

Law, Objectivity And Truth: A Cathedral View.*

A judge decides for ten reasons nine of which nobody knows.¹

Abstract

Matters about the logical objectivity of law are closely related to the legitimacy of law as a social institution and its adjudicative processes. It is reasoned for example that if law is independent of individual preferences, then it can command normativeness and guarantee impartiality in application. While the controversy about whether the normative character of law requires rational justification or should be taken as objectively valid has occupied “the separability thesis” in jurisprudence, this paper argues that such a stance is an error-analysis that contributes little to the objective character of law. Rather the argument put forward here is that the logical ordering of law is intricately connected with philosophical analysis of objectivity, truth and meaning than with the nature of law and morality, often pigeon in the dichotomy between legal positivism and objectivity on one hand, natural law theory and subjective on the other hand, as most academic lawyers unschooled in the finer points of contemporary jurisprudence would have us think. It concludes that law is objective in its peculiar way both in its nature, content and procedures notwithstanding that certain evaluative externalities make this practically challenging.

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¹ W.S. Merwin, *Asian Figures* (1973) 65 (Chinese proverb) cited by S.I. Winter, *The Cognitive Dimension of the Agon: Between Legal Power and Narrative Meaning* (1988-89) 87 *Mich. L. Rev.* 2225 n. 1. According to Winter, of the ten reasons only one is revealed in the judicial opinion and so for those who experience legal doctrine as manipulable, it is plausible to think that the doctrinal surface of judicial decisions merely conceals its subjective purposes looking more like the ‘wheel [thrust] inside a wheel’ in Ezekiel’s vision of the chariot, see *Holy Bible*, Ezekiel 1: 16,17.

Introduction

A reader of this would be quick to conclude that law is not an objective science. That however would be too judgmental without a *prima facie* investigation. Such a posture assumes without question, premises that are not uncontroversial. For example, without more it does not make a fundamental distinction between categories of objectivity and its relationship to logical truth.² Also, it runs the risk of confusing and mixing together two possible dimensions of legal objectivity: *metaphysical* and *epistemic* legal objectivity. The first is concerned with whether there is a particular principle out there that lawyer's can speak unequivocally as readily applicable to given facts of cases. The other is concerned with whether the process of determining the particular principle (for example through adjudication, legal reasoning) is free of distorting factors that cloud arriving at the right answers to controversies. Metaphysical objectivity posits in simple terms that there exist right answers to legal controversies.³ It presupposes that there is a 'legal fact' rationally determinate as a matter of law. So if D causes injury to C in circumstances that fit within the squares of *Donoghue v Stevenson*,⁴ then it follows as legal fact that D is liable to C in negligence. For the purpose of this paper we shall refer to matters of metaphysical objectivity as 'right answer' analysis. On the other hand, law is epistemically objective if the process of discovering the right answer is pure, free from impurities, thereby making a legal conclusion objectively right. We shall describe epistemic objectivity in this paper as 'autonomous analysis.'

While there appears to be a wide variety of claims about objectivity of law, it is fairly settled that there are right answers to nearly all legal

² For general reading on questions of entailment between law, objectivity and truth, see Brian Leiter, Law and Objectivity in Jules Coleman and Scott Shapiro, *The Oxford Handbook of Jurisprudence and Philosophy of Law*, Oxford Univ. Press, 2002, 990; Andrei Marmor, An Essay on the Objectivity of Law in Brian Bix (ed.) *Analyzing Law: New Essays in Legal theory* (Oxford: Clarendon Press, 2000) 1; Jules Coleman, *Truth and Objectivity in Law* (1961) 31 *Legal Theory* 38; Brian Leiter, *The Middle Way* (1992); Crispin Wright, *Truth in Ethics*, in Hooker (ed.) *Truth in Ethics* (Oxford: Blackwell, 1996) 7; Ronald Dworkin, Objectivity and Truth: You'd Better Believe It (1996) 25 *Philosophy and Public Affairs* 87; Putman, *Reason, Truth and History* (Cambridge: Cambridge University Press, 1961). See also Michael Dummett, *The Interpretation of Frege's Philosophy* (London, Duckworth, 1978); Richard Rorty, *Mirror of the Mind*.

³ Ronald Dworkin, *Taking Rights Seriously*

⁴ [1932] AC 562

controversies (a Dworkinian thesis) or that there are a few (a Realist stance), and that law is autonomous some of the time or almost none of the time. It is also a convergent view that law even if there exist right answer, as a matter of legal fact, the mechanism for discovering it may not be free from distorting factors. What this invariably means is that objectivity in the autonomous analysis presupposes in all cases the correctness of right answer analysis.⁵

A distinction between right answer and autonomous analysis is certainly of interest in its own right. We will argue that for jurisprudential reasons failure to distinguish between the two concepts can lead to an error analysis. Right answer analysis has more to do with legal standards and parameters of determining boundaries of relevance, applicable principles, judicial precedent and the likes, what can be classified as captured within the category styled method in law. Objectivity in this sense works like some mathematical formula. Once the facts of a case is settled, all that right answer analysis demands is application of the particular law to it to determine conclusion.⁶ Autonomous analysis invites questions having to do with whether law is an autonomous discipline in the sense that it does not accept of other parameters unlike the disciplines of arts and humanities in judging its objectivity and truth of its conclusions. It raises issues connected with whether law is or ought to be an autonomous discipline,

⁵ For instance, it would be practically impossible to discover 'D is liable for negligence to C,' as right answer without first making reference to the legal fact or thing one is trying to know.

⁶ It has been suggested that the civilian (code) legal system generally yield more than the common law to a scientific ordering of results in that it merges *ars judicandi* (judicial decision) and *scientia juris* (abstract juridical dialectic) in *jurisprudentia rationalis*. See generally Geoffrey Samuel, *Law of Obligations and Legal Remedies*, London, Cavendish Pub. 2nd ed. 2001; Langenbucher, Argument by Analogy in European Law [1998] *CLJ* 481; P. Legrand, European Legal Systems Are Not Converging (1995) 45 *ICLQ* 52; P. Legrand, Against a European Civil Code (1997) 60 *MLR* 44; P. Legrand, *Le Droit Compare*, 1999, PUF 75; and P. Legrand, Legal Traditions in Western Europe: The Limits of Commonality in R. Jagtenberg, E. Orulic, and A.J. ode Roo (eds.) *Transfrontier Mobility of Law*, 1995. Festus Emiri and Ayuba Giwa, *The Cautelary Nature of Obligations Law in the Common Law Legal System* in D.C. Maldoh, *et, al* (eds), *Judicial Administration and Other Legal Issues in Nigeria*, Lagos: Malthouse Press, 2010, 265. But cf. J. Bell, English Law and French Law: Not so Different (1995) 48 *CLP* 63; M. Lasser, Judicial (self) Portrait: Judicial Discourse in the French Legal System (1995) 104 *Yale LJ* 1325, that posit that the civilian system isn't that symmetrical and scientific as is generally thought, and that like the common law does not yield to a mathematical formula for deciding cases.

especially in the sense of having an independent system of evaluation divorced from outside externalities.⁷ Both issues however at a level of generality can be merged at the level of morality, a question that would engage us later. That notwithstanding this paper will keep the distinction between both (right answer and autonomous analysis) for purposes of clarity and show their correlation without necessarily confusing them.

This paper works within philosophical theories of objectivity and truth often neglected in discussions of this nature to seek better knowledge about the institution and practice of law, often referred to as essence in analytical legal philosophy.⁸ Accordingly, Part II argues that logical ordering of law is intricately connected with philosophical analysis of the nature of knowledge, truth and meaning than with the nature of law and morality, often pigeon in the dichotomy between positivism and objectivity on one hand, natural law and subjective on the other hand, as most liberal and contemporary jurists would have us think. Our position is grounded on

⁷ For discussion on whether law remains pure or is declining as an independent autonomous discipline, read Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962-1987* (1987) 100 *Harv. L. Rev.* 761. Autonomy is understood to mean that law is entrusted to persons trained in its discipline, having nothing to do with other disciplines. It was originally a political idea used by the Royal court in England to ward off royal interference with judicial decisions. For example, Sir Edward Coke is quoted to have said: 'then the king said, that he thought the law was founded upon reason, and that he and others had reason, as well as Judges: to which it was answered by me...but His Majesty is not learned in the laws of his realm of England, and causes which concern the life, or inheritance, or goods, or fortunes of his subjects which are not to be decided by natural reason but by the artificial reason and judgment of law. Law is an act which requires long study and experience. [Prohibitions Del Roy, 6 Coke Rep. 280, 286(1608)] cited in Posner, above, at 762 fn. 1.

⁸ Generally, analytical jurisprudence is a form of inquiry which seeks better understanding of the basic nature of the object or practice of law. It differs from jurisprudence of political theory which seeks a better way to organise society (such as ethical behavior, social justice, and the like).

⁹ In this respect we side with the views of Andrei Marmor (see above, n. 2) that real issues are glossed over when theorists seek to investigate the essence of law along political theory which are designed to seek better understanding of living (ethics, social behavior and the like). Rather questions of essence in law should be located in philosophical theories of knowledge and truth about the nature of law. The justification for this position is grounded in the belief that analytical jurisprudence should be divided into two branches: (i) concerned with essence and (ii) the other with political theory. While the former is an inquiry about knowledge of an object or practice, the latter is one that seeks to fashion theories for organized (good) living. Even though both are at many levels connected, it would be an error theory not to separate them in the context of objectivity and truth discourse.

the premise that those legal political theories only serve to confuse in that they merge together as one the political implications of a philosophical position with its grounds.⁹ Part III tells the two senses in which we intend to discuss the issue of legal logic- a division of what we previously refer to as right answer and autonomous logic. Using principles of moral reductionism, both understanding of law is examined in the context of truth structured in the subjective-objective dichotomy. It also introduces the three general philosophical senses of logical truth-semantic, metaphysical and logical objectivity and tells how these render law in the final analysis knowable or not knowable. Notably the section while acknowledging that there are varieties of objectivity, excludes the rather pedestrian talk of objectivity based on bias discourse that proceeds on premises of impartiality and the like of judicial process.¹⁰ May be a primer text on philosophy of law or legal system will do for those interested in reading along that line.¹¹ We shall have none of that here. The next Part iv and v applies our truth standard to our binary division of law to test its logical constancy, in the face of political disagreements on right answer and autonomous logic. It concludes making the application we argue that truth is not necessarily an epistemological concept and that in the area of law it makes sense to speak of objectivity in a peculiar legal sense and that doing so is revelatory, in that it makes sense to talk about law as indeed objective.

Logic, Truth and Their Connectivity

It is generally assumed that there is one model that summarizes a theory of law and legal systems. From that premise it has been thought that it is possible and useful to think of a general principle of jurisprudence on political lines. The continued vitality of textbooks and teaching patterns attest to the faith most people have in generalizing legal theory into two

¹⁰ It has been suggested that the varieties of legal objectivity includes questions of rule of law, treating peoples as equals, unbiased adjudication, law prescription of objective standards of conduct, and the like: See some examples in Kent Greenwalt, *Law and Objectivity*, New York: Oxford Univ. Press, 1992.

¹¹ See S. 36 (1) of the 1999 Constitution which guarantees the independence and impartiality of courts in the determination of civil rights and obligations of citizens and *Garba v University of Maiduguri* (1986) 1 NWLR (pt. 18) 550, [1986] 1 NSCC 245; *Adigun v Attorney-General of Oyo State* [1987] All NLR 328. See also, A. Obilade, *The Nigerian Legal System*, London: Sweet & Maxwell, 1979.

main political affiliations - liberal positivism and natural law.¹² The first group dominates Western legal discourse. These pride themselves as objectivist, committed to affirming the logic and objectivity of law and by entailment the truth about law. Natural law thinkers however, doubt this objective stance. By their count, talk about objectivity is mere pretence because by connecting law with its evaluation which is largely value-laden, law in the final analysis loses its objective and truth strength. For this reason they doubt the scientific stance of law. Within this political divide we would pigeonhole most of Realist scholarship and emerging jurisprudence, such as 'outsider jurisprudence', the Critical Legal Studies (CLS) movement, feminists and the economic theorists. While these may not necessarily share all of these features and some may be somewhere in between the divide, it does not derogate from the two general dichotomies. For example, some American realism and interpretive scholarship can be misfit classification in the divide. Same argument can be made for other shades of theories. But none of this has shaken the power of the traditional model of division.

It is generally said that the analytical school is concerned with law as it is, while the other strive to conceive it as it ought to be. Whether there is

¹² See for example textbooks on Jurisprudence, Funso Adaramola, *Basic Jurisprudence*, Elegido, *Jurisprudence*, (Ibadan, Spectrum Books), RWB Dias, *Jurisprudence*, 5th ed. London: Butterworths, 1985, MDA Freeman (ed.) *Lloyd's Introduction to Jurisprudence*, 9th ed. London: Sweet & Maxwell, 2014. Most theorist argue that the separability thesis is the defining essence that separates legal positivism from natural law theory. Legal positivism is defined by its commitment to the thesis and natural law by its rejection of it. For example, to call attention to the fact that 'the law is one thing its merits or demerit another' is intended a condition necessary among law's valid conditions. This is what the natural lawyer rejects. Whatever, history clearly suggests that it is uncharitable to deny the concept of an immoral law. Jules Coleman has thus suggested that natural law theory can be rendered more sensible in the separability debate by construing its rejection in two senses: in the semantic and conceptual senses. In his view the phrase "immoral law" makes sense semantically in that we understand the speaker intention to mean that an immoral law is objectionable in ways that invite into question the reasons we might otherwise have for complying with it, even though its standing as valid law is not contested. Conceptually too, the natural lawyer by her position asserts that the concept of an immoral law cannot be realized, in the sense the referent of the concept is empty because in her view there can be no such thing as a law subject to moral objection whose status as law is to be conceded. See Jules L. Coleman, *The Architecture of Jurisprudence: Part I*.

justification for the benchmark distinction is doubtful. Whatever, it must be said that the general political label to schools of thought is misleading, especially in determining the question whether law is objective. This is so because it is misleading to define such a serious issue by reference to affiliations. Whether law has inner logic or not is a complex issue having to do with the relationship between it and morality, and the philosophical questions of the nature of truth, knowledge and meaning.

By our count, theorists who argue that this is a matter having to do with affiliations miss the point. They fail to draw an important distinction. The political implications of a philosophical stance (may, but) need not merge with its grounds. For instance, it can be argued that the fact that critical legal theorists deny the objectivity of law should not necessarily make them anti-positivist/liberal jurists. There is no good for all time reason to think and associate all analytical jurists as belonging to positivist jurisprudence. For a moment consider: the fact that a person denies the legitimacy of law may well have considerable bearing on his political views, but the question whether law is legitimate cannot be settled on political grounds or arguments. It may be that he is an anarchist who denies every legitimacy claim of law. He could just well be a person who protest against political ordering, like some felt in apartheid South Africa. So a denial of legitimacy claim of law by such an individual only invites an analysis of the legal basis or grounds for his denial. While such analysis on the agent's grounds for denying legitimacy may reveal his political thinking, it is not implausible to separate both. Grounds need not square with implications. It need not be a matter of equivalence. So the political implications of a stance need not be the very grounds for it.

Another veiled error often made is this: generally those who pride themselves as committed to logic of law think they are by so doing extolling virtue and moral goodness. This is erroneous. It is not necessarily a commendable thing for law to be objective. Why? Law may turn out to be objectively bad or biased, such as when it protects and promotes 'stock positions,' that is considered bad. One example would do. In apartheid South Africa one can conceive the evil of objective law that discriminated against blacks and the coloured. So in the end objectivity need not be extolled as always desirable. That however is far from what we suggest. One thing however must be said. We would try as much as possible to address those areas of the subject we consider genuine areas of controversy that require analysis. If at the end we do not seem to address areas that

concerns the reader or we only succeed in providing only limited answers to them we apologize ahead because constraint of space does not permit complete coverage of a complex topic as this in a single paper. However if at the end we succeed in making the question of inner logic of law more sensible than it used to be, we would be have fulfilled our mission to a limited extent.

Right Answer and Autonomous Logic

At the onset we need to make ourselves clear as to why the question of objectivity of law not simply a matter for jurisprudence, but is also of practical significance. It is common to hear voices even from the legal community like this: “in what ways do theories of the nature of law impact what judges or other significant legal actors do? May be we should give a concise quick reply. Matters of objectivity of law arise along a variety of dimensions. For example, don’t we all expect our law to treat people equally, judges to adjudicate without bias and for some areas of our law to employ objective standards (the reasonable person standards) etc? Objectivity questions are interesting in its right. For example, many people are concerned about whether or not there are right-answers in law (metaphysical objectivity) and whether legal directives are objectively right, in the sense of being free from distorting factors that would obscure right answers (epistemic objectivity).

We have chosen to discuss the question of objectivity in these two respects. The first we already label right answer logic and the other autonomous logic. Under the first, objectivity is concerned with whether there exist a particular case or legal principle applicable to a given fact with certitude. At this level the focus on objective logic is whether legal actors can say and predict without fear of contradiction how the courts would determine any given controversy. Once the source of law and norms are uncontroversial then law is objectively determinable. If legal conclusions are predictable like the outcome of say mathematics, law would smell as science. In effect, objectivity in this sense has to do with identification of legal standards and their sources.

Those who are committed to its inner logic claim that legal criteria are not discretionary but are knowable as they apply to given fact situations. These claim that method in law, such as principles of precedent, normative (and adjectival) rules for determining relevance and the likes are clear aids in identifying sources of law and how they apply to produce predictable

answers. On the other hand, those who deny its objectivity insist that even in this sense law is not different from other social institutions that are largely discretionary and unpredictable (and by extension is not an autonomous discipline). An outsider jurist for example would question the certainty and certitude of traditional legal methods and tools because he doubts the capacity of say, precedent and legal rules to determine outcomes in the sense of their being certain and determinate.¹³ This is because to him, traditional models of law are now giving way to concrete experience that expands the frontiers of rules and principles. In the real world the power of statute or precedent has become less sacrosanct. His critique goes like this: ‘where once stood judicial opinions with their *ratio decidendi*, statutes with their purposes and legislative intent, there are now only texts and interpretive communities.’¹⁴

Objectivity in the second sense (epistemic) has to do with evaluation of legal directives and decisions, whether they are logically right or wrong. Most liberal commentators insist that law, unlike other social institutions such as morals and religion is autonomous. Law they say does not derive its validity from any other parameters if it is validly enacted. So also are decisions of courts. Again that is a posture vigorously contested by the others who deny the autonomous objectivity of law. For example, critical legal theorist insist that law should be rooted in the experience of those it seeks to serve and that gaps between law and experience provides basis for law reform, indicative that it ought to subscribe to external evaluative parameters.

At this point we need to clarify the sense in which this discussion would proceed to enable us find some common grounds and narrow the paper to what are consider only genuine areas of controversy. Talk about whether particular legal standards and directives are (epistemically) objectively

¹³ See Hilary Putman, *Are Moral and Legal Values Made or Discovered?* (1995) 3 *Legal Theory* 5; Andrei Marmor, Three Concepts of Objectivity, in Andrei Marmor (ed.) *Law and Interpretation: Essays in Legal Philosophy* (Oxford: Clarendon Press, 1995) 177.

¹⁴ See Fish, Anti-Professionalism (1986) 7 *Cardozo L. Rev.* 645 and Fiss, Objectivity and Interpretation (1982) 34 *Stan. L. Rev.* 739, both cited by Steven L. Winter, The Cognitive Dimension of the Agon: Between Legal Power and Narrative Meaning (1989) 87 *Michigan L. Rev.* 2225 at 2226, fn. 1.

right or wrong invites clarification of what standard determines its 'rightness' or 'wrongness.' It requires us to state whether the standard for judging is either legal or moral. If it is moral then in effect we should be reducing legal rightfulness to morals. In that case our investigation of the logic of law would be more correctly directed at investigating the logic of morality because by reductionism we can say legal standards and /or directives are objective right by reference to moral principles. If on the other hand we say particular legal standards and directives are objectively right not by reference to morals but to some other criteria, we would need to account for what these are outside their moral worth.

Also important to our discourse is a clarification of what we mean by the position objectively logic and subjective illogic. It is assumed that that which is objective is invariably logical, whereas that which is subjective remains illogical.¹⁵ The divide invites some comment. There is so much of transcendentalism which associates objectivity with logic and rationality. It is argued from that premise that there exist a felt connection between them and non contradiction. This no doubt again smells like extolling positivism. This certainly is not the position adopted by us as it is another error which confuses the authenticity of objectivity with the assumption that it establishes universal criteria of truth. Objectivity and truth do not necessarily square as one.¹⁶

Let us now make clear the three senses of objectivity used in evaluating law. For our discussion however we are of the view that the three concepts of objectivity useful for our purpose are semantic, metaphysical/ontological

¹⁵ See for example critique on the use of science as the model for thought about human life and society: Richard Rorty, *Philosophy and the Mirror of Nature*, 1979 (for philosophy); D. McCloskey, *The Rhetoric of Economics*, 1985 (for economics); S. Fish, Is There a Text in the Class? *The Authority of Interpretative Communities*, 1980; Edmundson, *The Ethics of Reconstruction* (1988) 27 *Mich. Q. Rev.* 622 and Balkin, *Deconstructive Practice and Legal Theory* (1987) 96 *Yale L. J.* 748; James B. White, *What Can A Lawyer Learn From Literature* (1989) 102 *Harv. L.R.* 2015; *Legal Knowledge* (2002) 115 *Harv. L.R.* 1398 (for law and literary studies).

¹⁶ For example James B. White, *What Can A Lawyer Learn From Literature* (1989) 102 *Harv. L.R.* 2015; *Legal Knowledge* (2002) 115 *Harv. L. Rev.* 1398. See also Festus Emiri, *Legal Storytelling and Perception* (2004) 1 *Annals of Nigerian Law* 203 (for law and literary studies).

and epistemic/logic objectivity, which we apply to our two categories of right answer and autonomous logic of law.¹⁷

Semantic Objectivity:

There are many senses and meaning of objectivity when applied to objects, statements, sentences, or persons. One thing is however conceded: objectivity stands in marked contrast to subjectivity.¹⁸ Objects in the external world, like our bodies, can be distinguished from our subjective attitudes and experiences. So too are statements. A statement is taken as objective if it refers to external objects, but subjective if it refers to say preference or experience or attitude of individuals. So a statement is only objective if it is assertoric, in the sense that it states facts that are true, correct or rational. It is subjective on the other hand if it only makes valid the claim for those who choose to accept it. Sentences can be objective if according to their semantic structure they are capable of being ascribed true or false values. Likewise we would say a certain person is objective if she is disposed to judge matters objectively, devoid of bias.

So, semantic objectivity concerns whether or not the proposition in some realm of discourse (law, physics, ethics, psychology, etc.) can be evaluated in terms of their truth or falsity.¹⁹ Generally semantic objectivity is a property of statements, rather than entities or cognitive mechanisms.²⁰ Whether a certain statement is objective or not has a bearing with its

¹⁷ Andrei Marmor, Three Concepts of Objectivity, in A. Marmor (ed.) *Law and Interpretation: Essays in Legal Philosophy* (Oxford: Clarendon Press, 1995) 177. It has been suggested that the strongest form of objectivity combines all three forms of objectivity. See J. Raz, Notes on Value and Objectivity, in *Engaging Public Reason*, New York: Oxford, 1999, 118, but cf. C. Lafort, Moral Objectivity and Reasonable Argument, (2004) 71 *Ratio Juris* 27 and Brian Leiter, Law and Objectivity, in Jules Coleman & Scott Shapiro, *The Oxford Handbook of Jurisprudence and Philosophy of Law*, Oxford Univ. Press, 2002, 969, where learned commentator appears to adopt only two kinds of objectivity criteria: metaphysical and epistemological objectivity, treating as peripheral semantic objectivity.

¹⁸ A discussion on the objective-subjective dichotomy is basically concerned about the characterization of a given discourse, which invites issues pertaining semantic objectivity. See, Andrei Marmor, An Essay on the Objectivity of Law in Brian Bix (ed.) *Analyzing Law: New Essays in Legal theory* (Oxford, Clarendon Press, 2000) 1 at 5.

¹⁹ It has been suggested that for a discourse to be semantically objective, and for a statement to be true, then the referent (i.e. like, justice, legal facts) must be metaphysically objective.

²⁰ Brian Leiter, Law and Objectivity, in Jules Coleman & Scott Shapiro, eds., *The Oxford Handbook of Jurisprudence and Philosophy of Law*, Oxford Univ. Press, 2002, p. 969.

referential character, i.e. whether it refer to facts that are true, correct or rational.²¹ This is so because the objectivity or subjectivity of a statement is marked by the linguistic intention of the speaker. If you say 'I like oranges' we quickly would recognise that you are not making an assertoric statement because you are expressing your sentiments, likes, desires or the like. You are not making a statement about a certain object in the world. But if you say 'the colour of Nigeria flag is green white green' we know that you are making an assertoric statement. You are speaking objectively because the statement is about a verifiable world object.

From this we can construct a divide between objective-subjective statements. The assertoric nature of a statement determines in semantic objectivity or subjectivity. But such a stance may be misleading as a truth proposition. A statement of desire can sometimes be assertoric, though at the same time semantically subjective. The statement above on 'like for oranges' though semantically subjective may be assertoric depending on the truth or falsity of the statement. If it is true that you really like oranges, then it is a statement that is both semantically objective and subjective that the same time. In effect a statement about a certain object in the world as opposed to that of the object's sentiments is semantically objective. What that means is that both objective and subjective statements have no direct bearing with truth. That you like oranges is true in both senses. None has a truth bearing than the other in the context used. Thus a statement is marked subjective only if it refers to the *subject*, and not the *object*. In our example above, the statement about oranges is semantically subjective because it refers to your preference, but that has nothing to do with the objective reality of oranges.

Metaphysical Objectivity:

The objective/subjective divide is also connected with notion of truth in the metaphysical (ontological) sense. The metaphysical objectivity is concerned with the extent to which the existence and character of an entity is dependent on the state of mind of the person (i.e. the person's knowledge, judgment, belief, perception or response). Metaphysical objectivity implies

²¹ In this respect, is there a difference between reference to external facts or to mental states? But cf. Andrei Marmor, *Positive Law and Objective Values*, Oxford, 2001.

the existence of an object independent of its perception or recognition, i.e., a thing is what it is independent of how we take it to be. Accordingly, a sentence refers to an object that exists independent of the attitude or thought of the speaker. Transposed to normative or moral judgments, it posits that these correspond to some facts in an observer-independent external world. So for law (and for purposes of the enquiry here), it implies that there exist right answers as a matter of law independent of observer-independent perception.²²

When applied to a given statement objectivity in the metaphysical sense carries with it commitment that there is truth in what it asserts. This is so because we generally consider a statement objectively true if it describes objects that exist in the world with the properties attributed or referred to in the statement. If there are things in the world described by a statement we say the discourse is metaphysically objective. If there are no such objects we think it metaphysically subjective. That being the case, a statement can only be objectively true if there exist an object with the properties it describes. Unlike semantic objectivity, its commitment to truth precludes a statement from being objectivity true and false. Therefore metaphysical subjectivity is a sceptical stance.²³ It amounts to an admission or denial of the possibility of ascribing truth to a statement in a given discourse. But the point must be made here. Metaphysical objectivity is not necessarily merged with a theory of for truth. It presupposes that a statement is true only in a descriptive sense Why? Asserting the objectivity of a statement implies that it describes a certain reality, a certain type of object.

Epistemic Objectivity:

A third sense of objectivity in pursuit of truth has to do with epistemic objectivity (often referred to as methodological, justificatory or discourse/logical objectivity).²⁴ Epistemological objectivity concerns the extent to which we are capable of achieving knowledge about objects or things that

²² This thesis of metaphysical realism is denied by anti-realist who deny the existence of objects outside and independent of the agent's perception. See Bruce Brown, *Dispositional Ethical Realism* (1993) 103 *Ethics* 221.

²³ Hilary Putnam, *Reason, Truth and History*, Cambridge: Cambridge Univ. Press, 1981.

²⁴ This form of objectivity is necessitated by demand to be free of bias and other factors that distort cognition and prevent things from being recognised as they really (metaphysically) are.

are metaphysically objective. Here however objectivity does not necessarily presuppose descriptiveness. A discourse is said to be logically objective if it is possible to ascribe determinate truth value to the statements comprising the discourse in that it is not vague. A sentence exhibits epistemic objectivity if it can be verified or justified as objectively valid. Generally, the claim to epistemic objectivity is challenging to justify save by transcendental-pragmatic arguments.²⁵ A weaker justificatory form of epistemic objectivity is correctness in the sense that any reasonable agent would accept a certain position as free of mistakes. Thus, law can be said to be objective in this sense insofar as reasonable persons would accept the mechanism for discovering right-answers are free from unnecessary distortions.²⁶

This paper deliberately has chosen to adopt these three main concepts of objectivity semantic, metaphysical and epistemic, because in our view it aids focus on the real controversy on the nature of law. We are aware that outside these three philosophical understanding of objectivity other possible implications are conceivable. For example, most of everyday commentators would prefer to tell about the objective nature of law from the parameters of impartiality in judicial decisions. That is itself a proper category. But it is of less significance in the context of this paper, as we would show later. Problems connected with impartiality may be more appropriate discussion in constitutional law commentaries.²⁷ That is not the task we have set to perform. Our task is to analyse the two understanding of legal objectivity, right answer logic (whether there exist right answers *as a matter of law*) and autonomous logic (whether the mechanism for discovering right-answers are free from distortions) using truth predicate classified into our three concepts of objectivity. In other words, whether we can speak of law as objective in the following two senses: (i) in the

²⁵ Robert Alexy, Translated by Neil MacCormick, *"A Theory of Legal Argumentation: The Theory of Rational Discourse as Theory of Legal Justification"* (Clarendon, 1989), Jurgen Habermas, *Truth and Justification* (1998); *Postmetaphysical Thinking* (1988).

²⁶ Brian Leiter, ed., *Objectivity in Law and Morals*, Cambridge Univ. Press, 2001. This position of cognition is denied by non-cognitivism which posits that sentences cannot be verified or objectively valid.

²⁷ Randy E. Barnett, *Coping with Partiality-Justice, the Rule of Law, and the Role of Lawyers* (1997) 3 *Roger Williams Univ. L.R.* 1.

metaphysical sense in so far as there exist right-answers to controversies and (ii) in the epistemic sense, in so far as the mechanism for discovering right-answers (e.g. adjudication, legal reasoning) are free from distortions.

Right Answer Analysis

We will begin our analysis with what is referred to as right answer logic. This section is concerned with the questions of whether there are always objective answers to the question what is the *law* on particular issues. This is a complex and contention issue. It calls to question the determinate nature for identification of legal standards, whether the criteria of identifying sources of law and the norms emergent from these sources are objectivity determined. This is one area where writers disagree. Generally we can classify the division along three main lines. The position adopted by most legal positivist, and by extension liberal jurist, is that there is an objective answer to the question of what the law is in a given issue. This group would point to legislation, judicial decision and the like as road maps for any that doubt the objective logic of law. The second group denies that there exist objective criteria about the identification of law. They deny the objectivity of standard legal analysis and the legal community faith in the abstract. Without doubt this is where Critical Legal Studies (CLS) belong. The third group comes in between. Some liberal jurists find the group attractive. These so called moderate objectivist (that we choose to refer to as liberal positivist) assert that while there are objective criteria for the identification of law on a given issue, the criteria leave gaps that are capable of introducing subjective reasoning, thereby admitting non-objective standards. For instance, method for identifying the laws invariably determines what law applies in a given circumstance. Since that may itself be indeterminate, it follows that in the final analysis what the law is on a given question may well turn out to be indeterminate also.

Let us now put these arguments in the semantic perspective to determine objectivity of law in the sense of whether there is a determinate objective answer to what the law is on a given issue. As previously stated a statement in a discourse is semantically objective if it is assertoric. Can we say that when lawyers claim that they know what the law is in a given case, that it is such and such, they are making assertoric statements or merely stating subjective preferences? For once, consider the dangers in asserting that law is semantically subjective. It means that there can be no real disagreements and controversy in law. All and every controversy would

be but matter of personal preference.²⁸ When a claimant for instance, insist on compensation for say personal injury caused by the defendant, it would be impossible to account for any intelligent disagreement between him and the defendant because each would be expressing nothing other than personal preference. That would hardly be sensible by any reasonable count. It would mean that the superficial descriptive and assertoric grammar of law discourse about its identification is semantically false and flawed. While it is not strongly objectionable to think that in 'hard cases' judges and lawyers find it difficult to say what a given legal position can be, it must be admitted that these are rare occurrences from the everyday staple litigation, given that legal position is often fairly settled for most cases.²⁹ It is certain rebellious to think that legal discourse about determinate objective answer to what the law is on a given controversy is mere expression of subjective desires, preferences and sentiments.

But does this add anything to our truth predicate about objectivity of law? It hardly does. As previously stated in Part III above, since semantic objectivity does not necessarily entail a commitment to truth about a certain statement in a discourse, and so cannot seriously settle the metaphysical controversy about the objectivity of law (or right-answers in law), we would require a separate justificatory account about "whether there is truth of the matter about the identification of the law, and what would this truth consist in."³⁰

Is law an entity out there for which we can say with confidence that the law in a given case is so and so, thus proffering right-answers to legal controversies? Is there such an entity (right answer) whose existence and character is independent of the human mind? Those who stick to

²⁸ See Ronald Dworkin, *Law's Empire*, Oxford: Hart Pub., 2000, 3, on disagreement about law.

²⁹ Ronald Dworkin, *Taking Rights Seriously*, London: Duckworth, 2002, 81. See also Cass R. Sunstein, *Incomplete Theorized Agreement in Constitutional Law* (2007) Public Law & Legal Theory Working Paper no. 147 available at <http://www.law.uchicago.edu/academics/publiclaw/index.html>, accessed 21/05/13.

³⁰ Andrei Marmor, (n. 2) 7. The semantic discourse hardly settles the truth commitment of 'case logic' about the identification of law i.e. whether there is truth not in the subject but about the object of law.

subjectivity argument insist that since law is often concerned with issues about values and evaluative judgment its identification cannot be objective. By equating objectivism with realism, these scholars deny the metaphysical objectivity of law.³¹ It has in fact been suggested that in recent times the causal link between the truth of law, its objectivity in the semantic sense have centred on the realism and anti-realism debate.³²

Raz for example argues that the objectivity of evaluative judgment and values does not materially make law less objective. The commentator posits that all law is source-based. By his argument, values can only affect the objectivity of law if a source-based legal standard commands the identification of another standard as legal or not on evaluative grounds. From this source-based proposition it would follow that when the law for example states that an immoral contract is void, all that happens is that a source-based rule is commanding explicitly the identification of another standard as the law. Raz source-based proposition is slightly amended by some other positivist who we would here label 'moderate positivist'. For these law comprises of source-based norms and others which are entailed by the source-based norms. Entailment is defined by boundaries of what we would describe as *ought* proposition. The source-based norms entail other set of norms by reference to morality. So the identification of a law may well turn out to involve considerations of what it ought to be at least to the extent that the *ought* is entailed by other legal norms. These forms of liberal positivism smells like subjectivism, at least to the extent that it posits that objectivity of values affect the objectivity of the identification of law. These argue that the identification of law partly depends on establishing what the law ought to be in the circumstance. This should not be surprising to those who argue at a level of generality that positivism is committed to an object identification of law. Various shades of positivism exist and this is not a place to list their differences. It should be sufficient to classify them into the two main branches: 'pure positivist' and 'liberal positivist' as this paper does.

³¹ See generally, the different strokes of realism in William Fisher, et. al., (eds.), *American Legal Realism*, New York: Oxford Univ. Press, 1993, Brian Leiter, Legal Realism, in D. Patterson, ed., *A Companion to the Philosophy of Law and Legal Theory*, Oxford: Blackwell, 1996, 261.

³² Andrei Marmor, An Essay on the Objectivity of Law in Brian Bix (ed.) *Analyzing Law: New Essays in Legal theory* (Oxford: Clarendon Press, 2000) 10.

In the metaphysical sense is the right answer objective? If so, how does it contribute to truth about law? Can we say that in all cases of dispute about what the law is in a given situation that we are describing something with the properties attributed to law? In essence, can it be assertorically said of law that it is objective, and that its truth consists in the fact that there are things in the world as it asserts? As stated earlier in this respect the objective/subjective proponents argue differently. If you were to ask of a CLS whether there was an objective answer to the question raised for example, in the Court of Appeal decision in *Mojekwu v. Mojekwu*,³³ you would not need to guess his answer. It would simple be this: no one can say categorically what the right answer would be. While, moral forces dictate relief for the oppressed widow under obnoxious customary law, ultimate outcome may (and indeed) depend to a large extent on characterization of the issues for determination. For purpose of making pointed the positions, we shall capture the dispute here. The plaintiff/ widow claimed that she as against her deceased husband's brother, the defendant is entitled to certain landed property, owned by her husband. The defendant on the other hand, argued that he is the rightful heir under native law and custom because the plaintiff had no male child for his late brother. Ordinarily, most would consider the contention of the defendant repugnant to natural justice, especially in the context that plaintiff had daughters for her late husband. In the circumstance, can lawyers predict what answer the court would give? The CLS would say no. Why, because lawyers themselves are not agreed as to characterization of the problem and determining what are considered relevant and applicable law. This is a formidable position no doubt. After all if the answer was that obvious, very little would count as argument by counsel for defendant. In fact, the conclusion of the court that plaintiff is entitled to the property as against defendant while applauded appears to have been reached by premises considered questionable.³⁴ The court narrowed the issues in a way that

³³ (1997) 7 NWLR (pt 512.) 283 at 305, per Niki Tobi, JCA.

³⁴ For critic of the method used to arrive at conclusion in *Mojekwu v. Mojekwu* (1997) 7 NWLR (pt 512.) 283. See O.F. Emiri, Law in Context: Feminism (2003) 1 *Legal Science Review* 55.

ultimate outcome had more to do with the applicable law that govern land where it is situate. It stated that the ultimate answer depended on the *lex situs*. In the court's considered opinion, since the applicable *lex situs* did not support the position of the defendant, judgment was entered for the plaintiff. But isn't that a curious and an artificial basis?

It appear so, because for once consider what grave (moral) error would have resulted if the *lex situs* in this instance make applicable the custom argued by the defendant. Judgment in his favour would be what the law would dictate as answer to the controversy. The court seem to realize the fact, and that was why it stated that if the custom had been the applicable *lex situs*, it would have had no hesitation to strike it down for being repugnant to natural justice and equity.³⁵ What that simply means is that an objective answer cannot always be given to questions. Too many things can enter the litigation process that may change expected answers.

Pure positivists again would deny that what the CLS point to as metaphysical subjectivity is actual objective. The kind of argument advanced by Raz would again provide refutal answer. Also, soft positivist would repeat the kind of argument employed in the context of debate about objectivity. There is no use repeating it again as the disagreement here has little to do for us in the context of truth. Why, because ontological objectivity is concerned with naming and defining reality.

It is now time to talk about objectivity in the third sense-epistemic objectivity. As previously stated, the concept of objectivity here does not necessarily presuppose descriptiveness. Generally we assume a discourse objective in this sense if it is possible to ascribe determinate truth value to the statement comprised in the discourse in the sense that it is not vague. How does law in the right answer sense fit into this objectivity? Also important, how does this relate to truth predicate about law?³⁶ In our context can we say that there is indeed no vague answer to law problems? Is it like

³⁵ Repugnancy doctrine-Akintunde O. Obilade, *The Nigerian Legal System*, Ibadan: Spectrum Books, 2001.

³⁶ Andre Marmor, Three Concepts of Objectivity, in A. Marmor (ed.) *Law and Interpretation: Essays in Legal Philosophy* (Oxford: Clarendon Press, 1995) 177.

mathematics, that all can say there is truth value to legal conclusion? Can a lawyer for example, assert with a percentage of certainty legal conclusion using parameters of 'method' clearly defined?

The Supreme Court decision on the Presidential election dispute is revelatory.³⁷ The main complain of the petitioner was that the Presidential election conducted in Nigeria in 2007 was fraught with enough irregularities to render the process void. The primary question for determination in the case turned on the interpretation of s. 146 (1) of the Electoral Act, 2006, namely on whom the Act placed the burden of proof of election irregularities, whether on the petitioner or respondent.³⁸

For purpose of clarity, section 146 (1) states as follows:

An election shall not be liable to be invalidated by reason of non compliance with the provisions of this Act if it appears to the Election Tribunal or court that the election was conducted substantially in accordance with the principles of this Act and that the non compliance did not affect substantially the result of the election.

The argument of the petitioner was that once substantial irregularities is established by him, it will be unnecessary to further burden him to show that the irregularities have substantially affected the result of the election to void it. The respondents argued that an entailment does not necessary result between irregularities and the result of election, and that both burden of proof rest with the petitioner. By a split decision of 4-3, the majority (Kutigi, CJN, Katsina-Alu, Niki Tobi and Musdapher, JJSC) held that the onus falls on the petitioner, and since it was not discharged, the election

³⁷ *Buhari v INEC* [2008] 12 SC (pt 1) 1 (SC); (2008) 19 NWLR (pt. 1120) 246 (SC); (2008) 4 NWLR (pt. 1078) 546 (CA); *Buhari v Obasanjo* (2000) 13 NWLR (pt. 941) 1; *Awolowo v Shagari* [1979] 6-9 SC 51, *Ituie v INEC* (1999) 4 NWLR (pt. 599) 360, *Akinfosile v Ijose* [1960] SCNLR 447, *Ajadi v Ajibola* (2004) 16 NWLR (pt. 898) 91, but cf; *Swem v Dzungwe* [1960] 2 NMLR 297, [1960] 1SCNLR 111, where the court held that once the petitioner proves substantial non compliance with the electoral law, his petition succeeds, without needing to further show that non compliance affects substantially the results, because it is an onus placed on the respondent.

³⁸ S. 164 (1) states: "an election shall not be liable to be invalidated by reason of non compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non compliance did not affect substantially the result of the election."

of the respondent President of Nigeria was upheld. It held that though the petitioner established the substantiality of the non compliance with s. 145 (2) of the Electoral Act, he failed to establish the substantiality of non compliance on the result of the election. The majority were of the view that the purpose of section 146 (1) is to save an election even when there is failure to meet with the provisions of the Electoral Act.

It is however interesting to take a peep into the judgment for purposes of examining the concept of right answer. The minority (Oguntade, Aloma Mukhtar, Omooghen, JJSC) decided otherwise. For example, in the view of Oguntade JSC, once the petitioner calls credible evidence to show non compliance which compromises the principles of the Act, he should succeed without more. His Lordship reasoned that the Act does not condoned non compliance with its provisions. It was also opined that proving resultant effect of non-compliance is a burden that ought properly to rest on one of the respondents, the Independent National Electoral Commission (INEC), who conducted the election. His Lordship appears to capture justification for placing the burden on the respondent this way: given the fact that law must be obeyed, it is sufficient for the petitioner to give evidence of non-compliance, and if the evidence is satisfactory, he should be entitled to judgment without more, unless the respondent can show that irregularities are not substantial in nature or do not contravene the principles of the Act, and in addition that it does not materially affect the election result. Anything otherwise will lead to approaching the matter on the basis that law is not meant to be obeyed.³⁹

What would a CLS adherent make of it? By split decision of the court (4-3) the election of Yar A'dua was confirmed as President of Nigeria against the challenge of Buhari. Generally, the judgment of the apex court has been the subject of debates and controversies.⁴⁰ One serious objection

³⁹ *Buhari v INEC* [2008] 12 SC (pt. 1) 1, per Oguntade JSC.

⁴⁰ The lead judgment by Niki Tobi, JSC at acknowledge this fact. His Lordship said: it is sad that so much has been said in the newspapers in this country on this case... with the usual aggressiveness of Nigerians arising particularly from the do or die behavior in politic, there must be irregularities. Courts of law must therefore take the irregularities for granted unless they are of such compelling proportion or magnitude as to affect substantially the result of the election. This may appear to the ordinary Nigerian mind as a stupid statement but that is the law as provided in s. 164 of the Electoral Act and there is nothing anybody can do about it, as long as the Legislature keeps it in the Electoral Act.

taken against it by some is the way and manner 'method' in law was made fluid and unsettled. Let us consider just two such instances. They both relate to the issue of proof of election irregularities and its effect on the overall conduct of the election. Interestingly, section 146 of the Electoral Act and general law of evidence entered the picture.

Interpretation of this clear provision ties with the issue of burden of proof of election irregularities. It has been suggested that a proper interpretation of the section enacts 'reverse burden'.⁴¹ By it if a complainant in an election can establish irregularity and/or non-compliance with the provisions of the Act, the burden of proof that notwithstanding the process the election remains free and fair shifts to the Independent Electoral Commission (INEC), the organizers of the election. If this position is taken as given, once a petitioner can establish irregularity and/or non-compliance with the provisions of the Act he is 'home and dry.' INEC would have to justify its return; otherwise its result would be invalidated by the court. But is this otherwise simple section plain in interpreting? Counsel for the petitioners thought so and so forcibly argued. But that was not the interpretation put on it by the majority judgment.⁴² So our CLS brother has a point. There is some force in his stance that it is hard to identify legal standards. Determining the criteria for identifying the sources of law, and the norms emergent from these sources are not objectively determinate. It is hard to ascribe determinate truth value to the conclusion arrived at in the case. Whether there is a scientific answer to the dispute in the case is unknown. Our positivist opponent will again here repeat the kind of argument already put forward in justifying the concept of semantic objectivity in answer to the CLS group.

Let us quickly go to an issue some would want us discuss later. We have raised it previously in this paper and we wish to talk about it because by so doing we may perhaps weave the three concept of truth theory in a way that can be sensible. As stated earlier it is mistaken to think that objectivity of law is necessarily a good thing. Objectivity is not entailed with what is

⁴¹ See dissenting judgment of Oguntade JSC in *Buhari v INEC* [2008] 12 SC (pt. 1) 1 and *Swem v Dzungwe* [1960] 2 NMLR 297, [1960] 1SCNLR 111. But cf; *Haruna v Modibbo* (2004) 16 NWLR (pt. 90) 487 and *Buhari v Obasanjo* (2005) 13 NWLR (pt. 941) 1.

⁴² See lead judgment by Niki Tobi, JSC in *Buhari v INEC* [2008] 12 SC (pt. 1) 1.

right. There can be an objective bad law. If courts for example would in all cases hold that slavery is proper, it hardly would make sense to think that that determinate position makes the law right and admirable. So in effect that there are objective answers to what the law is in so and so case does not settle the question of whether such objectivity is right or wrong. That being so we need to clarify whether right or wrong in our context imports moral evaluation or not. If it does then the debate about objectivity of law turns on the objectivity of moral values. In effect legal right is reduced to morality. In that case our investigation of the logic of law would be more correctly directed at investigation the logic of morality because by reductionism we imply that legal standards are objective right by reference to moral principles which we suggest would be circulatory. We accordingly abandon such a posture. In its place we argue that the rightness of legal decisions should be measured by reference to standards extra-moral and we would argue for what it is outside its moral worth.

How is objectivity of law related to the nature of morals? Is the entailment if any also a necessary basis for discussing the objectivity of law? May be the answer (we hope that does not disappoint) to these questions would emerge in the next part.

Autonomous Objectivity

Where does all of this leave us in the cathedral on autonomous case logic? Clearly this: that even in the three sense of objectivity there yet remains much uncertainty about the concept law, but that hardly denies the truth about the institution itself. Perhaps what should matter more is an investigation of its properties as a discipline, how it relates and is yet different from analogous institutions, such as morals, religion, sociology and the like.⁴³ That would certainly smell like something connected with the autonomy of law-autonomous objectivity, already identified as the subject of our second investigation, an epistemic investigation. May be a recap of this would remind us of the plot captured in this paper. We sincerely apologise for this especially for those who seriously take exception to repetition. This section invites discourse on whether it is possible to evaluate legal directives and decisions as objectively right or wrong. Even

⁴³ Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962-1987* (1987) 100 *Harv. L. Rev.* 761.

if we cannot unequivocally assert that the determinate nature of sources of law and their emergent norms in the three objective senses in part IV, we certainly admit to a large extent that there exist the institution known as law in a given society. In this part our focus would in the main be on the content of law, whether law has its own autonomous standards of evaluating in an objective manner the rightness or wrongness of legal norms and decisions. In effect, objectivity in this part invites a discourse on whether we can state that right and wrong in the content of law can be objectively determined.

As previously noted question about the rightness or otherwise of legal norms and decision often turn on evaluative judgment that often brings to play the place of morals in law, but that kind of issue that has long dominated jurisprudential writings would be played down in this paper.⁴⁴ Rather we would within the limit of space show that there are indeed objective, exclusive legal standards for measuring legal norms and decisions devoid of morals and that these standards speak to truth about autonomous legal objectivity. This is not to deny that morality is a primary means of evaluating legal norms and decisions, but it is misleading to subsume all evaluation on the basis of morality alone. For once consider how law can and is related to other values. It is plausible to measure it from perspectives of economic efficiency, logical coherence, language and so on.⁴⁵ That being the case, an evaluation that proceeds on the platform that if morals are subjective then law in the final analysis must also be is misleading. Rather, we posit that legal norms can be measured objectively from a largely legal inner perspective that admits of certain externalities of which moral is one without necessarily being subjective. In effect, it is our argument that it is not nonsensical to hold that law has some measure of autonomy in appraising legal rightness and wrongness.

In recent times several literature and philosophical scholars have attacked laws' claim of objectivity. Most discourses on 'law and hierarchy' especially from 'outsider jurists' increasingly question the objective stance of law

⁴⁴ Jules L. Coleman, *The Architecture of Jurisprudence: Part I*

⁴⁵ For example, from a language perspective notion of 'good' need not merge with morals. That is why we can evaluatively speak of a good hammer or nail without moral referent, but rather with the useful purpose they serve.

and norms emergent from it. For example, CLS feminist group argue that the 'inner logic' stance is mere veneer to wrap up male ideological biases, preferences and hierarchy.⁴⁶ From this position they are quick to label those who insist on law for law sake as hard-lined positivist. It is however mistake to argue that positivist insist on a pure theory of law because there are certainly different shades of the school. The point however has to be made here that while these critics have justification in arguing against objectivity of law, it would be extreme to think without further reflection that there is nothing autonomously objective about law in its own standards of appraising rightness wrongness legal directives and decisions.

While we admit in some cases lawyers may criticize legal decisions on moral-political grounds, these do not foreclose criticism on the basis that a decision can be 'legally wrong.' The presidential election verdict in *Buhari v. INEC*⁴⁷ by the Supreme Court is an example. Some critical commentators did not fault the Supreme Court's conclusion on moral grounds, but rather on the grounds that the court's interpretation of section 146 is legally wrong. So in effect their basis for evaluating the correctness or otherwise of the case is internally legal not based on external values. It would thus be somewhat irrational to suggest that such healthy criticism and evaluation is sheer wrap of preference, ideology or hierarchy. It is indeed disagreements on distinctive legal standards of evaluation about the mechanism for discovering right answer is free of distortion. This makes sense because law has its own distinct features from other social institutions: its own language, standards of evaluation and reasoning. It is therefore important to explain how its evaluative standards are internally, exclusively legal and largely objective without necessarily becoming vague by its peripheral admittance of other externalities of evaluation. While it is true that disagreements between lawyers on the content of law, whether a legal decision is right or wrong on objective terms may turn on their preferences, it would certainly be preposterous to suggest that all such disagreements are and that they cannot be located on distinctive legal grounds.

⁴⁶ Gary Lawson, *Feminist Legal Theories* (1995) 18 *Harv. J. L. & Pub. Pol'y* 325, Robin West, *Jurisprudence and Gender* (1988) 55 *Univ. Chi. L. Rev* 1, Catharine A. Mackinnon, *Feminism Unmodified* (1987), Deborah L. Rhode, *The Woman's Point of View* (1988) 38 *J. Legal Educ.* 39.

⁴⁷ [2008] 12 SC (pt. 1) 1 (SC); (2008) 19 NWLR (pt. 1120) 246 (SC); (2008) 4 NWLR (pt. 1078) 546 (CA).

Let us deepen this proposition by drawing analogies from practices analogous to the practice of law, such as conventionally established practices that claim autonomy as law. Most persons are familiar with football. 'Soccer' as it is popularly known has its convention that establishes the practice of football. We know that before it was established as sport sometime in history, there was nothing as football sports. Once the sport became established, over the years conventions were put in place to provide coherence and structure to the game. It is those set of conventions which in turn established the sport's own standards of appraisal. The conventions (today administered by groups such as Nigerian Football Federation (NFF), International Federation of International Football (FIFA), Confederation of African Football Federation (CAF) and the likes) determine the game, how it is played, what counts as goals, what counts as infringements etc. It tells what a good game of soccer is and what it is not. These appraisal standards are largely autonomous. So the conventions which constitute the practice of football also constitute its distinctive values and standards of evaluation. All of these are internal to football convention. However, these standards as distinct genre though standing separate from related defining standards in related activities is related to them, as these external values impact on general practice of football. For example, football evaluative standards would readily relate to general human concerns of sporting activities and rule governing impact-sports. One legal value that would ordinarily apply to such contact sport is the rule on assault. Legal rules recognise that a percentage of (aggressive) contact is inevitable in sports such as football, but they also provide defining limits to lawful contact. So if a player were to maliciously use his fist on another in a game of football that would amount to (criminal or civil) assault. Same can be said of racist chant against a player. We therefore would expect that football conventions in some ways ought to accommodate within its distinct genre-defining standard rules that incorporate and/or recognise the rule on assault. In effect, even the autonomous convention on the practice of football is at a level of generality related to external values, such as those dictated by law, morals and general human concerns.

In the same vein, law is objective in the sense that it admits of objective standard for determining right or wrong, even though in such doing its objectivity is related to certain externalities. It is in this sense that its autonomy is limited and partial only. In this respect like football conventions, the values that law instantiate and its appraisal standards are under-determined by external values and concerns to which it is related,

such as morals. Yes, sports and entertainment can take a number of forms which can be instantiated in infinite ways. Soccer constitutes one unique way of instantiating the general value of sports and entertainment. It follows therefore that the instantiation of football as a game is materially under-determined by the general concerns and values (sports and entertainment) they instantiate. It is only when there is the sport called football that it makes sense to talk about distinct football value, achievements and the like. That rightness or wrongness in football values are therefore those internal values it instantiates. These are however referable to the general external values that instantiate the unique, peculiar sport of football.

This is also true of the institution of law. There are numerous ways of doing right and wrong in human affairs regardless of law. Law only create its unique conception of what counts as right and wrong which are unique to it, though dependent on the general, external human values that instantiate it. What for example counts as stealing prohibited in section 383 of the Criminal Code Act is a projection of the general moral values on covetousness. No doubt both concepts are closely related. But that may just be the much connection between them. Even if a person were to argue that the code provision is the enactment form of covetousness, it is clear that the former is not reducible to the latter. The legal stipulation and its ramifications create unique legal concerns that are not instantiated by the general moral value. For instance, consider the provision of section 383 (2) (a). It provides *inter alia*: that a charge for stealing will be sustained if the offender fraudulently takes or convert a thing with 'intent permanently to deprive the owner of the thing in it.'⁴⁸

Read together with the requirement that to constitute stealing there must be a 'fraudulent taking or conversion,' it would suggest that if D were to take C's car away from its parking lot simply to enjoy a holiday with intention to return it thereafter, it would be improper to convict him for stealing the car. May be the proper charge should be for stealing C's petrol and no more. This is the plausible play enacted, because given the unique circumstances of case; D has no intention of depriving C permanently of his property rights to the car. That is certainly creation of a unique legal

⁴⁸ Criminal Code Act, LFN, 2004.

concern not necessarily equivalent of an instantiation of general moral revulsion against covetousness.

Like the football example above, the conventions creating law and its emergent practices partly creates their own values and standards of appraisal. But the point must be made: these unique legal values are constituted by the conventions which are constitutive of the practice. Just as it would be nonsensical to speak of distinct football practice values before football existed, so it is to talk of distinct legal values and appraisal standards in the abstract, as if these were some rational standards out there law has to meet. The autonomous values are creation of law, not followed or emulated by it. They are created by those same conventions which create the law itself. That being the case, whether law is objective or not is not dependant on any external values and standards of appraisal, such as morality, but on its unique values it instantiates. Since these are distinctive to law, constituted by its autonomous set of conventions, what our discourse entails is an appraisal about the legally autonomous standards. It is therefore modest to speak of objective legal values established by the constitutive conventions of law and its emergent practices. These are of course susceptible to other forms of evaluation, such as morals. Just as it can make sense to criticize football values through externalities of law and general sport conventions, one can also criticize autonomous legal values of law on general moral grounds. But here again something need be said: moral grounds provide external evaluation of legal decisions. But that is not all. Moral evaluation can also provide internal evaluation (as part of legal practice) not just in the sense argued by naturalist but also in the positivist sense in that positivist acknowledge the paramount role played by moral considerations in 'hard cases'.⁴⁹ So it makes sense in a distinct legal way to say that the mechanism of determining right answer are free from distorting factors (if they are thought to be located in say morality, political expediency, economic efficiency and the like) in a unique legal manner not necessarily subject to external evaluations.

⁴⁹ Ronald Dworkin, *Law's Empire*, Oxford: Hart Pub., 2000. That being so while one can modestly discuss objectivity of autonomous legal values in a modest sense, the question of whether morality is likewise objective can hardly be avoided. But this paper has chosen not to do so because that is outside its scope.

Conclusion

In the three senses of objectivity, we can with little contradictions say that there are objective right-answers in law. It can also be said that arriving at these answer is largely free of external distortions. With confidence it can be stated that whether law is autonomous from other discipline, especially moral, in the sense of having its own evaluative standard, is in the final analysis legal. Same can be said of the truth of its objectivity. Whether it makes sense to hold that it is autonomous in its evaluative standard is not a matter reducible to other parameters because a reductive analysis would be an error-theory. Legal parameters for judging law are internal to law. While this may incorporate moral worth, it does so only in the context if you permit us to employ Raz's source-based theory, if and only if a legal source-based standard explicitly command morality. If you side with Raz, as we do, then we can avoid to a large extent discussing the question of the objectivity of morality. Those who do not agree with the position simply because they think that discourse about law raises question of value would argue that right and wrong in law invites morals. For these, law cannot be thought of as an autonomous discipline. Right or wrong in law must be reduced to their moral worth. Anyone who subscribes to this thesis inextricably would recommend that discourse about objectivity of law would require a critical analysis of the objectivity of moral in reflection. We think such a stance more in the wrong than right. In fact, it amount to a discourse-circularity. There is no reason why legal standards cannot be internal. In the language game and other forms of discourses we employ numerous kinds of evaluative judgments that are not themselves reducible to morality. There truly is truth about the institution law and to a large extent it is objective. Such objectivity however does not throw away every disagreement about its nature. Like language, its objectivity controversy is what provides space for legal discourses and render intelligible disagreements. Law is therefore objective in its peculiar way both in nature, content and procedures notwithstanding that certain evaluative externalities make it practically challenging to guarantee the universality of its objectivity.