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In many respects this Workshop can be construed as an optimistic occasion for the role of jurisprudence in the legal curriculum. There are many more participants here than anyone expected and there would appear to be substantial interest in the set of issues that we are addressing. Perhaps the most useful thing for me to do on this optimistic occasion is to sound a cautionary note, and along the way to distinguish several different issues which ought to be focused on when thinking about the teaching of jurisprudence in an American law school.

Preliminarily, but as a first and underlying issue, we have to ask what we mean when we are talking about "jurisprudence." This is a workshop on jurisprudence, yet we have really been talking about substantive questions of philosophy of law, traditionally conceived. Philosophy of law is clearly one of the things that is meant by "jurisprudence" when people talk about the teaching of jurisprudence in a law school. However, it is also not a trivial question to ask exactly what philosophy of law is. On the one hand, as this program reflects, philosophy of law is a branch of philosophy that is concerned with a set of specifically philosophical general questions about the law: questions about its nature, relationship to morality, and proper role in the social structure. It is also a set of more specific philosophical questions about the law. Questions, for example, about theories and justifications of punishment, the nature of contracts, the nature and justification of private property, and the like.

On the other hand, there is another conception of philosophy of law which views it as a subject which gives distinctly philosophical treatment to essentially legal questions. A well-known book which does this, for example, is Hart's and Honore's book *Causation in the Law*. In its best parts it is not really an essay about causation as a philosophical subject. Rather, it is a philosophical essay about the use of causation in the law. One could look at any number of legal topics from a philosophical point of view with great profit. That kind of enterprise is also a part of philosophy of law, although not necessarily a part of technical philosophy.

But philosophy of law, under any description, is not the only thing that people mean by "jurisprudence" when they talk about a jurisprudence

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course in the legal curriculum. Sometimes they mean a sort of intellectual history course; a course which surveys, in a fairly broad historical way, what a variety of people have thought about some of these central issues. Such courses, I suspect, constitute the bulk of the jurisprudence courses taught in American law schools.

Another set of things that people mean by "jurisprudence" is harder to specify. It is neither technical philosophy nor intellectual history. Rather, it is anything that has to do with legal theory, broadly conceived. Normative claims about the law are often regarded as jurisprudential claims. "Jurisprudential" is used frequently as an adjective and it is not clear what the relationship is supposed to be between this adjectival use and the noun "jurisprudence," but a systematic look at the way the language is in fact used, would probably reveal that any claim about the law that has a normative flavor will be described by some as jurisprudential.

Whether or not this last broadly conceived set of things is properly viewed as "jurisprudence," it does encompass issues and subjects which clearly have a place in the law school curriculum. There are pedagogically feasible ways of teaching them within the law school as it is currently structured. Let me turn instead to the role of philosophy of law in the law school curriculum and raise a general kind of skepticism as to whether any but very basic courses in technical philosophy of law can be fit into it.

Law students at American law schools are people who have undergraduate degrees in a wide variety of fields. Many, of course, have advanced degrees as well. Nonetheless they come to law school as neophytes in the law; graduate students in some sense, but not graduate students of law. As a result, when you convene a class which you intend to be a course in philosophy of law, you end up with an enormous mix of backgrounds. Typically, some students have never had a philosophy course in their lives; others have had very fine graduate training; and, in between these two extremes, there is the entire range of background. For the most part, however, the students are not philosophically sophisticated. It is for good reasons that philosophy departments, like any other department which offers advanced courses, have prerequisites to their upper level courses. Law students, as a group, have not met any of the prerequisites, and it simply is not appropriate to try to teach a very sophisticated philosophy of law course in a law school.

Let me give you two examples, one from my own experience and one from our shared experience. When I was a law student and a graduate student at the University of Michigan, John Rawls had just published *A Theory of Justice*. *A Theory of Justice* went through a period when, rather curiously in my view, it became the book that everybody who was anybody in educated America had to read. Rawls became rather a folk hero—an unlikely folk hero for those of you who know him, since he is a very serious moral philosopher. The University of Michigan Law School arranged to have Rawls visit for a term. He was to teach a seminar which was going to be cross listed in the law school and the philosophy department. Before the seminar began you could walk down the halls of the law school and see many students carrying a thick green paperback book. The first meeting of the seminar was held and it was standing room only. Many of the law faculty were there, along with a full

complement of law students and a good-sized group of philosophy graduate students. Rawls, who is a wonderful philosopher, is not a very dynamic or scintillating lecturer. And he gave the sort of lecture that he would ordinarily give to a graduate course in philosophy. Throughout the next week people walked through the law school carrying their thick green paperback books. The second class was well attended, but at least you could get a seat. Rawls taught the class in his customary style. During the next week the thick green books magically disappeared. They were replaced in peoples' hands by the thick brown, red, and blue hardback books which typically are carried by law students as they walk between classes. By the third session, although the class continued to meet in the law school, the seminarians consisted of the philosophy graduate students and a couple of faculty members from the law school. It was a good course.

The lesson to learn is obvious. Rawls' book is a very, very hard book. Now you can read it at one level and probably get a fair amount out of it, but to read it the way Rawls would like you to read it or to talk about it the way Rawls would be prepared to talk about it, simply cannot be done by people who do not know anything about moral theory or political theory. It is not a good basic book.

My other example is provided by a session of this Workshop. John Finnis's book is a deep, ambitious book which is essentially, or at least in significant part, a book about moral philosophy. I would challenge us to bring in law students, no matter how smart, who had never had a course in ethics or who had never thought systematically (whether in a course or otherwise) about moral theory and ask them if they understood the exchange between Don Regan and John Finnis. They would not, they could not. Yet that is the level at which the book is written and it is the level at which it is meant to be discussed. One cannot go into a law school classroom with students prepared as ours are and give them books like these to read and to talk about, if what you are trying to do is to *teach* them legal philosophy. You cannot make up for their lack of philosophical background, as many of us are tempted to do, simply by requiring them to read more. Philosophical reading is necessarily slow reading. The hallmark of reading something seriously is to read it slowly. Beginning philosophy students cannot read a book a week. They probably cannot read a book every three weeks if you are talking about books of this sort. It takes a long time to read such books and to think about them.

When I say that it is not appropriate to teach a very sophisticated philosophy of law course to law students, I am assuming a pure pedagogical motive; namely, a desire that students genuinely come to grips with the material. However, other pedagogical motives might justify offering such a course. Perhaps, for example, the motivation might be the desire to expose students to material simply to expose them to the fact that there is this whole other world out there and not with any thought that they are going to master it. After all, there is much to be gained from reading Rawls or Finnis even if these books are not fully accessible to the reader. Even if he cannot appreciate it fully, the reader has learned something. But unless you make sure that the students in this kind of course understand that the material is not fully

accessible to them, you run the real risk of producing people who think that they understand a subject when they do not. There is the danger of producing people who are charlatans in the sense that they do not recognize their own limitations.

The pedagogical problems associated with philosophy of law are typical of those generally associated with interdisciplinary work. Interdisciplinary studies of various sorts have enjoyed increasing vogue in recent years; philosophy of law is just one of many examples. With all interdisciplinary studies it is crucial that the students realize that they are seeing the mixture of (at least) two disciplines and that, ideally, one would know something about each of the component fields before one presumed to be able to make interesting connections between them. There are a wide variety of ways to acquire an education in a field in which you have had no formal training, but you have to work hard. There are no shortcuts. An interdisciplinary course is unlikely to provide the necessary background to itself. A student should learn something about each discipline before the connections can be fully appreciated. This simple fact is too little realized. We must work very hard to keep both ourselves and our students from falling into the trap of assuming that there are shortcuts.

There is something very discomforting about the thought that it does not make pedagogical sense to teach advanced courses about the nature of and the conceptual foundations of law in our law schools. But the fact is that we have arranged our curriculum so that it does not. We do not, for example, have sequences of courses of increasing sophistication. Sequencing is done in every other discipline. One starts with the basic course and moves up from there. After the fundamentals have been mastered (or at least grappled with), the student is prepared to learn something about the subject in a more sophisticated form. We do not do anything like this in our philosophy of law courses. Moreover, curiously enough, we do very little of it in law schools at all.

If I am right that we are saddled in law schools with a curriculum which is systematically arranged so that it does not make sense to teach advanced courses about the foundations of law or the nature of law, we are left being able to teach only a pretty basic sort of course. We have the same set of choices available to us that other teachers of philosophy who are teaching introductory philosophy courses have available to them. We can teach a problems course or we can teach a simple version of a systematic foundations course. In each case law teachers have a significant advantage over people who are teaching philosophy to undergraduates at the beginning of their studies and that is simply that we have a set of students who do know something about the law. This puts us in a position to do something more with the interdisciplinary nature of the course than we otherwise could. This advantage is particularly ripe to be exploited in a problems course, a view which is apparently shared by Herbert Hart. He gave the following advice to a former student of his about to undertake the teaching of a law school course in philosophy of law:

> The books that you list on page 2 of your letter are, I think, the right ones if you are going to approach the subject in that way. That is to say by starting with an account of different

theories and getting your audience to read as much of them as possible. What I doubt is that this is the right way to start, especially with an American audience. Ought you not really begin with some object like criminal responsibility, the theory of punishment, or civil disobedience, or the judicial process which will both have much more obvious close personal contact with the law which they are studying and with identifiable problems in which they can be expected already to have some interest. My own inclination would certainly be to start in this way and to let the general theories of law encompassed by your book list arise out of these more concrete problems to be dealt with at the end, rather than the beginning, of the course. I am sure in this way what might appear to students as too dry and abstract a subject can be linked to concrete issues. In other words I don't think that they should be invited to consider general theories of law until they have seen how probing in depth some concrete issue will lead into theory. This approach does require a good deal of work and careful planning but I think it is worthwhile.

Let me return to my original framework. If I am right that our system of legal education in America makes it difficult or impossible to teach advanced courses in technical philosophy of law, another question arises. At the outset I said that you can think of philosophy of law as encompassing general kinds of questions, as well as somewhat more specific questions, and as a branch of technical philosophy. However, there is another way to conceive of philosophy of law. It is to think about it as the use of the tools of philosophical analysis in thinking about legal subjects or legal topics. To the extent that this is what we mean when we talk about teaching jurisprudence in law schools, there *is* much cause for optimism. Even if the students are not formally introduced to these tools, as they would be in a sequence of philosophy courses, the more that they see the tools used, the more likely they are to learn to use them for themselves. This is another instance of the pervasive method of learning which is so characteristic of legal education. If we can encompass in the phrase "legal analysis" these other kinds of analytical tools, then these things too will become part of the vocabulary and part of the arsenal of lawyers. This can lead to more careful work on their part as they develop the instinct to make distinctions, as they learn how to parse arguments, and as they learn how better to think systematically about legal problems. In short, it can make them better lawyers and better educated human beings.

To the extent that you are talking about jurisprudence as a course in intellectual history—a sort of great books course if you will—there can be no doubt that it can be taught effectively and well and that such a journey ought to be made somehow by every educated lawyer. How to go about teaching that sort of course raises a whole set of separate issues, issues which I do not propose to go into here.