

Jurisprudence

John Austin

- idea of tacit sanctions: i.e. marriage is a law that gives right and doesn't have sanctions, but he says if you don't follow certain formalities then the marriage is void

Laws Improperly So-Called

- laws improperly so-called are rules set by sentiment or opinions
- they are not really law
- international law is not law but international morality
- concluded that international law was not properly so-called because it didn't have a sovereign that was habitually obeyed by the intl community
- i.e. we stand for the anthem, general rule and accepted by all of society but no actual sanction for not doing it (can be criticized though, no actual sanction but subject to much judgement, criticism, and socially unacceptable)

Critiques of Command Theory

- main critique is the oversimplification of CST theory, especially in modern terms
- Hart's gunman theory: it is a model more suitable for an absolute monarchy, not a democracy
- quality of the sovereign is unimportant
- habit of obedience might arise from any cause (coercively induced fear, moral admiration, etc)
- no legal limitation to sovereignty
 - its absurd for a body to command itself
 - a body responsible for the legality of an entire nation should have some sort of sanctioning itself
 - otherwise sovereign can be dictatorial/unjust
- who/what is the actual sovereign?
 - laws commanded by long-dead members of the sovereign in parliament continue to be law, although apparently not commanded by the current sovereign
 - concept of separation of powers means that the judiciary can strike down the legislature or executive - does this mean the judiciary is sovereign?