

CONSTRUCTING LEGAL MEANING IN THE SUPREME COURT ORAL ARGUMENTS: CULTURAL CODES AND BORDER DISPUTES

Jeffrey Forest Hilbert

The role of the Supreme Court is to review and decide the constitutionality of legal issues decided in the lower courts. A key part of this process is the oral argument where the Justices attempt to establish the meanings and legal parameters of the issues they need to decide. The Justices use their questioning of the lawyers to tease out their arguments, test out their own ideas and use cultural codes and legal precedents to make sense of the issues of a case. These oral arguments provide an interesting space for Justices to directly interact with the law through discourse with the lawyers. Particularly interesting for sociological study, is how cultural codes are used to understand the law and its meaning in the oral arguments of the Supreme Court.

In order to assess the process, techniques and attributes of this discourse, it is important to have working definitions for the concepts involved. For the purposes of this study, cultural codes are

Hilbert

complex inter-related systems of meaning, about how the world works, how the world should work, and the expected rights and responsibilities of people in the world. The “cultural toolkit” contains the available ideas, norms, values and traditions which practical actors can use to make sense of themselves and others in given social contexts. Cultural tools are the socially circulating meanings and symbols available to specific actors in specific situations that provide the standpoint for the actors and the specific constructs of thought available to them. For the purposes of this study law is understood as the process or system of meaning by which social order (normative actions) are maintained and formalized. Using these concepts, I will review the oral argument in a 2010 Supreme Court case on the issue of whether California has the right to censor the sale of violent video games to minors in order to understand the sociological processes of constructing law through the discourse of oral arguments.

I will address two questions about the oral argument (1) How do the Justices use the cultural codes available to them to obtain and shape information beyond the written briefs submitted by the lawyers and friends of the court? (2) How do the Justices integrate cultural codes into the formal

legal setting? Exploring these questions will allow me to address characteristics that shape the issues as well as illustrate how the Justices utilize cultural codes as tools to assess and construct the parameters of the law. Before I can assess the oral argument as a meaningful space where the issues are shaped and understood through interaction, I will present the case to be reviewed, discussing how scholars understand oral arguments and offer a theoretical sociological background of cultural codes.