

Epistemology and Method in Law

Geoffrey Samuel



APPLIED
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Epistemology and Method in Law

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Series Preface

The objective of the Applied Legal Philosophy series is to publish work which adopts a theoretical approach to the study of particular areas or aspects of law or deals with general theories of law in a way which focuses on issues of practical moral and political concern in specific legal contexts.

In recent years there has been an encouraging tendency for legal philosophers to utilize detailed knowledge of the substance and practicalities of law and a noteworthy development in the theoretical sophistication of much legal research. The series seeks to encourage these trends and to make available studies in law which are both genuinely philosophical in approach and at the same time based on appropriate legal knowledge and directed towards issues in the criticism and reform of actual laws and legal systems.

The series will include studies of all the main areas of law, presented in a manner which relates to the concerns of specialist legal academics and practitioners. Each book makes an original contribution to an area of legal study while being comprehensible to those engaged in a wide variety of disciplines. Their legal content is principally Anglo-American, but a wide-ranging comparative approach is encouraged and authors are drawn from a variety of jurisdictions.

Tom D. Campbell

Series Editor

Centre for Applied Philosophy and Public Ethics

Charles Sturt University, Canberra

Preface

This book has been long in gestation and perhaps even longer in writing. But it has not been easy to try to produce a work for readers who may have knowledge neither of the continental (civil) law tradition nor of the main schools of Western legal theory, yet would like to go beyond the standard introductory works to legal method. In going beyond the standard works, the general question that this book seeks to answer is this: what does thinking like a lawyer actually involve? The focus is mainly on English cases and so the book is aimed at those primarily interested in the methods of common lawyers. Yet its ambitions are wider: it is also designed as a contribution to comparative law inasmuch as it is concerned with the 'law' question. For if one does not know what it is to have knowledge of law, then it becomes difficult to know what one should be comparing. Most important, however, it is propounding a thesis that knowledge of law is more than just knowledge of rules. If there is one issue that underpins the search for knowledge beyond the rules, it is the awareness that to date no one has been able to model the legal mind for artificial intelligence purposes. This work is a direct response to that failure, although I am fully aware that there is nothing in this book that will be of direct benefit to AI.

The book has benefited immensely from both public and private criticism of my earlier work. I should therefore like to take this opportunity to thank those colleagues who have written reviews and provided commentary. Many weaknesses have been addressed and, if not always fully and successfully strengthened, they will I hope be treated as part of a continuing dialogue. Needless to say, then, that the book does contain a few sections that have, to a greater or lesser extent, seen the light of day elsewhere. The influence of many will be found in the pages that follow. Where that influence is conscious, I have attributed ideas as fully as I can. Nevertheless, there will be many omissions. To go some way in combating this weakness, the bibliography ranges wider than the actual note references and thus inclusion in the list is a recognition of influence and absorption. Even so, this bibliography probably does not fully represent all those who have contributed to my thinking.

My family have patiently suffered late-night absences and disappearances to French faculties and to them I offer my warmest thanks. Many thanks also to all those colleagues here and abroad, often named by me elsewhere, for their help and support. John Bell and Pierre Legrand do, however, deserve special mention here. Finally, I would like to acknowledge the superb editing carried out by the publishers. They not only improved the style of my English, but on occasions corrected my French. A special thanks to real professionals.

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