

Description of Research and Teaching

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Research

My research has fallen into three main areas: General Jurisprudence, other Legal and Political Philosophy, and Moral Philosophy (including moral psychology and metaethics).

A. General Jurisprudence

My work in general jurisprudence from 1993 through 2007--when my book *Naturalizing Jurisprudence: Essays on American Legal Realism and Naturalism in Legal Philosophy* appeared with OUP--had three main themes, reflected in the three parts of that book: "American Legal Realism and Its Critics"; "Ways of Naturalizing Jurisprudence"; and "Naturalism, Morality, and Objectivity." Under these broad headings, I have pursued three main lines of research:

(1) a philosophical reconstruction of the jurisprudence of American Legal Realism, defending it against Hart's famous criticisms, demonstrating its compatibility with legal positivism, locating it within a naturalistic philosophical outlook, and rescuing it from the Critical Legal Studies misrepresentations. Representative publications here would include "Rethinking Legal Realism: Toward a Naturalized Jurisprudence," in the *Texas Law Review* (1997), which has been cited some 300 times in the literature in the intervening years; and "Legal Realism and Legal Positivism Reconsidered," in *Ethics* (2001), which was also chosen as one of "the ten best articles" of that year by *The Philosopher's Annual* (the first time a paper in general jurisprudence had ever been so recognized since the *Annual* started choosing the "ten best" philosophy papers in the late 1970s). My essay "American Legal Realism" for *The Blackwell Guide to the Philosophy of Law and Legal Theory* (2005) gives a good, capsule account of my revisionary reading of American Legal Realism (the on-line version at the Social Science Research Network [SSRN] has been downloaded more than 14,000 times).

(2) a critical examination of the methodology of legal philosophy, in light of the naturalistic revolution in most other branches of philosophy since the 1960s. Here I have been more influenced by the American naturalistic philosopher Quine than most legal philosophers. The central naturalistic idea is that *what there is* and *what we know* are questions to be answered by the methods of successful empirical science, not by armchair philosophical methodology. (As I have also written, Quine was not a very good Quinean, remaining wedded to doctrines—physicalism, behaviorism in psychology—long after they had failed scientifically.) This led me into the methodology debate in legal philosophy, initiated by John Finnis in 1980, revived by Stephen Perry in the 1990s, and addressed most systematically by Julie Dickson in her 2001 book. My aim was to explore the prospects (and pitfalls) of conceptual versus naturalistic approaches to legal philosophy, though in the Postscript to Part II of my *Naturalizing Jurisprudence* book ("Science and Methodology in Legal Theory") I abandoned the more ambitious claims in some of my earlier work on behalf of naturalism due to the poor quality of the empirical social science about judicial behavior. Representative contributions here are the widely-cited and reprinted "Beyond the Hart/Dworkin Debate: The Methodology Problem in Jurisprudence," which first appeared in 2003, as well as the Postscript mentioned above. The essay "Naturalizing Jurisprudence: Three Approaches" from 2009 is a useful synoptic account of the possibilities on my view

(it will be reprinted in a forthcoming volume [edited by M. Guidice & D. Priel] on *Prospects for a Naturalistic Jurisprudence*, in which I will also respond to various critics) as is the essay on “Naturalism in Legal Philosophy” I was invited to contribute (by Joseph Raz) to the on-line *Stanford Encyclopedia of Philosophy* some fifteen years ago (the current version was updated and co-authored with the legal philosopher Max Etchemendy).

(3) an exploration of the objectivity of law and morality, reflected in my 2001 edited collection from Cambridge University Press (*Objectivity in Law and Morals*, with contributions by Joseph Raz, Philip Pettit, and Gerald Postema, among others), and in several papers before and since. Here my broader philosophical interests in metaphysics, philosophy of language, and meta-ethics—especially the realism/anti-realism debate—have played a large role. Initially, I explored questions about the objectivity of law with a focus on questions of the indeterminacy of legal reasoning, but since I was particularly interested in Dworkinian views in which correct legal judgment depended on objective moral judgments, I also ventured in to central metaethical questions. Representative papers include the well-known co-authored piece with Jules Coleman on “Determinacy, Objectivity, and Authority” (*University of Pennsylvania Law Review*, 1993—I am more responsible for the “determinacy” and “objectivity” parts, Coleman for “authority”); my own contribution to the edited 2001 CUP volume, “Objectivity, Morality and Adjudication” and “Moral Facts and Best Explanations,” from *Social Philosophy & Policy* in 2001, which has become a standard citation in literature on explanationist arguments for and against moral realism.

Since 2007, I have returned in my work to three main themes in general jurisprudence:

(1) the problem of “theoretical disagreements” as Dworkin dubbed it; here I have argued, against some other legal positivists, that it is a real problem, but that it admits of a response within a positivist theory that has affinities to “error theory” in metaethics (my 2009 paper, “Explaining Theoretical Disagreement” in *University of Chicago Law Review* is representative, and has been widely discussed; I have also defended that response more recently against various critics in a paper forthcoming in an OUP volume on metaethics and jurisprudence edited by D. Plunkett, S. Shapiro & K. Toh);

(2) the methodology problem in jurisprudence, though now I think there is a good defense of Hart’s approach, though it was not one he considered: it turns on appreciating the nature of social artifacts, like law, and the role of ordinary understandings (including as manifest in linguistic practices) in constituting them, but it also requires that we deflate the metaphysical ambitions of legal philosophy in some ways (representative papers here are “The Demarcation Problem in Jurisprudence” paper for OJLS in 2011, and the recent paper (co-authored with a former PhD student, Alex Langlais) on “The Methodology of Legal Philosophy” for *The Oxford Handbook of Philosophical Methodology* [2016]).

(3) the nature of realism in legal and increasingly political theory. In the coming years, I plan to put together a collection of post-2007 papers in general jurisprudence dealing with this topic (plus some new papers), locating them within a generally realist—in the colloquial, not metaphysical sense—outlook in political and legal theory (one I take to be compatible with the core aspiration of Hartian positivism). One central current project is an essay on legal realism and positivism for the forthcoming *Cambridge Companion to Legal Positivism*, but also a paper on “Realism and Moralism in Political Thought” on the occasion of the Paolo Bozzi Prize from the University of Turin, Italy.

I should also note that the *Encyclopaedia Britannica* commissioned me to write the first new essay on “Philosophy of Law” in over fifty years (the last one was by Julius Stone, another legal realist); the essay has just recently appeared, co-authored with a former student, Michael Sevel.

B. Other Legal and Political Philosophy

My general interest in the intersection between core philosophical areas like metaphysics and epistemology with legal theory led me into philosophical work on the philosophical foundations of evidence law, a doctrinal subject I have taught regularly to law students over the past quarter-century. My co-authored paper (with Ronald Allen, the Wigmore Professor of Law at Northwestern) on “Naturalized Epistemology and the Law of Evidence,” *Virginia Law Review* (2001) is representative, and has been one of the most-cited papers in American evidence law scholarship over the last 15 years.

More recently, I have also moved into more normative legal and political philosophy, though trying to integrate both Anglophone and German philosophical themes in a way not that common in most Anglophone work. My 2013 book *Why Tolerate Religion?* (Princeton University Press, 2013) explored the question whether there was any good moral reason to provide exemptions from generally applicable laws only to those who had religiously-based conscientious objections to them. Drawing on Mill and Rawls, I argued there was not, and in a concluding chapter argued for both the equality of religious and non-religious conscientious objections to the law, but also in favor of limiting exemptions to cases that do not shift burdens on to others (at least for laws that genuinely promote the common welfare). The book was written for a general audience (with most technical discussion buried in endnotes), and has attracted wide interest, including responses from an Elder of the Mormon Church in America, as well as many reviews in popular media in Europe, and translations, already, into French (2014) and Italian (2016). The British political philosopher John Gray, writing in *The New Statesman*, said the book was, “A model of clarity and rigour and at points strikingly original, this is a book that anyone who thinks seriously about religion, ethics and politics will benefit from reading.” The legal scholar and religious liberty expert Christopher Eisgruber, President of Princeton University, wrote, “Every reader will learn something from this remarkable book, and, beginning now, every serious scholar of religious toleration will have to contend with Leiter’s bold claims.” (Excerpts from many reviews are here: <http://press.princeton.edu/titles/9839.html#reviews>.) The book was also a *Choice Outstanding Academic Title* for 2013.

I have also begun to write about the philosophical foundations of free speech (e.g., my Julius Stone lecture at Sydney on “The Case Against Free Speech,” *Sydney Law Review* [2016]) and about the political and legal philosophy of Marx (e.g., “Marx, Law, Ideology, Legal Positivism,” *Virginia Law Review* [2015]), and the way in which the Marxist tradition took a wrong turn with Lukács and the Frankfurt School (e.g., “Why Marxism Still Does Not Need Normative Theory,” *Analyse und Kritik* [2015]). I will be working on a book on Marx for my *Routledge Philosophers* series, co-authored with Jaime Edwards, who is finishing his PhD at the University of Chicago. I also plan to write a book on free speech issues in the next few years, drawing on both Millian and Frankfurt School themes, especially from Marcuse.

C. Moral philosophy

I have worked on issues in moral philosophy—understood broadly to include moral psychology and metaethics—throughout my academic career, with two primary themes: the moral philosophy of Nietzsche, and a defense of moral anti-realism.

The interest in Nietzsche may seem unrelated to my work in legal philosophy, but, as with my revisionary work on American Legal Realism, there is a continuity with my general philosophical sympathies. My main contribution, I believe, has been to defend an interpretation of Nietzsche as a philosophical naturalist on the model of Hume, a view which was not at all orthodox when I started writing twenty years ago, but is now thanks to my efforts.

Nietzsche interests me not as a museum piece from the history of ideas, but as a prescient philosopher whose speculations about the nature of consciousness, motivation, and agency increasingly win support in empirical psychology. Representative publications here include my book *Nietzsche on Morality* (Routledge, 2002; expanded 2nd edition 2015)—which has been called “arguably the most important book on Nietzsche’s philosophy in the past twenty years” (*Journal of Nietzsche Studies*)—as well as several articles, such as “Nietzsche and the Morality Critics” (*Ethics*, 1997), the widely reprinted “Nietzsche’s Theory of the Will” (*Philosophers’ Imprint*, 2007), and “Moralities are a Sign-Language of the Affects” (*Social Philosophy & Policy*, 2013). These papers all integrate Nietzsche interpretation with philosophical argument drawing on contemporary Anglophone sources, and some of them draw heavily on empirical moral psychology as well. One indication of the success of my work within the mainstream of Anglophone philosophy is the inclusion of essays on Nietzsche (authored or co-authored by me) in *The Blackwell Companion to Experimental Philosophy* and *The Oxford Handbook of Moral Psychology*, volumes that are otherwise silent on post-Kantian German philosophy. This summer, I will finish a book on *Moral Psychology with Nietzsche* for Oxford University Press that incorporates some of the previously published articles and includes new material.

A second line of research in moral philosophy has involved the defense of anti-realism about morality and, more recently, normativity in general. The American Legal Realists were, of course, inchoate moral skeptics; Hart was arguably an ethical non-cognitivist and anti-realist, though again without a systematic view; and Nietzsche, of course, was an anti-realist about value. I have been a defender of value anti-realism, and a critic of versions of value realism, both in some of my jurisprudential work (such as “Moral Facts and Best Explanations” [*Social Philosophy & Policy*, 2001], mentioned above) and in other writings. Representative publications would include “Moral Skepticism and Moral Disagreement in Nietzsche” (*Oxford Studies in Metaethics*, 2014) and “Normativity for Naturalists” (*Philosophical Issues: A Supplement to Nous*, 2015).

Some ‘objective’ metrics of research impact

I am the most downloaded legal philosopher (and philosopher) on the Social Science Research Network by a wide margin, with [more than 125,000 downloads of 69 papers](#).

Based on a study by Prof. Greg Sisk & colleagues at the University of St. Thomas in Minnesota, I am the 5th most-cited law & philosophy scholar in legal academic journals for the period 2010-2014, and the most-cited one under the age of 60.

Google Scholar metrics: I have an h-index of 39 and over 4,600 citations. (Relatively few legal philosophers have Google Scholar profiles, but my rough contemporaries who do are [here](#), [here here](#), [here](#), and [here](#).)

Teaching and Mentoring

I have taught evidence law, jurisprudence, and a variety of philosophical topics at all levels over the last twenty-four years: undergraduate (less frequently), law students (a post-graduate degree in the US, though I have also taught on occasion law undergraduates in England and France), and philosophy PhD students. I love teaching and I have always agreed with Nietzsche that “Whoever is a teacher through and through takes all things seriously only in relation to his students—including himself.” Some teaching evaluations from recent years are available at my homepage: <http://brianleiter.net/teaching.shtml>.

In terms of specialized topics, I have taught seminars over the years on metaethics, moral psychology, the methodology problem in jurisprudence, toleration and religious liberty, freedom and responsibility, and the epistemological significance of etiology, as well as on thinkers like Nietzsche, Marx, Freud, Foucault, and the Frankfurt School.

Although my primary appointment in the U.S. has always been on a law faculty, I have nonetheless supervised many PhD students in philosophy (including legal philosophy), who now teach at the University of Texas at Austin, University of Sydney, Georgia State University, Vassar College, University of Illinois at Urbana-Champaign, National University of Singapore, Wayne State University and elsewhere. At the University of Chicago, I have supervised or am supervising PhD students working on issues in metaethics, moral psychology, political philosophy, Nietzsche, and Marx.

I have always made a point of collaborating with graduate students: giving them opportunities to speak at conferences, as well as co-authoring and co-editing with them. At Texas, I created the “Law and Philosophy Program,” whose regular intensive workshops included faculty and students from both the law school and the PhD program in philosophy. At Chicago, I created the “Center for Law, Philosophy & Human Values,” whose conferences have always included opportunity for law and philosophy students to either present papers or comment on the papers by distinguished scholars from elsewhere.

I have also throughout my academic career mentored JD and PhD students from non-traditional backgrounds (including Hispanic, African-American, working-class, and/or gay students). I am delighted that they, and all the PhD students I have worked with, have found [permanent academic positions](#).