

# Legal Positivism

**PHIL 420**  
**Philosophy of Law**  
**Distance Delivery**  
**Lecture Two**

## Natural Law



- **Greeks and Romans**
- **Christianity**
- **Law as something metaphysically determined**
- **Law and morals**
- **Moral realism**
- **Moral content in the law**
- **An unjust law is not a law at all**
- **Blackstone**

## Utilitarianism



- **Jeremy Bentham**
- **John Stuart Mill**
- **Ethics as secular and empirical**
- **Consequentialism**
- **Hedonism**
- **Pleasure as the single intrinsic good**
- **Greatest happiness principle**
- **Problems**

## Legal Positivism



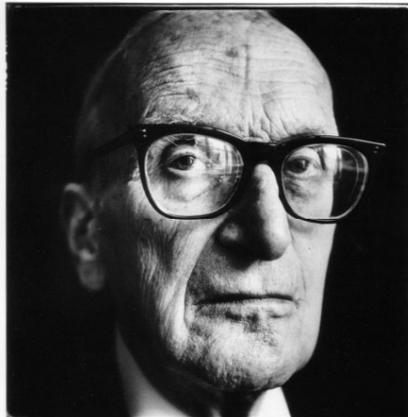
- **John Austin**
- **Relationship to Bentham**
- **Rejection of Natural Law**
- **Severability thesis**  
“The existence of law is one thing; its merit and demerit another. Whether it be or be not is one enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry.”

## Austin's Definition

an assemblage of signs declarative of a volition conceived or adopted by the *sovereign* in a state, concerning the conduct to be observed in a certain *case* by a certain person or class of persons, who in the case in question are or are supposed to be subject to his power: such volition trusting for its accomplishment to the expectation of certain events which it is intended such declaration should upon occasion be a means of bringing to pass, and the prospect of which it is intended should act as a motive upon those whose conduct is in question.

- Laws as *commands*
- Legal rules as *general commands*
- Commands come from the *sovereign*
- Threats
- Behavior becomes habitual
- Who is the sovereign?
  - Receives habitual obedience
  - Does not habitually obey others
- Secular and empirical
- Law as human and social
- Law as “posits”

## Hart's Criticisms



- *The Concept of Law*
- Laws apply to the sovereign
- Sovereign in a democracy
- Laws concerning powers
- Laws from custom
- Rex
  - His reign
  - His death
  - Rex II – his orders?
  - Rex I – his old orders?