

**Families of Meaning: Dismantling the Boundaries
Between Law and Society**

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I declare that this thesis is my own account of my research and contains as its main content work which has not previously been submitted for a degree at any tertiary education institution.

Tracey Summerfield

I would like to dedicate this thesis to the memory of my father,
Harold Summerfield.

Note on the Text

The text of the thesis and its reference notation follow the Author-Date Referencing System as outlined in the *Hart Publishing Style Guidelines* with further guidance from the *Oxford Guide to Style*. There have been modifications to account for Australian spelling and punctuation conventions and to accommodate the requirements of legal referencing.

Abstract

Legal positivism insists upon a distinction between the inside and outside of law. The common law and statutory rules of interpretation assist in maintaining this distinction, establishing the myth that legal decision-making is a purely objective and rational process, giving rise to internal truths. While critical theorists have illustrated the ways in which the lines between the inside and outside are always blurred, there remains a perceived distinction, in law, between the interpretation of concepts that occurs *in* the law and that which occurs *outside* the law. Only the former have legal legitimacy. The idea of the legal family is a case in point, where the law defines family according to its own prescriptions irrespective of how family is constituted by non-legal communities. In this thesis, I consider the meanings of family in different spheres to show how the lines between the social, the political and the legal consistently overlap. I then develop a mechanism by which the law can acknowledge and affirm that which is 'outside'. This requires, firstly, a conception of law as communication and of legal interpretation as a constructive process. Secondly, the task demands that jurists engage with the semiotic processes of the everyday and that legal concepts, at least those that exist independently of the law (family for example) be framed with an open indexicality. This might enable such concepts to be interpreted according to a range of contexts, other than (or in addition to) the legal one. Finally, using the family as an example, I illustrate how a semiotic approach can assist legal interpretation, reform and analysis.

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