed attempts to dig social science out of its holes. We would keep setting up new organizational tents within structures like the Research School of Social Sciences; perhaps one day a Darwin might walk into the tent. We looked back to the School of Social Ecology at the University of California, Irvine, where we had been stimulated by postdoctoral fellowships in 1979. There was intellectual excitement in this attempt to translate a particular biological sciences breakout (social ecology). There were also difficulties in resisting careerist currents. Today we see one of the most distinguished law and society groups and one of the most highly ranked criminology graduate programs at Irvine, one that sustained the distinctive focus on white-collar crime pioneered by Gil Geis. It is hardly a failed experiment. The Irvine law and society and criminology groups bear some marks from the bold social ecology vision of their

founding. We drew on engagement with other places that enriched us in an interdisciplinary way, particularly the American Bar Foundation (ABF). Carol Heimer, Terry Halliday, Ian Ayres, and Tom Tyler from our ABF days became recurrent RegNet visitors.

The Irvine experiment looked mixed, and so did not discourage us. Of course most new organizing ideas will not begin to transform the social sciences. There will be a hundred skirmishes before success arrives, and it is unlikely to come from just mimicking the biological sciences. There were hundreds of non-Darwins before Darwin. Being a non-Darwin “try-hard” of the social sciences seemed a worthy way to spend a life. The Irvine ambition seemed right: to organize around theoretical content (social ecology) rather than around categories of abstract objects—such as political institutions, social institutions, criminal justice institutions, or law—or overly abstract models, such as rational choice. Our experience with the Reshaping Australian Institutions project, which I led from 1990–1996 in the Research School of Social Sciences (followed by Frank Castles and Geoffrey Brennan), and the Institutional Design Project before it convinced us that theory about processes of institutionalization was more important than scholarship organized around categories of institutions. The Reshaping Australian Institutions project succeeded at engaging a hundred splendid scholars at some level. It was a failure in terms of changing anything about the way the social sciences operated in Australia. Constant battles with disciplinary warlords who opposed School funds going to a project like this in preference to core disciplines (even though most funds came from outside) were exhausting and demoralizing. Reshaping Australian Institutions also failed to connect up to a transformational agenda for an Australia that many of us hoped would acquire a new constitution for the centenary of federation in 2001 that would recognize indigenous rights, transform Australia into a republic, and more.

In 1996 we persuaded the Research School of Social Sciences to transform its budget process to allocate a portion to new interdisciplinary initiatives that would survive for six years in an organizational tent. Our proposal was that the tent would fold at the end of six years; then a new tent would be competitively funded from that fraction of the School budget. In the event RegNet was not funded until 2000, and on the basis of the whole university moving to this kind of process, with all units taxed 2% of their budget to fund a competition, judged mainly by eminent external scholars, that process funded new initiatives that crossed boundaries. This was a good way for a university to go. It was abandoned as centers of disciplinary power fought back against the tax. Top management of the university preferred to grab the power to fund new initiatives as its prerogative.

Universities that care to promote innovative erection of tents outside disciplinary structures might look to emulate that 1990s Australian National University vision. Being a critic of the extant disciplinary order does not mean one should be an advocate of root and branch restructuring of universities in pursuit of one’s alternative vision. Top-down restructures rarely achieve their objectives in universities because in Mintzberg’s (1979) terms, universities are not “machine bureaucracies” (as in Henry Ford factories). He saw universities as “professional bureaucracies” (run by professors), rather like the way hospitals were run by doctors. This was more true in 1979 than today; there has been erosion by central administrators of the power of professors in universities, of doctors in hospitals. Yet it remains true that the best universities are not machine bureaucracies. The more vibrant they are, the more they have the quality of what Mintzberg called “adhocracies.” He found adhocracies in an information technology industry that was full of “organizational tents.” These tents created new technologies that made the production systems of old machine bureaucracies obsolete, creatively destroying Fordist automobile manufacturing that was no longer competitive, for example.

Val and I did not want to move rapidly to establish RegNet. We envisioned it as a structure of tents within tents, most of which would fail, all of which would be planned for shutdown after six or

so years.<sup>2</sup> We erected two experimental tents, both of which proved so surprisingly successful that for more than a decade it was impossible to shut them down, although both have now disappeared, making way for new initiatives.

The first tent was organized around the theory of restorative justice. It became known as the Center for Restorative Justice, headed by Heather Strang (working with Adjunct Professor Lawrence Sherman, both now at Cambridge) and later by Brenda Morrison (who now heads the innovative Center for Restorative Justice at Simon Fraser University). It recruited a brilliant group of PhD students that included Nathan Harris, Eliza Ahmed, and Miranda Forsyth, who are still with RegNet. Four of the former RegNet PhD students have entries in the list of classic restorative justice publications according to citations and reputational ratings that was prepared by Sawatsky (2009); 11 Australian National University faculty in total are on that list. More importantly, the RegNet restorative justice scholars created and absorbed local, indigenous, national, regional, and international ripples of engagement.

Early on, the Center as well as the social movement for evidence-based restorative justice organized conferences outside the structures of disciplines it influenced, such as criminology, law, sociology, education, and social work. It did this after so few of the disciplines turned up to our panels inside their conferences. But when the global movement for restorative justice took off from those conferences where we networked with practitioners, the criminologists and the denizens of other disciplines asked us to bring our tents inside their buildings. Restorative justice became a significant influence in criminal justice, education, child protection, and transitional justice after war. The Center for Restorative Justice attracted huge grants from governments, particularly from the United Kingdom and United States, and a generous US business benefactor, Jerry Lee. This was hardly creative destruction of criminology in a Schumpeterian sense (Schumpeter 1962), just a little dent, a tiny transformation. Restorative justice centers opened in many universities; one at Curtin University established the Asia Pacific Forum for Restorative Justice, and another at KU Leuven nurtured the European Forum for Restorative Justice. Academic journals on restorative justice followed. No academic journal articles on restorative justice were published in China in Chinese in the Chinese Sciences Citation Index until 2001. By 2013 there were 3,612, plus 10 books.

From modest beginnings in 1997 Valerie Braithwaite organized the Center for Tax System Integrity (CTSI) around the idea of responsive regulation, but also a set of ideas from the social psychology of regulation, procedural (Tyler 1990) and distributive justice (Wenzel 2003), and motivational postures (Braithwaite 2009). Tax research had previously been dominated by the disciplines of law, accounting, and economics. CTSI delivered new forms of engagement with those disciplines and with psychology without submitting to them. CTSI became the largest center in RegNet. Its output continues to be a body of work that has had as much influence in reshaping tax compliance policy around the world during the past two decades as perhaps any university research center can claim, although a clutch of exciting new university centers are now taking this field up to a new level, including a new one in the Crawford School of Public Policy at our university! CTSI made a contribution to showing how governments can be more effective in redistributing wealth from the rich to the poor. It paid its way, helping the Australian people to increase revenue from well-heeled corporate taxpayers. The Transfer Pricing Record Review and Improvement Project raised more than \$1 billion in extra revenue for every extra \$1 million spent

<sup>2</sup>In commenting on a draft, Terry Halliday remarked that this reminded him of the University of Chicago, before the end of World War II, forming committees, for example on South Asia and Social Thought, that “had extraordinary potency as cross-disciplinary conversations and exchanges.” Interestingly, Chicago’s social sciences were ahead of its biological sciences in this, with its Committee on Evolutionary Biology not being formed until 1968.

on it (Braithwaite 2005, pp. 89–98). The Australian Research Council used this in submissions to the government arguing that university research funding should be increased because this one innovation raised more revenue than the entire university research budget. While tax authorities in New Zealand and the rest of Australia’s region, the United Kingdom, and many other countries followed the Australian Tax Office’s lead into responsive regulation, other kinds of financial and environmental regulators also flocked to learn of the innovations in Australian tax administration.

Some of the 10 successor tents were pulled down in fewer than five years; others lasted longer. Microcenters of just a few people that were quite short-lived became common in RegNet. A high-impact example was Social Accountability in Sustainable Agriculture (SASA) that Sasha Courville (2003) established as RegNet’s first new faculty member in 2001 after completing a PhD on fair trade certification of coffee. As a postdoc Sasha raised \$2 million in outside funding for SASA and founded the Fair Trade Association of Australia and New Zealand, which was housed in RegNet for many years before it outgrew us, moving to a real building.

At the end of her postdoc in 2005 Sasha took the London job of Executive Director of the key node in the very network she was studying, the ISEAL Alliance, the global association for social and environmental standards that networks groups like Fairtrade, the Forest Stewardship Council, and seven other such organizations. To varying degrees, some of these organizations were global NGO-business-government hybrids of a new kind of globalized regulatory capitalism. They illustrated the need for a policy-oriented social science theory that transcended the business school model, the statist public policy model, the law school model of focusing on legal institutions, and the sociological model of studying social movements. Sasha’s PhD on coffee ecolabeling certification, her postdoc, and her executive leadership were all strategic early moves toward the now booming scholarly field of transnational private regulation (Bartley 2011, Cashore 2004). Braithwaite & Drahos (2000) built on these early insights in *Global Business Regulation*, seeing promise in an institution like the Forest Stewardship Council to drive up global regulatory standards for forests through sequenced ratchets.

Some RegNet centers, for example the Center for Regulatory Economics, were pretty much flops. I played a leadership role in helping found the Center in the Australian National University Faculty of Commerce and Economics. It struggled because it was captured by a narrow group of economic regulators who were interested only in one discipline and in the immediate policy agenda of a tiny set of regulatory agencies. Through the lens of this analysis, my leadership failure was that those were auspices that were unlikely to generate a future Wi-Fi of regulatory technology. More likely to do so was the team working on innovations in patent office administration and open source biotechnologies (Drahos 2010, Hope 2009, Palombi 2009). The RegNet center that has had the most sustained networked quality is the National Research Centre for Occupational Health and Safety Regulation. It continues to sustain an occupation health and safety network that has promoted countless collaborations in this research community. It still meets regularly as a network and still publishes a newsletter in which Liz Bluff provides the most insightful abstracting service of the latest highlights from the regulation literature that can be found anywhere. It has seen sterling international leadership by Neil Gunningham, Richard Johnstone, Andrew Hopkins, and others.

We thought regulation was a promising field on which new tents might be erected because we were conscious of spineless regulation that had failed to touch problems like climate change or like derivatives that could cause economic crisis (as occurred in 2008). We had long worried about the limits of the simple economism of putting a price on carbon (Braithwaite 1981). We wrote of the rise of the regulatory state, then the regulatory society, until some of us were persuaded by David Levi-Faur (2005) and Jacint Jordana’s data that we live in an era of Regulatory Capitalism where markets are more vibrant, but so is regulation (Braithwaite 2008). Although regulation still does seem a central topic for how governance works in an age where steering grew in importance

compared with rowing, we were never messianic about it, seeing it as one of many fallow fields where a reconfigured social science might flourish and where we could bring some starting theories, such as responsive regulation, restorative justice, nodal governance, smart regulation, and regulatory ritualism, to the table. While Levi-Faur was at RegNet, he, along with me and Cary Coglianese, established *Regulation & Governance*, which became a leading law and society journal and a leading governance journal.

The ideas of regulatory space and a constitutive conception of regulation that were foundations for RegNet's nodal governance work were first opened up by Clifford Shearing in an introduction coauthored with me and Peter Grabosky to a much unread volume from a poorly attended conference of the early years of thinking about RegNet called *Business Regulation and Australia's Future* (Grabosky et al. 1993). That conference attracted a who's who of regulatory leaders as speakers. One of its chapters was one of Neil Gunningham's (1993) most brilliant pieces, which diagnosed regulatory failure in Hong Kong in the 1987 stock market crash. It was an early work on nonstate ordering of regulatory problems in what came to be called derivatives markets, and compared regulatory failure there with environmental and occupational health and safety regulatory failure. That kind of comparativism became a model for much that was to follow at RegNet, as did Grabosky's rich comparative oeuvre, including his book with Gunningham on *Smart Regulation* (Gunningham et al. 1998) that continued a tradition on meta-regulation that was so brilliantly taken up by an early RegNet member, Christine Parker (2002).

It was a sobering experience at the time that so few attended the 1992 conference and so few read or cited the book that first explored such ideas. In those days there were people who thought of themselves as environmental scholars, as occupational health and safety scholars, as tax experts, who would attend specialist conferences and read specialist books in those fields. But few were generalist regulatory scholars who would attend a conference that traversed many such fields. By 2014 an interdisciplinary community of regulatory scholars has been created that discusses diverse types of regulation at the Society for Advancement of Socio-Economics, the Law and Society Association, and the European Consortium on Political Research Standing Group on Regulatory Governance. Yet if one gets up at those meetings to discuss the application of regulatory theory to the regulation of crime, genocide, war, or families, business regulatory types can begin to shift in their seats with a "this has been assigned to the wrong panel" squirm. In other words, regulatory theory as general social science theory of steering the flow of events (Parker & Braithwaite 2003) has not traveled far. For all its little successes along the way, therefore, regulatory theory has largely failed to prove a transformative move in a fertile, theoretically motivated reorganization of the social sciences.

Perhaps RegNet was just lucky to appoint good people, people who were recognized as good because of their connection to the law and society world like Gunningham, Colin Scott, and Imelda Maher and Adjunct Professors like Halliday, Eve Darian-Smith, and Sally Merry. But that was not really true of Grabosky, Shearing, Strang, Julie Ayling, Kate Henne, Jennifer Wood, Benoit Dupont, Jenny Fleming, Monique Marx, Augustine Park, Rod Broadhurst, Adjunct Professor Sherman, and many others (whose reputations were more as criminologists); Levi-Faur, Kyla Tienhaara, Bina D'Costa, Morton Pedersen, Jeroen van der Heijden, Burgiss-Kasthala, and others (who were political scientists); Kirsty Hobson, David Marshall, Courville, Bruce Doran, and Robyn Bartel (geography/human ecology); Valerie Braithwaite, Ahmed, Tina Murphy, Michael Wenzel, Harris, and others (psychology); Greg Rawlings and others (anthropology); Mary Ivec and others (social work); Nicola Piper, Anna Hutchens, Vivienne Waller, Parker, Jenny Job, and others (sociology); Veronica Taylor (an Asian law and social science scholar); Emma Larkins, Adjunct Professor Martin Krygier, and others (philosophy-history-politics); Peter Drahos (an interdisciplinary scholar and philosopher of intellectual property); Ben Authurs (literary studies);

Mamoun Alazab (information technology); and Sharon Friel, Alison Ritter, and Judith Healy (as public health researchers), among others. Perhaps RegNet's most respected leader in the Australian academy and as a public intellectual is Hilary Charlesworth, who has never attended a Law and Society Association meeting. She is a preeminent feminist international lawyer who has made Canberra as much an experimental site of rights institutions (working with Helen Watchirs, who left her RegNet postdoc to lead the Australian Capital Territory Human Rights Commission) as it has been an experimental site for restorative justice. Charlesworth sits in many influential places that make important decisions, at the time of writing as a judge of the International Court of Justice on the Antarctic whaling case against Japan, for example. One way of looking at RegNet is as a group that had some overblown ambitions about transforming social science but in reality simply did some good bits of work in settled fields, and some ordinary bits, too. There is some truth to that way of seeing RegNet.

RegNet also failed to shut itself down! The university did not want it closed because it was a high-impact group. For 13 years now it has had in the range of 20 to 30, mostly junior, academic staff and a much larger number of PhD scholars. Those working in it did not want it shut because they had mortgages to pay. In the original design, those with tenured jobs would revert to them somewhere else once the tent came down. This was moot once RegNet was no longer part of the old Research School of Social Sciences. RegNet did succeed, however, in closing most centers internal to RegNet.

### **RETIRING TO A LIFE OF SOCIAL SCIENCE CAMPING**

Perhaps there is comfort in thinking that just shaking underperforming institutions like the social sciences might cause a little creative destruction (Schumpeter 1962), a little innovation by entrepreneurs attracting excellent people and funds away from the obsolescent. Faculties of many of the oldest social science disciplines suffer the obsolescence of male domination. Half of RegNet's faculty has always been female, and we have been blessed with leading women—Veronica Taylor, Hilary Charlesworth and Valerie Braithwaite—serving as the three most recent Directors of RegNet, with the next Director in 2015 to be another, Sharon Friel.

The social sciences remain little touched by the RegNet experiment. Perhaps we should not call it a failed experiment. We take comfort in thinking that a failure with glimpses of success shows promise for decades of dynamic experimentalism (Dorf & Sabel 1998). There might still be virtue in the ambition of learning through monitoring whether new tents organized around theoretical ideas such as regulatory capitalism, restorative justice, responsive tax system integrity, or nodal governance produce insights. The ambition of strengthening methodological competence through nodes of expertise across interdisciplinary networks clearly shows promise. Creative destruction of disciplines organized around types of institutions and “models of man” by tented studies of theories of institutionalization remains a worthy project. Defending the core values of universities and enriching conversations with politically active students will always be noble work. With decades, hundreds of new tents might eventually come to house some Darwins or Einsteins of the social sciences. A nice metaphor of the regulatory literature has been that audit and other technologies of regulation can be rituals of comfort (Power 1997). Perhaps erecting social science tents is a ritual of comfort for people who just like camping to get away from the disciplined crowd.

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