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# Integrative Jurisprudence

By JEROME HALL\*

*Editorial Note:* The following paper was originally presented in Mexico City on December 10, 1975, in a symposium honoring Professor Emeritus Luis Recaséns Siches of the National University of Mexico.

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**M**Y contribution to this symposium comes less than two years after the publication of my *Foundations of Jurisprudence*,<sup>1</sup> a small book which was a product of almost forty-five years of studying and teaching philosophy of law. Any writer of a book that has an important place in his life's work is likely, after a passage of time, to reflect on his venture and to think of problems that he might have explored or, at least, have gone into more fully than he did. He is likely to think of the enterprise of legal philosophy partly in the light of the reception of his book,<sup>2</sup> partly in terms of issues that continue to divide legal philosophers into opposing schools. Accordingly, I shall be expressing some reflections on the central themes of *Foundations of Jurisprudence*. I shall also discuss some of the principal barriers to the progress of legal philosophy and certain tests of the validity and adequacy of a legal philosophy. Finally, I shall delineate the salient features of an integrative philosophy of law.

Unlike the situation in the physical and natural sciences, where each generation of scientists can build on a solid foundation and contribute to the progress of his science, in legal philosophy each writer seems to start afresh, influenced, of course, by the cultural milieu in

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1. J. HALL, *FOUNDATIONS OF JURISPRUDENCE* (1973).

2. For book reviews published in English see: Bodenheimer, Book Review, 48 *TUL. L. REV.* 771 (1974); Dias, Book Review, 33 *CAMBRIDGE L.J.* 341 (1974); Lloyd, Book Review, 13 *J. SOC. PUB. TEACHERS OF LAW*, 219 (1975); McNerny, Book Review, 19 *N.Y.L.F.* 919 (1974); Stone, *Law-As-Action and Integrative Jurisprudence*, 26 *HASTINGS L.J.* 1331 (1975).

which he lives, but still building his philosophy with only partial or indifferent use of the relevant literature that extends 2500 years into the past. Let me say directly that I do not see any immediate future when all legal philosophers will accept a single philosophy as the only or the best one; by like token, fortunately, it is not possible to suppress individual creativity and other sources of difference that are bound to find expression in the philosophies of particular cultures. The problem I address is this: is every legal philosophy just as sound as every other one? Are legal philosophies like artistic creations, about which some suggest that one can only say "I like it" or "I don't like it," or are there valid standards for criticism of, or preference among, legal philosophies?

We may start with recognition of the fact that at the base of every legal philosophy is a postulate or set of postulates that are accepted as evident and that in combination comprise the perspective of that philosophy. Thus, classical natural law philosophy rests on an objective view of reality and on the characterization of human psychology as rational and social; the German historical school is based on the *Volksgeist*; utilitarianism is grounded on the pleasure-pain principle and the maximization of social value, and so on. There are, of course, more detailed ways of describing the ultimate perspectives of legal philosophies, but the above may suffice to raise a number of important questions, even if it is agreed that it is impossible directly to refute a basic perspective. Certainly, we cannot criticize a legal philosopher simply because he has been sensitive to the distinctive tones of the culture in which he grew up and has lived his life.

Nonetheless, we can examine the fruits of his perspective, the structure, the legal philosophy, that rose from his foundations. We can ask whether in the course of articulating his legal philosophy he contradicts himself, whether there are internal inconsistencies. Second, we can ask whether he has neglected certain problems, facts, or facets of experience that are generally accepted as legally important. In other words, has he, while claiming to present an adequate philosophy of law, failed to provide a legal philosophy that is relevant to the elucidation of important problems? Third, we can ask whether he has fully articulated the concepts comprising his legal philosophy. This inquiry includes, but is not confined to, the question whether he has constructed a basic framework of ideas or "categories" to which everything said in his philosophy may be referred for "ultimate" explanation.

Fourth, we may raise questions regarding the significance of his legal philosophy. Here, plainly, we tread on uncertain, more difficult

ground. Nevertheless, since significance depends on current problems and current intellectual interests, some estimates of significance seem valid. Given two legal philosophers who live in the same culture, it is surely pertinent to ask whether they have been equally sensitive to current issues and intellectual interests. Moreover, in the ever-increasing expansion of national interests, in the coming together of many cultures, one may begin to pose the above questions on a world basis, on the basis of universal problems and of the intellectual interests that represent common elements in the cultures of many countries.

Relevant here are the great dimensions of human experience which everyone would admit have had considerable influence on legal philosophies, namely, the experience of ideas or concepts, of facts, and of values. As regards each of these realms of experience, legal philosophers have taken various, often divergent, positions. Since Kant, one can no longer indulge in "naive realism," but the battle regarding "forms" or "mental constructs" is without end; and even more starkly and vigorously opposed are views of values and ethical principles. What seems clear to me, at least, is that an indifference to any one of these realms of experience inevitably leads to an inadequate philosophy of law, a particularistic theory. Since there is a wide consensus regarding the importance of the above dimensions of experience, the controversial issue is the use that is made of them in the construction of a legal philosophy. As previously noted, "significance" is measured by current intellectual interests and problems; presumably, these interests are related to, or subsumed under, one or more of the three basic dimensions of experience noted above.

A fifth and final question to be raised in the evaluation of a legal philosophy or, if one prefers, in the selection or construction of the legal philosophy one is prepared to defend, is this: has the writer paid due attention to the history of legal philosophy? "Due attention" implies no less than a thorough grasp of the history of legal philosophy and the deliberate use of that history to formulate issues and to build upon that heritage of ideas and theories. This use of history is also the best guaranty of the maintenance and preservation of the *continuity* of legal philosophy.

Insistence on continuity implies that legal philosophy has distinctive characteristics and that continuity is essential to its progress, partly, as stated above, because of the store of ideas, analyses and theories that history provides and partly because legal philosophy is at bottom a discursive discipline, a conversation, and often a debate. It is common

knowledge that entering an ongoing conversation without knowing what was said previously can be very awkward, causing some legal philosophers to make claims of great originality when, in fact, their theories were anticipated and discussed many years ago. Legal philosophy is an intricately woven fabric, and the originality of modern legal philosophers is limited. It is true, of course, that a physical scientist is also born into a world of accepted terms, theories, and procedures. In legal philosophy, however, terms, theories, and procedures are loaded with cultural meanings; they are not subject to uniform definitions characteristic of physical science. History in the two different areas must therefore be viewed with correspondingly distinctive attitudes. A man may become a great physicist even though his knowledge of the history of physics is very limited; but in legal philosophy, the history of the discipline is an important part of the equipment of the legal philosopher. Nonetheless, in both areas, originality consists in employing a new perspective which rearranges the "pieces"—the concepts and the theories—to provide a more significant pattern.

It is submitted, accordingly, that there are several sound tests of the validity and adequacy of a legal philosophy; that granted that there is no direct refutation of the ultimate postulates upon which a philosophy of law rests, there are tests of the soundness and adequacy of the structure built on those postulates. These are, in sum, internal consistency; the clarification of concepts, especially in relation to a set of ultimate categories; the inclusiveness of these categories and of the system of ideas built on them which establishes their relevance to current problems and intellectual interests; and, finally, the use of the history of legal philosophy.

It is evident, I believe, that legal philosophies which have been dominant for many years—legal positivism, natural law philosophy, and sociology of law—have not reflected an equal sensitivity to current interests and problems or to the realms of experience mentioned above. It does not carry one very far, however, simply to notice the differences in the range or scope of legal philosophies; indeed, when one recognizes, as one must, that a scholar of the late Kelsen's erudition and sensitivity constructed and adhered to a conceptualistic legal positivism, the question of the diversity of legal philosophies and of their range becomes complex, perhaps insoluble except in vague terms of shifts in interest, a reiteration of the truism that great legal philosophies are not refuted; they only cease to interest.

Now, I am not going to undertake the impossible task of trying to discover why legal philosophers construct divergent philosophies of law. It is possible, of course, to discover certain cultural conditioners. For

example, Kelsen lived in Vienna when the Vienna Circle, composed of many brilliant scholars, drew a hard line between science and the social or cultural disciplines. Furthermore, in the continental experience, natural law philosophy was closely associated with religious institutions and their dogmas. Both of these reasons probably influenced Kelsen to allocate values and valuation to the sphere of individual preference, outside the realm of cognition. By contrast, in the United States, except during the colonial period, we have never had the experience of a dominant religious institution that seriously threatened the imposition of its dogma, nor, perhaps because we have been rather simple-minded in our view of morality, have we had the sophistication to develop systematic positivist views of ethics; philosophers like Stevenson have been a small minority. At the same time, the social sciences have probably received more attention in the United States than in any other country, and the line between physical science and the social disciplines has not been as definite as was the case on the Continent, nor has it led to the exclusion of the social disciplines from the field of knowledge. In the United States, American legal realism, following Pound's sociological jurisprudence, was much more influential than the conceptualism engendered by neo-Kantian legal philosophies lacking Kant's moral philosophy.

But this sort of explanation is basically historical; it may cast some light and restrain criticism but it does not reach the question of the validity or adequacy of a legal philosophy. Nowadays, one reads many legal philosophies, from Plato's to Aquinas's to Kant's and on into the 19th century, when legal philosophy broke away from the general current of philosophy and became a separate discipline, advancing specialization but paying the cost in particularisms, in its loss of the wider context of philosophy that was created by the illustrious founders of philosophic thought. Criticism of legal philosophies naturally reflects the individual perspective, intuition, and, perhaps, even the unconscious bias of the critic. Nonetheless, a legal philosophy may be subjected as well to the tests previously discussed.

For example, when reading Kelsen, it is certainly defensible to criticize and reject his subjectivist ethical positivism not only by reference to recent progress in moral philosophy, but also because of inconsistencies within his system, such as those regarding "legal justice," "toleration," and the "*Grundnorm*." Kelsen is not only mistaken, he distorts a very important, some would say the most important, phase of human experience. I do not imagine for a moment that debates on ethics will ever end, for even among adherents to a common perspective

on the importance of the moral life, the current of cultural, social, and economic change will require restatements of legal philosophies in terms of the distinctive facts, circumstances, and problems of the particular generation. Nor do I doubt that skeptics and positivists will arise in every generation. Nevertheless, I think their attacks can be met, and the significance of values and valuation maintained, with corresponding influence on the construction of an adequate philosophy of law.

Similar considerations warrant sharp departure from Kelsen's treatment of fact. Although Kelsen seems to have been influenced by Max Weber's attitude toward values and valuation, he was apparently not influenced by Weber's principal contribution to social science—his theory of social action; instead, Kelsen took a dim view of the sociology of law. In this regard he adhered to Kantian conceptualism, and the well-known criticism of Kant's view of fact applies equally to Kelsen's philosophy of law.

In the United States, on the contrary, although a few brilliant scholars, notably Gray, Hohfeld, and Kocourek, made important contributions to analytical legal philosophy, the main current was influenced by social science, with Holmes and Pound as the forerunners and the legal realists making the most important contributions to this branch of jurisprudence. Among the latter is the work of Llewellyn, who was particularly influenced by Weber as well as by Eugen Ehrlich and behaviorist psychology fashioned on the model of physical science. American legal realism, despite its suggestiveness and its many sensitive studies of judicial decision, suffered from several important defects—its depreciation of legal rules, its lack of system, and its indifference to values while carrying on so-called "scientific" inquiry. This last defect was manifested in the insistence on the separation of the "is" and "ought" of positive law and the corollary that scientific inquiry should be limited to the "is" of law. I shall return to this question shortly; at this point it is necessary to distinguish two important meanings of "ought" if the realists' fallacy, as I see it, is to be understood. "Ought" may refer to the reform of law, and if the realists had confined their polemics to the thesis that understanding a branch of law is not compatible with a burning desire to reform it, they would have stood on relatively sound ground. Their polemics, however, went far beyond any such modest counsel. They seemed to think that if one wished to build a science of law he must ignore the normativity of law; Weber's theory of *wertfrei* social science was apparently a major influence.

In sum, in reading the dominant legal philosophies one finds both strength and inadequacy—Kelsen's genius in analytic conceptualism and

the inadequacies of his philosophy as regards valuation and fact; the suggestiveness of the realists regarding factual aspects of judicial decision but also the shortcomings noted above. A similar view of modern natural law philosophies would be defensible despite the fact that analytical legal philosophy had its origin in natural law thinking and also despite the acknowledgement by natural lawyers of the importance of fact.<sup>3</sup>

To some, the indicated path to the construction of a legal philosophy may seem to be eclectic in a derogatory sense. But both a necessary degree of humility in the light of the history of legal philosophy and the example of Aristotle in the first book of *Metaphysics* support the view not only that creativity is possible if one takes that path but also that originality in perspective accompanying that method will have important consequences for the progress of legal philosophy.

What in my view stood out finally as of paramount importance in social affairs was social action. I did not start my reading of legal philosophies with that insight. For many years, law as comprised of rules was the focus of attention, and my first departure from that tradition took the form of viewing legal rules as cultural facts—a fusion of certain ideas, values, and facts, notably the fact of feeling that interpenetrates legal concepts. The concomitant rise of an abundant philosophy and sociology of action impelled further study of what should be the subject of legal philosophy. More important yet was the fuller realization that social action is the paramount datum in human affairs, and even more influential was the fact that “law-as-action” provides a *unifying* concept, one which integrates the main streams of philosophic thought—conceptualist, ethical, and empirical.

Before discussing this synthetic aspect of integrative legal philosophy, I should like to comment briefly on problems regarding legal rules, especially as they have been treated in recent Anglo-American discussions. Problems about rules of law have occupied all legal philosophers, especially as regards their difference, if any, from other norms. On this question I have taken two directions. First, as against those legal philosophers who have argued that there are two kinds of legal rules, called “primary” and “secondary,” the first being sanctioned, and the second, consisting of powers or “facilities,” not sanctioned, I submit-

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3. This statement should be qualified, for example, with regard to the French institutionalists. Still, it seems true that modern natural law theorists, with notable exceptions, have (understandably) concentrated on problems of ethics and values, with consequent neglect of the analysis of concepts and other logical problems as well as of the sociology of law.

ted that powers and sanctioned rules must be brought into their proper relation, namely, powers are instrumental to sanctioned duties. Accordingly, legal rules are both categorical and hypothetical—the apparent antinomy being explainable in a dynamic jurisprudence by the fact that hypothetical powers are used instrumentally to create the subsequent categorical duties. In sum, legal rules are sanctioned categorical commands to which hypothetical rules are instrumental.<sup>4</sup>

The other direction concerns the comparison of legal rules with other norms, and focuses on the question whether the former are distinctive. It seemed to me that this question had been over-simplified by concentrating directly on an alleged crucial difference. This approach ignored the fact that differences are significant only against a background of similarities. Accordingly, I constructed the following list of criteria for legal rules: 1) their moral validity; 2) their function in the maintenance of social values; 3) their regularity rather than their systematic character; 4) their implementation of public interests; 5) their effectiveness; 6) their supremacy when challenged by other norms; and 7) their inexorability. It is the last of these—the supremacy, but most important, the inexorability of law, taken in the context of the above indicated similarities with other norms, that distinguishes positive laws from other norms.<sup>5</sup>

I have indicated some of the factors that influenced the construction of an integrative philosophy of law, and I should now like to discuss the principal differences between my view of integrative legal philosophy and other similar legal philosophies.

First, as I have noted, one influence was a type of social science rather than phenomenology and existentialism, which have influenced Latin American legal philosophers; specifically, I was influenced by recent writing on the philosophy of action and by the post-Kantian social science of *Verstehen*, the insistence on the necessity of taking mental states into account in understanding social action. I believe this kind of social science is essential to comprehension of law-as-action; in any case, my limited study of existentialism and phenomenology led only to some very general and, I fear, only vague insights rather than to definite ways of clarifying the basic concepts of legal philosophy.

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4. For a more detailed discussion of this rather complex problem see J. HALL, *FOUNDATIONS OF JURISPRUDENCE* 124-27 (1973).

5. In the solution of this problem I am pleased to acknowledge my debt to Professor Recaséns Siches, whose writing on this subject led me to reexamine my earlier view of positive law.

Second, in contrast to English utilitarians, especially Austin, who allocated questions of value to legislation, and in contrast, also, to those who separate *theory* of law from *philosophy* of law and allocate valuation to the latter discipline, I found it necessary to adhere to the path of the founders of natural law philosophy, namely, to postulate the moral validity of positive law. The reason for this position is that the insight of the great natural law philosophers who emphasized the conditions needed to discover sound laws is supported by the requirements of science. This rationale raises several questions that call for discussion.

It is commonplace that there have been and are many kinds of political regime and that in ordinary speech, even within a particular polity, we speak of "good laws" and "bad laws." The strength of legal positivism is its applicability to all of these governmental "decrees," to all rules that are commonly called "good" or "bad" laws. But it pays a very heavy price, much too great a price, in its exclusion of value and fact from the province of legal philosophy. Moreover, once it is granted that the content of law should be qualified, at least in terms of value, an inexorable consequence follows. It is implied in Plato's theory of knowledge—the discovery of "the one among the many"; a modern scientist would simply say that there must be a common field of data, that scientific laws generalize these common features among countless items. For example, among the innumerable things in the universe there are only 105 "elements"; to them and combinations of them is the limitless number of things reduced. Since scientific laws and theories are statements about the common features of things, the logic of scientific description determines that it cannot generalize substantively about a field that is composed of contraries and contradictions. That same logic was manifested in the traditional definitions resting on the moral validity of positive law; once that qualitative limitation was placed on the relevant field of data, it followed inexorably that an unjust so-called or popularly called "law" was not really a law. One cannot generalize and say that moral validity is an *essential* feature of law and say also that some laws are not morally valid. I stress this point because in the current positivist view and in that of recent linguistic philosophy, it is arbitrary, indeed, it is fanatical to insist on the moral validity of positive law. In contrast, the present thesis is that science and philosophy require uniformity of the data about which they generalize, and that logic imposes the inevitable consequence of admitting a substantive property as essential. Theoretically, of course, one may say, as did Kelsen, that valuation is subjective, non-cognitive, and therefore not needed or helpful in defining "law." Theoretically, one might also say

that if uniformity of data is necessary for scientific and philosophical generalization, one might confine the concept of legal rules to immoral ones. What one should not say is that some laws are moral while others are immoral or amoral. That assertion is defensible as everyday speech; it is not defensible when it is used scientifically or philosophically since science and philosophy are disciplines which generalize. I have spoken of the moral validity of positive law; for reasons previously indicated, there is also a factual dimension of the subject of legal philosophy which I shall later discuss. The present point is that the logic of descriptive generalization requires uniformity as to both factuality and the quality of moral validity.

Apart from Kelsen's ethical subjectivism and his exclusion of fact (which involve the collateral issues of the importance of value and of the sociology of law), one might argue that since many governmental rules are immoral, their immorality could *logically* serve as the substantive characterization of positive law. Moreover, it could be urged that "good" and "bad" are correlatives, the one implying the other. While this view may be logically sound, it collides with a deeply rooted preference for good government, which is a rationally defensible bias. The postulate of classical natural law philosophy and its central purpose—to delineate the conditions in which good laws can be discovered or made—is persuasive for other reasons than that just indicated. Bad rules may be the product of whim or even, as Frederick Pollock noted, of insane dictatorship. Such diversity and instability defy generalization, at least in the current state of knowledge. Good laws, in contrast, imply rationality and recurrent conditions that are amenable to valid generalization.

The direction I have taken regarding the definition of positive law may be more fully explained and supported by reference to an attempted solution of the problem in a narrower context, that of penal law. In this field, there have been three tendencies and corresponding views of penal law:

1. The first theory holds that any law sanctioned by punishment is a penal law. This view was modified by the English utilitarians because they regarded any sanction as an "evil"; they therefore distinguished penal from civil law by reference to a procedural criterion—the plaintiff controls the process in the latter, but the complaining witness is not in control of criminal prosecution. Plainly, this mode of distinction does not achieve a description or substantive characterization of penal law, and it has other deficiencies which need not be discussed here.

2. A less formal theory of criminal law, indeed, one which claims to be based on moral culpability, includes inadvertent negligence as a type of *mens rea* (*Schuld*) and as a basis of culpability.
3. The third theory of criminal law, one that I have tried to construct, excludes inadvertent negligence from criminal liability and restricts *mens rea* to the intentional or reckless commission of legally proscribed harms. There are other important aspects of this theory which need not be discussed in order to make the relevant point.

A crucial difference among these three theories of criminal law is that only the third is a genuinely descriptive theory. For what is inadvertent negligence but the negation of the awareness of intentionality or recklessness? By lumping together these very different states of mind the label "*mens rea*" or "*Schuld*" becomes merely formal, not descriptive of what is common among criminal states of mind. Since the principle of *mens rea* is critical in the definition of criminal law, the consequence is that this definition does not denote a uniform type of data. Moreover, the first theory noted above, which considers only the control of the process and fails to distinguish penal from civil sanctions, is even more remote from a description of a uniform field of data designated "penal law." Parenthetically, may I say that in practice, also, lawyers would find the descriptive theory the more helpful one; for while, of course, they would recognize that penal codes make inadvertent negligence a sufficient ground of liability in some "crimes," they would be better able to deal with that concept because all that is known about it is known by and from its contrast with intentionality or recklessness. Concepts other than *mens rea*, for example "harm" and "punishment," are also either formal or confused in the first two theories noted above.

The theory of positive law which I defend is an enlarged version of the above briefly and, no doubt, inadequately described theory of penal law.<sup>6</sup> Its great merit is that it discovers and specifies a uniform field characterized, in part, by its moral validity. If it be objected that neither this theory of penal law nor that of positive law includes norms that are in common speech and in lawyers' language "penal laws" or "positive laws," the answer is that no descriptive theory can accurately cover disparate things; in other words, every descriptive theory, whether of science or economics or law, is limited by its terms to certain data or conditions, just as, for example, the physical law of falling bodies is

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6. See generally J. HALL, GENERAL PRINCIPLES OF CRIMINAL LAW (2d ed. 1960).

limited to a perfect vacuum. Indeed, regarding all valid descriptive generalizations it must be said not only that they have great significance in advancing knowledge, but also that they inevitably omit data that from other points of view are important. In sum, restricting "positive law" to norms that are morally valid (the thesis of classical natural law theory) is, for the above stated reason, far more defensible than ignoring the substance of those norms and confining legal philosophy to structural analysis. The additional reasons in defense of the choice taken were discussed above in terms of the criteria of an adequate philosophy of law.

The third important distinguishing feature of the direction I have taken in constructing a philosophy of law concerns an important conceptual difference from similar efforts that have defined or redefined "positive law" in terms of "official behavior" or in terms of "conduct." The former approach was that of the American legal realists, and I have discussed what seem to me to be the limitations of that method—depreciation of rules of law, neglect of their normativity shown in a fallacious divorce of the "is" and "ought" of law, and imitation of the model of physical science. The critical aspect of these limitations is the consequent inability to distinguish official behavior from simulated official behavior.

The latter approach—defining positive law as a type of conduct, which has been congenial in some Latin-American countries—seems to me, with deference, to suffer from two serious limitations. First is the fact that ideas subsist; there are clearly comprehensible legal ideas, and they are very important. Second, that simple solution, equating "law" with "conduct," runs counter to a linguistic tradition that is older than Plato. Language is a mighty institution, and a solution that conforms to long established linguistic usage is certainly to be preferred, especially if it also takes account of law as conduct. For the above indicated reasons, I felt impelled to retain "law" in its traditional meaning ("law-as-rules") and also to construct the concept of "law-as-action," which is the more important concept.

In the viewpoint of the sociology of *Verstehen*, law-as-rules and other mental constructs are essential to the determination and recognition of the distinctive type of action designated "law-as-action." As stated, this idea is the basic concept of the integrative philosophy of law; it therefore shifts the major emphasis from concentration on rules to final and greater emphasis on, and study of, law-as-action. Next, and especially important in an age when analysis has dominated the concep-

tion of philosophy, "law-as-action" represents the advance of synthetic thinking as well as the equally important work of analysis of concepts. That this synthesis also builds on what is sound in the dominant particularistic legal philosophies is surely an additional advantage.

Its superiority over philosophies that concentrate on rules is apparent. For example, the puzzlement regarding the relation to, or effect of ideas on, action is avoided; we start with action in which ideas are integral. Next, the "validity" of law becomes more than a question of logic; it gains significance because it characterizes certain actions. Again, the "effectiveness" of law becomes not a mystery regarding the efficacy of norms, but rather an attribute of certain actions. Furthermore, a philosophy of law focused on "law-as-action" is a genuinely dynamic philosophy in contrast to the dubious claim of the "pure theory." It is action, not concept, that is dynamic.

There are also practical advantages, among them the importance of the layman's actions, which interact with and influence official law-as-action. There is the paramount fact that action rests on the postulate of freedom, especially the freedom needed to solve social problems. This fact raises relevant challenges and also provides an optimism that contrasts with deterministic behaviorism and the view of law as the mere instrument of power.

Finally, on the side of theory, an emphasis on "law-as-action" opens the door to interdisciplinary study in which scholars who are specialists in logic, ethics, or sociology study data within the framework of a common integrative perspective. For half a century or more there has been much discussion and advocacy of "interdisciplinary study"; the meager results and the lack of theories of what this concept involves have, understandably, given rise to skepticism regarding this sort of "exhortation." Still, it is at least equally clear that thinking in terms of interrelations has been central in the growth of science and philosophy; to the extent that "interdisciplinary study" merely emphasizes the need for that kind of thinking in the social disciplines, it is surely unexceptionable even if the products do not comprise a rigorously unified body of knowledge. More definitely, it seems evident that cooperation among specialists who share a sound, common perspective (and are willing to confront sharply opposed views) will advance knowledge of law further than the efforts of scholars who pursue their individual specialties based on narrow perspectives. For example, logicians in the integrative perspective would not only employ logic as a realistic normative instrument, they would also be interested in the practical logic of

argument (dialectic) and in the logic of action, both of which call for more than formal analysis. Social scientists who shared the above perspective would be sensitive to the requirements of a humanistic discipline; the recent shift by many social scientists from behaviorism to the study of value-oriented actions supports this opinion. And collaborating moral philosophers would not only focus on abundant data that involve the use of sanctions; they would also apply their discipline to actual social-legal problems. Beyond these avenues to the progress of legal philosophy is the more difficult, challenging need to invent new concepts to capture the reality of law-as-action in terms that are much more descriptive than the static, structural concepts presently employed in jurisprudence. These are large, perhaps overly ambitious programs. *Foundations of Jurisprudence* had the more limited purpose of providing the necessary conditions for such progress by coming to grips with the principal problems that require solution if we are to construct a legal philosophy for our times.