

Law as a System of Rules

PHIL 420
Philosophy of Law
Distance Delivery
Lecture Three

Legal Realism



- **Holmes**
- **Judges deciding cases**
 - **Their language**
 - **Their behavior**
- **Vehicles in the park**
 - **Clear cases**
 - **Hard cases**
 - **Semantic indeterminacy**
 - **Legal action is required**
- **Might all law be like this?**
- **Importance of moral judgments**
- **“Formalism”**

Nazi Law



- **WW II**
- **Gustav Radbruch**
- **Unjust laws**
- **Civil disobedience**
- **Revolution**
- **Evil wife example**
 - **Her defense**
 - **Court's rejection**
 - **Hart's dissatisfaction**
- ***Ex post facto***
- **Nazi war crimes**

Starting Over



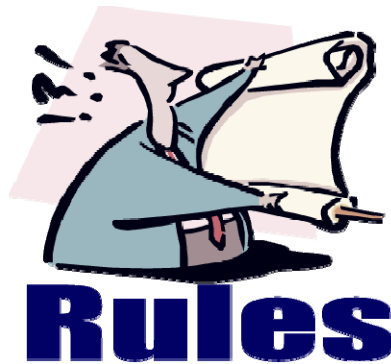
- **Austin's mistakes**
 - **Sometimes orders, threats, habit**
 - **But other kinds of law**
 - **Continuity of law**
 - **Sovereign in democracy**
 - **Gangster law**
- **Doesn't give us the notion of a rule**
- **Law as a system of rules**

Rules



- **Primary rules**
- **A system of primary rules only**
 - **Some primitive societies**
 - **Uncertainty**
 - **Static character**
 - **Inefficiency**
- **Secondary rules – rules about rules**

Secondary Rules



- **Uncertainty – rules of recognition**
- **Static quality – rules of change**
- **Inefficiency – rules of adjudication**
- **Contracts, wills, etc.**
- **Internal and external perspectives on law**
- **“Law as the union of primary and secondary rules”**

Legal Authority



- **Legal systems**
- **Hierarchy of rules of recognition**
- **Parking citation in La Grande**
- **The Constitution**
- **Rule of Recognition vs rules of recognition**
- **Ultimate rule**
- **Not sanctioned by a higher rule of recognition**
- **Mere social acceptance**

First Analytical Paper

Your paper should be between 2000 and 3000 words.

Explain and critically assess the jurisprudential theories of legal positivism, natural law, and legal realism. Which approach to the nature of law has the most promise? Defend your answer.