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Daniel A. Farber

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The Jurisprudential Cab Ride: A Socratic Dialogue

Daniel A. Farber*

Socrates used to say that true education involved a teacher sitting on one end of a log, talking with a student at the other end. Often, however, I've found that it's more productive to sit on the student and talk to the log.¹

The scene is an urban street-corner on a winter night. A light snow is falling; although the ground is still clear, visibility is poor. There is little traffic. K., a young law professor, is pacing nervously, waiting for a cab. K. may be played by either a man or a woman, at the director's discretion, but must be portrayed as young and serious looking, though easily prone to anxiety attacks. After a hard day at work, K. has recently finished an unsuccessful and rather frustrating shopping trip, marked by unsettling hermeneutical perplexities.² The stores have now closed, and employees and shoppers have left for the night, leaving the street deserted. Suddenly, out of the swirling snow, a cab grinds to a halt. K. jumps in and announces the destination. The cab has seen better days and smells vaguely of cigar smoke. The driver may be pictured as looking like the Kojak character on the old T.V. show, but is chewing on an old cigar rather than a lollipop.

CABBY: So what do you think about all that Clarence Thomas stuff?

K. [*glumly*]: To tell you the truth, I can't even stand to think about it right now.

During the next several speeches the cab shoots down the street, careening wildly around corners and swerving to avoid the few

* Henry J. Fletcher Professor of Law, University of Minnesota.

1. Attributed to the late George Stigler by my colleague Gerald Torres.

2. See Daniel A. Farber, *The Deconstructed Grocery List*, 7 CONST. COMMENTARY 213 (1990).

pedestrians still on the street. (This should challenge the set designer.)

CABBY: Kinda makes you think about what kind of guy ought to be a judge, don't it? I mean, do you need to have like a good character or just be smart?

K.: I'm sorry, but I'm really beat. I just don't feel much like talking.

CABBY: Hey, you know what I always say: the unexamined cab ride ain't worth taking.

K.: I've had a horrible evening, and I'd just like to sit here if you don't mind.

CABBY [*obviously determined to chat anyway*]: Well, in my cab, you got the right to remain silent, but you got no right to an attorney, if you know what I mean.

K.: That's O.K., I'm a lawyer anyway. Or a law professor, at least.

CABBY: Really? Just like that Anita Hill, huh? What kind of stuff you teach?

K. [*wearily*]: Several different things—depends on what the Dean wants. Sometimes it's Contracts, sometimes it's Civil Procedure. [*yawns*] Next time, who knows, maybe it's Tax or Bankruptcy. Any course that no one else wants—that's what I get. Hey, you know how it is, when you don't have tenure you have to jump through all the hoops. Right now I'm teaching Jurisprudence.

CABBY: Yeah? What's that?

K. [*not wanting to be rude, but hoping to end the conversation with the garrulous driver quickly*]: Oh, it's like the philosophy of law. What is law, is it immoral to violate the law, what is justice, that type of thing. [*morosely*] A lot of the students think it's kind of abstract. You know, not the kind of thing they're going to use on Wall Street.

CABBY [*enthusiastically, and oblivious to the total lack of interest displayed by his audience*]: Oh no, that's great stuff. [*He turns his head to address K., narrowly missing a parked car.*] Back in the old country, guys used to love to talk about that philosophy business. I could sit for hours down in the Agora—you know, it was like downtown in the old days—and listen. Fact of the matter is, I don't know nothing about that stuff myself. [*He suddenly slams on the brakes, bringing the car to a screeching halt at a red light.*] All I ever did was ask a dumb question now and then, you know what I mean? And usually, I couldn't even understand the answer. What a dummy! Still, it was a lot of fun. Of course, that was a long time ago and Athens was a lot different in those days.

K., who hadn't really focused on the cabby before, looks at his license and sees that the cabby bears the name of a famous Greek philosopher. K. is too tired to continue the conversation, however, and the two lapse into silence. K. is deep in thought about how to complete an article in time for the tenure vote. Suddenly, K. notices that the cab has been stopped at the red light for what seems like a very long time. In fact, the driver has gotten bored and has started reading a book. K. is getting impatient about the delay and, after waiting what seems like an eternity, finally decides to speak up.

K. [*diffidently*]: Excuse me, but are we going to sit here all night?

CABBY [*bruskly*]: Well, there's a red light, if you didn't notice.

K. [*in a wheedling tone*]: Yeah, but we've been sitting here forever. Can't you just go?

CABBY: Run a red light? Me? You gotta be kidding; I'm a law-abiding citizen. What about my license?

K. [*exasperated*]: But it's the middle of the night! There's no place for a cop to be hiding.

CABBY [*putting down his book and starting to look interested*]: You think I should only obey the law if I might get caught? And you a law prof. and all! No wonder we had Watergate. Is that what you guys teach at that law school of yours?

K. [*defensively*]: Well, obviously no. But there aren't any other cars, so there's no chance that you might cause an accident or anything.

CABBY [*not giving any ground*]: Maybe so, but it's still against the law to run a red light. Don't I have a duty to obey the law?

K. [*now on familiar ground; this is a discussion K. has had in class with students*]: You can't always obey the law. Look at Nazi Germany, or sit-ins against segregation.

CABBY: O.K., but we're not talking about any big deal moral crisis here. I mean, this is just a cab ride, for heaven's sake. So there's no higher moral value in the picture. Isn't there a duty to obey the law under normal-type circumstances?

K.: Aha, that's what we call a prima facie duty. There's been a lot of recent thinking about that. Lots of law review articles, and that kind of thing. Big think stuff.

CABBY: I'm just a cab driver, but say, maybe you can explain it to me.

K. [*warming to the pedagogic task*]: Think of it this way. You have a moral obligation to take the best course of action while taking into account all of the circumstances. At least, that's what people like me think.

CABBY: Seems reasonable to me. [*Mulls the matter over.*] How could it be wrong to do the best thing taking into account all the circumstances? O.K., I can buy that.

K. [*feeling a short-lived burst of energy*]: Then the rest of the argument should be easy. The fact that there's a law on the subject might be relevant to one of those circumstances. For example, if there were anyone around and you ran the light, it might encourage disrespect for other laws. But no one is here to see you, so it's O.K.

CABBY: I hate to tell you this, but *you're* here to see me. So I guess I better not run the light.

K.: No, because I'm not just *any* passenger. *I* understand that

running the light is morally appropriate here. So if you run the light, it won't cause me to disobey laws in other circumstances where it *wouldn't* be morally appropriate.

The light is still red, and the snow is beginning to fall more heavily.

CABBY: I get it. So if it was just any dummy in the back seat, I should stay at the light, but if it's a law professor I should run it?

K. [*still in classroom mode*]: Well, that might be part of the calculation. But anyway, what you have to do is decide the best thing to do under all the circumstances. If you factor in all the concrete effects of obeying or disobeying the law in a particular case, you'll make the right decision.

CABBY: But once I factor in all those concrete reasons, there won't be anything left over about obeying the law. I mean, it won't be one factor in my calculation that, like in the abstract you might say, you ought to obey the law? Is that right?

While the driver has been talking, K. has been looking around the cab. K. hears a ticking noise, but can't figure out where it's coming from—certainly not K.'s quartz watch, though K. checks it anyway. During the remainder of the dialogue, the ticking sound will fade in and out; K. will somewhat furtively look around, check inside pockets, look on the floor, and so forth.

K.: No, because you've already taken into account all the reasons why obeying the law in this particular situation would be good. So there's nothing left over to factor in. That's why some people think that the duty to obey the law is an empty concept; it doesn't add anything to the analysis of any particular situation.

CABBY: An empty concept, huh? I like that. Seems like there's a lot of that going around. [*He hums a Greek-sounding tune absently to himself, deep in thought.*] I gotta admit, I'm still a little puzzled. If there's no duty to obey the laws—not even a *prima facie* whatever you called it—then why even *have* laws? I gotcha there, don't I?

K. [*continuing to look around for the source of the ticking noise*]: No, that's not right. Laws are still useful. They provide guidance about what is usually the best thing to do. Like, usually it's a good idea to stop at red lights because it avoids accidents.

CABBY: So in a way, the law isn't a command. It's more like information that you're getting about the best thing to do. Is that it?

K.: Exactly.

CABBY: This empty concept idea is dynamite. I love it! But look, I'm not just any old Joe off the street, I'm a cab driver. When I got my license, I promised to obey the traffic laws. Actually, when you think about it, I also promised to obey the laws when I became a U.S. citizen. Don't I have a duty to keep my word?

K.: Yeah, a lot of my students say that too. But the same analysis applies. Just think it through. The fact that you made a promise is relevant to determining what is the best thing to do under all the circumstances. But there's no such thing as a prima facie duty to honor promises.

CABBY: Then what is the point of making a promise?

K. [*beginning to find the driver a rather dull if not irritatingly persistent student*]: Again, it's information. You're telling people what your present intentions are and inviting them to rely on that. If you break the promise, you have to consider the impact on the institution of promise making, just like you have to consider the impact on legal compliance by others if you break a law. It's the same thing exactly.

CABBY: I guess you would also say that the duty to tell the truth is also an empty concept.

K. [*to the audience*]: Is this guy ever going to shut up? [*To the driver again, in an impatient tone*] That is the logical implication.

CABBY: So if someone makes you a promise, or if they tell you something, they have no prima facie duty of honesty.

K. [*another aside*]: Do things like this ever happen to other people or is this some kind of curse? This is beginning to seem like an episode of *The Twilight Zone*, featuring the Socratic Cab Driver From Hell. [*Turning back to the driver*] No, there's no prima facie duty to be honest, only a duty to be honest or to keep your promise if that is the best thing to do under all of the circumstances.

By this time, snow is beginning to pile up on the cab. After checking the time, K. sighs heavily. The driver seems determined to talk all night. During this part of the dialogue, the driver becomes more formal, sounding more like his philosopher namesake and less like a stereotypical taxi driver; for this reason he is now referred to in the script by his surname.

SOCRATES: So if someone makes me a promise, they are making a statement—which may or may not be truthful, depending on all the circumstances—about their present intentions, which they either will or will not carry into effect, depending on all of the circumstances. Would it be wise to rely on such a promise?

K. [*stifling a yawn*]: Perhaps not.

SOCRATES: And if that is so, would not a society of individuals holding that view be gravely defective?

K.: How so?

SOCRATES: Is it not desirable that the individuals in a society be able to trust each other?

K.: Yes.

SOCRATES: But a society following your way of thought would be lacking in trust, would it not? Or at least, would it not have less trust than a society that believed in a duty to obey the law, honor promises, and tell the truth?

K. [*plucking lint from clothes*]: Yes, I suppose so.

SOCRATES: But can a view of morality be correct if adherence to it would produce a morally inferior society as compared with another view?

K. [*who really hasn't been listening very carefully but wants to be polite*]: I guess not . . . Shouldn't we pay rent on this as a parking space? I mean, we've been here for hours.

SOCRATES [*seeming determined to stick to the subject*]: So your theory of legal obligation must be defective, wouldn't you admit? And we seem to be left with no answer to the question, is there a duty to obey the law?

K. begins searching for the source of the ticking noise again; by now K. feels a bit like Captain Hook pursued by the ticking crocodile. Looking to the front of the cab, K. notices that the meter is running. The total fare has now reached \$137.

K.: You didn't tell me that the meter was running, you turkey.

SOCRATES [*sarcastically*]: It didn't seem like the best thing to do under all of the circumstances.

K.: Don't give me that crap.

SOCRATES: Hey, maybe we should discuss this. When is it unjust to require payment of a debt? An interesting question . . .

K.: Look, you jerk, I'm not going to spend the rest of the night playing this game with you. Here's twenty bucks, pal. I'm going to walk home.

K. jumps out of the cab and slams the door.

SOCRATES [*almost muttering to himself*]: What made you think knowledge would be cheap?

K. [walking a few steps, slipping and almost falling in the snow, then turning around and shaking a fist at SOCRATES]: Hey, buddy, get a life!

As K. trudges away through the snowdrifts, the light changes to green. The cab starts off, and then abruptly vanishes into the swirling snow, as the curtain falls.