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Concepts: What is legal philosophy? What is the purpose of the study of legal philosophy? What is its proper methodology?

Philosophy is the love of wisdom, and legal philosophy is the love of wisdom about law. In the analytical tradition, the wisdom we love is mainly wisdom about the nature of things, where this is understood to be closely related to wisdom about the concepts of those things. We analyse concepts, but in doing so we aim at understanding the very thing of which these are the concepts. So a book called *The Concept of Law* is really a book about the nature of law (the social institution). How come we already know that law is a social institution? Because that much is clearly part of the concept of law. What else is part of the concept of law? That is what we aim to discover so that we can get a clearer sense of which social institution law is. Law, of course, is only one of the things we are interested in as philosophers of law. I have also worked on various other things of interest to lawyers such as: justifications, excuses, justice, charity, legality, reparation, regret, wrongdoing, responsibility, and constitution.

What is the purpose of all this? Mainly, to get at the truth about the things in question. It is wisdom that philosophers love and they normally need no other motivation than getting at the truth, solving the puzzle. That is certainly what motivates me. This is frustrating to some people who work in law schools, who do not have philosophical temperaments. They would like to influence the development of the law, or the attitudes and behaviour of judges, or social policy. They want to lead the practical lives of lawyers, albeit in a more intellectually spacious way. But I tend to think that the best way I can contribute to the world, if I can contribute at all, is by concentrating on getting to

the truth about things and letting other people decide what, if anything, to do with it. I take a bureaucratic view of intellectual life according to which all the disciplines need to do their bit but none should try to do more than the bit they are qualified to do. The bit that philosophy is qualified to do, and that I am qualified to do as a philosopher, is to understand the nature of things (in particular, as a philosopher of law, things of interest to lawyers).

As a lawyer – I am that as well – I have other qualifications, including qualifications in advocacy. So I can advocate too, with a view to changing things about the world that get on my nerves. But that is really a different job, and one that I reserve for special occasions. I can of course bring my skills in reasoning to bear on both jobs (even though in advocacy it is sometimes more desirable to reason badly, whereas in philosophy it never is).

A common assumption is that we philosophers of law will be intellectually most at ease with those colleagues who are interested in making or changing the law, or influencing the behaviour of judges, or campaigning for human rights, etc. I find this is not so. Among my non-philosopher colleagues I am intellectually most at ease with traditional black-letter lawyers. They are often most interested in simply getting at the truth about legal doctrine. They want to know what, according to English law or the law of some other system, counts as a statute or a hereditament or an award of damages, or when a trust is constructive rather than implied, etc. They do the local work of which mine is the global equivalent. With them I can talk. For many of the global concepts I am interested in – crime and contract, for example – need to be studied with an eye to the detail of their local legal instances. For this I need black-letter lawyers of the old school. Black-letter lawyers do of course influence the law but they do this best when they are not trying to. That is when they get things really straight.

I don't do methodology. There's so much else to theorise about that theorizing about my method is the last thing on my mind. What's more, I don't have a method, or at least not one

that I am aware of. I simply think and write about things as, in my own erratic judgment, they can best be thought and written about. That is something which varies from thing to thing. I am much moved by (although not always successful in implementing) Aristotle's advice that we shouldn't try burdening a subject with a level of precision that it can't bear. Some things can be studied more formally while other require a more relaxed, narrative approach. My writing therefore varies greatly in complexity and density, as well as in technicality. I do not use any kind of symbolic or formal logic, however, partly because I doubt that anything I am interested in will be illuminated in that way, but partly because I am incompetent in the hieroglyphics. I should say that I also do not favour the kind of casuistical method favoured by some moral philosophers (I think, for example, of J.J. Thomson and F.M. Kamm). I tend to think that the escalating complexity and unfamiliarity of the cases makes them false friends, and that anyway philosophers can't expect to tackle practical problems so determinately as the method tends to suggest. Most of the cases are borderline cases, or cases of radically conflicting norms, and the job of a philosopher is probably limited to establishing which borderline they are on or which conflict they present. In fact my own ambition is probably even more limited. I am usually happy enough if I can establish which question we are supposed to be answering and how it differs from some others in the vicinity.

Experience: What is your personal experience? How did you start on legal philosophy? Which people influenced you in your work?

I started out as a law student at New College, Oxford. I was fairly good at law, and could probably have been earning a lot of money at the Bar by now, had I not been corrupted by philosophers. My drift in a philosophical direction started when Nicola Lacey became the college's main law tutor, during my second year as a law undergraduate. She brought a number of

new disciplinary perspectives to bear on what I studied, and when I took particular interest in philosophical perspectives, she encouraged me to take moral philosophy tutorials with Jonathan Glover, who was then the college's senior philosophy tutor. Even after that stunning experience I still imagined myself becoming a practising barrister. But I did stay on in Oxford for a master's-level law degree (the BCL) and this was when an alternative future really began to become apparent to me. I thought I had better take some further philosophically-oriented courses as this would be my last chance. I was lucky enough, during this year, to participate in the seminars of Joseph Raz, John Finnis, Ronald Dworkin, Steven Lukes, G.A. Cohen, Amartya Sen, Derek Parfit, and many other luminaries of the Oxford philosophical scene. I was also lucky enough (and it really was just luck) to win a very junior position, a 'Prize Fellowship', at All Souls College where several of these people were also fellows. I was warmly welcomed and my interests were encouraged and supported, especially by Cohen and Parfit. Most of all, I was encouraged by my college mentor Tony Honoré, who brought together an extraordinary mastery of the law with wide philosophical interests, and remains to this day my guru.

With such an intense exposure to philosophers, and such generous nurturing of my philosophical interests, it's hardly surprising that I did well in my philosophy courses and was diverted from my planned path and into doctoral study in philosophy. My thesis project concerned responsibility (its varieties and their importances), a topic which I had picked up from an important but neglected essay by H.L.A. Hart. I was supervised at first by Honoré and then, on his retirement, by Raz, with Parfit as my new college mentor. What did I learn from my various supervisors? Honoré taught me that it is possible to engage with and respect law (as an academic discipline) in one's philosophical work. That is perhaps the lesson that has had the biggest influence on the general tone of my work, and on my choice of topics. Meanwhile, Raz and Parfit taught me (by each

demonstrating to me and each expecting of me) the very highest standards of philosophical argumentation. Whether I have been able to sustain those standards I very much doubt. But it would be hard to improve on a training at the hands of two such different, but incomparably brilliant, masters as they.

My philosophical instincts have been greatly influenced by Raz and Parfit. I share what Neil MacCormick memorably called their 'in-your-face moral realism'. In this respect they finished a revolution in my worldview that Glover had started, and which differentiates my work from Lacey's, Honoré's, and Hart's, all of whom tend to think of morality in social terms (or at least are ambivalent about whether to think of it that way). It also differentiates my work from that of Bernard Williams, who was the internal examiner of my doctoral thesis. He doesn't think of morality in social terms but he's got an interesting relativistic view about reasons, including moral reasons, which I find deeply counterintuitive. In other ways, however, Williams has been the third big contributor (alongside Raz and Parfit) to my basic philosophical outlook. So much so, indeed, that I have been identified as a former student of Williams rather than of Raz in a worldwide philosophy family tree that resides somewhere on the internet. In a way Williams provides a counterbalance to the Raz-Parfit influences. He encourages a more narrative and allusive approach, less driven by the imperative to reach a conclusion by a series of definite steps. He also shares with both Raz and Parfit, however, an enviable ability to get to the heart of a mystery by reconceptualising it. I share his sense of wonder and I find that he often asks the best questions (and he has a nice line in touching and resonant examples from literature and life).

In developing particular lines of research I can also name more local influences. None of us working in the philosophy of criminal law today would have got anywhere without Antony Duff, who was my external thesis examiner as well as a great encourager of my youthful pursuits and a very patient interlocutor later. Tony Honoré helped me more than anyone

else to see the way forward with the law of torts. Tim Macklem has done more than anyone else to help me develop my views on general problems about rationality and value. My work on the general theory of law is mostly developed from Hart's and Raz's work, so here it is wrong to speak of 'influence'. I am just carrying their thinking forward. Les Green has helped me quite a lot in doing so. With Tony, Tim, and Les I have often collaborated in teaching; with Tim also extensively in writing.

Work: Which are the areas and topics have you worked on legal philosophy? What are your main contributions to the area?

It would be much quicker to list the areas and topics that I haven't worked on. I am quite a generalist. I have written a bit about law in general (especially since I took up my present post in Oxford, since holders of my present post are expected to have views on such matters!) This work is not particularly original – I am carrying on with ideas developed by Kelsen, Hart, and Raz – but it is widely read and cited. Which only goes to show that originality is not highly prized in the marketplace of academe. I've also done some general work on practical rationality (including collective action) and the theory of value. Again, not especially original (except for Tim's contributions).

My main interest, however, and the main place where I have done what I believe to be original work, is in solving philosophical problems that arise in particular areas of law. In this vein I have written about public law, private law, and criminal law. I have also written about some areas that cut across these traditional demarcations, such as discrimination law and charity law. My most notable silence is in international law.

I find that I am sometimes typecast as a criminal law theorist. However I did not intend to make a life out of this subject and in recent years I have been trying hard to steer my work more decisively into private law, especially the law of torts. I still have a lot to say about private law, whereas I have said most of what I

want to say for the moment about criminal law. In fact I published my book *Offences and Defences* (OUP 2007) at least partly as a way of drawing a line under the 'criminal law years'. It is hard to make a sharp break like this, however, and I am constantly drawn back into old topics by requests from editors and conference organisers. So the shift will be more gradual. Nevertheless, before too long I expect to be in the same position with tort law that I am in with criminal law now, i.e. looking for a way to move on from it to something else!

Among criminal law theorists I am associated especially with work on criminal defences. I have distinctive views about justifications and excuses, both of which I assimilate to the domain of the rational, in contradistinction to denials of responsibility. I have also written quite often about the causal element in crimes, and about the logic of complicity (which I believe must be at base a causal mode of liability). It is my interest in the moral and legal relevance of causing that has led me into the law of torts, where that relevance is much more pervasively represented. No repair of damage without causation of damage! Here my shared interests with Bernard Williams become particularly prominent, as I try to deal with what has become as the problem of 'moral luck' and with it the problem of our moral attention to the past (not just crying over spilt milk, is it?).

Future: Which is the future of legal philosophy? Which problems do you think should receive major attention in the following years? Which do you think are the more fruitful ways to approach these problems?

I hope it is a liberal future in which people write about the problems that interest them, rather than the problems that interest governments, businesses, or mass market book buyers. European civilisation – and with it, philosophy as I understand it – was built on intellectual experimentation by iconoclastic individuals whose work was made possible by the belief that payment should not always be by results, or at least not always by

the immediate usefulness of results. The contemporary world is sadly inhospitable to this idea. As universities are assimilated to the contemporary world's culture of payment for immediately useful results, we can expect the European tradition to be ever more under attack. Serious universities will have to find new ways to protect the freedom of their scholars, probably by charging their students ever more for fancy and marketable credentials, in the time-honoured manner of the American Ivy League. Legal philosophy will thrive to the extent that people are willing to pay large sums to go to the vaunted universities where it is done. There, finding suitable teachers (philosophers do have *some* immediate uses), some of these people will become lovers of wisdom too. We can only hope that their huge student-loan debts will not destroy their love or frustrate its pursuit.