

Critical analysis assignment – the common sense of law



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Straight away we are told of the intention of the authors, and that is to persuade the reader to reconsider what is usually taken for granted and to question common sense assumptions about the law. [1] We are immediately then given an example which shows that the richest and most powerful states exert the most influence regardless of each sovereign state being equal and having one vote in the United nation's general assembly, simply because the vast majority of the major countries make up the biggest proportion on a map. In response to this example a question is given of whose idea was that? To be specific, " Who drew that map? "[2]This response questions the authority and right one has just because somebody says it is so, just because that's the way it is. The chapter sets out to try and keep asking questions in relation to law, to not just accept something because it says it is so but rather challenge it and ask the question, why? The authors state that there are two underlying premisses of the book. These are said to be value judgements, fundamental assumptions not capable of proof through reason. The first premise is that knowledge has value even if it cannot be instantly translated into learning capacity. It is said then, that this premise is a traditional assumption in education but not necessarily an assumption shared by those with power and governments. The author makes it clear that there is little point in reading on if you do not share the premise as it is a non-negotiable premise for the book. [3]The second premise of the book is that " It continues to be better to be an unhappy Socrates than a happy pig.

The authors then say it will look at what it describes as disturbing and even perhaps a little destabilizing because much of what it discusses should

challenge both preconceived ideas and common sense. [4]The authors go on to say that ordinary people not involved in law directly, ‘ Law Consumers’, have a different appreciation of law. This is said to be that, “ People tend to think of law as something which maintains order in society without which we would have massive disorder or anarchy, with no individual safe from violence or from threats to his or her own property”[5]The author’s then go on to mention that it is difficult to get away from this common sense view simply because, from an early age, we become aware that this is common sense. By giving the examples the authors have with regards to the common sense view of law, we can clearly see that they are speaking in a way that appeals to reason/logic combined with a lot of assumption. However, I fail to see any support for the statements given. Despite this it would seem that there does not require much support for their argument.

The reason being is that much of what the authors are saying is just as the chapter has set out to discuss, common sense. From a young age we are taught or pick up the very basics of law, (the common sense view) that is, as the authors have written, without law there would be massive disorder or anarchy. Just by reading the newspaper on a daily basis is enough to appreciate and understand this view. Everyday we read or see on the news stories involving murder, car crime, burglaries, assaults and rape to name a few.

We read about the perpetrators being brought to justice by the authorities that are in place to protect our society. This instills in our minds an image, whether unconsciously or not, that without law and the authorities, criminals would be free to do as they please and that justice would be non-existent.
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This confirms then the quote given in this chapter, “ Law, we are taught, is what protects and preserves civilisation from chaos. ” [6]You should now be able to see that even without support for the author’s claims; hardly anything is needed as it is difficult to get away from this common sense view simply because it is built into us all from an early age. The authors also speak about the separation of law from society. “ While the law is in books, the problem is in the social world, and the law seems to exist already for disputes which appear in the social world.

” [7]The point made here is that for a dispute to become legal the social problem must be transformed into a legal problem. This is a very true statement and one that needs very little backing up. An example of this might be when a person is arrested for an offence it is the job of their lawyer to look at the problem at hand and turn it from a social problem into a legal problem. In doing this, a lawyer will use what is already available to him in the skills he has learnt or understands in law which will enable him to then approach the situation as best he can in helping his client. A lawyer’s job is to find a solution to a legal problem inside of a book of rules, therefore the law is already in place and it’s just a matter of matching the law with the issue at hand. Many clients express surprise when their solicitors explain to them what their dispute is ‘ really about’,[8] this is very true.

This is because the lawyer has turned the problem from a social one into a legal one. ReadStealing by Carol Duffy analysisIt is then said that “ The law takes on an existence of its own”. This statement is backed up by referring to a few examples where this happens, such as, Muslims referring to the

Quran and Hadith for rules and the Jewish using the Torah to find social rules
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with their sources claiming to reflect the will of God. [9]This is a good observation by the authors and it is difficult to disagree with them. These rules exist separately from the social situations they are called upon to resolve. Many of the social facts in a dispute become irrelevant because it is the law that determines what is at issue.

Our common sense definition of law appears simply to observe reality but it is also constitutive. Law, in our society is maintained in the form in which it is because of our perception of the law, because of our common sense. This is another good observation and it is very difficult to not agree with this idea for the same reason stated above, common sense. In conclusion, the author makes some very valid points surrounding the idea of the Common Sense of Law. The main focus point in discussion is that ' The Law is the Law' and that the Common Sense of Law is just this.

It is difficult to not agree with what is being said, even without strong evidence to back up the authors writing. I believe this is due to the fact that evidence is not needed because as the title of the chapter suggests, we are talking about common sense, and as we know, common sense requires very little or no evidence to back up its argument. It is true, as the authors have said, unless you are trained in law, it is very difficult to get away from this common-sense view simply because, from an early age, we become aware that this is common sense.