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Introduction
The Story of a Project*

Once upon a time a jurist in mid-career decided that the time had come to test and explore the implications and applications of some of his more general ideas at less abstract levels. The starting-point was an interest in 'broadening the study of law from within' as part of a conception of the discipline of law as an intellectual activity primarily concerned with the creation and dissemination of knowledge and critical understanding within 'legal culture'.[1]

The first step was to select a traditional field that seemed ripe for rethinking. There were several candidates. Torts, which he had taught for several years and which was in process of being deconstructed and redistributed; Contract, which was coming to be perceived almost as the paradigm or test case of legal scholarship; Land Law, on which several colleagues had done some promising ground-clearing work without having yet established a clear path out of the thickets of feudal arrangements and medieval doctrine; and Evidence, which had some intriguing ancestors in Bentham, Wigmore, Thayer and Frank, but which seemed to have been going through a somewhat stagnant phase in recent years.

The choice of Evidence was sealed by an epiphanic moment. In 1972, during a heated debate about proposed reforms of Criminal Evidence, Sir Rupert Cross, the leading English evidence scholar of the post-war era said: 'I am working for the day when my subject is abolished.'[2] This was provocative at several levels. In the immediate context it was ideologically offensive to one who saw at least some of the surviving rules of evidence as symbolizing important civil libertarian values and providing some, admittedly fragile, safeguards for persons suspected or accused of crime. At a personal level, it was intriguing to speculate about the seeming ambivalence or masochism underlying the remark. Successful expositors have a vested interest in the survival of their chosen field(s). Even more intriguing was the suggestion that if the rules of evidence were abolished there would be nothing left to study. The conception of the subject implied in this remark was that the Law of Evidence was co-extensive with the subject of Evidence – a school-rules view of the field.[3] This naturally raised further questions: How much of evidence doctrine consists of rules? What would we study if there were no rules? What should we be studying about evidence or 'evidence plus' in addition to the rules? What would be the place of the Law of Evidence within a broadened conception of the

subject? And by what criteria might one judge what parts of our existing heritage of evidence doctrine might be worth preserving or extending?

This casual remark provided an almost ideal starting-point for my project. For was not the enterprise of 'broadening the study of law from within' directed specifically to constructing alternatives to this kind of narrow, rule-bound 'formalism'? And was not Evidence – narrowly conceived, riddled with technicality, relatively neglected as a subject of academic study in England, and prone to cyclical, repetitious, deeply unsatisfying political debates – ripe for rethinking in this way?

About six years later, but still at a relatively early stage of my explorations, I reported on my project thus:[4]

> One central problem may be restated as follows: most Evidence scholarship in the Anglo–American tradition (and here I would include courses on Evidence and public debate on evidentiary issues) has concentrated on and been organized around the *rules* of evidence, especially the exclusionary rules, and their rather limited framework of concepts. Within that tradition work on other aspects of evidence, proof and fact-finding has at best been fragmented and spasmodic. Work in such fields as forensic science, witness psychology, the logic of proof, probability theory, and the systematic study of fact-finding institutions and processes has proceeded largely independently, not only of the study of evidence doctrine, but also of each other. All these lines of enquiry – and many others – seem to be related, but the exact nature of the relationships is often puzzling and obscure. From the point of view of a broadened conception of legal scholarship it is worth asking: Is it possible to develop *a coherent* framework for the study of evidence, proof and related matters within academic law?
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> As a first step towards confronting this question, I sought to analyse and diagnose the main reasons for my dissatisfaction with the prevailing tradition of evidence scholarship and debate. After all if one is able to articulate one's own grounds for dissatisfaction with a corpus of literature, this can at least suggest some implicit criteria for a more satisfying approach. These criteria may then be articulated, refined and systematized. After some reflection I concluded that, at a general level, at least four main charges could be made against the orthodox literature as it was a few years ago: First, it was too narrow. Because it had focused almost exclusively on the rules of admissibility, it had almost systematically neglected a whole range of other questions, such as questions about the logic and psychology of proof. Secondly, it was atheoretical: the leading theorists of evidence, such as Bentham or Gulson or Jerome Michael, have in recent years either been ignored entirely or have been used or abused extraordinarily selectively; most discussions of evidentiary issues have proceeded without any articulated and coherent theoretical framework for describing, explaining or evaluating existing rules, practices and institutions. By and large orthodox evidence scholarship had assumed a rather naive, commonsense empiricism, which failed to confront a variety of sceptical challenges to orthodox assumptions, ranging from Jerome Frank's fact-scepticism, through politico-ideological critiques, to various forms of epistemological relativism. It had proceeded in almost complete isolation from developments in relevant branches of philosophy. Thirdly, in so far as orthodox academic discourse has moved beyond

simple exposition, it has tended to be incoherent: for the conceptual framework of legal doctrine often does not provide an adequate basis for establishing links with other kinds of discourse; by and large this is true of the Law of Evidence. For instance, the orthodox expository framework cannot easily accommodate even something as central as the nature of reasoning about probabilities in forensic contexts, a topic which has recently been given prominence in this country by Jonathan Cohen, Glanville Williams and Sir Richard Eggleston.[5]

Fourthly, the expository orthodoxy can lead to distortions and misperceptions of key evidentiary issues and phenomena. A weak version of this charge is that by concentrating on some issues to the neglect of others, a misleading impression is given of the subject as a whole. A stronger version is that such imbalances actually lead to misperceptions and error. Here one illustration must suffice: because of the concentration on the exclusionary rules, nearly all of the existing literature on confessions treats retracted confessions as the norm; yet retracted confessions surely represent only a small minority of all confessions. Typically, neither the scholarly literature nor public debate gives a balanced and realistic total view of the role of confessions in the criminal process; for example, the significance of confessing as an important stage en route to a guilty plea. Evidence scholarship has failed to give a systematic account of confessions in criminal process as *phenomena*. As a result, it provides no clear answers to such questions as who confesses to whom about what under what conditions, in what form, and with what results? Yet it is difficult to see how one can hope to make sensible and informed judgements about the issues of policy relating to confessions and interrogation without at least tentative working answers to such questions.

This kind of criticism suggests some criteria which a broader approach to the study of evidence would need to satisfy in order to meet these objections, in so far as they are well-founded. To meet the charge of narrowness, it would be necessary to identify at least the most important questions which ought to be tackled in a systematic and comprehensive approach to the study of evidence. This requires an adequate theoretical and conceptual framework.

To meet the charge of incoherence, the relationships between the different lines of enquiry would need to be charted carefully and explicitly – there are, for example, some puzzling questions about the connections between the logic and the psychology of proof, or again, between the study of evidence and proof on the one hand and of criminal and civil procedure on the other.

To meet the charges of theoretical naivety, important theoretical puzzles and disagreements would need to be identified and considered. It is not good enough to dismiss the sceptics, however exaggerated their views may be, by pretending that they do not exist or that what they say is irrelevant.

And to meet charges of distortion and misperception, it is important to paint as realistic a total picture as possible of the phenomena under consideration, so that particular issues can be set in the perspective of some reasonably balanced and realistic overview of the whole. That is part of what is meant by studying law in context. For example, one of the main objections to the CLRC Eleventh Report is that it tended to treat trials on indictment as representative of all trials and professional criminals as

representative of all suspects, and was silent about the scale of many of the phenomena and types of behaviour which it was purporting to discuss.[6] To a lesser extent similar criticisms might also be made of the Devlin Report on Identification.[7] If recent public debate about the exclusionary rules and about particular problems of fact-finding, such as problems related to identification, had been set in the context of a broad and balanced total picture, it would have been much easier to make confident judgements about the problems and some of the recommended solutions. Within that perspective it would have been difficult for the CLRC to ignore almost entirely evidentiary problems in Magistrates' Courts and for the Devlin Committee to overlook the fact that the problem of misidentification of juveniles, which rarely reaches the stage of trial on indictment, may be one of the most serious aspects of the total problem of misidentification. Such considerations suggest that in order to develop a broader approach to the study of evidentiary questions it would be helpful, perhaps necessary, to develop a working theory of evidence, proof and fact-finding in adjudicative processes.[8]

Having reached this stage, an obvious next question to ask was: Has anyone tried to develop such a theory before? It did not take long to discover that this was by no means a novel enterprise, even within the Anglo–American tradition of Evidence scholarship. In particular, Bentham's *Rationale of Judicial Evidence,* and his other very extensive writings on evidence and procedure, and Wigmore's *Principles of Judicial Proof* could both be viewed as attempts to develop a working theory for a broad approach to the study of the problems of evidence and proof respectively.[9] Whatever their short-comings, each of these works ranks among the major achievements of our scholarly heritage. Each of them can provide a rich and convenient starting-point for attempting to develop a contemporary theory which seeks to satisfy the kind of criteria suggested above. Yet they have been largely ignored.

It was not surprising, indeed it was rather encouraging, to find that there had been previous attempts to tackle the problem that I had posed to myself. But there were some aspects of the history of the study of evidence which were surprising and ultimately very daunting.

The intellectual history of Evidence scholarship is full of fascinating twists and turns. It could, I suspect, be treated as a representative case study of the intellectual history of Anglo–American academic law. It includes many ironies and paradoxes: orthodox study of the law of evidence has been one of the least empirically oriented branches of academic law. The work of specialists in Evidence, such as Wigmore and Cross, ranks among the highest achievements of legal scholarship. Yet does not much of the secondary writing on Evidence, to borrow a phrase from Holmes, rank 'high among the unrealities'?[10]

One aspect of this history is particularly relevant to my present theme: there has been a natural tendency within the Anglo–American tradition to treat Evidence scholarship as starting in the eighteenth century, first with the early expository treatises of Gilbert and Peake, and then with Bentham's writings on evidence.[11] According to this account the judges developed the common law rules piecemeal; the early expositors tried to reduce the case law to at least partial order and in so doing gave Bentham a clear target to attack: the technical system of procedure and the whole corpus of evidentiary rules.

Although he was conscious of the logical and psychological aspects, even Bentham's work is to a large extent rule-centred, for the core is an obsessive and repetitious attack on the very idea of having formal rules of adjective law.

I suggest that this view of the intellectual history of Evidence scholarship is a good example of the kind of distortion that a narrowly rule-centred conception of academic law can produce. For the study of problems of evidence and proof in forensic contexts does not start with Gilbert and Peake and Bentham. It has a very much longer history than that. For example, the study of the logical and psychological aspects of the subject can be traced back all the way to classical rhetoric. Rhetoric, viewed as the study of persuasive discourse, was a central part of the humanistic tradition of Western learning from Corax of Syracuse in the 5th century BC right through until the early nineteenth century. It was part of the trivium of logic, grammar and rhetoric; the intellectual histories of, for example, inductive logic, literary criticism and the study of communication are inextricably bound up with the long and complex story of rhetoric as an academic subject.[12] Now, one of the most important stimuli for the development of classical rhetoric, perhaps the single most important one, was a practical concern with the art of pleading in court: many of the classical texts, *The Murder of Herodes*, some of the speeches of Demosthenes and Cicero, are examples of forensic oratory. Similarly persuasive discourse and concern with probability are as important as ever for contemporary legal practice. The irony is that although legal processes provided one of the most important stimuli for the early development of rhetoric as a subject, contemporary legal scholarship and legal education have, with some notable exceptions, recognized neither its historical nor its contemporary significance. Although this may be a simplification, I would suggest that there is a single main reason for this: it is that legal scholarship has taken legal doctrine as its *starting-point* – thus even the two subjects which are most closely concerned with the issues which lie at the centre of the rhetorical tradition, the study of evidence and probability and the study of reasoning in forensic contexts, do not treat these questions. The modern study of evidence is largely equated with the study of the rules of evidence, just as the study of legal reasoning (and the traditional moot) are confined almost entirely to reasoning about disputed questions of law. The study of rhetoric on the other hand was concerned with reasoning and persuasion in regard to disputes about facts, arguments about policy and arguments about law-making and, only rather peripherally, with questions about legal doctrine. This is just one instance of an over-concentration on rules of law contributing to the dual divorce of legal scholarship from a central part of the tradition of humanistic learning on the one hand, and from the concerns and realities of some important aspects of legal practice on the other. This in turn suggests that a redefinition of the boundaries of academic law, including both legal scholarship and legal education, would not involve embarking on uncharted waters; rather it would involve a return to a place in the mainstream of the humanistic tradition of learning.

Now there is a danger that all of this may sound rather grandiose. So let me make a confession. If [someone] had asked: 'How far have you got?' the answer would have been: 'The project has at least ten years to go.' If she had asked: 'Are you not opening a Pandora's box?' it would have been dishonest to deny it. The prospect of developing

> a framework for the study of evidence and proof which is broad and coherent and has some prospect of satisfying reasonable standards of scholarship is extremely daunting. It is calculated to bring on recurrent attacks of that familiar disease; 'the sabbatical blues'.

That was written in 1978. Ten years on [in 1988–89], I can update this report as follows. The enterprise has made progress on three main fronts: first, a fairly extensive, but selective, review of one part of our heritage of evidentiary texts – specialized secondary Anglo–American writings about evidence – has been completed. The most detailed part of this, case-studies of two of the leading figures in the tradition, has been published as a book: *Theories of Evidence: Bentham and Wigmore.*[13] This was a quite limited enterprise in that it was restricted to an introductory account, 'more expository than critical', of two specific works, Bentham's *Rationale of Judicial Evidence* and Wigmore's *Principles of Judicial Proof*, set in the context of an argument that our received heritage of specialized secondary texts about evidence has been dominated by a remarkably homogeneous set of ideas and assumptions that have their roots in eighteenth-century Enlightenment rationalism. The restricted nature of that book deserves emphasis. Apart from limitations of time, space and expertise, I did not attempt a full-scale contextual intellectual history because this was meant to be a preliminary stock-taking of the central tradition of our received ideas as part of a contemporary exploration of the subject. Bentham's writings on evidence in particular deserve a much more detailed and genuinely historical treatment, as does the development of the underlying ideas, legal doctrine and legal practice in this area. Three early essays in this volume (chapters 2, 3 and 6) – an extended version of the essay on the Rationalist Tradition, an exploration of some seemingly sceptical challenges to this ideal type, and a critical reinterpretation of the Thayerite conception of the Law of Evidence – are also quasi-history. They too represent a critical stock-taking of selected parts of a rich heritage rather than intellectual history *stricto sensu.*[14]

The second sub-project that has been brought to completion is a set of teaching materials on *Analysis of Evidence* prepared in collaboration with an American law teacher and litigator, Terence Anderson, and an English Professor of Statistics, Philip Dawid.[15] This work is based on Wigmore's account of the logic of proof (including his Chart Method of analysing mixed masses of evidence) and seeks to interpret, develop and to some extent subvert it. The materials are intended as a vehicle for developing some intellectual awareness and analytical skills in intending legal practitioners. It is not necessary to describe the work here, but it is relevant to give a brief account of some lessons I have learned from this experience of preparing and using the materials and working with an American attorney, a statistician and the ghost of Wigmore.

One of the central themes of the essays that follow relates to the uses and limits of 'reason' in fact-determination. The experience of extensive and intimate collaboration over several years has not resolved all of my doubts, uncertainties and

confusions. Indeed, it has opened up some others. What it has done, however, has been to exorcize certain spectres. For example, at first sight the secondary discourse of advocates often suggests a fundamental scepticism about the relevance of 'rational' analysis and intellectual skills to the task of selecting, seducing, impressing, and persuading jurors in the adversary system. 'The hard-nosed practitioner' claims to be concerned with 'winning, not justice', 'proof, not truth', 'persuasion, not reason', 'experience, not logic', 'Art not Science', 'feel, not analysis', 'theatre, not . . . ' and so on.[16] Manuals of advocacy emphasize body language, eye-to-eye contact, rhetorical devices, manipulative and diversionary tactics, making a good personal impression, gaining and keeping attention, brevity and simplicity. The more explicit American treatments of jury selection exhibit an uninhibited concern for the exploitation of all kinds of bias, prejudice and stereotyping – race, gender, class, religion, nationality.[17] On the surface, most say almost nothing about rational argument. The discourse of advocacy is a rich source of ammunition against sharp distinctions between fact and value, fact and law, reason and intuition, and other similar discriminations. My experiences suggest that the hard-nosed practitioner's 'and nots' just do not work – either way. Even the crudest cook-books on advocacy presuppose, build on, and even pay homage to, a basic, indeed somewhat formalized rationality. My collaborator, Terry Anderson, was independently attracted to Wigmorean analysis because it offered a means of injecting some intellectual rigour into modes of training that he considered were too dominated by the 'touchy-feelies'. Some of those who know him might wish to dismiss his faith in reason as utopian or eccentric, but he can hardly be accused of indifference to the theatrical and rhetorical aspects of advocacy. The reactions of students, especially those who have had extensive practical experience of litigation, are perhaps better evidence. Almost without exception, even the most laborious form of Wigmorean analysis converts them – 'I wish I had had that before I tried my first case.' For me the first lesson of this experience is that neither simple faith in reason nor brute scepticism will do.

Another fallacy that has been exposed by this project has been the idea that Wigmore's Chart Method and one or other versions of the calculus of probability are rigid, 'mechanical' devices based on doctrinaire versions of pseudo-science – at best of little practical use for legal practitioners, at worst dangerous instruments of delusion of self and others.[18] Wigmore's 'logic of proof' was indeed rooted in a particular intellectual tradition and presented in a rather formal manner. But experience of using and teaching them – for the purpose of reconstructing, constructing and criticizing arguments – suggests that Wigmore's method, Bayes' Theorem and other axioms of probability are extraordinarily flexible and powerful intellectual tools which, if used with sensitive awareness of their nature, make clear the operation of 'subjective' values, biases and choices at almost every stage of complex intellectual procedures.

Again, it could be pointed out that my other collaborator, Philip Dawid, is a distinguished subjectivist and so not typical of proponents of 'misplaced mathematicization',[19] whose influence on evidentiary theory is often sharply

attacked as politically dangerous as well as philosophically wrong. But, in my experience, the main messages of statisticians to the non-expert consist of warnings about the misuse of statistical analysis. The dangers are real, but they lie with the half-educated, the innumerate and those unable to spot elementary statistical fallacies. I remain unpersuaded by claims that either in principle or in practice lawyers' reasonings can be subordinated to Bayes' Empire, but that is for different reasons than the idea that they are 'mechanistic'.[20]

Theories of Evidence represented an attempt to take stock of this part of our intellectual heritage through a detailed study of two of its leading figures. *Analysis of Evidence* is intended as a set of learning materials for developing a group of flexible intellectual skills of potential value to practitioners. This third product of the continuing enterprise is more varied. The essays in this volume were written over nearly fifteen years. While the general project has remained fairly stable, over time my ideas have developed and changed; each essay was written in a particular context for a specific audience. In selecting and revising them for inclusion, I have tried to reduce repetition and to make the book more coherent than a mere anthology. Although they are presented in an orderly sequence, each essay is intended to be self-standing and it is not necessary to read them in order. It may help to say something about each of them.

The first essay, 'Taking Facts Seriously' (chapter 2), was written for a Canadian audience in 1980. It was intended to arouse interest in the general area and to make the case for giving it more attention within academic law. Although the paper is ostensibly about legal education, the central thesis, that questions of fact deserve as much attention as questions of law, applies to legal scholarship and legal discourse generally. This was in essence a consciousness-raising exercise. At the time, Evidence as an academic subject was in the doldrums. In North America nearly all courses on evidence focused almost exclusively on the Law of Evidence and were strongly influenced by traditional bar examinations which tested doctrinal knowledge rather than fact-handling skills. In the United Kingdom, Evidence was eccentrically considered to be 'a barrister's subject'; it was studied only by a small minority of undergraduates and was given little emphasis in solicitors' training. The situation has greatly improved in the last ten years, but the case for taking facts more seriously is still worth making.[21]

'The Rationalist Tradition of Evidence Scholarship' (chapter 3) was originally written for *a Festschrift* in honour of Sir Richard Eggleston, an Australian judge and scholar, who has contributed as much as anyone to the recent revival of interest in the subject. The essay is in two parts: an historical survey of specialized Anglo–American secondary writings on evidence from 1750 to about 1970, and a reconstruction of common basic assumptions about the aims and nature of adjudication and about what is involved in reasoning about disputed questions of fact in this context. The essay thus has an historical and an analytical aspect. The historical thesis is that by and large leading specialized writings on evidence have approximated sufficiently to this ideal type to justify talking about a single, remarkably homogeneous tradition

of Evidence scholarship. The analytical thesis is that this ideal type is a useful starting-point for interpreting and evaluating any discourse about evidence and is not restricted to secondary writings or the common law world. The test of success of this analytical construct is its clarity, coherence and utility as a tool of analysis of evidence discourse and doctrine. A much abbreviated version of the original essay formed the first chapter of *Theories of Evidence* in order to set detailed studies of the ideas of Bentham and Wigmore in the context of the intellectual tradition of which they were the leading figures. In revising the essay for this volume, I have expanded it to include some additional material (especially on Stephen, Chamberlayne and Moore), and to respond to criticisms and questions from commentators on the earlier versions.

The next chapter, 'Some Scepticism about Some Scepticisms', was written as a sequel to 'The Rationalist Tradition'. It explores whether and in what respects a direct challenge to central ideas in that tradition is offered by a sample of seemingly sceptical or relativist writings that bear directly or indirectly on fact-finding and adjudication. This study highlights some contrasts between specialized writings on evidence – homogeneous, intellectually isolated and rooted in a particular brand of eighteenth-century optimistic rationalism – and the more varied, iconoclastic and modernist approach of many writers about legal processes. The general conclusion is that few, if any, of the writers surveyed present a direct challenge to the core *concepts* (notably Truth, Reason and Justice) embodied in the Rationalist Model, but that the particular *conceptions* associated with this tradition are not the only possible ones and appear somewhat simplistic and old-fashioned today. In short, there is much worth preserving in our heritage of Evidence scholarship and there are no coherent alternative models in sight, but the subject is ripe for rethinking and updating.

'Identification and Misidentification in Legal Processes: Redefining the Problem' (chapter 5) develops and illustrates the application of a contextual total process model of litigation to a familiar topic. It was originally intended to point out to researchers into witness psychology that concentration on the reliability of eyewitness identification in contested jury trials was unduly constricted and that there are richer, more suggestive and more realistic models of legal processes available as a starting-point for their enquiries. The essay can also be read as a case study of the narrowing and distorting effects of the expository orthodoxy referred to above.

Chapter 6, 'What is the Law of Evidence?' was originally conceived as an attempt to present an overview of the subject to foreign lawyers, emphasizing the point that our Law of Evidence is neither as extensive nor as important nor as peculiar as its popular image abroad might suggest. Having presented this paper successively to audiences in Italy, China and Poland, I now offer it with only minor modifications to students of the common law as a way of seeing the subject whole. The interpretation could be described as a modified and updated version of Thayer's vision of the common law of evidence as a series of rather limited exceptions to a principle

of free proof, meaning in this context free enquiry and 'natural reason'. Thayer's key perception was that the rules, standards, guidelines, instructions and other evidentiary norms serve mainly to structure arguments about disputed facts and to modify and to constrain general canons of practical reasoning in a particular kind of context. The idea that the Law of Evidence is primarily concerned with reasoning links this essay with a central theme of this book – the nature, uses and limitations of reasoning about questions of fact. It is hoped that this chapter will also serve to dispel some misconceptions: I have sometimes argued that the Law of Evidence is only one part of the subject of Evidence.[22] This has been variously interpreted to mean that, like Bentham, I believe that all rules of evidence should disappear, or like radical indeterminists, I think that they have already disappeared or that they are uninteresting or unimportant. This essay should put such canards to rest.

'Rethinking Evidence' (chapter 7, formerly chapter 11) draws some themes together and outlines one possible way of looking at and redefining the field. It can even be interpreted as delivering on a rash promise to construct a mapping theory that at least indicates the main points of connection between the many different lines of enquiry that have emerged from this particular version of Pandora's Box. However, it ends not with answers, but with questions. And if I am required to justify this let me borrow the final paragraph from a piece not included in this volume, my inaugural lecture at University College London in 1983:

> It is tempting to move from a critique of past theories to a bold clarion call proclaiming the need for a new theory. My remarks on evidence could be interpreted as a call for a Brand New Theory of Evidence for the Modern Age. But this is also too neat and too simple. In sketching one possible way of developing a different perspective on evidence and information in litigation, I have been suggesting that legal theorists have a constructive role to play in building bridges, sculpting syntheses or hatching theories. The study of evidence also reminds us that all such structures are built on shifting sands. We may have to wait many years for a new theory of evidence to emerge, probably as the work of many minds. If it does, however useful or illuminating it may be, it will not be difficult to show up the flimsiness of its foundations, whatever its particular form and content. Meanwhile, there is one further job for the jurist to undertake in his daily work to examine critically the underlying assumptions of all legal discourse and to question established ways of thought, especially those that are becoming entrenched. One task of the theorist is to pick away at all assumptions, including his own. Whether he adopts the role of court jester or the Innocent in *Boris Godunov* or the child in the story of the Emperor's clothes or any other form of hired subversive – his first job is to ask questions and, with the greatest respect to the greatest of our gurus, to let the consequences take care of themselves.[23]

Chapter 7 (old chapter 11) was the culminating one in the first edition and tries to give coherence to what has gone before. The remaining chapters were all written after 1990. Chapters 8 through 13 explore themes about the relationship