

Law – college essay



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Objectivity has received a bad name.

This presents a special problem to the field of law, and it is a problem that argument scholars are in a position to shed some light on. Setting aside the radical Critical Legal conclusion that the only consistent action is to do away with law altogether, there is on the one hand the conclusion that, as long as a legal system exists, it is necessary that judges remain objective (Nagel, 1993). The reason is obvious. The point of law is to enforce justice. However, if judges are deciding on arbitrary bases, then justice cannot be served. But, on the other hand, there is the claim that objectivity cannot be obtained at all. What is to be done with the Critical Legal claims that “black letter” law does not constrain judges? However, the discrimination still exists in American Legal System. The issues such as gender, race and class differences influence judges decision and could be one of the reasons why a person could be accused.

The challenge is to find a way to conceive of objectivity that recognizes both its necessity and its elusiveness. It is not enough to merely reassert outmoded assumptions about objectivity nor to viciously “trash” them without leaving adequate ground for social action. Instead, it might be more productive to try to understand how objectivity is constructed and what impact those constructions have on specified outcomes. A close reading of legal decisions is at least one useful vehicle to understand how judges are constructing their own definition of objectivity. The hierarchies of race and class, for example, give rise to power struggles among men. Sociologist Karen Pyke argues that “white heterosexual middle- and upper-class men who occupy order-giving positions in the institutions they control—particularly

economic, political, and military institutions—produce a hegemonic masculinity that is glorified throughout the culture.”(Murphy and Tanenhaus, 2002) African American men have long argued that they are “ emasculated” by white supremacy, both materially and culturally. Materially, emasculation means that African American men have been denied the privileges of hegemonic masculinity, including patriarchal control over women, jobs that permit one to exercise technical mastery and autonomy, and the financial and political power that enables control over others.

Culturally, African American men have been stereotyped by whites as docile and childlike in antebellum times, and in postbellum times as violent, unable to control their physical and sexual urges, and unintelligent. This latter set of stereotypes allows white men to see themselves as superior: Though African American men may possess a brutish maleness, they are lacking in the mental and moral qualities that are necessary for “ civilized” men: gentlemen, patriarchs, rulers. (Rosenberg, 2002) There are many judges and “ law regulators” proclaim the similar point of view in court and within government institutions. What about law’s objectivity? Does law “ exist” prior to legal decision? Can judicial reasoning be guided by standards internal to the legal materials? At the dawn of the twenty-first century we can, I think, affirm a position more subtle than the one Holmes asserted at the end of the nineteenth. Yes, the standards to guide judicial reasoning can be internal to the law of a system that seeks to make them so, though never perfectly. Positive law is a human creation—a cultural artifact—though it is largely created for moral purposes, for the sake of justice and the common good. That is to say, law exists in what Aristotelians would call the order of

technique, but it is created in that order precisely for the sake of purposes that obtain in the moral order. So, for moral reasons, we human beings create normative systems of enforceable social rules that enjoy, to a significant extent, a kind of autonomy from morality as such.

We deliberately render these rules susceptible to technical application and analysis for purposes of, for example, fairly and finally establishing limits on freedom of conduct, as well as resolving disputes among citizens, or between citizens and governments, or between governments at different levels. (Sandmann, 1991) And to facilitate this application and analysis we bring into being a legal profession, from which we draw our judges, that is composed of people trained in programs of study that teach not, or not just, moral philosophy, but the specific tools and techniques of research, interpretation, reasoning, and argument relevant to legal analysis. ...