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

One view of the task of legal philosophy, explicit or implicit in much of the literature in the discipline, is that it seeks to identify and explain the nature of law, that is, those properties which law, at any time, and in any place, must possess in order to be law, and hence which make it into what it is.\(^1\) This is an account of the central task of a certain kind of legal philosophy – that which is sometimes referred to as analytical jurisprudence – which I have adopted myself in some of my writings.\(^2\) However, despite regarding identifying and explaining the nature of law as a central task of jurisprudential inquiry, I would also like to think of such inquiry as being broad enough to encompass many different approaches to understanding and evaluating law. For example, considering what effect the existence and character of law have on our moral and other reasons for action, attempting to develop philosophically adequate accounts of the foundations of particular areas of law - eg EU law, tort, contract, criminal law -, and examining the role, if any, of empirical studies of various kinds in confirming or denying certain jurisprudential theses all seem to me to represent fruitful lines of jurisprudential inquiry.

In a certain sense, it is very difficult to say which topics legal philosophy should address as these arise in and change over time as our sense of puzzlement as regards issues within the disciplines shifts.\(^3\) These shifts occur sometimes due to factors within the discipline, or within...

---


\(^3\) I discuss this aspect of the methodology of legal philosophy in J. Dickson, ‘The Central Questions of Legal Philosophy’ in M.D.A. Freeman (ed), Current Legal Problems (Oxford University Press, Oxford 2004).
neighbouring disciplines, and are sometimes influenced by more external factors. As an example of the former, a resurgence of interest in Wittgenstein’s remarks on rule following within the philosophical community in the 1980s influenced legal philosophers to take up concerns regarding the possibility and character of rule following in law and in legal interpretation in the early to mid-1990s. As regards external influence, the growing number and importance of various forms of intra-, trans-, supra- and international legal phenomena (see further my response to question 3 below) has prompted some within legal and political philosophy to call for and engage in legal philosophical work which attempts to develop the tools with which to adequately investigate, analyze, evaluate and judge such phenomena. Such shifting areas of puzzlement reinvigorate our discipline and keep its inquiries fresh, and are the hallmark of flourishing legal philosophical inquiry.

As to the purpose of studying legal philosophy: for students, both undergraduate and postgraduate, I would say it is to deepen and render more critical their thinking about the law, its character, and the influence it does and ought to have on our practical reasoning processes. A course in Jurisprudence enables students to stand back from the jurisdiction-specific legal detail with which they are often inundated during their law degree, and to consider more abstract matters such as whether there is something which all legal systems share, and the character and importance of the various relations that may pertain between law and morality.

Regarding the proper methodology of legal philosophy, as is noted in my response to question 3 below, this is an area I am particularly interested in. My own view, developed initially in my book, *Evaluation and Legal Theory* is that we should espouse an approach that I have termed ‘indirectly evaluative legal theory.’ According to this methodological approach, legal theorists must inevitably engage in evaluation in constructing their theories of the nature of law, but the evaluation concerned need not be, nor be supported by, ‘direct’ or moral evaluation of the properties of law under investigation. Although ‘indirectly evaluative’

---


7 Ibid, especially chapter 3.
judgments of the importance and significance of certain features of law have to be made in order to pick out and adequately explain those features of law upon which the theory is focused, ‘directly evaluative’ judgments of the moral value of those aspects of law need not be undertaken, and need not necessarily support the relevant indirectly evaluative judgments, in order to identify and explain law’s essential properties. So, for example, a theory of law may pick out law’s claim to possess legitimate authority as an important and significant feature of law to be explained. But, so I contend in *Evaluation and Legal Theory*, one can know that law’s claim to authority is an important feature of law to be explained without yet taking a stance on whether, and, if so, under what conditions, that claim is justified. The indirectly evaluative judgment that law’s claim to authority is an important feature of law to be explained can instead rest on: the fact that it is a feature which law invariably exhibits, and which reveals the distinctive mode of law’s operation; the prevalence and consequences of beliefs concerning law’s claim to authority (including beliefs that the claim is true) held by those subject to and administering law; or the fact that the existence and character of law’s claim to authority bears on matters of practical concern which are important to us, eg in means that law will hold us to certain standards whether or not we agree with them, and will impinge on our practical lives in various distinctive ways.

Of course, constructing our legal theories initially without making moral evaluations of those aspects of the law in which we are interested does not preclude other theoretical investigations considering such questions of law’s moral value and justifiability at a later stage in jurisprudential inquiry. Indeed, one other reason why certain features of law may be important and significant to explain is because they are relevant to any eventual moral evaluation of the law, and to any eventual judgment concerning whether, and in what circumstances, we ought to follow the law. In this way, indirectly evaluative legal theory, as well as identifying and explaining law’s essential properties, and hence deepening our understanding of a centrally important social institution which has a pervasive influence on our lives, can also serve as an illuminating precursor to the enterprise of assessing whether and when law is morally valuable and worthy of our allegiance.

---

8 Ibid, chapter 3.
9 On these latter points, see *Evaluation and Legal Theory*, chapter 7.
2. **Experience:** What is your personal experience? How did you start on legal philosophy? Which people influenced more substantially in your work?

I first encountered legal philosophy as a second year undergraduate student at Glasgow University, Glasgow, Scotland, where taking a course in that subject was compulsory in obtaining a law degree. Having studied the subject for one academic year, I decided that I wanted more, and so I specialised in it in the final two years of my four year undergraduate law degree, and graduated with First Class Honours specifically in Jurisprudence. When looking back over the course of my career so far, I often think how much I benefitted from the system that was in place at Glasgow University when I studied there. Being afforded the opportunity to take several courses in philosophy of law, in depth, and over a two year period towards the end of my degree, I left my undergraduate studies with an excellent grounding in different aspects of legal philosophy, and was in a position to undertake doctoral work without having to take a Masters level course first. During those final two years of my undergraduate degree at Glasgow, my Jurisprudence tutors were Elspeth Attwooll and David Goldberg. Both of them provided me with strong encouragement and personal example as regards the further study of Jurisprudence, and as regards becoming a teacher at university level. Elspeth Attwooll in particular, and the long-standing wholehearted commitment she showed towards the Jurisprudence Department and especially its students, was a personal inspiration to me. In fostering a community spirit amongst the students studying legal philosophy, in making us feel that the subject was somehow ‘our own’, and in her own passion for and commitment to wide-ranging jurisprudential discussion, she instilled in me a strong sense of the value of and fellowship associated with intellectual work when it is done well. These are things that I try to carry with me in undertaking my own work, and that I hope to impart to my students.

After I left Glasgow University I came to Balliol College, University of Oxford, to study for a D.Phil in legal philosophy, supervised by Professor Joseph Raz. Joseph Raz was an enormous source of inspiration and support, both professional and personal, during the time I was completing my doctorate and beyond. I learned so much from him, not merely from his invaluable instruction and patient encouragement with regard to my own work, but also by example, and especially from the intellectual integrity, enthusiasm and high standards which he brings to academic work in general. Once I had completed my doctorate, and was embarking on my first academic jobs at the University of Leicester and University College London, Professor Raz remained a source of encouragement and sound practical advice as I made the transition from doctoral student to academic. I draw so often on points he made to me, and on
his general approach to intellectual work, in supervising my own doctoral students today, and in this way feel part of a chain of learning, teaching and research in legal philosophy. If I could be half as good a supervisor to my own students as he was to me I would count that as very prominent amongst my professional achievements.

In terms of more recent influences, a trip I made to UNAM - the National Autonomous University of Mexico - in 2004 to give a series of seminars on my book, *Evaluation and Legal Theory*, inspired me in terms of the spirit of openness and dedicated inquiry that I found there amongst students and Faculty alike (and also led to the book being translated into Spanish, as *Evaluación en la teoría del derecho*). Moreover, some of those I met there – in particular Juan Vega, Enrique Cáceres and Imer Flores – have become amongst my most valued friends and colleagues in legal philosophy. In addition, wonderful colleagues such as Wil Waluchow, John Gardner and Leslie Green are also a continuing source of inspiration to me, in terms of the calibre of their intellectual work, the kinds of academics and teachers they are, and the kinds of people they are.

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

My work in legal philosophy to date has focused on two main areas or themes. First is the methodology of Jurisprudence where works such as my 2001 book, *Evaluation and Legal Theory* ask questions such as: what are the criteria of success of theories of law? Must theories of law involve evaluation of some kind in order to be successful, and, if so, what kind of evaluation – moral? or of some other kind? Articles such as ‘The Central Questions of Legal Philosophy’; ‘Methodology in Jurisprudence: a critical survey’; and ‘Is Bad Law Still Law? Is Bad Law Really Law?’ also raise and attempt to answer meta-theoretical or methodological questions such as whether the questions that legal theorists do and should tackle are immutable or rather arise in and change over time; whether the beneficial moral or political consequences of espousing a given theory of law ought to influence which theory we do espouse; and whether

---

holding a position such as that ‘bad’ or unjust law is less than fully law fails adequately to do justice to law’s social and institutional nature.

This concern with the meta-theoretical or methodological aspects of jurisprudential inquiry has been with me since I began studying jurisprudence, and in approaching a whole host of issues in the discipline I find I am naturally drawn to wondering what grounds or justifies various of the claims which theorists make. Even articles of mine which on the surface address issues concerning the nature of law rather than the nature of the theory of law - articles such as ‘Is the Rule of Recognition Really a Conventional Rule?’ or ‘Legal Positivism: Contemporary Debates’ - end up including methodological aspects or gravitating towards the meta-theoretical aspects of the questions under discussion. The reasons behind this enduring interest in meta-theory are not at all clear to me, but in my view my strong instinctual gravitation towards such questions has proved very useful to me not merely in my research, but also in teaching legal philosophy at both undergraduate and postgraduate level. Getting students interested in the origins and character of jurisprudential questions, and in the status of jurisprudential claims and what might justify theorists in making them is a good way of getting them to think more deeply about the subject, its aims and point, and what might count as success within it.

My second main area of interest, which I have focused on in some of my more recent work, concerns how to understand, analyse and evaluate various of the intra-, trans-, supra- and international legal orders which increasingly seem to feature in our contemporary governance arrangements. In particular I am interested in whether a theory of legal systems, and a legal systems analysis, can adequately explain certain non-state legal phenomena, such as the supranational law of the European Union, or the intra-state law of present-day Scotland. In articles such as: ‘How Many Legal Systems? Some Puzzles Regarding the Identity Conditions of, and Relations Between, Legal Systems in the European Union’; ‘Towards a Theory of European Union Legal Systems’; and ‘The Idea of a Legal System: Between the Real and the Ideal’, I consider issues such as how we are to understand the character of and interaction between

European Union and national legal systems, and which elements are most important in determining whether non-state entities such as Scotland or the EU can be said to have ‘their own’ legal system. I have also become involved in an editorial capacity in a new journal dedicated to examining transnational legal issues, entitled *Transnational Legal Theory*.¹⁹ and I am co-editing a new book for Oxford University Press entitled *Philosophical Foundations of European Union Law* which is designed to bring together legal and political philosophers with EU legal scholars in order to investigate the distinctive theoretical puzzles raised by the supranational law of the EU.

My interest in these scholarly themes has been generated partly by the fact that I have taught European Union Law, as well as Jurisprudence, since I began my academic career, but more significantly simply by the growing prevalence and importance of intra-, trans-, supra- and international legal phenomena in our contemporary governance arrangements and our legal lives. The existence and significance of such phenomena demands that we develop adequate theoretical tools with which to understand, analyse, evaluate and judge them, and I hope that my work can in some way contribute to this project.

4. **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?

The future of anything is always hard to predict! And, moreover, because of some of the points mentioned in my response to question 1, regarding how factors both internal and external to the discipline may affect how our sense of puzzlement changes over time, there may be specific reasons why it is difficult in the case of legal philosophy. Perhaps some indications of what may and should lie ahead can be given though, although they must be taken as speculative, and as reflecting my personal views only. First of all, I fervently hope that legal philosophy has a future as a serious philosophical discipline which is the subject of teaching and research in law schools. Given the progress made since the time of H.L.A. Hart in reuniting legal philosophy with philosophy, and in rendering the discipline more rigorous and philosophically challenging, it would be a shame for matters to slip back in any way, let alone to the state of the discipline immediately before H.L.A. Hart’s time. I do not think that this will happen, however, and am optimistic about the future of the discipline. The great legal philosophers of

---

the latter half of the twentieth century - H.L.A. Hart, John Finnis, Ronald Dworkin, Joseph Raz – took time and pains to encourage and foster a new generation of legal philosophers from amongst their graduate students. Those who were encouraged or took their inspiration from that previous intellectual generation - eg Nicos Stavropoulos, Leslie Green, John Gardner, Wil Waluchow, Brian Leiter, Brian Bix, Andrei Marmor, Jules Coleman and myself – have themselves in turn encouraged yet another and more voluminous generation of legal philosophers. This ‘passing the torch’ tradition in the philosophy of law hopefully ensures that the discipline will flourish and remain in safe hands in the years to come.

As regards specific topics or themes which that discipline might investigate in the future, as my responses to the questions above indicate, I personally believe that the number and importance of intra-, trans-, supra- and international legal orders are set to increase, and that these phenomena require us to develop the analytical tools with which to analyse, evaluate and judge them. I believe that this will be an important future task for both legal philosophers and political philosophers. In particular, it is my view that we need to develop a new theory of legal systems, and of the interactions between such systems and their norms adequate to characterise such legal orders and do full justice to their novelty and complexity. I also believe that still more work remains to be done as regards jurisprudential methodology, and, in particular, as regards the criteria of success of theories of law, and in terms of whether we can properly speak of theoretical progress being made within the discipline. Others will have different views, and the existence and variety of such views are one hallmark of a flourishing discipline.