

Preface

This book is intended as a contribution to jurisprudential reflection on the nature of legality. The term ‘jurisprudence’ in the Anglo-American legal tradition generally refers to the philosophical study of the general features of law, both as a social phenomenon and as an intellectual object of moral significance. As such, jurisprudential theories have as their main goal the elaboration of the general properties of law and legal order, at a level of abstraction that is in some degree removed from the immediate sphere of concern of the practising lawyer. Contemplation of these more abstract theses and concepts is the central aim of jurisprudence; in doing so the legal philosopher may hope to clarify the intellectual basis and presuppositions entailed by the practitioner’s activities. The detailed application of such general theoretical insights to the concrete substantive issues arising from practical, legal and doctrinal argument is then the secondary business of ‘applied legal theory.’

The present work is an instance of ‘applied legal theory’ *not* in the sense that it seeks to apply a general theory of legality or ethics to a particular problem (for the central argument of the book is that such a distinction between theory and practice is misleading). Rather, it represents an attempt to show that theoretical insights can be grasped only *within* particular practices, so that theory and application go inevitably together. It is, therefore, an attempt to understand the nature of legality not in general, but within the British polity specifically. In this respect, the book seeks consciously to depart from the predominant forms of jurisprudential inquiry carried on in Anglo-American law schools at the present day, and hopes to reconnect with the traditional jurisprudential investigation of the moral nature of law. Modern jurisprudential arguments increasingly hinge upon a limited number of disagreements as to the correct way in which to refine a series of conceptual distinctions and categories. When not concerned with conceptual boundaries, they tend to concern the proper description of essentially the same theoretical object, a ‘liberal theory of justice’. These efforts, I argue, are misguided for they fail to grasp the essentially practical or ‘applied’ character of jurisprudential thought.

I have endeavoured in writing this book to keep its length as short as possible. In the face of a vast and ever-growing jurisprudential literature, there is (I hope) some virtue to be found in a shorter work seeking to develop its own set of arguments and concerns, rather than engaging with established and well-worn arguments in an exhaustive way. The book’s brevity has necessarily entailed a certain ruthlessness in pursuing a particular argumentative course at the expense of many possible lines of development. I hope in time to explore these broader themes in other published books and essays.

Much of the present work represents a deepening engagement with themes that have been developing in my mind for a number of years. Parts of Chapters 5 and 6 appeared in earlier guises in the *Oxford Journal of Legal Studies*, 26 (2006) 257–288 under the title ‘Positivism, Idealism and the Rule of Law’ and in *Law and Philosophy*, 25 (2006) 417–452, entitled ‘Practices and the Rule of Recognition’. An earlier version of a portion of Chapter 8 (and short sections of Chapter 7) appeared as “‘Protestant’ Political Theory and the Significance of Rights’ in the *Northern Ireland Legal Quarterly*, 56 (2005) 551–584. Thanks are due to Oxford University Press, Springer and the Society of Legal Scholars (NI) for permission to republish.

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