



Proving the Unprovable: The Role of Law, Science, and Speculation in Adjudicating Culpability and Dangerousness (American Psychology-Law Society Series)

Christopher Slobogin

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This book is written for researchers, scholars, advanced graduate students, and clinicians who work in risk assessment and criminal responsibility. It addresses the question of admitting expert testimony from behavioral health experts in determining matters of culpability and dangerousness by examining a number of factors, including the source of the expert testimony, whether juries need it, and whether it is presented as proven or informed in the court. It argues that the question cannot be understood as a dualistic matter of being for or against expert testimony; rather, its highly nuanced arguments show that determining who should be punished and who should be preventively detained must happen through an interdisciplinary process that looks at the specific circumstances of each case. It offers an analytic framework for making these determinations that treats culpability and dangerousness not as static, ontologically-complete entities, but rather as socially-constructed concepts that cannot be determined solely through the scientific method. The book makes the intriguing argument throughout that although expert testimony cannot be considered scientifically reliable or proven, it should nevertheless be included as long as it can be classified and understood as informed speculation because it makes legal factfinders attend more closely to the matters that the law considers pertinent to past mental states. It seeks to reconcile the tension between the law's demand for accuracy and the inability of behavioral science to provide more than speculative answers for most questions raised by the insanity defense and related doctrines and by sentencing, commitment and sex offender statutes that require determinations of risk.

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