

The Epistemological Foundations of Law

The Epistemological Foundations of Law

Readings and Commentary

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Foreword

This book differs from the standard jurisprudence textbook in that it examines law as a truth claim. Its major theme is whether there are any eternal truths about the law, and, if so, whether they are knowable. The twin quest for knowledge and truth raises the basic question of epistemology of what are the foundations of human knowledge? In other words, how do we know that whatever we believe about the world, about the human condition, or about law is true? The central project of the book, then, is an investigation into the epistemological foundations of law. Among the major questions it discusses are: What is the nature of law? Does it have a “true” meaning? If so, is it knowable? What is the role of reason? What is the relationship between law and morality, or between law and the citizen? What is the nature of the obligation to obey the law and how does it arise? Does law have any founding principles? If so, what are they, and how can they be identified, evaluated and critiqued?

The first Western philosopher who explicitly asserted that law is a truth claim was Socrates. It is not surprising that other Western philosophers followed this path. The materials herein trace the origins of this claim to some 500 years before Socrates walked the streets of Athens. The materials divide this period into two, the first being the era of the great Greek poets and playwrights such as Homer, Hesiod, and Sophocles, who lived between the eighth and fifth centuries BCE (the prephilosophic period). The second is the period between 625 BCE, when Thales was born, and 470 BCE, marked by the birth of Socrates (the Presocratic period). Indeed, the complete historical profile unfolds in these materials over eight overlapping historical/philosophical periods: (1) The prephilosophical period. (2) The Presocratic period (Chapter 2). (3) The Postsocratic period (Chapters 3–4). (4) The Roman period (Chapter 5, first part). (5) The medieval/Christian period (Chapter 5, last part). (6) The Enlightenment period (Chapter 6). (7) The modern period (Chapters 7–11). (8) The postmodern period (Chapters 12–13).

It goes without saying that this periodization is disputable. The periods, however, are intended to serve as analytical categories on which the organizational framework of the book rests. They also incidentally serve as evolutionary guideposts in a grand intellectual voyage, so that the reader gets an integrated picture of law not just as a social phenomenon but also as a truth claim, which, like all truth claims, can be critically evaluated.

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