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‘Doing’ Medical Law *and* Ethics

Putting Interdisciplinarity to Work

SHARON COWAN, EMILY POSTAN AND NAYHA SETHI

1.1 Introduction

Interdisciplinary work is hard work, as anyone who has done it knows. In the current research funding environment, it more often than not means working in teams, collaborating across countries, cultures and languages, as well as disciplines. It can be challenging to bring together a group of people – and a range of discourses – from different disciplines, not only because of the ever-increasing time constraints under which academics operate but also because truly interdisciplinary work means negotiating different approaches to research methods, terminology, normative import, ethical boundaries, writing and publishing conventions, and so on. Interdisciplinarity can also mean working as a solo researcher, using the methods and perspectives of disciplines other than one’s own to inform, shape and enrich a line of enquiry or a set of specific research questions. Working alone avoids many of the challenges inherent in large interdisciplinary projects, allowing the writer to frame and realise their own research goals. The lone interdisciplinary scholar faces other challenges, including the onerous task of familiarising themselves with the conventions and epistemological parameters of other disciplines. However, as we will explore, interdisciplinarity brings benefits as well as challenges, including the opportunity to paint a more complex picture, create a unified or multi-stranded voice, and construct an intellectual contribution that is more than the sum of its parts.

In this chapter, we explore more specifically the benefits – and challenges – of taking an interdisciplinary approach to the field of medical law *and* ethics, where the ‘*and*’ operates both as a descriptive conjunctive term and as a way of positioning the two in relation to each other. Their

conjunction questions the compartmentalisation of medical law (and medical jurisprudence, traditionally perhaps a narrower, doctrinally oriented field of study) as the concern of academic (and practising) lawyers, and the study of ethics as the concern of philosophers. It does so not by bolting on ethics as an afterthought or treating medical law and ethics as if they were separable ‘parts of pop-bead necklaces’.¹ Rather, different perspectives have to be brought together at a fundamental level to challenge the assumption that each field of study is truly independent from the other. The composite field of ‘medical law and ethics’, itself already explicitly interdisciplinary in name, can also then be opened up to critical engagement with other disciplines such as sociology, philosophy, political theory, policy studies, health sciences and anthropology, as well as critical perspectives such as feminism² and critical race theory.³ Indeed, it is an inherently porous and evolving field of study. In our view, this broader understanding of ‘medical law and ethics’ moves us towards more socially and ethically grounded contextual studies of medical and health-care practice.

The interdisciplinarity of medical law and ethics is reflected in its research focus: the objective is no longer simply to excavate the development of the law or to interrogate legal decision-making. Nor is the aim limited to examining the social and human impacts of the practices of medical law and regulation (though these remain substantial and critical aspects). Rather, medical law and ethics extends also to thinking about how ethical and other normative frameworks can inform the governance and practices of medicine and the biosciences in areas where the law does not, or cannot, reach (for example, because it is normatively ill-equipped to do so, or because it is ill-suited to keep pace with developments in medical knowledge and technology). As we will explore, ‘doing’ medical law and ethics necessitates an interdisciplinary approach of the sort that has been embraced by our friend and colleague Graeme Laurie, in teaching and in research.

¹ Elizabeth Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (Beacon Press 1988) 15.

² See, for example, the work of Julie McCandless, Sally Sheldon and Marie Fox.

³ Chandra Ford and Collins Airhihenbuwa, ‘Critical Race Theory, Race Equity, and Public Health: Toward Antiracism Praxis’ (2010) 100 (Suppl 1) *American Journal of Public Health* S30; ‘Commentary: Just What Is Critical Race Theory and What’s It Doing in a Progressive Field like Public Health?’ (2018) 28 (Suppl 1) *Ethnicity & Disease* 223. See also Khiara Bridges, Terence Keel and Osagie Obasogie (eds), ‘Critical Race Theory & the Health Sciences’ (2017) 43 *American Journal of Law and Medicine*.

In this chapter, in keeping with this book's overarching theme, we suggest that it is timely and important to consider what is the legacy of interdisciplinarity for scholars today, and whether – and if so, how – we might choose to continue or disrupt it. This includes asking what might be risked by engaging in interdisciplinarity. We begin by setting out what we mean by interdisciplinarity in our context, before moving on to showcase three ways that Graeme's research and teaching exemplify the openness of spirit and the intellectual curiosity that are required to engage meaningfully in interdisciplinarity. In doing so, we explore the enriching and enabling features of interdisciplinary approaches, and the dividends that can come from working in interdisciplinary ways. However, interdisciplinarity should not be employed just for its own sake, or as an end in itself⁴ – rather, it is a means of understanding multi-faceted problems, and its success depends upon how we define the term, and why and how it is utilised.

1.2 Implementing Interdisciplinarity

In essence, interdisciplinarity integrates insights from a range of disciplines into a novel framing or understanding of an issue. As noted, the aim of presenting a new, interdisciplinary approach can be achieved either through collaboration with scholars from a range of disciplines or as a lone scholar using insights and methods from cognate – or indeed entirely unrelated – disciplines. As becomes evident in our case studies, Graeme has engaged in both.

1.2.1 How Is Interdisciplinarity Defined?

It appears that there is no unitary or unified definition of interdisciplinarity; Callard and Fitzgerald have described it as 'a term that everyone invokes and none understands'.⁵ At its broadest, interdisciplinary studies have been described by Barthes as 'creating a new object, which belongs to no one'.⁶

⁴ William Twining, 'Law and Anthropology: A Case Study of Inter-disciplinary Collaboration' (1973) 7 *Law and Society Review* 561.

⁵ Felicity Callard and Des Fitzgerald, *Rethinking Interdisciplinarity across the Social Sciences and Neurosciences* (Palgrave Macmillan 2015) 4.

⁶ Roland Barthes, *The Rustle of Language* (University of California Press 1989), cited in Erin McClellan and Amanda Johnson, "Deep Interdisciplinarity" as Critical Pedagogy:

According to Krishnan,⁷ one difficulty lies in properly distinguishing between crossdisciplinarity, multidisciplinary and transdisciplinarity. For Krishnan, crossdisciplinarity refers to the borrowing of methods or conclusions from another discipline – essentially, how do other disciplines answer this question (or, how would one discipline answer a question raised in another discipline)? – while multidisciplinary frequently involves a team of researchers from different disciplines, often led by a principal investigator, working together to solve a common problem. Transdisciplinarity, on the other hand, says Krishnan, can mean working with people outside of the academic context: for example, ‘stakeholders’, civic society and so on (though, of course, it might also imply practices that transcend the boundaries of individual disciplines to create a new approach or knowledge base altogether). Notwithstanding these apparent distinctions, we agree with Krishnan that all of these (and potentially others) are types of interdisciplinary work, and we will say more later about how Graeme’s work has embraced these approaches to varying degrees.

1.2.2 *Why Turn to Interdisciplinarity?*

An interdisciplinary approach is necessitated, says Newell, ‘by complexity, specifically by the structure and behaviour of complex systems’.⁸ Of course, we need not accept Newell’s view that interdisciplinarity is merited in the study only of complex systems (where complex appears to have a particularly scientific connotation). We might argue that interdisciplinarity is merely a useful way of better understanding a particular issue from overlapping yet distinct perspectives, regardless of whether or not the ‘system’ or issue in question is ‘complex’. In fact, many issues and systems – such as the practice of medicine, or legal decision-making – may appear to some as straightforward, until we subject them to an interdisciplinary perspective.

Teaching at the Intersections of Urban Communication and Public Place and Space’ (2014) 5 *International Journal of Critical Pedagogy* 5, 9.

⁷ Armin Krishnan, ‘Five Strategies for Practicing Interdisciplinarity’ (*ESRC National Centre for Research Methods NCRM Working Paper Series*, 2009) http://eprints.ncrm.ac.uk/782/1/strategies_for_practising_interdisciplinarity.pdf (accessed 19 January 2021). See also Simon Penny, ‘Rigorous Interdisciplinary Pedagogy: Five Years of ACE’ (2009) 15 *International Journal of Research into New Media Technologies* 31 for a discussion of ‘deep’ versus ‘shallow’ interdisciplinarity.

⁸ William Newell, ‘A Theory of Interdisciplinary Studies’ (2001) 19 *Issues in Integrative Studies* 1.

Newell lists seven diverse motivations for interdisciplinary study – the three most relevant to our discussion here are social, political and epistemological critique; social, economic and technological problem solving; and production of new knowledge. Similarly, Turner suggests that interdisciplinarity is the result of an increasing focus on 'problem solving' in the context of complicated social issues that cannot be resolved on a 'monodisciplinary' basis; interdisciplinarity is therefore inherently critical of existing disciplinary boundaries.⁹ He argues that there is some consensus that the study of health and illness is particularly well-suited to interdisciplinary approaches because of the complexity of disease and illness, as well as the 'multicausality of social, individual, biological and cultural phenomena'.¹⁰

The field of medical law and ethics covers a wide range of disparate and complicated issues – not only the intricacies of legal rules, which by themselves can be technical and complex, but also ethical values and discretion in clinical decision-making, as well as government policy on public health and on the appropriate boundaries of medical research, and so on. Navigating this terrain is clearly both a legal and an ethical project, but it also has social and political impacts, and relies on technology and fast-paced knowledge development. In short, 'doing' medical law and ethics requires attention to a diverse array of complex issues. It is not difficult to see, then, how it might be thought that doing medical law and ethics requires an interdisciplinary approach.

How do these motivations to work interdisciplinarily translate into practice? How might we use interdisciplinarity to best effects? Or, as Callard and Fitzgerald have put it, '[w]hat, we ask, would a delicate, difficult, transgressive, risky, playful, and genuinely *experimental* interdisciplinarity . . . look like?'¹¹

1.2.3 *How Is Interdisciplinarity Best Utilised?*

We can see the answer to this question in Graeme's research and teaching over the last twenty-five years, much of which is interdisciplinary, as our case studies below will highlight (though, as is evidenced by other chapters in this collection, his powerful contributions to legal scholarship in his own 'voice' are also abundantly clear). Graeme's interdisciplinary

⁹ Bryan Turner, 'The Interdisciplinary Curriculum: From Social Medicine to Postmodernism' (1990) 12 *Sociology of Health and Illness* 1, 2–3.

¹⁰ *Ibid.*, 4.

¹¹ Callard and Fitzgerald (n 5) 4 (emphasis in original).

approach to his work reminds us that what look like neat compartments of study, within the university at least, have more porous parameters than we might think.¹² His work displays many of the features that Klein has identified as characteristic of interdisciplinarity,¹³ notably, defining problems that need to be solved. In Graeme's research, these include the right not to know, the regulation of personal data and tissue, governance of health research, and intellectual property concerns. Doing interdisciplinary work also requires identifying the knowledge systems and disciplines (that is, theories, literatures and methods) needed to address those problems; such as, in Graeme's case, sociology, anthropology, bioethics and philosophy. It involves constructing an integrated framework and deploying common or shared concepts and vocabulary to understand those problems (such as liminality, or spatial privacy, as explored further in our case studies). These are, as Newell says,¹⁴ epistemological issues, but, in Graeme's case, they are also practical issues of team management and motivation, skills that are as rare as they are essential but that Graeme, as anyone who has worked with him knows, has down to a fine art.

Can interdisciplinary work have beneficial impacts on the real world? Recent experience of the Covid pandemic has shown how crucial social science and humanities perspectives are to forming inclusive and evidence-based public health and health-care responses.¹⁵ However, Turner is sceptical that disciplines such as sociology can make much impact on the day-to-day practice of medicine,¹⁶ since they are always to some degree 'subordinate' to medicine.¹⁷ He suggests instead that it is usually a crisis of confidence or legitimacy that prompts change within medical practice. Medicine is clearly a powerful discipline within contemporary society. Law, however, is another. One of the reasons why it is interesting and important to research and teach medical ethics and law together, as Graeme has done, is that there are often epistemological as well as ethical

¹² Turner (n 9) 2. See also Raphael Foshay (ed), *Valences of Interdisciplinarity: Theory, Practice, Pedagogy* (AU Press 2011) who argues that universities are inherently interdisciplinary.

¹³ Julie Thompson Klein, *Interdisciplinarity: History, Theory, and Practice* (Wayne State University Press 1990) 188–9.

¹⁴ Newell (n 8) 14.

¹⁵ Cecilia Vindrola-Padros, Georgia Chisnall, Silvie Cooper et al, 'Carrying Out Rapid Qualitative Research During a Pandemic: Emerging Lessons from COVID-19' (2020) 30 *Qualitative Health Research* 2192.

¹⁶ Turner (n 9) 12.

¹⁷ *Ibid.*, 19.

conflicts between the two, and these must be resolved in a very practical sense for the sake not only of health-care practitioners and patients but also of governments, researchers and others. Two of our case studies point specifically to these challenges.

As noted already, interdisciplinary engagement can entail the practical and intellectual challenges of navigating the methods, literatures and languages of disciplines in which one has not been trained – and doing so in a way that is respectful of their provenance but also robust enough to challenge territoriality. It also invites a new class of concerns about how to situate and where to publish one's research.

Some of these concerns are noted by Callard and Fitzgerald. In outlining their worries about interdisciplinarity in its current form,¹⁸ they question whether an interdisciplinary approach is inherently constructive or progressive, and whether it can be a distraction or an exercise conducted as a result of institutional or other pressures. On the last point, Callard and Fitzgerald note Barry and Born's critique that '[i]nterdisciplinarity has come to be at once a governmental demand, a reflexive orientation within the academy and an object of knowledge'.¹⁹ This is perhaps most apparent in research council funding priorities and university 'vision' statements and goals.

Interdisciplinarity's 'reflexive orientation' is evident in the recent growth in interdisciplinary courses and relatedly in the formation of 'hybrid' scholars trained in multiple disciplines, who are equipped with a diverse set of skills belonging to multiple and distinct disciplinary homes. Yet, while there can be many merits to such career profiles, there are also distinct downsides. A lack of deep training in any one discipline can carry encumbrances. For example, a researcher can experience the disorientation of having many, potentially competing, sites of intellectual enquiry without the comfort of the disciplinary foundations and boundaries of a single home discipline.

Even where scholars are trained in one discipline, they may be employed in departments or schools that are predominantly the terrain of another discipline (such as a social scientist in a medical school or a philosopher or criminologist in a law school). This can result in the researcher experiencing a continual need to justify themselves as 'belonging' in another discipline's 'home', and to demonstrate their value in

¹⁸ Callard and Fitzgerald (n 5) 4.

¹⁹ Andrew Barry and Georgia Born, *Interdisciplinarity: Reconfigurations of the Social and Natural Sciences* (Routledge 2013) 4. The book examines the current 'preoccupation' with interdisciplinarity.

a way that other colleagues perhaps may not. There might also be unrealistic expectations that a researcher has to encounter, such as those relating to their breadth of expertise in their home discipline: 'you trained in law, you must know about all contract/criminal/negligence/intellectual property law'. This can produce a sense of 'disciplinary homelessness' and, in turn, increased exposure to precarity of employment.

Despite these potential challenges, we agree with Callard and Fitzgerald that just as interdisciplinarity is not inherently progressive, neither is it inherently risky.²⁰ Rather, its success lies in the way that it is utilised. We move now to show, through our three cases studies, that Graeme's approach has been particularly instructive and constructive in this regard, both through his own contributions to interdisciplinarity and in how this has influenced our individual and team working.

1.3 Case Study 1: Interdisciplinarity and Pedagogy: A Legacy of Openness (Sharon Cowan)

My professional connection with Graeme Laurie began before I took up my post as a lecturer at Edinburgh Law School in 2004 because he was on my interview panel. The interview was for a lectureship in criminal law and medical jurisprudence, and I was nervous because my knowledge of medical jurisprudence (or medical law as it was named at my previous institution) was limited to reproductive rights and the legal regulation of transgender identity and health care. Somehow, I persuaded the panel that I was appointable. When I took up the post, I became even more nervous because the kind and intellectually curious Dr Laurie who interviewed me was going on sabbatical for a year. Since, by the time I joined the School, the medical jurisprudence team comprised only Graeme and the esteemed emeritus professor J Kenyon Mason, and every class was co-taught by two teachers, this left me in my first year of a new post teaching with the very eminent and – at the time – rather intimidating Professor Mason. Before being appointed as an Honorary Fellow in Law in 1985, Ken Mason, as he was known, was the Regius Professor of Forensic Medicine at the University of Edinburgh. As such, he brought medical experience and expertise directly into our classroom, a rare thing for a law school. Graeme became an integral part of the medical jurisprudence team (which originally included Professor

²⁰ Callard and Fitzgerald (n 5) 12.

Alexander McCall Smith) in 1995 and it became clear when I arrived almost a decade later that my new colleagues had forged a formidable and unique partnership, and that I was being welcomed into a rather unusual unit. From 2004 onwards, the three of us became co-teachers, colleagues and then friends.

Ken passed away in January 2017. I have missed him dearly, and in ways that are difficult to document. His many legacies have been memorialised in the work of the Mason Institute, named after him, as well the Festschrift in his honour, *First Do No Harm*.²¹ Graeme has consciously taken forward many of Ken's intellectual legacies. Here, though, I would like to speak about one of the great joys that, for me, is an important legacy of having worked with Graeme – my time spent with him co-teaching medical jurisprudence.

As well as teaching with Ken, I taught side-by-side with Graeme for thirteen years, where I had some of the best teaching moments of my career. The co-taught classroom creates particular opportunities for interdisciplinary teaching and learning. Without being overly reductive, with Ken as a medic, Graeme a private lawyer and me a queer, feminist criminal lawyer, we each brought very different perspectives that led us to different reasoning, and often different outcomes (though, perhaps surprisingly, also sometimes similar outcomes!), when presented with a thorny medico-legal ethical problem. Modelling 'compassionate debate' in the classroom in this way supports critical inquiry as students see simultaneously a variety of views – that here were informed by different disciplinary epistemologies – and participate in the process of knowledge as relative and situated.²²

In fostering the open-spirited classroom that he and Ken created, Graeme's classrooms were exciting places to be. When we taught together, I never saw Graeme with a single note in his hand, though I observed many intrigued and engaged faces, and every session was fresh and inspiring. I was a newcomer to the discipline, yet it was obvious to me that his knowledge of medical law was deep and all-encompassing, but he was also keen to try new ways of teaching and learning, designing new curricula and courses that kept us in tune with the fast-developing discipline of medical law and ethics, and reaching out to other disciplines that could inform our teaching. Part of this journey, and building on the foundations of a single course at Edinburgh Law School, was the creation of a world-leading LLM programme in 'Medical Law and Ethics' (designed and developed in partnership with a colleague appointed to

²¹ Sheila McLean (ed), *First Do No Harm: Law, Ethics and Healthcare* (Routledge 2006).

²² McClellan and Johnson (n 6) 8, 11.

initiate the programme, Shawn Harmon). One of the core undergraduate and postgraduate courses is still called 'Fundamental Issues in Medical Jurisprudence', recognising the roots of the subject area (and reflecting the title of the established Chair in Medical Jurisprudence) as grounded within the theoretical analysis of legal decision-making on medical matters. Yet, naming the LLM programme 'Medical Law and Ethics' – as well as further appointments of colleagues including Agomoni Ganguli-Mitra and Emily Postan, who specialise in researching and teaching bioethics – allows for ethics to have a more conspicuous role in the study of the intersection of law and medicine within Edinburgh Law School, and also reflects the title of the well-established Mason and McCall Smith's *Law and Medical Ethics* textbook, originally co-authored by Ken and Alexander McCall Smith, with later editions edited by Ken and Graeme and then by Graeme and others. Embracing a law and medical ethics framework reflects a further shift to engage with a more international and interdisciplinary student body; today, LLM students enrolled in the Medical Law and Ethics programme come from a wide range of backgrounds, including medical practice, dental practice, nursing, health-care administration and the humanities, as well as law.

An open engagement with interdisciplinarity and the internationalisation of health as 'global' is apparent across Graeme's research career to date, but it is also discernible in his approach to teaching. During my time as his co-teacher, Graeme spearheaded the development of an innovative 'flipped' course, named 'Contemporary Issues in Medical Jurisprudence'. Students in this course were put into groups, and each group picked a seminar topic which they researched and for which they produced the class handout. Groups were encouraged to choose topics that demonstrated the cutting-edge and interdisciplinary nature of contemporary medico-legal ethical dilemmas. The students then became the teachers of the two-hour discursive class, and each group's skills as researchers and seminar leaders were assessed. This was an original approach that the students invariably found terrifying at first but ultimately empowering and rewarding.

Group work, and specifically co-operative learning and interactive engagement, has been shown to be particularly useful for law students, improving student experiences of learning as well as outcomes.²³ Moreover, learning through the method of inquiring into current social

²³ Mary Keyes and Kylie Burns, 'Group Learning in Law' (2008) 17 *Griffith Law Review* 357; Alex Steel, Julian Laurens and Anna Huggins, 'Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students' Engagement, Skills Development and Deep Learning' (2013) 36 *University of New South Wales Law Journal* 30.

'culture-embedded' problems can lead to what Goredetsky and colleagues have called 'contextual learning', which is informed by interdisciplinary bodies of knowledge.²⁴ Using such methods to teach law – a subject that is often carved into neat, divisible and separable parts and sub-parts – can be risky and challenging; students, who might be exposed to this approach in only one or two elective subjects and not as part of the core curriculum, may resist the critical epistemological challenges that come with more interdisciplinary learning. But such learning is enhanced and dynamic because it is initiated by the students themselves, and 'reflects the present or developing epistemologies that dominate or will dominate [their] lives'.²⁵

The independence and confidence that these teaching methods instil surpass the skills produced through the 'banking' method of learning,²⁶ where the 'expert' teacher 'deposits' knowledge in the 'novice' student, that often characterises the teaching of law. For Friere, the teacher is a 'catalyst, or animator' creating space for students to 'become creative subjects of the learning process rather than passive objects'.²⁷ Graeme has always taken on this role of animator in his teaching. His willingness to introduce such non-traditional methods of interdisciplinary teaching, learning and assessment, which fundamentally transformed an already well-established and popular syllabus, speaks to his own openness to continual learning, and his capacity persistently to challenge himself and others around him. I am fortunate enough to have witnessed and learned from this first-hand for more than a decade.

The openness of spirit that marks Graeme's teaching is, of course, also manifest in his *research*.

1.4 Case Study 2: Two Mantras for Interdisciplinary Research (Nayha Sethi)

1.4.1 The 'So What?' Question

Graeme's colleagues and students will be familiar with the 'So what?' question, a critical tool, akin to a mantra, persistently invoked by him to encourage us to reflect upon the implications of our own research. It is

²⁴ Malka Gorodetsky et al, 'Contextual Pedagogy: Teachers' Journey Beyond Interdisciplinarity' (2003) 9 *Teachers and Teaching* 21.

²⁵ *Ibid.*, 31.

²⁶ Paulo Friere, *The Pedagogy of the Oppressed* (Herder and Herder 1970).

²⁷ Gillian Calder, 'Performance, Pedagogy and Law: Theatre of the Oppressed in the Law School Classroom' in Zenon Bańkowski and Maksymilian Del Mar (eds), *The Moral Imagination and the Legal Life: Beyond Text in Legal Education* (Routledge 2012) 223.

interconnected with related questions: ‘What will have changed as a result of this work?’, ‘What does this mean for others working on this topic?’, ‘What are the real-world implications?’, ‘How can these be translated into practice?’ and ‘What value and impact will this new knowledge generate?’. ‘So what?’ and associated inquiries speak to Graeme’s commitment, apparent throughout his expansive body of work, towards ensuring that our scholarship within and beyond medical law and ethics remains connected to, and contributes towards, the world beyond academia (what Krishan has termed ‘transdisciplinarity’, as noted in Section 1.2.1). For some, the significance of our research within the academy or out in the ‘real world’ is easily discernible. Others, though, may have experienced episodic existential crises, approaching the ‘So what?’ question with some trepidation. Graeme’s contributions remind us that looking to other disciplines and to actors within and outwith academia offers invaluable opportunities for identifying how, and ensuring that, our academic work can satisfactorily meet the considerations laid out under the umbrella of the ‘So what?’ question.

This is evidenced, for example, in Graeme’s sustained engagement with social sciences to generate empirically grounded governance solutions across a variety of health research contexts, including DNA databases²⁸ and electronic health records. My first academic post working with Graeme was at the University of Edinburgh on the Scottish Health Informatics Programme (SHIP). This initiative aimed to establish a research platform for electronic health records held by NHS Scotland, and we were responsible for shaping and delivering the legal workstream. Graeme stressed at the outset that building a governance framework solely based on ethical and legal issues was not an option. Rather, it would necessitate close collaboration with social science colleagues on the Public Engagement workstream of the project.

Having a background in law, including the completion in 2009 of the ‘Fundamental Issues in Medical Jurisprudence’ LLM course at Edinburgh, I was relatively familiar with key ethico-legal issues of data use and health research. Collaboration with social scientists, however, presented an entirely new explorative lens. As a young legal scholar, the idea that social scientists were concerned with telling a story, devoid of

²⁸ Gillian Haddow et al, ‘Tackling Community Concerns about Commercialisation and Genetic Research: A Modest Interdisciplinary Proposal’ (2007) 64 *Social Science & Medicine* 272.

the doctrinal inflexibility which lawyers can tend so confidently to impose, often without critical reflexivity or acknowledgement upfront, was certainly novel. Rather than merely asking what the law prescribed, or what the ethical implications of various data access permeations were, our colleagues, led by medical sociologist Professor Sarah Cunningham-Burley, were guided by a distinct set of concerns: 'What do publics think?', 'What are different stakeholders concerned about?', 'Are the governance approaches under proposal acceptable?', 'Why or why not?'. We explored such questions through a variety of sociologically informed methods, including workshops, focus groups, consultations, systematic reviews and questionnaires. Throughout, our social scientist colleagues reminded us of their consternation over the 'tokenistic' ways in which public engagement is often annexed to grant proposals and subsequently funded projects; it is frequently about paying lip service, but stops short of meaningful deliberation. It was clear that Graeme was committed to ensuring that we would not reinforce this pattern but, rather, challenge it.

We incorporated the findings from this research directly into our Principled Proportionate Governance Framework,²⁹ which was reflective of and informed by stakeholder and – crucially – public concerns. Indeed, advocating for the inclusion of public and stakeholder perspectives has remained a key theme in much of Graeme's work.³⁰ As I have noted elsewhere, alongside colleagues from other disciplines, the importance of meaningful engagement is particularly pertinent today given the recent growth in data-driven initiatives and associated data controversies.³¹ Graeme's scholarship reminds us that in appealing to other disciplines, wondering what they might have to offer us, it is equally important to consider what we in our own disciplines may be able to offer in return and that this responsibility extends beyond the walls of academia into 'the real world'.

²⁹ Graeme Laurie and Nayha Sethi, 'Towards Principles-Based Approaches to Governance of Health-Related Research Using Personal Data' (2013) 4 *European Journal of Risk Regulation* 43.

³⁰ See, for example, Pam Carter, Graeme Laurie and Mary Dixon-Woods, 'The Social Licence for Research: Why care.data Ran into Trouble' (2015) 41 *Journal of Medical Ethics* 404.

³¹ See, for example, Mhairi Aitken et al, 'Why the Public Need a Say in How Patient Data Are Used for Covid-19 Responses' (2020) 5 *International Journal of Population Data Science Letters to the Editor*; and James Shaw, Nayha Sethi and Christine Cassel, 'Social License for the Use of Big Data in the COVID-19 Era' (2020) 3 *npj Digital Medicine* 128.

Participating in a larger interdisciplinary team for the Liminal Spaces project more recently³² has provided additional learning opportunities, including lively discussions, masterfully stewarded by Graeme, focusing on methodological approaches (or lamented lack thereof!); theoretical frameworks; epistemology; and on one particular occasion the somewhat amusing but crucial realisation that we were appealing to the same terminologies – including ‘normativity’, ‘case study’, ‘embodiment’, even ‘liminal’ – in very different ways. These interactions provided cautionary tales against assuming shared understanding of key terms. No matter how trite our own interpretations of ‘basic’ terminology may seem to us, clarification of key terms, communication and exploration of areas of divergence as well as complementarity are imperative from the outset. But beyond this, interdisciplinary working challenges us to question the ways in which we frame research problems, the critical lenses we choose to employ and the need to be alert to, declare and justify them. The enriched insights to be gained from adjusting these lenses make interdisciplinarity well worth the effort. In turn, it is these enriched insights that can tend to reveal to us multiple and diverse responses to the enduring ‘So what?’ question. These are often responses that we simply would not be able to discover without actively engaging with other disciplines beyond the law and with other actors beyond the academic setting to reveal to us the varied real and potential impacts of our scholarship.

1.4.2 *Originality, Significance and Rigour*

Anyone participating in a UK university Research Excellence Framework (REF) assessment will be familiar with the holy trinity of ‘originality, significance and rigour’. For Graeme, this was another key mantra (and one for which he was often playfully teased!). His work demonstrates that engaging with other disciplines can provide fruitful dividends for fulfilling these criteria. For example, a recurring theme through his work is his plea to legal scholars to avoid the temptation of dismissing offhand caricatures of law/regulation as an encumbrance to those wishing to ‘get on with their research’. Rather, he suggests that it is our responsibility as medico-legal scholars to understand, demonstrate and effectively communicate the ways in which law can act as a facilitator.

³² www.liminalspaces.ed.ac.uk/ (accessed 20 January 2021).

But equally, if regulatory challenges are to be overcome, we must acknowledge the limits of the law.³³ Graeme's work is exemplary in showing us how robust engagement (rigour) with other disciplines such as social sciences, philosophy and anthropology can provide legal scholars with the novel (original) insights that are necessary to enable us to do this in ways that are impactful (significant). This approach has influenced my scholarship, much of which focuses on supporting context-sensitive decision-making in health research.³⁴ For example, I have considered the diverse functions that rules and principles can perform, and the repercussions of adopting rules-based and principles-based approaches for those charged with navigating complicated regulatory landscapes within health research. My doctoral thesis considered how best practice instantiations can provide context-sensitive and practically grounded support to decision-makers in determining what to do.³⁵ Subsequently, I have explored this further in the context of conducting research and innovation during global health emergencies.³⁶

Most recently, I was inspired by Graeme's revival of the anthropological concept of liminality and its novel application to health research regulation. Graeme problematises the law's tendency to create silos through categorisation of regulatory activities, subjects and objects.³⁷ These categorisations are themselves legacies left over from previous regulatory regimes, which may at their time of inception have been fit for purpose but no longer remain so and which, paradoxically, may frustrate the original goals of legislation or regulation. Graeme argues that liminality encourages us to break free from these constraints and to reimagine regulatory landscapes as constantly evolving, influenced by and impacting upon diverse disciplines, regulatory objects and actors. Through embracing a liminal approach, he suggests recasting boundaries

³³ Graeme Laurie, 'Liminality and the Limits of Law in Health Research Regulation: What Are We Missing in the Spaces in-Between?' (2017) 25 *Medical Law Review* 47.

³⁴ Nayha Sethi, 'Reimagining Regulatory Approaches: On the Essential Role of Principles in Health Research Regulation' (2015) 12 *SCRIPTed Journal of Law, Technology and Society* 91.

³⁵ Nayha Sethi, 'Remaining Rooted Whilst Branching Out: An Investigation of Rules and Principles in Decision-Making' (PhD thesis, University of Edinburgh 2016).

³⁶ Nayha Sethi, 'Research During Global Health Emergencies: On the Essential Role of Best Practice' (2018) 11 *Public Health Ethics* 237.

³⁷ Graeme Laurie and Shawn Harmon, 'Through the Thicket and Across the Divide: Successfully Navigating the Regulatory Landscape in Life Sciences Research' in Emilie Cloatre and Martyn Pickersgill (eds), *Knowledge, Technology and Law* (Routledge 2014) 121.

laid down in law – such as those around data and tissue use in health research – to reveal what may be missing from the spaces in between.³⁸

I have applied liminality to my own scholarship, including in exploring the relationships between treatment, research and innovation.³⁹ I argue that predominant regulatory categorisations of these activities, and the bases for differentiating between them, are in many instances obsolete and problematic from practical and regulatory perspectives. They are ignorant of the experiences of key regulatory actors and subjects (publics, patients, researchers, doctors, regulators) and objects (treatments, surgeries, devices, data, tissue). I suggest that liminality offers more holistic understandings of medical innovation that reflect existing processes and relationships. Such recasting provides a novel conceptualisation of medical innovation as a shared space where both practice/treatment and research coexist.

The value of appealing to liminality is clear to me and, I hope, convincing to those who have engaged with the work of the Liminal Spaces team. But, as discussed further in Case Study 3, employing an abstract concept from another discipline can be challenging. Concepts and methodologies carry their own legacies within the disciplines from which they have originated, and choosing to engage with these as a relative ‘novice’ necessitates a considered approach and explicit acknowledgement of, but not deterrence by, these legacies.

Graeme’s application of liminality has been instructive and inspiring in this regard. It demonstrates that we must be up to the task of familiarising ourselves with, and embedding ourselves within, entirely unfamiliar domains while simultaneously guiding our audiences (expert and non-expert) through them. For example, engaging robustly with anthropological literature on liminality and communicating it to non-anthropologist audiences was intimidating for me, as was dealing with the scepticism and disciplinary territoriality that can come with treading outside our own disciplinary, theoretical and methodological homes. But, somewhat paradoxically, Graeme has demonstrated that it is precisely through engaging with other disciplines that we can in turn learn how to harness these very skills. This necessitates a generous amount of openness of spirit in all directions, which is one of the most important legacies Graeme has gifted us, and one that also

³⁸ Laurie (n 33).

³⁹ Nayha Sethi, ‘Regulating for Uncertainty: Bridging Blurred Boundaries in Medical Innovation, Research and Treatment’ (2019) 11 *Law, Innovation and Technology* 112.

permeates his work that brings to life the interdisciplinarity of the *conceptual* foundations of medical law and ethics.

1.5 Case Study 3: Interdisciplinarity in Conceptual Work (Emily Postan)

As noted in Section 1.2.2, Newell suggests that one possible motivation for interdisciplinary work is epistemological critique.⁴⁰ One aspect of this may be the pursuit of conceptual clarity, relevance and utility. In what ways can interdisciplinary approaches contribute to these qualities in the concepts we use in our medical law and ethics scholarship? This is a question that I have confronted in my own bioethics research, and one for which Graeme's work provides an object lesson. My own experiences recounted here are offered as an illustration of a way in which interdisciplinarity may play out in the work of a solo researcher.

As scholars, we often pride ourselves on the appositeness and impact of the concepts we generate and use in our work. This is perhaps particularly so for those with backgrounds in philosophy. Achieving conceptual precision and transparency is the very business of philosophy. Where some might see captivating neologisms or welcome interpretive looseness, the antennae of a philosopher are primed to twitch at the risk of obfuscation or elision.⁴¹ For example, when an anthropologist colleague expressed scepticism about the value of research in which I sought to characterise the impacts of biological information on our identities – objecting that identity was too contested an idea to make this a cogent line of inquiry – my instinct was to double-down, to demarcate precisely the sense of identity where I judged critical interests might be most at stake. Noting such differences of approach, to what extent can and should interdisciplinary thinking, and specifically engagement with the ways that those in other fields use language and identify objects of concern, contribute to the conceptual work we do in medical law and ethics? And what might it teach us about the extent to which we police the boundaries of these concepts?

Graeme's research exemplifies the value of looking to other disciplines for theoretical tools and framing devices. His scholarship is way-marked by the evocative and often highly visual concepts that provide centres of

⁴⁰ Newell (n 8).

⁴¹ See, for example, Adam Henschke, 'Did You Just Say What I Think You Said? Talking About Genes, Identity and Information' (2010) 3 *Identity in the Information Society* 435.

critical and interpretive gravity in his own work and, subsequently, in that of others. Perhaps most prominent among these are his interrogation of genetic privacy⁴² and his recent work on liminality in the practices and regulation of health research,⁴³ each of which is discussed in depth in other chapters in this volume.

Graeme's application of the concept of liminality invites a fresh perspective on the ways in which the objects and practices of health research may cross or fall between traditional regulatory boundaries, and on the shifting identities and responsibilities of all actors.⁴⁴ Meanwhile, with his influential work on privacy, Graeme introduces to the lexicon of medical law and ethics the compelling idea of 'spatial privacy', characterised as a state of 'physical or psychological separateness' that 'should not be invaded without due cause'.⁴⁵ In doing so, he has provided an invaluable tool for approaching long-standing ethical and legal puzzles, including the so-called 'right not to know' genetic information about ourselves.

The concepts of liminality and spatial privacy, as developed by Graeme, are inescapably interdisciplinary in both their genesis and their impact. As noted in Case Study 2 (Section 1.4), liminality has its origins in anthropological literature and the team Graeme built to work on this project comprised lawyers, anthropologists, sociologists and bioethicists. Meanwhile, his interpretation of privacy draws not only on legal but also on philosophical, psychological, sociological and historical scholarship.⁴⁶ The gaps addressed by each of these concept-driven inquiries reflect not only Graeme's appreciation of inadequacies in the law but also his sensitivity to the human dilemmas and experiences confronted by clinical geneticists, patients, health researchers, participants and regulators, and the ways these disrupt, or are overlooked by, existing legal and ethical frameworks. The enduring impact and

⁴² Graeme Laurie, *Genetic Privacy: A Challenge to Medico-legal Norms* (Cambridge University Press 2002).

⁴³ Laurie (n 33).

⁴⁴ Graeme Laurie et al, 'Charting Regulatory Stewardship in Health Research: Making the Invisible Visible' (2018) 27 *Cambridge Quarterly of Healthcare Ethics* 333; Catriona McMillan et al, 'Beyond Categorisation: Refining the Relationship Between Subjects and Objects in Health Research Regulation' (2021) 13 *Law Innovation and Technology* (volume 13, 194–222).

⁴⁵ Laurie (n 42) 64.

⁴⁶ Graeme's monograph opens by recognising the many disciplines in which, and the actors for who, questions of privacy arise – 'Privacy is a problem. Or[,] rather, privacy causes problems. It causes problems for sociologists, psychologists, anthropologists, philosophers, politicians, doctors, lawyers, governments, states, communities, groups and individuals' (n 42) 1.

relevance of Graeme's analyses to policy-makers and practitioners is evidenced by his many expert advisory roles. These include his work with the Nuffield Council on Bioethics and the Ethics and Governance Council of UK Biobank. The practical legacy of his work is undoubtedly attributable to its interdisciplinary roots and ambitions, and Graeme's intentions to speak to audiences beyond law and beyond the academy.

My own work – examining the ways in which our encounters with information about our bodies and biology may impact on our capacities to develop and inhabit our own identities – owes much to Graeme's work on privacy.⁴⁷ This is not least because my research also seeks to characterise a critical interest engaged by access to information about ourselves, and Graeme (alongside one of my co-authors here) provided immeasurably supportive supervision of my doctoral research.⁴⁸ But it is also because interdisciplinary research was key to my development of a conception of identity as embodied self-narrative and in which biological information can play ethically significant roles. Reflecting my own disciplinary training, I embarked on this inquiry by drawing upon philosophical theories of narrative self-constitution. I then moved into less-familiar territories, to develop and refine the core philosophical conception in light of social scientific analyses and empirical accounts of the nature and experiences of identity construction and the socio-cultural and epistemic contexts in which this takes place.

As a bioethicist working within a law school, my aim is that my research will transcend abstract ethical debate, to convey the real-world importance of understanding and attending to the concepts, interests and values I seek to characterise. This is one of the key strengths of the field of medical law and ethics – that it permits those of us working within the field to draw on the complementary normative, critical and conceptual tools of each 'parent' discipline, while focusing our gaze on practical challenges posed by health, medicine and the biosciences. My hope is that, through drawing upon diverse framings and materials offered by a range of disciplines, the robustness and practical utility of my resultant conceptual analysis, normative frameworks and recommendations will be enhanced. Nevertheless, my approach still betrays marked discipline-specific prejudices about the locus of authority for conceptual matters and, indeed, in the assumption that it makes sense to look for a source of

⁴⁷ Emily Postan, 'Defining Ourselves: Personal Bioinformation as a Tool of Narrative Self-Conception' (2016) 13 *Journal of Bioethical Inquiry* 133.

⁴⁸ Emily Postan, 'Defining Ourselves: Narrative Identity and Access to Personal Biological Information' (PhD thesis, University of Edinburgh 2017).

authority at all. For example, rather than premising my project in identity and bio-information on the ways that the law or publics have construed the value of this information to identity, I instead sought first to characterise how these interests *ought* to be understood.

This approach felt so natural that I was wrong-footed when Graeme asked why embodied narrative self-constitution (rather than some alternative account) was an appropriate foundation. My answer – ‘because it rings true, is carefully and consistently characterised, and has been robustly defended against critiques and counterarguments’ – felt naïve when held up to the twin mirrors of practical policy application and findings from inductive empirical studies. That something rings true and is consistent and defensible is no guarantee of truth or relevance. And our assessment of these characteristics is inescapably the product of our particular preoccupations and perspectives. The imperative to remain alert to the biases and limitations of our own perspectives, and to adjust for them as far as we can, is ever-present and particularly acute when the outputs are intended (optimistically) to have application in the real world. Interdisciplinary thinking and working offer possible routes out of our myopia and ways to widen our vision. The growth of the discipline of empirical bioethics is one example of a recent interdisciplinary development that seeks to enrich, and enhance the practical applicability of, bioethics scholarship and, by association, that of medical law and ethics.⁴⁹

Learning how to work with materials and ideas from multiple disciplines – particularly where this brings the empirical and the jurisprudential together with the conceptual and the theoretical – is valuable, even necessary. But, as noted at the start of this chapter, it is not always a comfortable experience. It forces us to confront limitations in our own critical tools and understandings. It can make our premises seem question-begging and our conclusions overdetermined. In projects in which the central aim is precisely to draw attention to and characterise particular concepts, it may highlight the instability, contested nature or implicit normativity of these concepts in ways that resist easy resolution. For example, in my own research, when the courts invoke a ‘right to identity’ in ways that are both promiscuous and ambiguous about what ‘identity’ means, should I take this as a welcome indication that the law protects identity interests, or that the jurisprudence is dispiritingly

⁴⁹ See, for example, Jonathan Ives, Michael Dunn and Alan Cribb (eds), *Empirical Bioethics: Theoretical and Practical Perspectives* (Cambridge University Press 2016).

inchoate and inadequate? Similarly, how should I incorporate the views of study participants who report that genetic information is critical to their identities, but justify this on problematically essentialist grounds?

Part of reconciling abstracted ideals and complex realities may be to hold the conceptual and linguistic reigns a little less tightly, to explore and find productive spaces in the ambiguity and differences of interpretation that we encounter through interdisciplinary work. This still does not always come easily to me. Here, my (re)training in medical law has been instructive. Despite the law's association with rules and bright lines, the interpretation of open-ended and pliable concepts is a crucial part of permitting the law to be responsive and to evolve – a facility that is particularly important where its objects are rapidly developing medical practices or biotechnologies.

Conceptual plasticity and ambiguity are not, however, unalloyed virtues. Much of the value of interdisciplinary conceptual work lies in equipping diverse parties, who bring different formations, interests and goals, with a shared lexicon with which to conduct analyses and debates. This means that even if (and when) they disagree, they do not do so because they are talking past each other, using apparently similar words in wildly different ways or resorting to exclusionary jargon. Achieving this requires that the ideas and terms proffered for shared usage are themselves compelling and comprehensible – perhaps not always simple, but not mired in the specialist language or arcane debates of isolated scholarly traditions. The ideas developed in Graeme's work offer precisely these qualities. For example, the idea of spatial privacy exemplifies this kind of accessibility, enabled by the evocative metaphor that – among other things – privacy involves protection of a secluded space, free from unwanted intrusion. This is a perfect example of a concept that is not only a product of interdisciplinary work; it is also itself capable of transcending disciplinary boundaries, of making itself understood and useful wherever it lands.

This case study has focused on the way that interdisciplinarity is experienced and exercised in the context of conceptual work as part of solo academic projects, but of course much of Graeme's work, including his work on genetic privacy, has never been entirely solo, and has often been undertaken in applied contexts and in teaching, as we have discussed. As all three case studies have shown, Graeme's work in 'doing' medical law and ethics – as a collaborative scholar, project leader and co-teacher – exemplifies the many rewards, and sometimes challenges, of rigorous and committed interdisciplinarity.

1.6 Conclusion

As Amir Krishnan has suggested:

Although all researchers are certainly well advised to look beyond their own discipline, it is also clear that little could be gained by choosing an interdisciplinary research strategy just for the sake of it. In the end, it very much depends on the problem that the researcher aims to solve whether a disciplinary or an interdisciplinary approach would be more successful.⁵⁰

Across our three case studies, we have shown the crucial role of interdisciplinary perspectives in ‘doing’ medical law and ethics, highlighting the hard work, intellectual challenges, practical constraints and compromises that are often involved in interdisciplinary work. However, we have also demonstrated why it is essential to make these efforts, and the rewards that may be reaped in terms of the quality, practical utility and uptake of the products of the work, whether working in teams or individually, and whether the work is conceptual, applied or pedagogical.

Built on his long interdisciplinary partnership with Ken Mason, Graeme’s academic agility and intellectual curiosity reflect a willingness to take risks in order to maximise the benefits that an interdisciplinary perspective can bring to ‘doing’ medical law and ethics. His research and teaching have left their legacy: a culture of collaboration and disciplinary – and personal – openness of spirit, all of which are essential to address the legal, regulatory and ethical challenges posed by medicine, health care and the biosciences.

Collaborating on this chapter has provided the three of us with the opportunity, from different perspectives, and with different approaches, to celebrate together our experiences of the joy and stimulation of teaching and researching with Graeme. And through this celebration we have shown the importance of developing accessible and relevant concepts and methods for ‘doing’ medical law and ethics that can offer a common currency across and among disciplines, for those within and outwith the academy.

⁵⁰ Krishnan (n 7) 2.