

H.L.A. Hart

The Concept of Law (1961)

Outline

1. The Pre-Legal World of Primary Rules
2. Law as the Union of Primary and Secondary Rules
3. The Rule of Recognition
4. The Internal POV
5. What is a legal system?
6. Legal and Moral Obligation
7. Did Hart Meet the Challenge?

The Pre-Legal World of Primary Rules

Primary rules “are concerned with the actions that individuals must do or must not do”.

- **Problem of uncertainty:** *There is no authoritative procedure for determining what the primary rules are.*
- **Problem of static rules:** *There is no authoritative procedure for deliberately changing the rules.*
- **Problem of inefficiency:** *There is no authoritative procedure for determining whether a rule has been violated or for punishing violations.*

Law as the Union of Primary and Secondary Rules

Secondary rules are rules about primary rules.

THE PROBLEMS OF A WORLD OF PRIMARY RULES	HOW SECONDARY RULES SOLVE THESE PROBLEMS
1. The problem of uncertainty: there is no authoritative procedure for determining what the primary rules are.	The rule of recognition: a standard for determining the existence of primary rules.
2. The problem of static rules: there is no authoritative procedure for deliberately changing the rules.	Rules of change: empower an individual (or a group) to deliberately vary the primary rules.
3. Problem of inefficiency: there is no authoritative procedure for determining whether a rule has been violated or for punishing violations.	Rules of adjudication: specify who is to determine whether primary rules have been violated, the procedure by which this determination is to be made, and how penalties are to be implemented.



Transition from a pre-legal world to a legal world

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The Rule of Recognition

- 1) It is the master-rule of a legal system.
- 2) Every legal system has one...
- 3) ...but it is not identical in every legal system.
- 4) The existence of the rule of recognition is a social fact.

In any legal system, the validity of primary rules can be ascertained without appealing to morality.

The Internal Point of View

The perspective of a member of a group who accepts the rules as the appropriate standard of conduct.

The violation of a rule is not a basis for predicting a hostile reaction, but is itself a reason/justification for a hostile reaction.

What is a legal system?

“There are two minimum conditions necessary and sufficient for the existence of a legal system. On the one hand those rules of behaviour which are valid according to the system’s ultimate criteria of validity must be generally obeyed, and, on the other hand, its rules of recognition specifying the criteria of legal validity and its rules of change and adjudication must be effectively accepted as common public standards of official behaviour by its officials. The first condition is the only one which private citizens *need* satisfy: they may obey each ‘for his part only’ and from any motive whatever...The second condition must also be satisfied by the officials of the system. They must regard these as common standards of official behaviour and appraise critically their own and each other’s deviations as lapses.” (p. 113)

Legal Obligation and Moral Obligation

Moral Obligation: If I have a moral obligation to X, that means I should X.

Legal Obligation: If I have a legal obligation to X, this does not mean that I should X. Rather, it means that a legal official can insist that I X and punish me if I fail to X.

Did Hart Meet the Challenge?

Hart thinks that his distinction between legal and moral obligation provides an alternative to two inadequate kinds of legal theories:

- **The command theory** (Austin)
 - Lacks an account of legal obligation.
- **Nonpositivist theories** (Radbruch):
 - Confuses moral obligation with legal obligation (the confusion leads to anarchism and quietism)