

## 1. The Command Theory of Law

### Essential

- John Austin, *The Province of Jurisprudence Determined* (1861) (Lectures I, VI, and Hart's Introduction to 1955 edition)
- Jeremy Bentham, *Of Laws in General* (ch. 1, 2)
- H.L.A. Hart, *CL [The Concept of Law, 2<sup>nd</sup> edition]* (chapters 1-4)

### Further

- Hart, *EB [Essays on Bentham]* Introduction and ch.5
- Hart, 'Legal Positivism and the Separation of Law and Morals' (1958), *71 Harv. L.R.* 598
- Ronald Dworkin, *TRS [Taking Rights Seriously]*, Introduction

*Essay:* Austin defined laws as general commands, given by a sovereign to its subjects. Evaluate that definition.

### *Discussion Questions:*

How would Austin explain why I shouldn't drive down Cornmarket?

Can Austin distinguish between law and the commands of a gunman? Does he need to do so? Can Hart?

What role do sanctions play in Austin's theory? What role does the *fear* of sanctions play?

What does it mean to say that legal theory must explain law's normativity?

Who or what is sovereign in the United Kingdom? In the United States?

Can you describe the law of contracts as a set of commands?