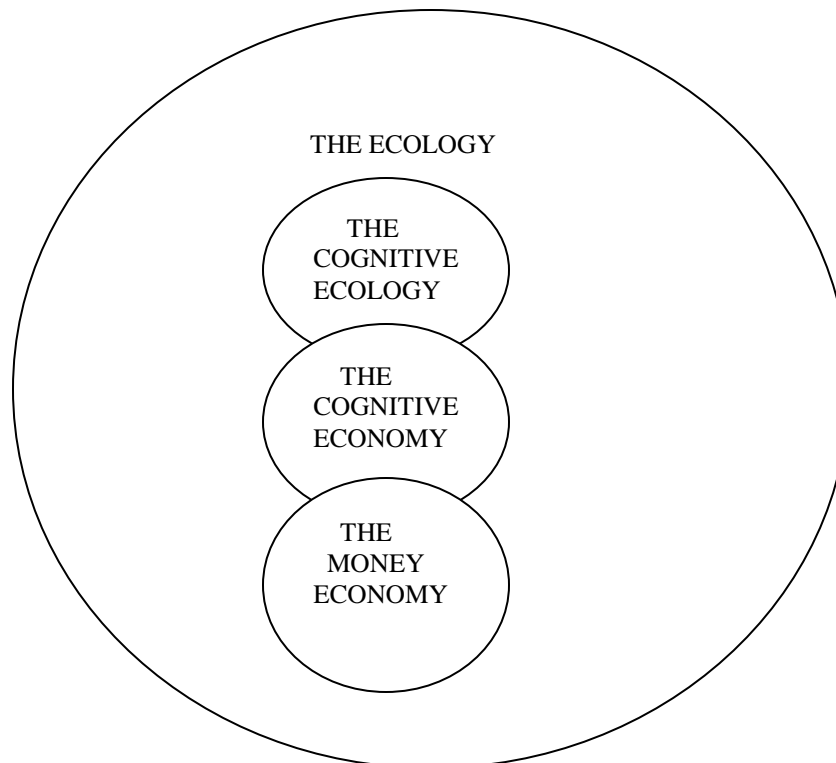


**Philosophy 338A
Philosophy of Law
2017
Note Eleven**

ODDS & ENDS

1. *Economies*

In class on Tuesday, February the 7th we briefly discussed the difference between the “money” economy and the cognitive economy. There is a further distinction which we should take note of. As we know, an ecology is an elaborate network of interactions between nature and its inhabitants. Much of that interaction is purely causal, and operates well outside the range of human knowledge (e.g. the workings of peristalsis, hair growth, and so on). However, there are large ranges of cases in which our interactions with nature are cognitively driven. We want to know how best to protect ourselves from nature’s dangers, we seek ways to manipulate nature for our own ends, and we expend enormous collective effort in revealing nature’s secrets. To the extent that this is so ours is a *cognitive ecology*, with which our cognitive economies play an important negotiating role, furnishing inputs to our money economies to help them do their thing. These are partially ordered hierarchical structures, roughly schematizable this way:



2. *Establishment epistemology*

We were saying the other day that there is nothing *as such* that is remotely wrong with established modes of enquiry. Established methods and assumptions have held their ground in the face of attempts to discredit them. Everyone agrees that experimental methods make for better actual science than methods of axiomatic derivation do. Everyone agrees that mathematics is more securely tethered when its theorems meet the test of rigorous proof. One of the signs that a certain mode of enquiry has become an established one is that it attracts very wide support from the scientific community and, correspondingly, comparatively slight disagreement.

In philosophy, things are not quite that cut and dried. These days, there is considerable disagreement among logicians about what logic actually is and about which so-called is preferable to the so-called others. Similarly, there are standing and quite basic (and still unresolved) disagreements among moral philosophers about the right, or best, approach to ethics. Even epistemologists separate themselves into one or other of several rival schools of thought. There isn't anything like this kind of rivalrousness in physical chemistry or population genetics. So why would we even think of applying the concept of establishedness to *any* branch of philosophy?

There is a rough operational test for this. In a loose and informal way we can say that a way of doing philosophy – its methods and key assumptions – makes the establishment cue to the extent that it finds a secure place in the PhD curricula of virtually all the universities of the anglosphere and beyond, especially in regard to philosophical developments since the late 19th century in Germany and the early 20th century in England. These years were a tumult of original philosophical thinking and radical developments in the beginning, but now long since business as usual in what has come to be called analytic philosophy.

In arrangements as loosely contrived as these ones, there is plenty of room for the intra-family high dudgeon that attends self-refereed. You can be a fully paid-up member of the family to the extent to which your work makes the PhD curriculum and (a further consideration) is a source of comment in the leading journals.

3. *Paradigm creep*

We now come to an interesting feature of established theories. Over time, the more that they are established, the less their fundamentals will be subject to critical oversight or what, in the business world is called quality control. To the extent that the operating principles of a discipline eases up on its own quality control measures, the greater the likelihood that the discipline in that configuration will assume the status of an intellectual paradigm. The extent to which the paradigmatic ways of proceeding take hold in a school of thought, the greater the likelihood of its transition from paradigm to dogma. The greater the extent to which a school of thought has achieved the safe harbour of dogmatism, the greater the likelihood of imperial outreach. What I mean by this is a good deal less dramatic than the seizure and subduance by imperial powers over the epochs of lands and societies of distant reach. What I mean here is the importation of methods and assumptions that work very well in the home disciplines, but which are at risk of over-extension when applied to different regions of intellectual life in the absence of strict quality-control oversight. In many such instances a paradigm's colonization of a distant discipline is a bridge too far. One of its chief failings is its indifference to the requirements of due diligence set forth in our book, and the abiding risk of data-bending and subject-changing conceptual distortion. When this happens, I will say that the paradigm has fallen prey to

paradigm creep, which stands to paradigms as mission creep stands to “limited” military engagements abroad.

What is the “take-away” here? Paradigm creep is evidence that the paradigm has ventured too far afield, that it is not longer doing the work that it is good for at home. For example, there is good reason to think that the probability calculus is a good estimator of the chances that attend games of that same name, such as dice-games. Even so, given all the empirical turbulence that attends it when it colonizes our thinking about human reasoning on the ground in the particularities of real life, it is hardly excessive to take this as plausible evidence of paradigm creep.

Our intellectual history is dotted with “game-changing” reactions to paradigmatic theories that no longer quite pay for their creep. To put it over-simply, Newton put paid to the Aristotelian paradigm in natural philosophy when, in 1696, he launched the new celestial mechanics. In 1905 Einstein did to Newton what Newton had done to Aristotle with the launch of the special theory of relativity.

When in this book I call into question the *bona fides* of establishment epistemology in its outreach to the criminal law, I intend no violent overthrow of the established order. But I do intend some measure of empirically sensitive constraint on its foreign ventures into law.