

Chapter 6

Bacon's Chickens? Re-thinking Law and Science (and Incriminating Expert Opinion Evidence) in Response to Empirical Evidence and Legal Principle

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Engaging with exogenous knowledge products: “advice” and “evidence”

This collection, and indeed, this particular topic, is timely.¹ For there is an increasingly obvious, perhaps inexorable, need for legal practitioners – whether solicitors, barristers, judges and even scholars to engage with fields and expertise from beyond the law – so called exogenous (that is, external) communities and their knowledge. This needs to take place in response to both the provision of *evidence* and insights and *advice* about legal processes.² In this chapter, I hope to sketch something of a case for engagement, and even accommodation.

By way of overview, my sense is that the only way the law can credibly manage its relationship with external knowledge and advice is to use fundamental legal values and principles to mediate engagement and accommodation in ways that mitigate the erosion of legal institutional legitimacy. Ironically, the law's willingness to defend its traditions and values and explain how alternative knowledge and advice might be accommodated provide perhaps the only solution to the problem of expertise and its own ability to maintain a broadly rational orientation.³ Consequently, there is a need to engage with external communities

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1 An oral version of this chapter was presented in a session entitled “Law and the uses of expertise”.

2 I do not mean to suggest that “advice” and “knowledge” are strong, or mutually exclusive, or epistemologically driven categories.

3 Whether it can credibly claim to be continuing “the rationalist tradition” if it ignores or trivialises other knowledge products is an open question. The “rationalist tradition” is discussed by W Twining, *Rethinking Evidence: Exploratory Essays* (Basil Blackwell, Oxford,

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