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Conceptions of Thinking Legally:

an interpretative approach

Robert Malcolm Herschell

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an interpretative approach

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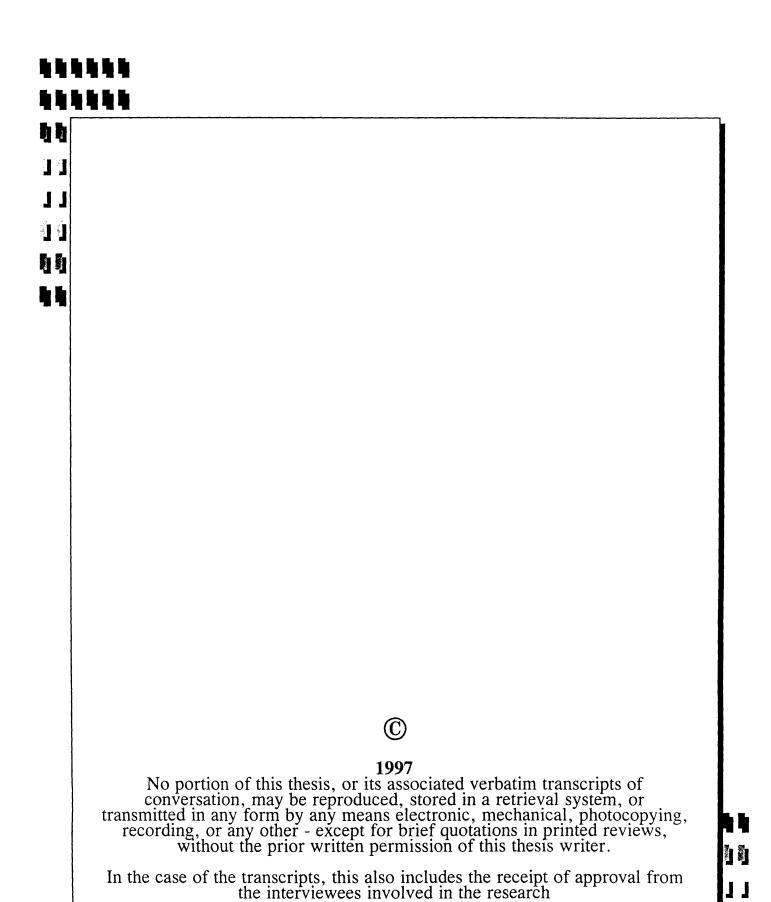
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ABSTRACT

Title:

Conceptions of Thinking Legally: an interpretative approach.

The central question explored in this research study was what are conceptions of thinking legally? A review was undertaken of the predominant humanistic, rationalistic and dualistic approaches to educational research. These approaches have been criticised as being too limited in their epistemological and ontological presuppositions, assumptions and foundations. Their 'worldviews' which are based on cognitive dualisms, do not provide either comprehensive or sufficient frameworks for integrated perspectives. Thinking legally has been placed within a holistic context of 'knowledge as being' rather than the dualistic perspective of 'knowledge as cognition'.

The main focus of this study was to overcome the limitations of previous work that has been undertaken in this field of academic research. Rationalistic approaches to strategies such as *legal reasoning*, *legal problem-solving* and *legal thinking* were evaluated in terms of their dualistic and humanistic epistemologies and ontologies. Consequently, an alternate approach was elaborated.

The study focused on three questions which were:

• The Contextualising Question:

On the basis of your experience, what does 'right' and what does 'wrong' mean to you?

• The Focusing Question:

What types of experiences have you had with the law and legal issues, and how have these impacted on your life?

• The Research Ouestion:

Based on your life experience, what does it mean to think legally?

An interpretative approach, phenomenography, was proposed as an alternative to the usual positivistic, rationalistic, reductionistic and deductive strategies. Phenomenography was used as an interpretative research strategy by the implementation of principles, procedures and concepts about intentional human experience. The extent to which the phenomenographic approach can be used to articulate a holistic, interpretative and inductive study of *thinking legally* was examined through an empirical study of 30 residents in south-east Queensland, Australia. These participants ranged included experienced legal, professional, political and governmental leaders; legal and law-related educators and law students; business and community leaders; and teachers, students and



parents. Interview/discussions were conducted to generate seven categories of description, interpretation and explanation of *thinking legally*.

Distinct conceptions of thinking legally have been identified. These were:

Conception A: *Thinking Legally* as the rule of law;

Conception B: Thinking Legally as a representation of a personal worldview;

Conception C: Thinking Legally as a process of justifying personal behavioural space;

Conception D: Thinking Legally as a process of dealing with dualism;

Conception E: Thinking Legally as personal processing of contextual and situational data;

Conception F: Thinking Legally as providing pathways for decision-making;

Conception G: Thinking Legally as a pervasive and comprehensive construct.

The outcomes of this study demonstrated that thinking legally was not predicated on mastery of a specified set of elements related to legal and law-related learning, as would have been expected under rationalistic paradigms. Thinking legally was perceived in this study as predicated on a broad definition of knowledge which includes: (i) knowledge as content acquisition, (ii) knowledge as cognitive processes, (iii) knowledge as academic and practical skills, (iv) knowledge as professional abilities, and (v) knowledge as personal development.

The outcomes of the study have major implications for those involved in the design, development, implementation and review of legal and law-related education programs. The epistemologies, ontologies and worldviews upon which current programs have been developed need to be reconceptualised. In addition, the elaboration of an interpretative approach to *thinking legally* has methodological implications for practice.

This study demonstrates how it is possible to investigate, in an inductive manner, the basic meanings of specific life experiences of a group of people in order to deepen understanding of the fundamental nature of human thinking, action and experience.



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Acknowledgments

When one first entertains the thought of commencing a study of this kind, the journey begins with a sense of adventure, enthusiasm and high spirit. Encounters with significant people, readings and life experiences, develop a sense of reality that is, in most cases, overwhelming. Were it not for the inspiration, encouragement and support of significant individuals, this researcher would have abandoned the study in the pot-holes, dead-ends and detours of the Doctor of Philosophy journey.

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I dedicate this thesis to the thirty participants in the study as well as to the clients of the research: the Legal and Law-related lecturers, teachers and students, especially in Queensland and the other Australian States.



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