

2. Rules and Principles

Essential:

A. Hart on Rules as Practices and on Law as System of Rules

- Hart, *CL* chapters 5, 6, pp. 54-9, and pp. 247-69
- Hart, *EB* 143-7; 153-61

B. Dworkin on Principles

- Dworkin, *TRS*, Ch. 2; Ch. 3, second part (following discussion of the practice theory of rules)

B. Criticism of Hart on Rules as Practices

- Raz, *PRN* [*Practical Reasons and Norms*] 50-58, 124-6, 146-8
- Dworkin, *TRS*, Ch. 3, first part (preceding response to Raz and others re principles)

Further reading:

- Raz, *AL* ch.8, esp. pp.153-7
- Dworkin, *LE* [Law's Empire] Ch 1
- Dworkin, 'Hart's Posthumous Reply', unpublished manuscript, available at Bodleian Law Library DESK (Jurisprudence Box of Offprints).

Essay: What makes a rule legally binding, according to Hart? What makes a principle legally binding, according to Dworkin?

Discussion Questions:

1. Rules and Practices

What is a social rule? What is the practice theory of rules? Are there rules of morality? If so, are they explained by the practice theory?

What is the 'internal aspect' of rules? What is its role in Hart's theory of law?

Why does Dworkin think that Hart's practice theory of rules is defective? Why does Raz think it is?

2. The RR

Do lawyers share a RR? What would be the RR for the United Kingdom? How detailed need a shared rule be to serve as a RR?

What makes Parliament's decisions law, according to Hart?

What is the reason, according to Hart, for which UK lawyers treat what the Queen enacts in Parliament as law?

3. Principles

Does Dworkin think that the law consists not only of rules but also of principles?

Can we list all the principles on which courts should rely? If not, why not?