The Epistemological Profile of Legal Doctrinal Scholarship—A Reply to Geoffrey Samuel

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Abstract

This piece is a response to Geoffrey Samuel's review article that deals with my 2021 monograph, Legal Doctrinal Scholarship. I aim to correct misrepresentations of my position, but I also seek possibilities of a more constructive engagement between Samuel's diachronic analysis of the development of legal thought and my synchronic account of the character of legal scholarship. The first substantive section aims to set the record straight by explaining my account of legal doctrinal scholarship (as a normative and hermeneutic discipline) against the background of my thoroughly interpretive methodology. Then, I move on to addressing some of Samuel's specific objections to my account—related to the idea of the rational reconstruction of the law, the scope of interdisciplinary engagement in academic research into law, and the ideological profile of legal doctrinal scholarship. Finally, I address why Samuel's own account does not fit into the parameters of my own theoretical project. My methodology leaves room for a range of different approaches to legal scholarship—including Samuel's historical jurisprudence. However, Samuel's approach lacks the argumentative force he would need to exclude the possibility of providing legal doctrinal scholarship with a plausible epistemological justification within the methodological parameters of my account. I argue that, ultimately, our debate is about the implications of methodological pluralism: the conditions under which theoretical accounts with very different methodological assumptions may have a correcting influence on one another.

Keywords: Samuel (Geoffrey); interpretivism; science; scholarship; normativity; rational reconstruction; interdisciplinary engagement; ideology; methodological pluralism.

[A] INTRODUCTION

In the previous issue of *Amicus Curiae*, Professor Geoffrey Samuel published an intriguing article (Samuel 2022b) that focuses primarily on my 2021 monograph, *Legal Doctrinal Scholarship*. I am honoured that such a prominent scholar found my work worthy of extensive engagement. At the same time, I cannot hide my disappointment with some aspects of his article. I think he seriously misrepresented important aspects of my position.[1] Also, I would have appreciated if the analysis had been written in a different (as in less dismissive) tone. However, I recognize that it would be small-minded and futile to dwell on issues of tone.

The challenge was not unexpected. In my book, I engage explicitly with Geoffrey Samuel's own views on legal scholarship—albeit in much less detail (Bódig 2021: 161-163). I am fully aware that we stand on two sides of an important theoretical divide, and that epistemological reflection is central for both of us. There is a conversation to be had here. I write this reply not only to correct misrepresentations but in search of that conversation. I wonder whether we can move forward on that basis. By clearing up misunderstandings and misrepresentations, perhaps, we can both benefit from this debate. I do not assume that my position may not be in need of corrections.

This is made easier by the fact that I do not need to launch a general attack on Samuel's position. We clash on a limited front. My work is not just a theory of legal doctrinal scholarship. It is also a legal theoretical manifesto that reflects my views on the (parlous) state of academic legal theory—the legal theory produced by professional academics (predominantly) in law schools. I search for a suitable role (one among several) for academic legal theory. As it happens, Samuel is much more sympathetic to the legal theoretical dimensions of my book (Samuel 2022b: 59-60). Similarly, there are important aspects of Samuel's work I am comfortable with.

In this reply, I pursue three interconnected objectives. This first is to paint a more accurate picture of my position on legal doctrinal scholarship—to correct at least the most important misrepresentations. Secondly, I counter some specific objections raised by Samuel. And thirdly, I want to

[1] There is one misrepresentation I need to object to above all else. According to Samuel, I conclude that 'the epistemological ambitions of legal scholarship are not fully intelligible' (Samuel 2022b: 57). Well, the quoted passage is genuine, but my actual claim is that those epistemological ambitions are not fully intelligible 'without assuming that the law has enough sense invested in it to reward an interpretive approach to its normative demands and internal processes' (Bódig 2021: 243). And that is an assumption I stand by.

make clear why Samuel's approach did not seem attractive in the light of my specific theoretical objectives. The first two objectives are closely intertwined. Sections B and C will be dedicated to them—going from more general points to more specific ones.

The third objective relates to the exact 'battle lines' between Samuel and me. Some relevant points will be raised in section B, but section D will be dominated by this issue. Hopefully, addressing it will help us move this academic debate forward. It will also help me demonstrate what it means that I work with a methodology that leaves room for a range of different approaches to legal scholarship—with different upsides and downsides. In abstract terms, I readily recognize the viability (and value) of Samuel's 'historical jurisprudence' project. It can answer questions that my theoretical initiative is not designed to address. Still, it is not the case that my only problem is that he does not recognize the viability of my theoretical project in return. If we look at his analysis in more concrete terms, the clash of perspectives becomes sharper, and I am bound to find some aspects of his specific theoretical strategy problematic.

I seek to avoid needless repetition of points articulated in my monograph. A published piece needs to speak for itself. Still, some restatement of my position will be necessary to substantiate my arguments. Naturally, limiting restatements means leaving some aspects of Samuel's criticism unaddressed.[2] Also, a note on how I approach Samuel's position is in order. I found it really helpful to read Samuel's challenge to my position in conjunction with his recent monograph, *Rethinking Historical Jurisprudence*. Most of the claims turned against me in the article get more detailed treatment there. At the same time, in order to keep the debate focused, I avoid referencing his earlier work. I take the 2022 monograph as the most complete statement of his position. I need to add that, in the interest of a more constructive engagement, I contacted Professor Samuel, and he generously provided me with some further clarifications about his position. They are also factored into this reply.

[2] In particular, I choose not to address Samuel's way of capturing how my position relates to some of my key theoretical sources: Ronald Dworkin, Herbert Hart and Hans-Georg Gadamer. Nor do I deal with the suggestion that 'doctrinal scholarship is little more than an opinion column in a daily newspaper' (Samuel 2022b: 56).

[B] LEGAL DOCTRINAL SCHOLARSHIP AS A NORMATIVE ACADEMIC DISCIPLINE

There are several important points of disagreement between Samuel and me. But the crunch point is obvious. As he frames it, I have put forward an epistemological defence of legal doctrinal scholarship. And he thinks that that effort is doomed. I note that I never thought of my analysis as a 'defence'. I offer a theory of legal doctrinal scholarship that, indeed, puts heavy emphasis on the epistemological profile of the discipline. But that discipline has a well-established position in academia. In some ways, it could do better, but it is not in danger of losing its status. There is room for improving our understanding of its character, but the discipline does not need saving.

Importantly, there are notable differences in how we capture the character and scope of legal scholarship. This needs to be kept in mind to make sure that we do not talk past each other. My analysis is focused on legal *doctrinal* scholarship specifically which I regard as a self-standing academic discipline. It is just one among several disciplines that represent academic engagement with law ('scholarship about law') (Bódig 2021: 7, 181). Even though Samuel acknowledges doctrinal work as an aspect of academic practices around law, he places it in the context of a more broadly defined 'discipline of law' or simply 'law' instead (eg Samuel 2022a: 305). Samuel treats this discipline unequivocally as a social science (eg Samuel 2022a: 9, 134). And the argumentative edge of his broader analysis points towards the transformation of the 'discipline of law' to make it better adjusted to the methodological standards of contemporary social science. (This is why he urges legal scholars to adopt his so-called 'inquiry paradigm', eg Samuel 2022a: 281.) In my telling, a lot of the scholarship about law is indeed social science (like legal anthropology or the sociology of law), but when it comes to legal doctrinal scholarship more specifically, we are looking at a hermeneutic discipline (with a normative focus) that does not fit into well-established umbrella terms like 'natural sciences', 'social sciences', and the 'humanities'. (Bódig 2021: 152) It is best characterized in terms of a separate category: 'doctrinal scholarship'.

Clearly, we have more than a terminological squabble on our hands. The substantive question is whether we can characterize the whole of legal scholarship as a social science, and whether there are ways to make a hermeneutic discipline (focused on the normative aspects of the doctrinal structures of the law) methodologically viable in contemporary academia. Importantly, Samuel recognizes that the kind of doctrinal scholarship I talk about is indeed practised by legal scholars. (His

recurrent engagement with Peter Birks is a good indicator (Samuel 2022a: 20-21, 49, 147).) However, Samuel refuses to attribute to it a distinctive disciplinary character and insists on measuring it against the methodological standards of the social sciences. By those standards, the academic practices of doctrinal scholars are failing. They represent a paradigm (the 'authority paradigm', Samuel 2022a: 37-39, 280, 329) that has no place in contemporary science. This explains why he is bound to reject my position as unacceptable. If someone finds a plausible way to locate legal doctrinal scholarship (as a credible academic discipline) outside the scope of social sciences, Samuel's position loses much of its critical edge. By the same token, if Samuel is right about the discipline of law, my account of legal doctrinal scholarship cannot be viable. I need to challenge his position, and he needs to challenge mine.

Samuel's attack on my position is multifaceted. But his objections cluster around two central claims. The first is that I do not have a viable account of science (and social science in particular). I do not engage enough with social science methodology (Samuel 2022b: 56), and that comprehensively undermines my effort. Secondly, my epistemological defence fails on its own terms. I have set an impossible task for myself (Samuel 2022b: 57), and I undermine my own project (Samuel 2022b: 55, 65). In the end, my analysis does not even qualify as an epistemological defence of legal doctrinal scholarship (Samuel 2022b: 63). At best, I provide an object lesson in the (deleterious) 'effect of the authority paradigm on legal knowledge and its generation' (Samuel 2022b: 59).

This section looks at Samuel's two central claims. (In section C below, I move on to a few more specific objections that will help amplify my points.) We need to be careful, once again, how we frame Samuel's challenge. There is an obvious clash between us, but the mutual relevance of our claims depends on how our methodological assumptions relate to one another. In this section, the focus will be on my methodology, and I will develop my answers to Samuel's two central claims from a common core on that basis. In section D below, I will also reflect on Samuel's own methodological assumptions.

In my work, I apply a thoroughly interpretive methodology. Importantly, that determines not just my treatment of the law but all the constitutive concepts of my inquiry—including the likes of 'scholarship' and 'disciplinarity'. This matters because my main complaint about Samuel is that he has systematically ignored key aspects of my interpretivism. Once we factor them in, some of his objections lose relevance. And some others get at least blunted.

I have articulated my position on interpretivism on multiple occasions—including my monograph (Bódig 2021: 27-33; Bódig 2013). Here, I only highlight the few crunch points most relevant in the current context. Interpretivism accounts for phenomena by relying on interpretive data gained from participant communication. Here, it is probably helpful to put the point the following way: interpretive analysis operates on a 'phenomenological ground' provided by interpretive data (Bódig 2021: 21-22). Crucially, interpretive data constitute practice-relevant facts. Participant communication itself constitutes a mass of social facts (speech-acts that have been uttered as a matter of historical record), and it references factual features of social practices (like power relations between participants, procedural steps, decisions, value commitments). However, this does not turn interpretivism into a form of empirical enquiry. Interpretive accounts are 'calibrated' on practice-relevant facts (that provide the phenomenological ground for them) (Bódig 2021: 27), but their methodological character is determined by a crucial fact: the relevant interpretive data can be accounted for in different ways and from different perspectives. Even if the interpretive analysis prioritizes the conceptual tools (including the terminology) offered by participant communication (which is, incidentally, one of the features of legal doctrinal scholarship, Bódig 2021: 125), multiple interpretive accounts remain possible with a more or less equal claim to plausibility. I will call this the *hermeneutic condition* (a term not used in my monograph).

A few further aspects of operating in the hermeneutic condition will have significance below. First, social practices generate masses of practice-relevant new facts on a continuous basis. This is what gives interpretive theorizing its dynamism. Even when most practice-relevant facts reinforce existing theoretical constructs, the ones that do not are always potential triggers of conceptual development. Secondly, the fact that interpretive data are compatible with a series of different interpretive accounts of any given social practice has a further implication. Think of the law. It can be accurately described as a system of obligations, as well as an institutional manifestation of oppressive power relations (where the normative language of obligations is just window-dressing). There are no facts about functioning legal systems that either of these (otherwise incompatible) conceptions of law cannot account for. The choice between them cannot be simply the function or fit with the available social facts. Other factors (like epistemic focus, practical orientations, value assumptions, terminological preferences) also come into play. Thirdly, the available interpretive data will always have gaps and contradictions in it. Participant communication will record conflicting views on the scope

of the relevant social practice (including the criteria for participation), its character-defining processes, the values associated with it, etc. Interpretive theorizing needs to do some 'work' on the interpretive data (eg making judgements on the significance of particular sets of interpretive data). In other words, interpretive theorizing has an inevitable constructive aspect (Bódig 2021: 32). (Clearly, this is not news to Samuel: Samuel 2022a: 25.) Crucially, this point becomes particularly rich in methodological implications when the theory addresses the normative aspects of social practices. Interpretive accounts face up to the failings of normative mechanisms and end up engaging with ways in which the practice could be improved on.

It is against this background that we can assess Samuel's first main objection: my account of 'scholarship' is too weak to serve my theoretical ambitions. This line of criticism is targeted at one of my central claims (already mentioned above): legal doctrinal scholarship does not fall under categories like natural sciences, social sciences, or the humanities. Samuel's complaint is that the point I make has remained (to put it mildly) underdeveloped due to the lack of any 'in-depth analysis of the epistemological features of the natural sciences, of the social sciences and the human sciences' (Samuel 2022b: 56). The lack of engagement with the literature on social science epistemology (and Jean-Michel Berthelot more specifically, Samuel 2022b: 56) is a particular concern.

Indeed, I do not provide a deeper analysis of the different categories of academic disciplines. In that regard, I took some calculated risk (exposing myself to the kind of criticism Samuel has put forward). That risk is related to a strategic decision about thematic focus: I set out to explore how the intellectual resources of academic legal theory can be used to deepen epistemological reflection on legal doctrinal scholarship. (After all, as I have mentioned above, the book also functions as a legal theoretical manifesto.) The kind of in-depth analysis Samuel calls for would have altered the very character of my project. So, I will not argue that Samuel may not have a point here. More than that, I am ready to give ground in the light of successful challenges to my position.

However, those challenges must be relevant within the methodological parameters of my inquiry. It needs to be emphasized that, unlike in Samuel's work, 'science' is not among the technical terms deployed. Instead, I rely on the literature on academic disciplinarity to develop a concept of 'scholarship' as a term of methodological significance (Bódig 2021: 147-149). Crucially, I treat 'scholarship' as an interpretive concept. That leaves Samuel with two basic ways to challenge my account. He can

argue that scholarship (or science) cannot be treated as an interpretive practice (and, by implication, 'scholarship' as an interpretive concept). Notice that it would not be enough to demonstrate that the concept can be framed differently, or even that it is better framed in a different way. The point needs to be that scholarship has some features that are incompatible with my interpretive methodology. (After all, not all concepts are interpretive ones. Eg 'quark' in particle physics is not.) Alternatively, Samuel can argue that my interpretive account is flawed. There is a critical mass of interpretive data that I am unable to account for. Or that I have falsified the available interpretive data.

It is of some significance that Samuel does not pursue either of these two lines of argument. He rarely ever engages with the methodological underpinnings of my monograph, and he never goes into any details about it. In fact, his article starts with a long exposition that sets up his own conceptual framework to deal with the epistemological features of legal scholarship, and then projects it on my key claims without ever asking whether his approach is justified in methodological terms. His basic *modus operandi* is navigating academic sources and checking my book for the signposts of academic sources he has found useful in his own work.

Even more interestingly, Samuel does not really counter any of my specific claims about scholarship. It is clear in his book that legal scholarship cannot be taken as a natural science (Samuel 2022a: 27). And he has consistently argued that the kind of normative scholarship I talk about (trapped in the authority paradigm, Samuel 2022a: 329) does not meet the standards of social science research. So, what a lot of legal scholars do now is not social science, really. Also, in his own book, Samuel needs to face up to the fact that by far his most important source for social science epistemology, Berthelot, excluded law from the social sciences on the ground that it concerns itself with normative judgements (Samuel 2022a: 30; cf Berthelot 2001). This is a nice piece of interpretive data that chimes with my position, if I may say so.

Samuel also backs away from a direct challenge when it comes to dealing with my specific claims about the profile of legal doctrinal scholarship. My argument that empiricism is a poor fit for legal doctrinal scholarship is 'not inaccurate' (Samuel 2022b: 56). And my characterization of the epistemological features of legal doctrinal scholarship (being internalist, normative, practice-specific, interpretivist, deferential to practice-specific authorities) is also 'not inaccurate' (Samuel 2022b: 55-56; cf Bódig 2021: 121-126).

But then, what is Samuel's specific complaint? Well, it seems that I have missed that my characterization of legal doctrinal scholarship could apply equally to astrology (eg Samuel 2022b: 55-56)—a pseudo-discipline that lacks the quality of science.

Notice that, in this context, Samuel uses the term 'science' as a marker of a certain epistemological quality. We are looking at knowledge that captures aspects of our reality, and that lays claim to a certain type of validity (Samuel 2022a: 25). This suggests that Samuel uses the term 'discipline' in markedly different ways compared to 'science'. While science is captured in terms of epistemological validity, discipline is a more of a historical category. I mean he tends to talk of the 'discipline of law' in terms of historical narratives. (That is one of the central themes of his book, after all.) And the concept of 'science' is used to assess its epistemological quality in different phases of its historical development. This is how it makes sense to talk of the discipline of law while claiming that (in the grip of the authority paradigm) much of it lacks scientific quality.

What are the criteria for scientific quality here? Interestingly, I am not unsympathetic to Samuel's abstract framing for 'science'. In my own account of 'scholarship', I also touch on the importance of epistemological validation (Bódig 2021: 148). However, when it comes to the implications for standards of quality, we part ways. Samuel insists that the relevant standard is the production of new knowledge (eg Samuel 2022a: 291), and he denies that the systematization of existing knowledge could qualify as a scientific undertaking. This was confirmed by him in conversation. So, he measures legal scholarship against the requirement of producing new knowledge (Samuel 2022b: 53). This explains why he challenges on multiple occasions my claim that much of legal doctrinal scholarship is not new doctrinal knowledge (Samuel 2022b: 54-55), or that legal scholarship is not exactly a factory of new ideas (Samuel 2022b: 58). He even quips that I am getting PhD students in law schools into trouble. After all, they are supposed to earn their research degree by producing new knowledge (Samuel 2022b: 55).

My account of scholarship is markedly different on this point. I dispute the common (but ill thought-out) idea that scholarship (as manifested in academic research) is all about producing new knowledge—operating on the frontiers of human knowledge. Much of academic research across disciplines is about framing (and reframing), systematizing, or better establishing existing knowledge. In other words, epistemological validation is not just about the process of establishing new knowledge, but also the 'vetting' and regimenting of existing knowledge. The practices of academic

disciplines all reflect some balance between these two aspects of academic research. This is why I often talk of 'cultivating' knowledge when it comes to the practices of scholarship (Bódig 2021: 118). And I argue that, in some disciplines, framing and systematizing existing knowledge plays a particularly important role. This point is central to my account of legal doctrinal scholarship. I emphatically do not claim that legal doctrinal scholarship does not produce new knowledge. But I indeed emphasize that it affords a much bigger role to systematizing existing knowledge than most other disciplines.

Once again, we should not lose sight of the methodological point. I do not need to claim that my account of scholarship or academic research is the only viable one. I only need to establish that it has the support of interpretive data, and it is fitting for my theoretical undertaking. And I indeed think that—across disciplines—interpretive data suggest that framing and systematizing existing knowledge is a key aspect of academic research of scientific quality. We do not even need to look at obvious examples like successive instances of historical research into Caesar's Civil War that use (and reframe, reinterpret) mostly the same sources. My favourite example is from the natural sciences. Newtonian mechanics revolutionized physics in the late 17th century, but physicists have been much likelier to work with Lagrangian or Hamiltonian mechanics since the 19th century. Both effectively restatements of Newtonian physics (Deriglazov 2010). In some sense, they may represent new knowledge (as in getting to know a different way of formalizing mechanics). But in the sense Samuel means 'new knowledge' (operating on the frontiers of human knowledge), they clearly do not. There is no new physics there. Both Lagrangian and Hamiltonian mechanics translate the same physics into a markedly different conceptual framing (and mathematical formalism). Importantly, new formalization along these lines (that represents both reframing/restatement and systematization) often facilitates later scientific advancements. For example, the typical formalization used in quantum physics today is based on Lagrangian mechanics. Most famously, it sets the conceptual parameters for the most iconic manifestation of quantum mechanics: the Schrödinger equation (see eg Cook 2002: 147-148.) This reminds us of ways in which the production of new knowledge and the continued work on existing knowledge are intertwined in practices of academic research.

So, I doubt that Samuel's take on 'science' would constitute a devastating challenge to my account of scholarship. From my perspective, he works with rather constraining epistemological standards of academic research. It may be adequate for some purposes, but certainly for a project given

my methodological assumptions. And I think I have ample support from crucial pieces of interpretive data.

In the light of these points, it may be useful to return to Samuel's contention that some of my key claims would fit into a book on astrology (Samuel 2022b: 55-56). Indeed, in my book, I look at the analogy suggested by Samuel between astrology and legal doctrinal scholarship (Bódig 2021: 163) because I also recognize the danger of the loss of academic quality if legal scholarship becomes insular (if internal coherence is over-emphasized, if academic standards are calibrated exclusively on already existing scholarship). Legal doctrinal scholarship done poorly can come to resemble astrology. However, the gist of my point is that it can be avoided. This is why I emphasize the connection with the 'phenomenological ground' provided by social facts. And this is why I point to the role of dealing with the influx of knowledge from other disciplines in the form of either interdisciplinary or multidisciplinary engagement. (More on this in section C.)

Ironically, Samuel ends up helping me out on this point. He offers a couple of excellent arguments that can be used to show how legal doctrinal scholarship (done well) is unlike astrology. I wish I had thought of them. He is right that astrology cannot be interdisciplinary (Samuel 2022b: 57). Legal doctrinal scholarship certainly can be—as I argue in chapter 5 of my monograph. Also, astrology clashes with other disciplines 'with more reliable methodologies' (astrophysics, astronomy), and that undermines its epistemological credentials (Samuel 2022b: 65). Legal doctrinal scholarship has no such problems. Its claims about the doctrinal structures of legal practices are not contradicted by any other discipline.

Of course, if we want to produce an analysis of legal doctrinal scholarship that is based on a viable account of scholarship and academic disciplinarity, it is not enough to make room for systematizing and reframing knowledge. My theory of legal doctrinal scholarship does not revolve around the claim that legal doctrinal scholarship strikes a distinctive balance between systematizing existing knowledge and producing new insights. My central claim on this point is that we are dealing with a (hermeneutic) discipline with a normative focus, and that a sensible conception of academic disciplinarity would leave room for disciplines of this kind. In this regard, it is much harder to pin down the disagreement between Samuel and me. When he unequivocally labels the discipline of law as a social science, his account does not reckon with the possibility of distinctly normative disciplines. At the same time, he sometimes gives indications that aspects of scientific research may

revolve around normative concerns.[3] In conversation with me, Samuel said he was hesitant to assert that there could be specifically normative disciplines.

Regardless of the difficulties with pinning down the exact disagreement here, we need to address the possibility of normative disciplines before turning to Samuel's claim that my epistemological defence fails on its own terms. Two points need to be highlighted briefly. The first concerns how I make room for normative disciplines, and the second is about the character of legal doctrinal scholarship more specifically. As to the first point, I argue that exerting a rationalizing influence on our understanding of our (natural, social, psychological) world, as well as our uses of the knowledge (deemed relevant for academic inquiry) is an important aspect of the academic pursuit of knowledge (Bódig 2021: 148). And this rationalizing influence must extend to addressing the normative aspects of concrete social life (eg the concrete ethical life of communities, policy formation, the functioning of legal institutions). Of course, social sciences have a lot to say about how normative arrangements affect social relations, what power dynamics sustain them, what cultural patterns they reflect, etc. But there are also questions of academic significance around the intelligibility and justifiability of action (including practical judgements) within the parameters of those normative arrangements. When addressing the limits of competent practical judgement in line with the given normative arrangements, or the ways in which normative arrangements could be improved upon, the focus shifts to the normative (action-guiding) significance of social facts.

In my telling, it is this normative focus that determines the character of legal doctrinal scholarship. It will shape up as a hermeneutic discipline because the hermeneutic condition forces it into the methodological posture of interpretive engagement with legal practices.[4] I argue in my monograph that it is normative in three interconnected senses (Bódig 2021: 123). First, as I indicated in the previous paragraph, it focuses on the normative aspects of legal practices—more specifically the articulation of the contextual meaning of and interconnections between normative claims arising from positive law. Secondly, it internalizes the constitutive value assumptions about the law—like the value of legality. (More on this

[3] '[J]urists are, on an analogy with scientists and social scientists, striving to forge rational and coherent models. They are attempting, if not to provide insights into empirical reality, at least to furnish a conceptual framework for achieving social, economic and political justice that is institutionally grounded' (Samuel 2022a: 310).

[4] For the sake of clarity, it needs to be added that this point makes my interpretivism layered. I offer an interpretive account of a discipline that centres around interpretive engagement with the law.

in section C.) Thirdly, it is explicitly committed to improving legal practices. (This third feature is conspicuously manifested in academic concerns with institutional design.) Crucially, legal doctrinal scholarship is not the site for abstract speculation about values considered relevant for law. It is not just that it is anchored in practice-relevant social facts. In epistemological terms, it connects with the body of knowledge participants already utilize (and dynamically shape) as they navigate existing legal practices. That is what I call 'doctrinal knowledge'. The character-defining job of legal doctrinal scholarship is cultivating doctrinal knowledge. (This is why the epistemological analysis in the monograph revolves around the concept of doctrinal knowledge. The whole of chapter 3 is dedicated to it.)

What can be Samuel's objection to accepting the viability of an academic discipline along these lines? It seems to me that the answer must lie in his arguments for categorizing the discipline of law as a social science. Perhaps, those arguments defeat my position. In that regard, Samuel's key claim comes from an interesting source. Inspired mainly by Berthelot, he identifies six 'schemes of intelligibility' (Samuel 2022a: 51-53; cf Berthelot 1990) that are all reflected in the social sciences (causal, functional, structuralist, hermeneutical, 'actional', and dialectical). And he demonstrates that they are also embedded in the discipline of law—providing a shared epistemological framework with the other social sciences. I think this aspect of Samuel's work is excellent. It offers a great opportunity for all legal scholars to raise their level of methodological awareness. Indeed, those schemes of intelligibility are embedded in the practices of legal scholarship.

However, Samuel's analysis sidesteps an important issue (with far-reaching methodological implications). Does it make an epistemologically relevant difference whether the orientation of academic research is normative? What if the research questions concern the viability of normative arrangements or the ways in which they could be improved? Naturally, I argue that it does make a difference. (And as we have seen, I find myself in at least partial agreement with Berthelot—the very author of those six schemes of intelligibility—who distinguished legal scholarship from the social sciences on the ground that it deals with normative judgements.) Specifically, placing the thematic focus on the normative aspects of social practices makes a character-defining difference. It changes the problem horizon for academic research (eg by necessitating engagement with issues of institutional design), and, in the case of legal doctrinal scholarship, it confers special methodological significance on rational reconstruction. (More on this in section C.)

I emphasize again that my position has ample support from relevant interpretive data. The kind of normative engagement I talk about is an integral part of the disciplinary practices of legal scholars. There is no sign of it dying out. Two decades ago, Fiona Cownie found that about half of the legal scholars in British law schools fall into that category (Cownie 2004). Siems and Mac Síthigh confirmed this finding a few years later (Siems & Mac Síthigh 2012). And if we look further, the position of this kind of scholarship is significantly stronger in Germany and France (Samuel 2022a: 27-28). As a matter of interpretive data, legal scholarship has a stable (albeit not too prestigious) position within academia. Samuel is well aware of this—that is why he has been on a long campaign to change the minds of legal scholars about worthwhile academic research into law. Of course, Samuel can argue that these interpretive data are not determinative of scientific quality. However, as I have argued, on this score, he is not standing on a particularly stable ground—especially when it comes to categorical statements directed at an interpretive account of legal doctrinal scholarship.

[C] A FEW SPECIFIC OBJECTIONS

Of course, even if Samuel does not have knockdown arguments against the viability of legal doctrinal scholarship as a normative discipline, he might still be right to dismiss my specific account. He is clearly unconvinced by a series of my key points—like my reliance on the idea of the rational reconstruction of the law, my treatment of the ideological aspects of legal doctrinal scholarship, and my take on interdisciplinary engagement. Perhaps, my account fails on its own terms due to the accumulation of specific failings on these points. It is worth taking a look at them.

I have already mentioned that the idea of rational reconstruction is central to my account: it is at the methodological core of legal doctrinal scholarship (Bódig 2021: 141-146). It connects the three characteristic activities of legal scholars: systematizing the law, the critical assessment of legal developments (both in legislation and case law) and addressing institutional design (Bódig 2021: 8, 141-142).

Samuel does not deal with the idea in much detail, but he deems it unclear (Samuel 2022b: 54-55). I am not sure what the problem may be. I regard rational reconstruction as a rather undemanding and flexible concept. It is rooted in the basic insight that the law is socially constructed. Creating, sustaining (and further developing) the law demands continuous investment of (human and other) resources. It poses the question of what makes those efforts worthwhile. Also, we need to

recognize that the (socially constructed) law reflects choices: all normative arrangements could be more or less different to how they are now. There must be reasons behind those choices. These two considerations prompt the assumption that there is 'reason' invested in all aspects of the law. Rational reconstruction is about tracing the reason invested in legal mechanisms—both on the micro and the macro level (depending on the focus of academic research). For a hermeneutic discipline, the corresponding epistemological commitment is that we can access that reason through interpretive engagement with legal practices.

Importantly, the idea is not premised on some overarching rational scheme embedded in the law. Many different actors contribute to creating and sustaining legal mechanisms—often over long periods of time. Those actors can (and do) make conflicting 'investments of reason'. Also, legal mechanisms are subject to institutional drift (eg through institutional decay) that meddles with the meaning and functions of normative arrangements. Efforts directed at rational reconstruction will always find the law less than fully coherent and riddled with internal tensions (often manifested in institutional rivalries)—with deficiencies even in terms of its own stated action-guiding ambitions. Notice that, for those who see value in sustaining legal mechanism, this makes engagement with issues of institutional design a necessity, and it intertwines the systematization of the law with constructive theorizing—two features built into the very fabric of the interpretive methodology.

Notice the conditionality, 'for those who see value in sustaining legal mechanisms'. Rational reconstruction (in this context) does not assume seamless rational coherence, but it does have a constitutive value assumption. It construes *legality* (in the sense of managing a series of social relations and interactions through legal processes) as a value of major social significance (Bódig 2021: 131). Despite their (often glaring) dysfunctions, legal mechanisms are worth having and worth developing. (I will return to this point when dealing with the ideological profile of legal scholarship.)

I provided this brief overview of my position partly to indicate that I am ready for a substantive debate on rational reconstruction. But the more immediate motivation is that it serves as the template for addressing some of Samuel's more specific objections. First, it shows why it is a misrepresentation of my position that I assume an 'inner structure' in the law like Ernest Weinrib (Samuel 2022b: 65). Indeed, I believe that theorists like Weinrib or Charles Fried provide a useful starting point for a thoroughly interpretive and non-instrumentalist account of the law.

But I argue that we need to go well beyond them (Bódig 2021: 148-148) to capture the dynamic and dialectical relationship between practical reason and institutional practices in law (Bódig 2021: 251-253). I do not assume any mystical inner structure—as my treatment of the idea of the 'artificial reason of law' demonstrates (Bódig 2021: 253-254). Instead, I assume that, depending on the specific alignment of institutional, political, and other factors, practical reason operates in very different ways in concrete legal practices (Bódig 2021: 254-255). And when I highlight the importance of a non-instrumental approach to law in legal theory and legal doctrinal scholarship, I do not mean that legal mechanisms have no manifest or latent functions that they are instrumental to. (I explicitly recognize the viability of instrumental approaches to law: Bódig 2021: 243.) What I mean is that, by way of interpretive engagement, we cannot explain adequately any bit of the law as being thoroughly instrumental to external preferences. Even when pieces of law are designed to implement specific policies (hammered out in the political process), they will operate in the broader context of other normative arrangements, and no policy can fully determine how the law will be used by a range of participants with different practical orientations, interests, and agendas. The fact that the law engages with masses of differently positioned agents gives it remarkable hermeneutic depth. There is always more to learn about how practical reason operates in a complex institutional environment, and that brings dynamism to the challenge of rational reconstruction in legal doctrinal scholarship.

This also helps me provide a more adequate response to Samuel's suggestion (Samuel 2022b: 54-55) that I get PhD students (who work on doctrinal problems) into trouble by arguing that much of legal doctrinal scholarship is not new doctrinal knowledge—but rather the processing, structuring, and systematizing of existing doctrinal knowledge (Bódig 2021: 127). How are they supposed to produce new knowledge that would earn them a research degree? Above, I pointed to the need to strike a balance between producing new knowledge and framing, validating, systematizing existing knowledge in all disciplines. On that basis, I insist that legal scholars (or research students) would not have a hard time producing valuable and original new research. First, engaging with issues of institutional design (which typically means working on recommendations for improving the law) is inherent to the academic practices of legal doctrinal scholarship (Bódig 2021: 142-143). Interpretive engagement (directed at the rational reconstruction of the law) virtually always finds the given normative arrangements in need of further doctrinal development. Let me add a further point that does not feature in my book. Siems and

Mac Síthigh rightly emphasized that doctrinal legal research addresses 'deep hermeneutic questions' that go beyond the immediate concerns of practitioners (Siems & Mac Síthigh 2012, 654). And we must also agree with Becher and Trowler who characterized academic law as a 'rural discipline' where research efforts are scattered across a broad intellectual territory (Becher & Trowler 2001: 106, 185-187). The combined effect is the there are always segments of the law (partly because fast-changing modern legal systems recreate them on a continuous basis) where there is much need for the kind of deep interpretive engagement with the doctrinal structures that legal scholars specialize in.

To move forward, it is worth picking up on an implication of the latter point. In contemporary legal systems that are in a symbiotic relationship with the regulatory (or administrative) state, significant legal changes are always just around the corner (as multiple consultations are running in parallel at any given time). And the vast body of state regulations in diverse areas of social life generate a constant influx of external knowledge (from education and health care through manufacturing standards to financial procedures). That influx comes to dictate aspects of doctrinal development (Bódig 2021: 194). Processing these trends with a focus on preserving the integrity of the doctrinal structures of law becomes a permanent challenge for legal scholars. Of course, there is scope for throwing out bright new ideas, but the primary concern has more to do with preserving the intelligibility of the law—to make its doctrinal structures more transparent and clearer in its practical implications. Also, let us not forget that a hermeneutic discipline will have a built-in preference for working out the answers to doctrinal challenges from the epistemological resources the law already provides.

The pressure that the influx of external knowledge exerts on doctrinal structures leads us to the problem of interdisciplinary engagement. I must say that a key reason for writing this reply was the way Samuel misrepresented my position on interdisciplinary engagement in legal scholarship. He finds it bizarre that I argue that legal scholarship leaves a relatively narrow scope for interdisciplinary engagement (Samuel 2022b: 58). Moreover, he detects a certain 'fear of interdisciplinarity' in my account (Samuel 2022b: 60). He recognizes that I am not completely hostile to interdisciplinary research (Samuel 2022b: 61), but he senses that I am afraid of alienating legal scholars who consider interdisciplinarity as the enemy (Samuel 2022b: 62). Honestly, this reading of my intentions came as a stunning surprise to me. I have never even met a legal scholar who

would have framed interdisciplinarity as the enemy.[5] (But then, I may not move in the right circles.)

But let us focus on the key objection here. One of the reasons why Samuel thinks that my analysis fails on its own terms is that I have worked on an epistemological justification for legal scholarship 'with very little recourse to interdisciplinarity' (Samuel 2022b: 57). I can see how my position may look puzzling at first. I account for the adaptation pressures from the influx of new knowledge into law. (For Samuel, this is 'not unwelcome', Samuel 2022b: 62.) But then, is it not the case that the influx of external knowledge should drive interdisciplinary work? Well, the answer is rather straightforward. I am not sure how, but Samuel completely missed what I say about *multidisciplinary* engagement. Following a conceptualization that is pretty standard in the relevant academic literature, I distinguish interdisciplinarity from multidisciplinarity on the ground that interdisciplinary engagement implies at least some measure of methodological integration (Bódig 2021: 173-174; cf Alvargonzález 2011). My claim is that, for a normative discipline, there are more limited options for methodological integration with other (typically non-normative) disciplines. (In my monograph, I systematically explore the options for interdisciplinary engagement.) So, the other side of my claim is that I see a lot more options for multidisciplinary engagement for legal scholars (Bódig 2021: 186-187). In fact, I positively encourage it because I think that (due to the influx of external knowledge) legal scholarship is becoming ever more reliant on multidisciplinary engagement.

There is one more objection I need to address in this section. In some ways, it is the trickiest one, and I do not think I can deal with it adequately in this reply. Another key reason why I undertook to write this reply is that I needed to take on Samuel's claim that I did not even produce an epistemological defence of legal doctrinal scholarship: I offer an ideological defence masquerading as an epistemological one (Samuel 2022b: 63).

On the face of it, I could dismiss this objection in short order. Simply put, there is no masquerading here. It is not, as Samuel suggests, that I am 'at times' aware of the ideological dimension of the discipline (Samuel 2022b: 63). Dealing with that ideological dimension is an important theme in my book. I explicitly argue that certain ideological commitments are built into the very epistemological profile of legal doctrinal scholarship (Bódig 2021: 127). However, I realize that my position may be (unpleasantly) surprising, and that it requires further clarification. Of course, I need to refer the

[5] On this point, Samuel may be influenced by Dan Priel who indeed detected a hostile attitude towards interdisciplinarity among some legal scholars. Even the language (interdisciplinarity as the 'enemy') seems to come from him (Priel 2019: 167).

reader to my book for the full analysis (that spans several chapters there). Here, I limit myself to briefly highlighting the key considerations that make me think that Samuel's objection misses the mark. Also, just like in the book (Bódig 2021: 129), I signal my openness to further discussions on this important topic.

The methodologically crucial point is that, in this context, the epistemological inquiry needs to factor in certain ideological commitments[6] that affect the perspective from which knowledge is produced, framed, and utilized. Contrasting an ideological and an epistemological approach (as Samuel seems to suggest) is counterproductive and positively misleading. So much so that I very much assume that ideologically fixed assumptions play a role in the epistemological profile of all academic disciplines.[7]

Admittedly, the ideological aspects of legal doctrinal scholarship are more complex (and potentially more problematic) compared to most other disciplines. This is mainly due to the hermeneutic character of the discipline. As mentioned above, available interpretive data can support a series of different (potentially equally plausible) accounts of any social practice. This implies that a hermeneutic discipline can only acquire a coherent identity and a settled problem horizon if the relevant cohort of scholars can occupy a shared perspective on the relevant social practices. And this is how I see it playing out in legal doctrinal scholarship.[8] This discipline is focused on the normative aspects of legal practices, and that turns the doctrinal knowledge generated in and around legal practices into its defining epistemological concern. However, legal practices give rise to multiple versions of doctrinal knowledge—some more sophisticated than others. Legal doctrinal scholarship gains its distinctive identity by adjusting its problem horizon to the dominant form of doctrinal knowledge—the one that professional lawyers produce. This is what confers specific ideological commitments on legal doctrinal scholarship. I mean ideologically fixed value commitments drawn from the professional culture of lawyers. I argue that those commitments revolve around the value of legality (that I have already mentioned when addressing rational

[6] It needs to be emphasized that my analysis is premised on a specific conceptualization of ideology. It refers to value commitments that are constitutive of social roles. For social actors in those roles, the given value commitments are 'ideologically fixed' (Bódig 2021: 129-130).

[7] Eg physicists do not reckon with the possibility of supernatural forces affecting the phenomena they observe. And sociologists do not ponder whether they should factor in demons as a category of social actors when accounting for social processes. These are not conclusions they draw from empirical or other inquiries. Well, observations by themselves can never substantiate such a conclusion. They are ideologically fixed commitments built into the epistemological profile of their disciplines.

[8] What I provide here is a skeletal overview of points developed in chapters 3 and 4 of my monograph.

reconstruction). This is what legal doctrinal scholars cannot call into question without placing themselves outside the epistemological scope of their discipline.

It is said sometimes that legal scholarship should break its dependence on the legal profession. Samuel seems to share the sentiment. But I believe that, from my methodological perspective at least, this suggestion misconceives the position of legal doctrinal scholarship. The functional connection with the legal profession makes the discipline epistemologically feasible in the first place. If doctrinal scholars severed the connection, they would need to look for another 'client group' (cf Bódig 2021: 119).

This leads us back to a point I have emphasized above: the key to my account is the epistemological analysis of doctrinal knowledge (provided in chapter 3 of my monograph). I also consider it my original contribution to the literature. My theory of legal doctrinal scholarship stands and falls with it. Unfortunately, Samuel shows limited interest in that analysis. He mentions it a few times (eg Samuel 2022b: 54) but always in passing. I think we could have a more constructive conversation if my take on the variety of doctrinal knowledge produced by legal professionals were a bit more central to it.

[D] A LOOK AT SAMUEL'S ALTERNATIVE APPROACH

In the light of the previous two sections, we should be better positioned to explore the exact battle lines between Samuel and me. Up to this point, I have focused on setting the record straight on my account on legal doctrinal scholarship. In this section, I round out the picture by offering some reflections on Samuel's own approach.

I mentioned above that, in the abstract, I have no problem accepting the initial plausibility of Samuel's 'historical jurisprudence' approach. I embrace a form of methodological pluralism: I grant that every bit of law (procedural, as well as substantive) and every legal concept is a legitimate object of sociological analysis (Cotterrell: 1998)—as well as economical, anthropological, political, etc. I add Samuel's historical jurisprudence to the list. In his monograph, Samuel listed a series of questions that can only be answered within the parameters of his account (Samuel 2022a: 2, 327). I agree that there are such questions. I only insist that there are aspects to the law that only a doctrinally focused analysis can bring into the domain of academic research.

Accommodating Samuel's approach is made even easier by the fact that he touches on a series of points that demonstrate at least partial compatibility with my own analysis. He accepts, like I do, that lawyers have distinctive expertise (Samuel 2022b: 65). He points out that social facts and situations can be classified in multiple ways in law (Samuel 2022a: 26). This is what I capture as the 'hermeneutic condition'. And, considering my focus on the constructive aspect of academic engagement with law, I can only agree that describing the law is to transform it (Samuel 2022a: 244). Clearly, there is a real possibility of a more constructive engagement between us—despite the methodological divide. If I have objections, they only concern the specific way in which Samuel has developed his account of the discipline of law.

I have explored important methodological differences between our approaches, but I have not touched on a particularly salient one: the contrast between diachronic and synchronic models of law. Samuel's 2022 monograph offers a historical explication of the development of legal thought—written in the tradition of grand narratives about intellectual history. That is, he offers a diachronic theoretical model that he repeatedly contrasts to synchronic ones (Samuel 2022a: 303, 308). Even when engaging with my position (formulated from a different methodological vantage point), his default mode is to fall back on a historical framing. When the character of the academic practices of legal scholars is in question, he quickly directs us to an inquiry into a 'two-millennia project' of scholarship (Samuel 2022b: 46).

If we are to use this terminology, my account is (consciously and unashamedly) synchronic. Samuel does not rule out the very viability of synchronic models, and he may sympathize with some of them (Samuel 2022a: 225), but he has the tendency of fomenting distrust around them. Most characteristically, he argues that a synchronic model would assume that the law can transcend its own history (Samuel 2022a: 303). But that is not quite right. What a synchronic model assumes is not that, somehow, history can be transcended. Rather, it is that legal mechanisms (or academic practices) can be made intelligible by way of (interpretive or other) engagement with their contemporary manifestations. No doubt, they were all comprehensively shaped by their history, and they have aspects that we only understand adequately if we engage with the historical development of legal thought. But their very intelligibility (for the purposes of competent participation) cannot be dependent on familiarity with their historical background and trajectory. That would presuppose the kind of deep historical knowledge that most participants (even professional ones) do not have (and cannot be expected to acquire).

If we are to understand what enables the law or legal scholarship to function in its contemporary (institutional, social, political, cultural, etc) environment, we need synchronic models as well.

If we look deeper into the specifics of Samuel's own account, certain limitations of his diachronic model may reinforce this conclusion. It makes sense to start with the observation that his account is not thoroughly diachronic. He consistently develops his points about the law (and the discipline of law) from historical analysis, but that analysis is framed by conceptual constructs articulated in often strikingly ahistorical ways. We have actually come across the most characteristic example: 'science'. Samuel's conceptualization (Samuel 2022a: 13, 22-25, 287) is not based on the historical trajectory of scientific thought. Nor is it drawn from a phenomenological analysis of what scholars characteristically do. It is established by way of authoritative statements distilled from academic sources. As we have seen, Samuel uses science as a rather rigid epistemological category to pass categorical judgements on what qualifies as academic work of scientific quality. Notably, the ahistorical framing gives even Samuel pause at times—like when he ponders whether he can apply the term 'social science' (only coined in the 19th century) to the work of Roman jurists (Samuel 2022a: 56-57).

I stress that I do not blame Samuel for mixing historical analysis with the reliance on more ahistorical conceptual devices (that end up framing the historical analysis). I do not think that he had any other choice. As he is well aware (Samuel 2022a: 2), a range of widely different narrative accounts can be developed from the available historical data, and historical analysis by itself cannot discriminate between them without becoming viciously self-referential. (It seems that, with historical analysis, we also find ourselves in the hermeneutic condition.) But then, we should expect that any combination of historical and ahistorical analysis (if it is to meet standards of academic rigour) is provided with a transparent methodological justification. As I was not sure what that justification is in Samuel's case, I needed his help. In reply to my inquiry, he denied he had a specific method. He has no objection to being called a 'methodological pluralist'. Crucially, this is different to the methodological pluralism I embrace (and that I have referenced above). In my case, it is the pluralism (and co-existence) of distinct approaches with clearly defined methodological profiles. For Samuel, it is the 'internal' pluralism of his account. This is what enables him to slide back and forth between different methodologies in the course of articulating his historical jurisprudence.

Samuel's methodological pluralism would be way too risky for my taste, but I have no reason to reject it in the abstract. However, I have a series of specific problems with the way it plays out in his rendition of historical jurisprudence. I do not mean the most predictable challenge: making sure that the historical account of legal thought does not become selective in tendentious ways. There are issues that could be raised in that respect (like the way he systematically prioritizes private law over public law and ends up marginalizing the aspects of legal thought that remained less well developed in Roman law), but I recognize that he needed to make such choices to be able to produce an analysis with internal coherence and manageable proportions.

I have more worries about another challenge: under the conditions of Samuel's methodological pluralism, the historical and ahistorical aspects of the analysis can intersect in confusing ways. For instance, he adopts a fascinating point from Robert Blanché without any critical scrutiny (and historical validation): sciences go through four phases of development (descriptive, inductive, deductive, axiomatic) (Samuel 2022a: 283; cf Blanché 1983). Then he projects this claim on the historical trajectory of academic law, concluding that the authority paradigm reached the axiomatic stage with 19th-century German Pandecticism (eg Samuel 2022a: 284, Samuel 2022b: 50). This clearly informs the momentous claim that, once Pandecticism fell apart, legal scholarship found itself in epistemological confusion (Samuel 2022a: 226). As there is no 'next phase', any effort to revive their kind of normative scholarship can only count as futile nostalgia without much academic value (This conclusion is strikingly manifested in Samuel's treatment of most contributions to a 2019 volume *Form and Substance in the Law of Obligations*—Samuel 2022a: 244-245; cf Robertson & Goudcamp 2019). Here, from the uncritical adoption of a questionable regimenting device, we get to a whole historical narrative without ever asking whether Pandecticism was indeed the pinnacle of doctrinal scholarship—as opposed to an excess and a methodological blind alley from which the discipline needed to recover.

In more general terms, my main worry concerns the standard-setting role of Samuel's more ahistorical conceptual building blocks. Even though I accept that such concepts need to play a role in framing his historical inquiry, it remains a problem that Samuel has the tendency to acquire them from the relevant academic literature without much regard for the variability of the methodological assumptions in his sources. As he checks the implications of his conceptual assumptions against their phenomenological ground only intermittently, this may lead to problematic framing and the accumulation of problematic claims.

I only point to one complex example here. It is one of Samuel's recurrent themes that legal thought is self-referential (Samuel 2022a: 22-23, 330): it constructs its models without reference to an exterior object (eg Samuel 2022b: 49; Samuel 2022a: 281). This claim guides his forays into ontological reflection (eg Samuel 2022a: 46-50), and it also affects his framing of issues of justification (Samuel 2022a: 15; Samuel 2022b: 49-50). The trouble is that the underlying claim clashes with the basic insight that the law is a social practice—its aspects are all anchored in masses of social facts. (As Samuel rightly emphasizes, these are not 'brute' facts—but facts, nevertheless, Samuel 2022b: 62). Those facts are the point of reference for legal thought. Oddly, Samuel seems to recognize this in certain contexts (Samuel 2022a: 23). In relation to Roman and medieval legal thought, he talks of legal reasoning projecting itself on a world of social fact (Samuel 2022a: 97), the analysis of factual situations (Samuel 2022a: 110), and operating inside factual problems (Samuel 2022a: 229). But his adherence to a dubious point acquired through academic sources (like Marie-Laure Mathieu, Samuel 2022a: 22-23; cf Mathieu 2014) gets in the way of applying this valid insight to the whole of legal thought more generally. Moreover, problematic points like this one have ripple effects. For example, Samuel's framing of justification overemphasizes consensus and coherence (giving in to a controversial form of conventionalism about values). And he also commits to the problematic claim that the object of legal scholarship is the legal text (Samuel 2022b: 50). No, the epistemic objects for the discipline are legal practices. Legal texts only gain normative significance if they can be matched to legal practices manifesting themselves in masses of social facts. The texts matter only because they are sources of information about them.

It bears pointing out that Samuel's tendency to straddle methodological differences also affects his treatment of my work. It lures him into measuring my claims against academic sources that served him well and then making categorical claims without regard for the specific methodological features of my inquiry. (Well, this is what made it necessary to explain my methodology in section B.) Perhaps, the most instructive example is that, as it turns out, one of my major failings is that I did not confront Felix Cohen's seminal critique of law as a system of concepts. Cohen famously called it 'transcendental nonsense'. He could have alerted me to the futility of my reliance on a metaphysical 'inner structure' (Samuel 2022b: 65). The trouble is that my methodology is not transcendental—it is interpretive. I do not see jurisprudence as 'an autonomous system of concepts' (cf Cohen 821). And most importantly, as explained in section C, I do not assume that the law has any kind of

metaphysical inner structure. The whole line of criticism is based on ignoring the specific methodological parameters of my account of legal doctrinal scholarship.

There is one more point I need to raise. As I have noted above, Samuel has the tendency to approach the discipline of law (and law itself) historically, while his framing of science is largely ahistorical. Admittedly, this is often the source of great insights (like when he deploys Berthelot's 'schemes of intelligibility'). But there seems to be a trend here. The framing devices tend to be external to legal scholarship and legal theory. And it means consistently subjecting legal scholarship to external standards. Its academic practices are rarely taken as possible sources of learning about standards of academic achievement. And Samuel rarely ever allows legal theory to set the epistemological parameters for the analysis of the discipline of law. Legal theory itself is taken mostly as providing historical data for intellectual trends.

That contrasts with my approach. I argue that academic legal theory should lead on exploring the epistemological parameters for legal doctrinal scholarship, and I have developed my methodological outlook to facilitate that. The epistemological inquiry should be guided by what academic legal theory finds out about the conceptual features of legal practices (Bódig 2021: 218). It is not just that I believe that conceptual legal theory has the requisite intellectual resources. I also think that outsourcing this task to a combination of social science epistemology and historical jurisprudence may miss aspects of the relevant epistemological features. Specifically, it can underplay the epistemological relevance of doctrinal knowledge. We certainly need to encourage more engagement with how epistemological reflection develops in other disciplines. But we also need to encourage epistemological reflection that works from the internal resources of legal theory and legal doctrinal scholarship. All self-respecting disciplines need to develop theoretical discourses that serve that purpose.

[E] CONCLUSION

The debate between Professor Geoffrey Samuel and me is of an interesting kind. There is no significant disagreement about the overall character of legal doctrinal scholarship. Instead, we have clashing views on whether that kind of scholarship constitutes a worthwhile academic pursuit. Should legal scholars be helped to break out of the trap of their authority paradigm to become better social scientists? Or should we work on providing the existing practices of legal doctrinal scholarship with a more robust epistemological grounding? This is a nicely focused

debate, but I still think that it is not really about who is right on our specific points of disagreement. On a deeper level, the debate explores the implications of methodological pluralism. How are we to handle the co-existence of theoretical accounts that have very different methodological and conceptual assumptions? What are the conditions under which they may be a correcting influence on one another?

At this stage of the debate, I remain convinced that, when provided with the appropriate methodological framing, it is not an impossible job to provide legal doctrinal scholarship with an epistemological justification. The current methodological discourse around the discipline may be scattered and disjointed, and we may need to face up to some 'home truths' (like the one about ideological commitments), but the key insights and conceptual building blocks we can work from are out there.

Samuel started his article by confronting academic lawyers with a choice: settling for the role of only assisting the legal profession or dedicating themselves to advancing knowledge (Samuel 2022b: 43). I think that, in the light of the variety of our methodological options, this is a false dichotomy. The two choices are not mutually exclusive, and there are other pathways as well for scholarship about the law. Even when scholars dedicate themselves to academic research into doctrinal challenges, and even when their primary focus is the academic validation of existing doctrinal knowledge, they can be confident that there is a perspective from which their job comfortably falls within the scope of worthwhile academic pursuits.

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