Objectivity and the Rule of Law

What is objectivity? What is the rule of law? Are the operations of legal systems objective? If so, in what ways and to what degrees are they objective? Does anything of importance depend on the objectivity of law? These are some of the principal questions addressed by Matthew H. Kramer in this lucid and wide-ranging study that introduces readers to vital areas of philosophical enquiry. As Kramer shows, objectivity and the rule of law are complicated phenomena, each comprising a number of distinct but overlapping dimensions. Although the connections between objectivity and the rule of law are intimate, they are also densely multifaceted.

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Cambridge University
To my four brothers: Steven, AJ, Mark, and David
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While I have endeavored in this book to make an original contribution to the debates surrounding the matters which I discuss, I have likewise striven to provide an accessible overview of those matters. Though I have not altogether eschewed the technical terminology of philosophy – since that terminology is often crucial for the distillation of complex ideas and for the avoidance of cumbersome prose – I have sought to explain each technical term or phrase whenever it first appears (and occasionally also thereafter). Similarly, although I have not dispensed with footnotes completely, I have kept them to a minimum. The ideas presented in this book are sometimes complicated, but I have done my best to articulate them clearly for a wide audience.

As will become apparent in my opening chapter, objectivity is a multifaceted phenomenon. In connection with law, and also in connection with most other domains of human thought and activity, the notion of objectivity gets invoked in quite a few distinct senses. Nonetheless, despite the complex variegatedness of that notion, it partakes of a certain
overarching unity. Specifically, each of the dimensions of objectivity is defined in opposition to a corresponding dimension of subjectivity. Legal objectivity, in its manifold aspects, is what marks the divide between the rule of law and the rule of men.

Because of the constraints on the length of each volume in the Introductions to Philosophy and Law series, I have had to forbear from exploring several important topics that would need to be pondered in any full treatment of the objectivity of law. Among the matters left uninvestigated is the fact that most legal systems involve multiple tiers of decision-making; the determinations reached by some officials are subordinate to those reached by higher-ranking officials. That hierarchical structure of adjudicative and administrative authority gives rise to some challenging problems for any analysis that ascribes objectivity to the workings of a legal system. Those problems have not been broached within the confines of the present volume, but I will be addressing them in some of my future writings. (A few of those problems are addressed in the fourth chapter of Kramer 2004a.) Two other important issues omitted from the scope of this book are the fact that many transgressions of legal requirements go undetected and the fact that the perpetrators of many detected transgressions go unidentified and unapprehended. Had I had sufficient space, I would have treated those issues -- concerning the limits on the ability of legal-governmental officials to give effect to the mandates of their regime -- in the course of my opening chapter’s reflections on the discretion exercised by officials in their responses to detected illegalities. (In Kramer 2001, 65–73, I have grappled with some of the theoretical difficulties posed by the occurrence of undescribed violations of legal requirements. Several of those difficulties and a number of related problems are illuminatingly discussed in Reiff 2005.)

Still, notwithstanding that the restrictions on the length of this book have obliged me to pass over the topics just mentioned and some other pertinent topics, the present volume provides a compendium of the main elements of the two phenomena encapsulated in its title. It probes many, though inevitably not all, of the intricacies in those elements. In so doing, it aims to reveal the intimacy of the connections between objectivity and the rule of law; and, more broadly, it aims to reveal the depth and fascination of the philosophical cruxes to which those connections give rise.
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