A Study of Epistemology in Legal Theory (1994, London, Avebury)

By Michael D. Roumeliotis

Reviewed by T.A.Rowland[*]

A Study of Epistemology in Legal Theory by Michael D. Roumeliotis has a somewhat wider title than its contents satisfy. It is rather a collection of essays on linguistic jurisprudence, including an appendix which offers an overview of the ideas of recent scholars who have written on the tradition of linguistic philosophy, and a general defence of the methodological presumptions of H.L.A.Hart. In the introduction the author advises that the book is about the "jurisprudence of ordinary language and its method"; "the claims linguistic jurisprudence made to knowledge and their meaning;" "an excavation in pursuit of what in them is true;" "linguistic jurisprudence assumed as firm philosophical ground" or the "frock, once so trendy, linguistic jurisprudence forgot herself in'; "our incoherent times, the place of the intellectual, communication and the lack of it; humans and the groups they make ; the concept of rule, and finally, language and logic."[1] In short, a lot of promises are made.

In form the work is divided into three parts with headings as sub-divisions within each part. Part One offers a reflection on the difference between rules and habits. Through the use of numerous examples ranging from courtship styles to how people fill in the time when sitting at a traffic light, the author concludes that a habit, unlike a rule, is never a reason for action, only a cause. From this the author concludes that the convergence of behaviour which can be noticed among different individuals does not provide prima facie evidence of the existence of a rule requiring it.

Part Two begins with an account of the epistemological background to linguistic jurisprudence, particularly its rejection of all metaphysical inquiries and the corresponding premise that philosophical theories should not be based

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[1]   Roumeliotis, M.D, *A Study of Epistemology in Legal Theory*, London, Avebury, 1994, 1.

on abstract definitions of terms of language, but rather one should "reflect upon how the relevant terms are used in everyday situations, in order to see the social rules and conventions that account for the possibility of the performance of the relevant speech acts".[2] At its most simple, the distinction is between those who regard definitions as descriptions of things, and those (that is, the linguistic philosophers) who regard all definitions as definitions of words. Roumeliotis explains it thus:

> "...whereas before, philosophy started with reflection on the "self-evident" and the "true", and concluded with a prescription of how social reality must be formed or how people must think, now such an enterprise seemed meaningless and absurd; instead, the only correct and worthy enterprise would be to see and reflect on social reality and the ways people think in fact, and describe this reality; for this is all the reality or truth there is."[3]

When this methodology is placed in the context of Hart's work, what is clear is that for Hart the question of "what is law?" is to be resolved by considering what individuals in fact mean by the term "law" when they use it, not what it is that they ought to understand law to be. Hart's "internal point of view", that is, the self-understanding and meaning of individual actors, is then contrasted with certain sociological perspectives which project upon individual behaviour certain theories for this behaviour. In defence of Hart, Roumeliotis concludes that "the social reality to be understood and described is so bound up with the people's beliefs, attitudes and concepts, that we cannot discard them as superfluous, without ending with a severely distorted view of this reality."[4] Thus, Hart's *The Concept of the Law* is among other things, an essay is descriptive sociology.

Roumeliotis then directs attention to the issue of how does linguistic philosophy explain the sense of social obligation which directs so much individual behaviour, having rejected the idea that meaning in language is to be found in a correspondence with some metaphysical reality? Roumeliotis

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[2]   *Id* at 35.

[3]   *Id* at 36.

[4]   *Id* at 38.

posits the theory that an explanation may be found through an examination of the "network of social rules and conventions" which exists "prior to any particular user of language," since each new user is "educated, indeed constituted", in accordance with the social rules and conventions which form his/her social environment.[5] He further observes that when this principle is applied to an analysis of modern Western society, a problem arises given the vast numbers of different cultures and communities which make up the fabric of this society. Anticipating post-modern criticisms of linguistic jurisprudence, on the grounds that there is no common understanding of terms such as "law" "justice" "rule" or "obligation", Roumeliotis suggests that it is necessary to narrow the range of focus to which the principles of linguistic jurisprudence are applied and offers the example of the distinction between the understanding of certain terms by lawyers (as a distinct social group) and the understanding of the same terms by the larger collective group of Europeans.[6] He does not however adduce evidence to justify his belief that lawyers as a social group do in fact share the same understandings about fundamental terms in jurisprudence.

Part Three provides an exposition of the contours of linguistic jurisprudence as a philosophy. It begins with an explanation of the principles of nominalism, that is, the idea that there are no universals, and while acknowledging that linguistic analysis shares a certain sympathy with nominalism, Roumeliotis nonetheless concludes that linguistic analysis can avoid some of the errors of nominalism, since it does assert that there is a reality of what law is independent of the role of the jurist. In practical terms, linguistic jurisprudence agrees with nominalism that there is not a particular definition of a word which is more correct than an alternative definition, however it does not go so far as to claim that there is nothing tying a word to one definition rather than the other. On the contrary, Roumeliotis asserts that there are "rules of language, tying it to certain uses, certain typical utterances if nothing more, which will probably display a certain family resemblance at least."[7] Thus despite the differences between the meanings of the word "law"

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[5]   *Id* at 41.

[6]   *Id* at 54.

[7]   *Id* at 96.

in different languages, notions like law or morality are roughly the same throughout the modern Western world as a result of common political and social histories.[8] From this Roumeliotis concludes that despite all the rhetoric against traditional philosophy's "metaphysics", the "basic ideas underlying the method and enterprise of linguistic jurisprudence, are those of any good old Platonic idealism."[9]

How this conclusion can be related, or distinguished from earlier conclusions in Parts I and II of the work, is not clear. In fact the work can be criticised generally for its very loose organisation. The relationship between the sections is not always clear and there are numerous assertions/premises which are not clearly woven together into a synthesis. Rather it reads like a mixed broth of ideas (what German scholars call a "Bettelsuppe" or "Beggar's broth) which are all in some way related to the topic of linguistic jurisprudence.   It may therefore be of value to those who are already conversant with this particular school and who may therefore find particular ideas to be of interest. However, as the long list of objectives given by the author in the introduction suggest, the work seeks to be a development of ideas on so many different fronts that the reader is left at the end of the work with a task of tying the numerous threads of premises (some defended, others not), together with another set of conclusions. The section on post-modernism also begs the question that "lawyers" as a generic group have certain common understandings about basic jurisprudential terminology, a proposition which does not seem to accord with common experience.

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[8]   *Id* at 98.

[9]   *Id* at 99.