

Philosophy 338
Philosophy of Law
2017
Note Eight

WHERE WE'VE BEEN & WHERE WE'RE GOING

1. *Research area*

- Criminal law in the common law tradition.

2. *Research question*

- Does the criminal law do a good job in handling its logico-epistemic concepts?

3. *Research methods*

- *À la mode de* cultural anthropology
- Due diligence with regard to empirically discernible facts on the ground
- Suppression of theoretical pre-conception and judgement.

4. *Research warning*

- By the norms and standards of EE, the case closes against the logico-epistemic dignity of criminal reasoning.

5. *Important datum*

- It is widely believed in common law countries that, within an acceptably narrow margin of error, our courts don't convict the wrong persons, that is, that convictions are both *right* and *righteous*. Call this the RR thesis.

6. *Research dilemma*

- RR is either true or not
- If true, its truth can't be explained by EE, and we will need to find an epistemology that does explain it.
- If not true, then all of us are wrong about RR, revealing our population-wide delusionality.
- Which puts the kibash on truth and justice alike, giving rise to big-box scepticism on a massive scale.

7. *Research limitation*

- As a working assumption, we have decided that big-box scepticism is not an option for this project.
- In taking that decision, we aren't saying that RR's falsity isn't possible. But this leaves the question of what we should do now.

8. *Research plan*

- To construct a defence of the truth of RR, and with it of the logico-epistemic reliability of legal reasoning in criminal law.
- To do this properly, we must make ourselves much more familiar than we have been with the actual workings of criminal law. We must also make ourselves much more familiar than philosophers usually are with the cognitive make-up and wherewithal of human beings and of the contributions cognitive activity makes to humanity's survival and flourishing.
- More compactly, we need a lot more information about the actual realities of criminal law in day-to-day action, and a lot more information about how we ourselves function as cognitive beings in day-to-day life's myriad and shifting contexts.

9. *Research aspirations*

- To arrive at the point at which to construct in a principled way an alternative epistemology to EE within which the RR thesis can find safe harbour.
- To use the "three trials" format to facilitate this outcome.

10. *Research report*

- We are still in *media res*. The first eight chapters have in one way or another been in partial fulfillment of our project, enlarging the relevant data bases (the law and our own cognitive selves), setting down rules of procedure and exposing working assumptions and intellectual continuities.
- The process continues with chapter 9, which is where we make first foot-fall with the make-up and procedures of a criminal court in action.