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Lines to a Don: Why it is isn't mindless to 'reimagine' Jurisprudence.

Alex Green[*]

Don different from those regal Dons!
With hearts of gold and lungs of bronze,
Who shout and bang and roar and bawl
The Absolute across the hall,[1]

In his 1910 poem, 'Lines to a Don', Hilaire Belloc takes a triumphant and hilarious charge at an unnamed academic, whose writing he characterises as 'Unworthy for a tilt with men'. The kind of peevishness that Belloc describes unfortunately can sometimes raise its head within debates about what properly constitutes 'legal philosophy' and, even more divisively, how we should design our Jurisprudence syllabuses. These often-acrimonious disagreements, at least as they appear online, now tend to turn on questions of decolonisation and inclusiveness. The most recent round of disquiet arose after Professor Stephen Sachs of Harvard Law School released his complete Jurisprudence syllabus online.[2] That syllabus named only two women, one of which is a faculty assistant.[3] The resulting and perhaps inevitable backlash swiftly expanded into a general discussion on the value of diverse and inclusive set readings within Jurisprudence.[4] I was amongst one of Sachs' most vocal critics and, since I was not as clear online as I might otherwise have been, my aim in this short paper is to develop my points more fully.

Another vocal contributor was Professor Brian Leiter of Chicago Law School, who accused several detractors of not understanding the scholarship listed on Sachs' syllabus and (apparently by extension) the subject of Jurisprudence itself.[5] I do not consider this to be a particularly fair critique for several reasons. Nevertheless, I intend to take Leiter's underlying point seriously. In what follows, I ask whether denying the centrality of authors such as HLA Hart, Ronald Dworkin, or Joseph Raz to the study of 'the nature of law and legal obligation, the relationship between law and morals, and the

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[1] Hilaire Belloc, 'Lines to a Don' in *Complete Verse* (Duckworth 1970).

[2] https://twitter.com/StephenESachs/status/1702697239121191347.

[3] https://twitter.com/ashwinivasantha/status/1702922730624913596.

[4] For example, see: https://twitter.com/GlexAreen/status/1702981341065687189; https://twitter.com/DrVidyaKumarUK/status/1702780706114396420; and https://twitter.com/GlexAreen/status/1702957608208908304.

[5] Brian Leiter, 'Mindless jurisprudence-bashing on Twitter (updated)' *Leiter Reports: A Philosophy Blog* (26 September 2023): https://leiterreports.typepad.com/blog/2023/09/mindless-jurisprudence-bashing-on-twitter.html (last accessed 4 October 2023).

role that philosophical issues can or should play in the actual practice of law' somehow involves a category mistake.[6] Does teaching Jurisprudence *always* require us to place such authors in pride of place, or else mandate our introducing them to students as the 'default options' within legal philosophy? I believe that it does not, for the reasons provided below. This question matters, in my view, not just for 'jurisprudes' or those otherwise responsible for the teaching of theoretical content but also because it speaks to broader themes of decolonisation, diversity, and inclusion within the academic provision of all law modules.[7]

My argument is divided into three sections. First, I examine whether it is possible to define Jurisprudence in the narrow manner that such imputations suggest. I argue that it is not, in part due to the incredible diversity of contemporary writing on that subject but also because the very question of what we mean when we ask about law's 'nature' or 'essence' is itself philosophically contested. Second, I canvass some familiar positive points about the merits of inclusive Jurisprudence syllabuses. Third, I characterise what I take to be an alternative means of introducing students to the best-known writers within the Anglo-American analytical tradition, drawn from my own teaching practice. My contention is that employing these authors within an appropriately diverse syllabus actually enhances their substantive contributions and shows the philosophical ambition of their arguments in its best light. Throughout this argument I employ periodic references Belloc's 'Lines to a Don', not just because it makes for enjoyable reading but also because, as is sometimes the way with poets, Belloc neatly captures some virtues and vices that teachers of Jurisprudence would do well to keep in mind when considering their own relationship to that subject.

'Don pedantic': Why Jurisprudence cannot be narrowly defined.

Jurisprudence, in its most traditional guise, concerns the nature of law.[8] To be more specific, it is the philosophical study of the nature of law 'as such', rather than of any particular legal order. One can also usefully distinguish between 'general jurisprudence' and 'special jurisprudence', where the former concerns the nature of law at its most abstract level, while the latter concerns the nature of more discrete 'areas' or 'domains', such as private or constitutional law.[9] Further specification is sometimes attempted. There are some who suggest that 'general jurisprudence' is not only neutral when it comes

[6] This is how Sachs himself defines the subject, *supra* n 3. For a comprehensive study of category errors, see: Ofra Magidor, *Category Mistakes* (Oxford University Press 2013).
[7] On links between syllabus design and the expression of collective values, see: Craig Newbery-Jones, 'Screencasting ethics and values: teaching contemporary legal issues and collective legal values through live screencasting' (2015) 50(2) *The Law Teacher* 242.
[8] Scott Shapiro, *Legality* (Harvard University Press 2011) 1-3.
[9] Leslie Green, 'General Jurisprudence: A 25th Anniversary Essay' (2005) 25 *Oxford Journal of Legal Studies* 565; Tarunabh Khaitan and Sandy Steel, 'Areas of Law: Three Questions in Special Jurisprudence' (2023) 43(1) *Oxford Journal of Legal Studies* 76.

to jurisdiction but also to geographical space or historical period.[10] Moreover, there are those who think, or at least certainly act as though, general jurisprudence (for brevity: 'Jurisprudence') is exhausted by Western, Anglo-American analytical tradition of legal philosophy.[11] Even more austerely, some claim it to be exhausted by a particular mode of enquiry with that tradition, such as 'conceptual analysis'.[12] I am not prepared to adopt these further specifications, as I believe them to beg the question with which I am now concerned.[13]

The main issue is that such austere taxonomising skips too swiftly over the philosophically controversial issue of what it means to examine the 'nature' of something (law included). Expanding upon some brief remarks made in earlier work,[14] it seems to me that there are at least three ways to understand such enquiries. According to one account, the nature of something is determined by the necessary and sufficient conditions for being that thing.[15] Just as there might be necessary and sufficient requirements for being a dog, the planet Mars, or an amusingly facile blog post, we might also investigate the nature of 'law' by asking about the conditions for the existence of law.[16] Another account of 'nature' or 'essence' holds that what is most objectively important about an entity, in aesthetic, ethical, moral, or teleological terms, provides its defining features.[17] For instance, like those who argue that the fundamental nature of humanity is located within our individual vulnerability,[18] so too we might argue that law is best characterised by its connection to patriarchal domination,[19] coercive force,[20] or practical authority.[21] Alternatively still, we might say that something's nature consists only

[10] Green (n 9) 565-567. Raz was particularly guilty of this move: 'Sociology of law provides a wealth of detailed information and analysis of the functions of law in some particular societies. Legal philosophy has to be content with those few features which all legal systems necessarily possess.' Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Clarendon Press 1979) 104-105.
[11] Martin Krygier, 'The Concept of Law and Social Theory' (1982) 2 *Oxford Journal of Legal Studies* 155, 157. Naturally, this need not be so, see: Julie Dickson, Elucidating Law (Oxford University Press 2022) 25-53.
[12] I infer this also from the tone and general content of, for example: Jules Coleman, *The Practice of Principle: In Defence of a Pragmatist Approach to Legal Theory* (Oxford University Press 2003) 175-218.
[13] I am not the first 'analytical jurisprude' to raise this concern. For a particularly searing critique along these lines, see: Ronald Dworkin, *Justice in Robes* (Harvard University Press 2006) 212-213.
[14] Alex Green, *Statehood as Political Community: International Law and the Emergence of New States* (Cambridge University Press 2024) 230-231.
[15] John Locke, *An Essay Concerning Human Understanding*, John Yolton (ed.) (Everyman 1993) 238 (III.iii.15).
[16] Another possibility, often confused with necessary conditions, is the idea of 'essential properties', see: Kit Fine, 'Essence and Modality' (1994) 8 *Philosophical Perspectives* 1. I do not dwell on this because, insofar as they trade upon the idea of essence, talk of essential properties does not advance us any further in determining what 'essence' itself might be. Fine, rightly in my view, rejects the idea that the complete set of necessary conditions for φ are coextensive with the essential properties of φ (ibid 4-5).
[17] For possibly the oldest version of this view, see: Aristotle, *Nicomachean Ethics*, Christopher Rowe (trans.) (Oxford University Press 2002) 101-102 (1097b25-1098a20). See also: Mark Greenberg, 'How to Explain Things with Force' (2016) 129(7) Harvard Law Review 1932, 1951-1954.
[18] Martha Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20(1) *Yale Journal of Law & Feminism* 1.
[19] Catherine MacKinnon, *Towards a Feminist Theory of the State* (Harvard University Press 1989) 237-249.
[20] Ronald Dworkin, *Law's Empire* (Hart Publishing 1986) 93.
[21] Raz (n 10) 28-33, 169-175.

in those properties that are *unique* to things of that sort.[22] Just as we distinguish triangles from other two-dimensional shapes because only triangles have three sides, so too might we distinguish law from other things on the basis that only law is concerned with the endemic subjugation of human conduct to rules,[23] or with the institutional-come-procedural restraining of governmental power.[24]

There may well be significant overlap between these approaches. Often, to enquire into the necessary and sufficient conditions for 'being something' is the same as asking what is unique about that thing. Nonetheless, this is not always so.[25] We can easily imagine a world within which only trees are naturally pigmented with the colour green, such that the property 'being naturally green' is unique to this form of life. However, it does not follow from this that being naturally green is necessary and sufficient for being a tree, since at some point the trees in our imagined world might lose their pigmentation, say, by dropping their leaves. One interesting point about all this is what it implies for teaching Jurisprudence. Since we do not agree in principle about what it means to investigate the nature of something, analytically downstream arguments about 'the nature of law' must remain methodologically and substantively open. There is no excuse, in other words, for mirroring Belloc's 'Don pedantic' and jealousy gatekeeping the 'broad church' of contemporary jurisprudence.[26]

This has direct implications for module design. A mistake often made about feminist, Marxist, and other 'critical' theories of law is that they are somehow ancillary to more traditional analytical approaches. As a matter of historical fact, many critical approaches no doubt emerged in response to what was then considered the analytical orthodox, however this is rarely (if ever) the reason for relegating such approaches to subordinate positions in Jurisprudence modules and textbooks. More often, an elision is made between theories that are 'critical' and those that are merely 'critiques'.[27] The

[22] Bertrand Russell, *An Inquiry into Meaning and Truth* (George Allen and Unwin 1972) 97–102.
[23] Kristen Rundle, *Forms Liberate: Reclaiming the Jurisprudence of Lon L Fuller* (Hart Publishing 2012) 8-11, 99-102.
[24] Jeremy Waldron, The Concept and the Rule of Law (2008) 43(1) *Georgia Law Review* 1.
[25] Miranda Fricker, What's the Point of Blame? A Paradigm Based Explanation (2014) 50(1) *Noûs* 165, 166.
[26] Julie Dickson, 'Ours is a Broad Church: Indirectly Evaluative Legal Philosophy as a Facet of Jurisprudential Inquiry' (2015) 6(2) *Jurisprudence* 207.
[27]This is best demonstrated by surveying of some leading textbooks (in this case, from my own shelf). The latest edition of *Understanding Jurisprudence* canvasses critical legal theory as 'reject[ing] what is taken to be the natural order of things' (this 'natural order' includes, apparently, 'race'): Raymond Wacks, *Understanding Jurisprudence: An Introduction to Legal Theory* (Oxford University Press 2020) 344. Wacks relegates both critical theory and feminism to his final two chapters, after lengthy discussion of the philosophy of punishment (a topic in special jurisprudence), which only goes to underline its 'outsider' status. The same is true of *Modern Jurisprudence*, which amazingly enough did not cover critical or feminist theory until its third edition, see: Sean Coyle, *Modern Jurisprudence: A Philosophical Guide*, 2nd ed, (Hart Publishing 2017); Sean Coyle, *Modern Jurisprudence: A Philosophical Guide*, 2nd ed, (Hart Publishing 2017); Sean Coyle, *Modern Jurisprudence: A Philosophical Guide*, 23rd ed, (Bloomsbury Publishing 2022). Coyle lumps this material together under the title 'Disruptive Theories'; a move mirrored by *McCoubrey & White's Textbook on Jurisprudence*, which excludes such theories from its section 'Theories of the Nature of Law', listing them instead under 'Against and Beyond Liberalism': James Penner and Emmanuel Melissaris, *McCoubrey & White's Textbook on Jurisprudence*, 5th ed. (Oxford University Press 2012). One notable exception is: Scott Veitch, Emilios Christodoulidis, and Marco Goldoni, *Jurisprudence: Themes and Concepts* (Routledge 2018).

assumption – the *incorrect* assumption, I must stress – is that critical theories are simply responsive, or reactive, and that they offer no positive account of law in their own terms. Such theories are, on this mistaken view, akin to Belloc's 'Don puffed and empty, Don dyspeptic', finding fault everywhere and meaning nowhere. Perhaps this is true of some critical scholarship; however, it is certainly not true of its best examples. Authors like Catherine MacKinnon, Margaret Davies,[28] Seyla Benhabib,[29] and Evgeni Pashukanis,[30] disclose positive (but not always 'positivist') accounts of law that explicate different accounts of its nature.[31]

MacKinnon, to take just one example, links law in several ways to the domination of women, arguing that such domination is essential to law because it forms one of its most widespread and normatively salient features.[32] Now, this may not be an account of law's nature that will satisfy every analytical 'jurisprude', however it would be philosophically disingenuous to claim that it was not an account of law's nature *at all*. This being so, the question simply must be open as to whether it is MacKinnon or Hart, for example, who should feature more prominently within modules designed to introduce students to the business of asking about the nature of law.

It is important to note that the disagreement between those who consider MacKinnon a paradigmatic legal philosopher, and those who do not, is not just substantive or political but also methodological. *Towards a Feminist Theory of the State* presents a controversial account of law's nature in the second mode canvassed above, rather than relying, as more analytical theories tend to, upon either the first or the third. This methodological divergence matters because it evidences the scope for disagreement about what matters when we investigate the nature of our legal orders. At the beginning of this section, I mentioned that some scholars understand 'true' Jurisprudence to be spatially and temporally neutral, at least to the extent that they take there to be a concept of law that applies universally, whatever divergent concepts might have been held in other places or times. This is itself a contestable philosophical thesis,[33] as is the adjacent notion that our legal philosophy can ever proceed without resort to contextually embedded social reality.[34] In her recent study of international law, for example, Ntina Tzouvala develops an account of that legal order's essential nature, which

[28] Margaret Davies, *Law Unlimited: Materialism, Pluralism, and Legal Theory* (Routledge 2017); Margaret Davies, *EcoLaw: Legality, Life, and the Normativity of Nature* (Routledge 2022).
[29] Seyla Benhabib, *Dignity in Adversity* (Polity Press 2011).
[30] Evgeni Pashukanis, *The General Theory of Law and Marxism* (Transaction Publishers 2002).
[31] In what follows, I assume the definition of legal positivism in: John Gardener, 'Legal Positivism: 5½ Myths' (2001) 46 *American Journal of Jurisprudence* 199.
[32] MacKinnon (n 19) 169-170, 238-240.
[33] Brian Tamanaha, 'What Is 'General' Jurisprudence? A Critique of Universalistic Claims by Philosophical Concepts of Law' (2011) 2 *Transnational Legal Theory* 287.
[34] Davies (n 28a) Chapter 4.

quite self-consciously focuses on the materiality (and materialism) of international law's historical and contemporary connection to the development of global capitalism.[35]

To all this the truly committed analytical taxonomist might stamp their foot, proclaiming that even scholars like those just referenced must nonetheless fall somewhere within traditional analytical debates on the issues raised therein. After all, are MacKinnon, Pashukanis, and the rest not also fundamentally *positivist*, in that they all accept some kind of separation between legal and moral validity? Now 'Don pedantic' is back with a vengeance. It may well be that authors such as MacKinnon agree with Austin or Raz, for example, to a greater extent than with Dworkin but that squarely misses the point. Trying to crush truly divergent theories into familiar and comfortable territory not only displays a shocking lack of intellectual imagination but also risks limiting their broader contributions. MacKinnon's lasting impact upon the study of law, whether or not one agrees with her, is her claim that it *matters more* that law is deeply intertwined with patriarchy than whether, for example, either natural lawyers or positivists have it right.[36] This claim is not just normative but also philosophical: it concerns what matters when seeking to understand the nature of law itself. This being so, she and those like her can hardly be excluded from the 'core' of Jurisprudence teaching, *a priori*.

'Dons rooted; Dons that understand': Why inclusive Jurisprudence syllabuses are a good thing.

To paraphrase Michel Foucault, things that should go without saying often go a lot better *with* saying. Curriculum decolonisation and other equality, diversity, and inclusion initiatives within contemporary law schools are not (or, at least, should not be) mere managerial fads. They are serious moral responsibilities that we as law teachers all share.[37] The online backlash following the release of Sachs' syllabus is best explained in those terms: many of us, myself included, felt as though our collective and self-conscious efforts to pursue these worthy goals were being expressively undermined. Sachs is a leading Professor at one of the most famous law schools in the world. For better or worse, this gives him an even more acute responsibility to have these goals in mind when engaging in module design.

There are several clear instrumental and intrinsic advantages for ensuring that our introductory Jurisprudence syllabuses are broadly representative not only of the type of work being done within that field, but also of the diverse range of backgrounds represented within it (see below). Admittedly, this task can be daunting. Jurisprudence, in the broad sense characterised it above, has not so much burgeoned as exploded in recent years, with a huge quantity of what, following Belloc, we might

[35] Ntina Tzouvala, *Capitalism As Civilisation: A History of International Law* (Cambridge University Press 2020).
[36] MacKinnon (n 18) 170.
[37] See generally: Folúkẹ́ Adébísí, *Decolonisation and Legal Knowledge Reflections on Power and Possibility* (Bristol University Press 2023), Chapter 1 in particular.

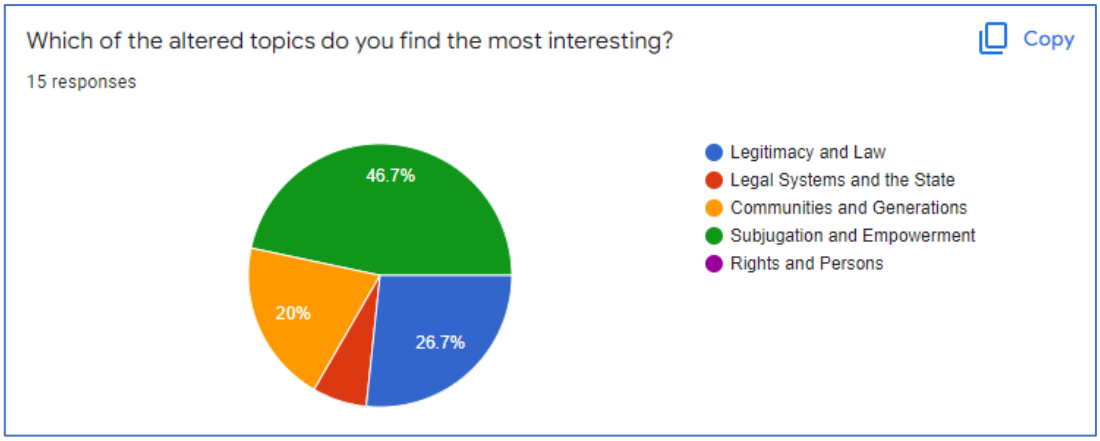
reasonably call 'Deep cargoes of gigantic tomes'. Nonetheless, once again for better or worse, it is simply our jobs as Jurisprudence teachers to stay broadly abreast of this material. None of us can be experts in everything, of course, but that surely cannot justify the restriction of our introductory syllabuses to material with which we are immediately comfortable and familiar.

We know that at least some Jurisprudence modules are compulsory and that very many students taking those modules may well find them unspeakably dull unless some careful thought is put into their design. To quote Leslie Green:

> Nowadays, a popular epithet of condemnation is 'irrelevant' or 'boring', especially among the practically-minded for whom a really interesting question is one a client might pay you to answer. Simpson reports, 'In my own long experience as a teacher and to some modest extent a practitioner of law I have never once been asked the question "What is law?"' Not only did no one ever ask him, he never felt moved to ask himself. 'Why anyone should worry about this is beyond me...' In all, the central questions of jurisprudence strike him as utterly boring. But as the old linguistic philosophers might have put it, 'boring' is not a simple predicate but a relational term, here tantamount to 'I am bored by this', or maybe, 'I don't know how to get interested in this' – to which an acceptable reply might be, 'I'm so sorry'.[38] [References omitted.]

Tempting though it might be to daydream otherwise, I am genuinely not convinced that 'sorry' is good enough when it comes to teaching. As canvassed in the following section, there are ways that traditionally over-represented authors can be introduced within a Jurisprudence syllabus, which, in my own experience at least, do not produce abject boredom.[39] At this point, I want to share some indicative but wholly anecdotal data from a small survey I conducted before finalising the syllabus of my optional second year undergraduate Philosophy of Law module at the University of York in 2021. Amongst other things I altered, one well-received change was the recasting of more traditional Jurisprudential topics (legal positivism, 'Law as Integrity', and so on) with 'meta-topics' that cut across several of these questions while also introducing material on, for example, law and patriarchy, law and race, and legal pluralism. Of the fifteen responses received from registered students to my question 'which of the altered topics do you find most interesting', the breakdown was:

[38] Leslie Green, 'Jurisprudence for Foxes' (2012) 3(2) *Transnational Legal Theory* 150, 160.
[39] Naturally, delivery also matters immensely here (we all do our best, I'm sure), but just as 'sorry' isn't good enough, any suggestion that 'our syllabuses don't matter, it's what we do with them' rings rather hollow as well.



Note that the meta-topic 'Subjugation and Empowerment', within which feminist legal theory featured prominently, was by far the most attractive to students, whereas 'Legal Systems and the State', within which the preponderance of the Hart-Dworkin debate fell, was the second to last enthusiastically received. Wholly anecdotal, of course, but interesting nonetheless. Following these changes, enrolment within the module increased by 138% in 2022, potentially indicating that, within York Law School at least, interest in this sort of material predominates.[40] To this I would add a straightforward suggestion: given my previous arguments about feminist and other critical material falling happily within the broad church of Jurisprudence, should we not aim, all other things being equal, to keep things interesting for our students?[41]

Turning to more weighty considerations in favour of inclusive syllabuses, these can be roughly divided into instrumental reasons concerned with pedagogy, on the one hand, and epistemology, on the other, as well as intrinsic reasons of (social) justice. Taking the latter first, the point is simple but important: a lot of quality work exists within Jurisprudence beyond that written by White men, such that any syllabus largely or completely excluding work of such diverse provenance without sufficient justification exhibits unjust exclusion.[42] Naturally, this point is contingent upon everything we know about the general exclusion of non-male, non-White individuals from legal academia more generally,[43] but it is nonetheless important for its historical contingency. Turning to the instrumental pedagogical reasons we have for adopting inclusive syllabuses, it is important that students from a broad range of

[40] I have not attempted to correct for other variables here. My intention is to suggest, rather than to prove, a possible explanation for these student reactions.
[41] This plea is subject to the 'no-harm' pedagogical principle I outline in: Alex Green, '"Just teach them the law!": the ethics of value inculcation within legal education' (2023) 57(3) *The Law Teacher* 390.
[42] I have met a few 'jurisprudes' who suggest the issue here is one of quality: critical work, apparently, is just not very good. However, since those same scholars often have similarly dismissive attitudes to some analytical authors that they *do* teach, the idea that they are genuinely filtering for quality is simply not plausible.
[43] See generally, and for example: Meera Deo, *Unequal Profession: Race and Gender in Legal Academia* (Stanford University Press 2019); Cruz Reynoso and Cory Amron, 'Diversity in Legal Education: A Broader View, a Deeper Commitment' (2002) 52(4) *Journal of Legal Education* 491.

backgrounds are able to identify with at least some of the authors they are tasked with reading.[44] This is, in one sense, also intrinsically important,[45] however its instrumental value should be clear in terms of ensuring not only student engagement but also the creation of welcoming, productive spaces for participatory learning.[46] (Those who scoff at the idea of classrooms as 'safe', 'inclusive', or even 'brave' spaces should, in my view, reflect carefully on what precisely they think their role as teachers might be.)

Turning finally to the instrumental epistemic point, the inclusion of various perspectives on the nature of law can only enhance the study of Jurisprudence in substantive terms. One article that has been particularly helpful within my own practice is 'Buried Alive' by Irene Watson, in which, as the title suggests, an aboriginal legal scholar writes 'from the inside, about [her] law and life ways which are buried alive by a dominant colonising culture'.[47] Of particular interest is a story 'known throughout Aboriginal Australia'[48] and quoted at the beginning this paper, which is worth reproducing in full:

> In the beginning there lived a giant frog, who drank up all the water until there was no water left in the creeks lagoons rivers lakes and even the oceans. All the animals became thirsty and came together to find a solution that would satisfy their growing thirst. The animals decided the way to do this was to get the frog to release the water back to the land, and that the 'proper' way to do this was to make the frog laugh. After much performing one of the animals found a way to humour the frog, until it released a great peal of laughter. When the frog laughed it released all the water, it came gushing back to the land filling creeks, riverbeds, lakes and even the oceans. As the community of animals once again turned their gaze to the frog they realised they had to make the large frog transform into a smaller one, so that it could no longer dominate the community. They decided to reduce the one large frog to many much smaller frogs, so that the frog would be brought to share equally with all other living beings.

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[44] Mohsen al Attar and Shaimaa Abdelkarim, 'Decolonising the Curriculum in International Law: Entrapments in Praxis and Critical Thought' (2021) 34 *Law and Critique* 41, 47-48.
[45] This can be conceptualised through the idea of 'cultural democracy', see: Ahmed, Wahida, Hezhan Kader, Abdul Khan, Ahmed Memon, Joy Olugboyega, Anthony Otobo Martins, Mekke Orie, Jasmyn Sargeant and Lisa Shoko with Suhraiya Jivraj and in collaboration with Dave Thomas and Sheree Palmer, *Decolonising the Curriculum Project: Through the Kaleidoscope* (University of Kent 2019): https://decoloniseukc.fles.wordpress.com/2019/03/decolonising-the-curriculum-manifesto.pdf (last accessed 6 October 2023); Delores P. Aldridge, 'On Race and Culture: Beyond Afrocentrism, Eurocentrism to Cultural Democracy' (2000) 33(1) *Sociological Focus* 95.
[46] See generally: Ahmed Raza Memon and Suhraiya Jivraj, 'Trust, courage and silence: carving out decolonial spaces in higher education through student–staff partnerships' (2020) 54(4) *The Law Teacher* 475.
[47] Irene Watson, 'Buried Alive' (2002) 13 *Law and Critique* 253.
[48] Ibid.

This parable can be usefully compared to Western philosophical myths about the creation of law, such as the state of nature and the social contract.[49] In other work, I argue that attention to myths of this kind, in both philosophy and our broader cultural practices, deepens our understanding of various issues germane to the nature of law.[50] In the classroom, I have likewise found material like the story of the greedy frog to be useful springboards for examining the normative and empirical premises behind different conceptions of law and the state (Hobbes, for example, tells us a legal creation myth about fear and violence, whereas Watson cites one about laughter and belonging). Analytical legal philosophers should readily accept this, given the popularity of thought experiments such as Dworkin's Judge Hercules,[51] or Raz's society of angels.[52] However, it is only when our syllabuses embrace broader sets of legal traditions (those of Aboriginal Australia, in this case) that our students benefit from thought experiments and other intuition pumps grounded in truly diverse cultural perspectives.[53] The philosophical benefits of an open mind scarcely need elaboration here.

It is illuminating that Belloc's praise of 'Dons rooted; Dons that understand' attaches directly to his favourable characterisation of 'Dons English, worthy of the land'. The supposedly necessary connection between understanding, on the one hand, and rootedness, on the other, is something deeply ingrained within many Indigenous legal cultures.[54] Whether or not one agrees with such traditions in substance, fairly representing perspectives such as these, which are increasingly prevalent within anglophone legal theory, requires Jurisprudence syllabuses to achieve appropriate inclusivity.[55] To put the point another way, unless we are to adopt an antecedent commitment to just one mode of doing legal philosophy, and there is no reason why we should,[56] we must not foreclose upon the diverse range

[49] Thomas Hobbes, *Leviathan or The Matter, Forme and Power of a Commonwealth Ecclesiasticall and Civil*, JCA Gaskin (ed.) (Oxford University Press 1996), Chapters XIII-XVIII.
[50] Alex Green, 'The Importance of Dystopian Hypotheticals: Towards an Ethical Turn in Liberal Political Philosophy' (2022) 4(2) *Law, Technology & Humans* 60.
[51] Dworkin (n 20) 239-240.
[52] Joseph Raz, *Practical Reason and Norms* (Oxford University Press 1999) 159-160.
[53] An intuition pump is an imagined hypothetical 'designed to focus the reader's attention on 'the important' features, and to deflect the reader from bogging down in hard-to-follow details' (Daniel Dennett, *Elbow Room: The Varieties of Free Will Worth Wanting. Cambridge* (MIT Press 1984) 12).
[54] Amanda Kearney, John Bradley, Vincent Dodd, Dinah Norman a-Marrngawi, Mavis Timothy a-Muluwamara, Graham Friday Dimanyurru & Annie a-Karrakayny, *Indigenous Law and the Politics of Kincentricity and Orality* (Palgrave Macmillan 2023) 3.
[55] To quote from Tamanaha (n 31) 307, we must guard against: 'asserting that [our] intuitions about law trump others…[because t]he confident insistence by analytical jurisprudents that they have identified necessary truths about the nature of law has the effect of clothing a parochial conception of law in universalistic dress to serve as a standard for all times and places.' See also: Kathy Luckett, 'Curriculum contestation in a post-colonial context: a view from the South' (2016) 21(4) *Teaching in Higher Education* 415; Folúkẹ́ Adébísí, 'Should We Rethink the Purposes of the Law School? A Case for Decolonial Thought in Legal Pedagogy' (2021) 2(3) *Amicus Curiae* 428.
[56] There are even reasons to suppose, for example, that commonly adopted analytical methods of 'conceptual analysis' might rest upon an endemic mistake, see: Michael Shaffer, 'The Problem of Necessary and Sufficient Conditions and Conceptual Analysis' (2015) 46(5) *Metaphilosophy* 555; Brian Leiter, *Naturalizing Jurisprudence: Essays on American Legal Realism and Naturalism in Legal Philosophy* (Oxford University Press 2007) 175-182.

of perspectives available to us, just because some of them may appear counterintuitive to scholars educated primarily within the analytical tradition.

'Dons admirable! Dons of Might!': Why and how 'traditional' Jurisprudence should inspire.

To be absolutely clear, I am not suggesting that scholars such as Hart, Dworkin, or Raz should be omitted from contemporary Jurisprudence modules, nor that we should shy away from taxing our students with some of the more challenging aspects of their work. I nonetheless believe that such thinkers can be introduced so as to leave uninhibited the justified drive to decolonise and diversify.[57] What is more, I contend that if these attempts are handled with care, they can also present these authors to students in a manner that is not only challenging but also inspiring. When Belloc introduces his 'regal Dons' that 'roar…The Absolute across the hall', he does so with his tongue firmly in his cheek; however, on another level, his praise is genuine. Although he imputes to them merely 'learning of a sort', he nonetheless hails them as:

> *Good Dons perpetual that remain*
> *A landmark, walling in the plain –*
> *The horizon of my memories –*
> *Like large and comfortable trees.*

We can do even better, I think. Although 'the Absolute' is sometimes considered out of fashion, it still summons images of truly bold and inventive thinkers, whatever their other significant flaws, such as Immanuel Kant, Georg Hegel, or Arthur Schopenhauer. Speaking personally, it also reminds me of how it was to be lectured on the nature of law by Ronald Dworkin, just before he left University College London, and I was an impressionable and awkward undergraduate with stars in my eyes. Dworkin never really 'roared' the Absolute (he tended more to purr it) but the 'vibe', as they now say, was very much the same.[58]

This is, I believe, how we should represent thinkers such as Hart to our students now: not as purveyors of received wisdom or canonical defaults, but rather as radicals of a different kind. At bottom, claims of the sort often found in the cannon of analytical Jurisprudence are exceptionally bold.

[57] Despite being all-male, this triumvirate is already reasonably diverse, with Joseph Raz being born to working class parents in Mandatory Palestine. I discuss Hart's positionality below.

[58] When Belloc speaks of 'large and comfortable trees', I am often reminded of one memorable conversation with Raz – this time when I was a nervous postgraduate researcher at my first academic conference – when he spent a solid forty-five minutes engaging me in probing conversation and, quite unnoticed to me at the time, sheltering me from my very real (and probably quite obvious) subcurrents of social anxiety.

Whether we examine John Austin's views about law 'properly so called',[59] Hart's ambition to explain the essence of all 'modern municipal legal systems',[60] or Dworkin's claims about the nature of legality,[61] such grand theories of law are quite staggering in their purported scope. For many of us educated in the shadow of the European enlightenment, it can be easy to overlook just how extraordinary universal claims of this scale really are. If we are to avoid mirroring Belloc's 'Don self-absorbed and solitary', we must remain alive to the fact that our students will often misconstrue the exciting ambition of such analytical authors as dry formalism or unwarranted abstraction, unless they are introduced to them with appropriate context from the very start.

To that end, I would make a modest suggestion. Rather than treating the analytical canon as somehow 'basic' or 'foundational', we should completely flip the script. Let theories emphasising the contingent, material, and contextual nature of law be the starting point for our Jurisprudence modules. Students today are often more than passingly familiar with the basic tenets of feminism and critical race theory, for example, so beginning with accounts of law like these may well fit what comes most naturally to them. Conversely, let those making universal claims about the nature of law be introduced later, or otherwise as challengers, so that our presentation of the relationship between analytical and critical theory is not just one of orthodoxy and critique but also of deep philosophical disagreement between genuine rivals. Not only does this better reflect the contemporary reality of critical scholarship but it also, in my own experience at least, gives students an appropriate sense of awe and enthusiasm when contemplating whether there could really be a single answer to the question: 'what is law?'

Students first introduced to the idea that law is a union of primary and secondary rules, or asked to reflect upon whether legal content might be determined by facts about political morality, can sometimes fail to see what is at stake when these questions are asked. But what if they started Jurisprudence by asking about the relationships between law and racism, or between legal subjectivity and sexuality? Having such material issues in mind breathes life into the critical potential that analytical philosophers often mask behind their otherwise laudable desire for accuracy. Hart himself had fascinating positionality. The son of a Jewish tailor of Polish and German descent, he not only worked at Bletchley Park alongside Alan Turin, but also, later in life, was active in public debate against Lord Devlin on the question of decriminalising homosexuality:[62] Hart was, to use his own

[59] John Austin, *Austin: The Province of Jurisprudence Determined*, Wilfrid E. Rumble (ed.) (Cambridge University Press 1995).
[60] HLA Hart, *The Concept of Law*, 3rd ed. (Oxford University Press 2012) 2-17.
[61] Dworkin (n 13) 171-178; Dworkin (n 20) 225-275.
[62] See, for instance: *Report of the Committee on Homosexual Offences and Prostitution*, Cmd 247, 1957 (UK); HLA Hart, *Law, Liberty and Morality* (Oxford University Press 1963); Patrick Devlin, *The Enforcement of Morals* (Oxford University Press 1965); HLA Hart, 'Immorality and Treason' in Richard A. Wasserstrom (ed.), *Morality and the Law* (Wadsworth Publishing Company 1971); and HLA Hart, 'Social Solidarity and the Enforcement of Morality' (1976) 35 *The University of Chicago Law Review* 1.

words, a 'suppressed homosexual'.[63] Anyone conversant with Hart's work knows that his positivism was partly motivated by the Benthamite desire to ensure that promulgated laws can be held to public scrutiny;[64] but that point will present itself far more viscerally to students already conversant with the material realities of legal oppression. Allowing critical theory to shepherd, rather than merely oppose, its traditional analytical foils will almost certainly enhance how these established texts are received.

'My fires are banked, but still they burn': Some concluding remarks.

I have argued that the case for restructuring introductory Jurisprudence modules so that the traditional analytical canon no longer dominates is not just sensible but compelling. For one thing, this reimagination of the status quo brings teaching more clearly in line with the true state of contemporary legal philosophy. For another, students are likely to find suitably restructured modules far more interesting. To this we may add several well-rehearsed but still eminently persuasive arguments in favour of greater diversity and inclusivity, as well as the (I hope) inspiring possibility that greater inclusivity is likely to strengthen the appeal of more canonical texts. Throughout, I have taken my lessons not only from a broad range of theoretical musings on the philosophy of law, but also from the humorous, and perhaps cautionary, lines of Hilaire Belloc. While I cannot hope to have convinced every reader, my aim has been to excite in some at least the desire for radical experimentation. I have appended the full text of 'Lines to a Don' immediately below, for the benefit of those readers who, like me, may find it engaging. For those unfamiliar, the name 'Chesterton' references the philosopher and critic Gilbert Chesterton, a close friend of Belloc, to whom the offending Don was extremely disparaging in print. Some things, it seems, never change.

[63] For a classic biography of Hart, see: Nicola Lacey, *A Life of H.L.A. Hart: The Nightmare and the Noble Dream* (Oxford University Press 2006).

[64] HLA Hart, 'Positivism and the Separation of Law and Morals' (1958) 71(4) *Harvard Law Review* 593. Cf. Dan Priel, The Politics of Legal Theory Revisited (2023) Netherlands Journal of Legal Philosophy, Pre-publications. This point is also championed by scholars who are, in general, quite dismissive of critical legal theory, see: Brian Leiter, 'The Radicalism of Legal Positivism' (2009) 66 National Lawyers Guild Review 165.

Lines to a Don

By Hilaire Belloc

Remote and ineffectual Don
That dared attack my Chesterton,
With that poor weapon, half-impelled,
Unlearnt, unsteady, hardly held,
Unworthy for a tilt with men –
Your quavering and corroded pen;
Don poor at Bed and worse at Table,
Don pinched, Don starved, Don miserable;
Don stuttering, Don with roving eyes,
Don nervous, Don of crudities;
Don clerical, Don ordinary,
Don self-absorbed and solitary;
Don here-and-there, Don epileptic;
Don puffed and empty, Don dyspeptic;
Don middle-class, Don sycophantic,
Don dull, Don brutish, Don pedantic;
Don hypocritical, Don bad,
Don furtive, Don three-quarters mad;
Don (since a man must make an end),
Don that shall never be my friend.

* * *

Don different from those regal Dons!
With hearts of gold and lungs of bronze,
Who shout and bang and roar and bawl
The Absolute across the hall,
Or sail in amply billowing gown
Enormous through the Sacred Town,
Bearing from College to their homes
Deep cargoes of gigantic tomes;

Dons admirable! Dons of Might!
Uprising on my inward sight
Compact of ancient tales, and port
And sleep – and learning of a sort.
Dons English, worthy of the land;
Dons rooted; Dons that understand.
Good Dons perpetual that remain
A landmark, walling in the plain –
The horizon of my memories –
Like large and comfortable trees.

* * *

Don very much apart from these,
Thou scapegoat Don, thou Don devoted,
Don to thine own damnation quoted,
Perplexed to find thy trivial name
Reared in my verse to lasting shame.
Don dreadful, rasping Don and wearing,
Repulsive Don—Don past all bearing.
Don of the cold and doubtful breath,
Don despicable, Don of death;
Don nasty, skimpy, silent, level;
Don evil; Don that serves the devil.
Don ugly—that makes fifty lines.
There is a Canon which confines
A Rhymed Octosyllabic Curse
If written in Iambic Verse
To fifty lines. I never cut;
I far prefer to end it—but
Believe me I shall soon return.
My fires are banked, but still they burn
To write some more about the Don
That dared attack my Chesterton.