

The Concept of Rules and the Concept of Law

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Our appreciation of the relationship between the concept of rules and the concept of law has increased substantially over recent years. The main credit for this must go to H.L.A. Hart whose examination of law and rules in his work, The Concept of Law,¹ has served both as a basis and an impetus for further study of this particular subject. Many questions though still remain to be answered concerning this relationship, not least as a result of problems associated with some of the accounts of rules and law that have so far been presented.

Perhaps the most common hindrance to a satisfactory account of the relationship in question is the general tendency of legal theorists to conduct their studies of the component concepts of law almost wholly from the point of view of the concept of law itself and from within the limits circumscribed by it. Paradoxical though it may seem, studies of that kind are not sufficient for a thorough understanding of any concept which is a component of another. This is not the place to consider in detail the deficiencies of such a method of investigation. It will suffice here simply to point out two of the more obvious problems connected with

studies of that kind. The first is that any such investigation is likely to ignore any features of a component concept that do not come within the principal concept in question.² These features can be significant, especially if one is seeking to discover not just the points of connection but also the extent of the connection, and thus any points of distinction, between the one concept and the other. The second danger is a practical one and is the possibility that if an examination of a component concept is conducted simply from within the context of the principal concept this will have a restricting effect upon one's understanding and appreciation of the component concept in question. This can be so even where all the possible features of the component concept are included within the principal concept. Both dangers are avoided by first examining the component concept qua an independent entity and only then determining its relationship with the principal concept involved. This latter method, then, is the procedure that will be followed in the present study of the relationship between the concept of rules and the concept of law.³

Two Concepts of Rules

So far reference has been made simply to the concept of rules. It is preferable to commence this study straight away however, with a consideration of not the general concept but two specific concepts of rules on account of the important, and quite obvious, distinction between them

Following John R Searle's terminology, the two kinds of rules which are involved will be referred to as regulative and constitutive respectively.⁴ Instances of both are well-known. Common examples of regulative rules are the rules of etiquette and good manners, for instance that which directs people to eat peas from a fork - and not off a knife - when eating in company. Familiar examples of constitutive rules of games, such as that which (put shortly) states that in cricket a batsman must move all the way from one crease to the other in order to score a run.

A simple and attractive way to distinguish between these two kinds of rules is to say that regulative rules inform people of what they ought to do in particular situations, whilst constitutive rules state what they must do in order to perform a particular act. The 'ought' here connotes simply what it is right and proper to do and not, for example, what it is prudent to do, and the 'must' signifies a logical and not a practical necessity. So the rule of etiquette concerning the way to eat peas is an example of a normative rule because it informs people of what they ought to do (i.e. of what it is right and proper that they do) in a particular situation, viz. when eating in company. The rule concerning scoring a run, on the other hand, is constitutive because it tells cricket batsmen what they must do in order to perform that particular act.

The 'ought/must' method of distinguishing between these two species of rules has the advantage of being neat and succinct but it does not clearly, or even accurately, indicate the basic distinction between them. Certain

objections to this distinction are not significant, for example the quite trivial point that we often use the word 'should' instead of 'ought', and even what would appear to be a more important objection, namely that we can use both of those words in connection with constitutive rules. The fact is that when we do use these other words in the way indicated we nonetheless use them basically in the sense of 'ought' and 'must' as previously defined. Particularly noteworthy here is the fact that 'ought' can be used as a deferential 'must'. If I am playing chess with my autocratic great-uncle who is a novice to the game and I see him innocently about to move his king two squares in one go, I might well tell him that he 'ought' not to do that because it is against the rules when what I really mean is that he must not do that if he wishes to play a proper game of chess.

On the other hand there is an observation concerning terminology which is important in that it does indicate a significant similarity between regulative and constitutive rules; this concerns the common use of 'must' in statements of regulative rules. Take, for example, the case of a mother who wishes to inform her young son how to eat peas. She would rarely say (presuming that she wishes to state a rule) 'You ought to (or should) eat your peas from a fork' or even 'It is right and proper that you eat your peas from a fork'. She would most likely say 'You must eat your peas from a fork' and thereby present a regulative rule in a form not dissimilar to that of a typical constitutive rule. This feature would become even more apparent if the child were then

to ask why he 'must' eat his peas from a fork, for a reasonably clear-thinking mother would justify her instruction substantially on the ground that such a way of acting is considered to be right and proper (when eating in company understood). Had she been more explicit in her original statement she would have said something like 'You must eat your peas from a fork in order to eat properly'. This statement is in fact equivalent to the original and patently regulative proposition 'You ought to eat your peas from a fork' though in form it clearly resembles such a statement of a constitutive rule as 'Cricket batsmen must move all the way from one crease to the other in order to score a run'

It is tempting to conclude from the foregoing, and from other examples, that all regulative and constitutive rules are in fact presentable as statements of what must be done in order that a certain individual act in a particular way in a given situation; or to put this in another way, that both types of rules are essentially the conditions under which particular action is deemed to have a certain result. On the basis of this conclusion one might then proceed to distinguish between these two species of rules by the kinds of results that are deemed to occur. With a constitutive rule the result is wholly rule-created - that is, one which is logically dependent for its very nature and existence upon the rule itself and which will accordingly vary from rule to rule. With a regulative rule, on the other hand, the result is simply that of acting either properly or improperly as the case may be: in other words the result

here is that the original act in question is a proper or improper act. Such conclusions, whilst not wholly accurate for reasons which will become apparent, nonetheless do indicate some of the characteristics, and in particular some of the common characteristics, of the rules in question. Both, for example, are reducible to the formula 'A constitutes B in situation S' where A is (or involves) one or more acts and B is a deemed result; it is a significant feature of both regulative and constitutive rules that they increase the result of action from just the normal, physical result to a further, deemed result in given circumstances.⁵ Here may lie the central feature of the concept of rules,⁶ at least to the extent that the concept in question concerns regulative and constitutive rules and not necessarily other kinds such as the so-called rules of thumb (or maxims) and fundamental moral rules (or moral principles)? The central feature of the concept of rules in any broader sense must await further consideration. It is sufficient for the present simply to note that there are other kinds of rules: for the purposes of this study, however, only regulative and constitutive rules will be considered in any detail.

This key to a more precise appreciation of the distinction between regulative and constitutive rules lies in the basic reason why each is followed. One follows a constitutive rule, in short, because one wishes to do something. More particularly, one follows a rule of this kind because one wishes to achieve the particular result which is deemed to follow only from acting in the way determined by the rule. The result in question may be, in very general terms, a change in status (one may, for example,

wish to confer a degree or appoint to an office) or a change in rights and duties (one may wish to enter into a contract or convey property); or the result may be participation in a devised activity or more simply performance of a devised act (one may wish to play a game or perform a religious observance). In every case, however, the particular result involved is logically attainable only by performance of the act, or acts, required by the relevant constitutive rule.⁸

Constitutive rules, then, are concerned only with positive action. Moreover, because the basic acts involved in these rules are deemed to produce novel results under the given conditions they are commonly regarded as creating new types of action. Some of the new acts in question have acquired distinctive names; so we speak of 'bidding', 'legislating', and with specific reference to the product of the new acts 'scoring runs' and 'conferring degrees'. Others, however, (indeed, probably the majority) are specifiable only as the act which is logically required to achieve a particular result, for example to move a king for the purpose of playing chess or to witness a signature for a particular legal transaction.

It follows from what has just been said that constitutive rules indicate the only way in which one can logically achieve a particular result; thus the appropriateness of the use of the term 'must' in the 'ought/must' method of distinguishing between regulative and constitutive rules. Colloquial speech can, however, detract from this fact, and even cause some initial confusion between constitutive and regulative rules, for we do sometimes refer to the particular acts required by constitutive rules as being the 'right',

'correct', or even the 'proper' way to achieve the results in question and likewise sometimes we refer to other acts which are nonetheless intended to have those results as being 'wrong' or 'incorrect'. To confound the issue we sometimes even refer to somewhat similar, though not precisely the required acts as being 'wrong' or 'incorrect' with the implication that the intended results nonetheless still occur as a consequence. So if my autocratic great-uncle in fact persisted in moving his king two squares in one move I might well inform him that that was the 'wrong' way to move a king in chess without giving him to understand that he thereby ceased to play chess. Strictly, of course, that terminology is inapposite. Constitutive rules, to repeat, indicate the only way in which one can logically achieve a particular result. Strictly, then, the 'right' way to achieve the result in question is the only way and the 'wrong' way is no way at all. However, the truth is that we sometimes regard approximations of the acts required by constitutive rules as resulting in approximations of the formal results, and it is particularly in this situation that we speak of the 'wrong' way to achieve these results - the 'wrong' way here being an approximation only of the required way, though one which is nonetheless deemed to have a similar, if not for all intents and purposes identical, result. So if my great-uncle now proceeds continually to move his king two squares at a time, despite my informing him that that is the 'wrong' way to move that chess-piece, I might still consider ourselves to be playing chess because, as with most games played simply as a pastime, an approximation of compliance with the rules is

popularly regarded as having substantially the same result as full compliance. Strictly, of course, we would no longer be playing chess though we would clearly be playing something very like it.

One follows constitutive rules, then, in order to do something. One follows regulative rules, on the other hand, not primarily or even necessarily to do something but to be entitled to something, namely the benefits at large that may be gained from membership of a voluntary association which is subject to rules of this kind. By 'association' here is meant not necessarily a formal organisation but any group of individuals, from two upwards, who have come together for a particular purpose. It can be either formal or informal, permanent or casual. The same collection of individuals can, indeed, even form two or more associations if they combine together for more than one particular purpose and they will certainly do so if they recognise distinctive regulative rules as applicable to each. The members of a tennis club, for example, may well form one association for the purpose of playing tennis, another with respect to use of the club's social facilities, and yet another in so far as they are members of the formal organisation which is the tennis club qua a corporate entity. To restate the original proposition, one follows any regulative rule in order to be entitled to the general benefits that may be gained from membership of the association to which they apply. Being entitled to benefits of this kind is what expressions like 'acting properly' in fact imply in the context of regulative rules.

These rules are thus not just conditions under which a person is deemed to act properly as was indicated earlier; they are conditions under which a member of an association is entitled to benefit from membership of the association in question.⁹

The basic reason for following regulative rules which has just been presented explains why these rules can be either positive or negative, for either action or inaction can be deemed necessary for a person to be entitled to a benefit or advantage. More importantly, however, it explains in a similar way a feature of regulative rules that is commonly overlooked, namely why these rules can concern not just acts but also attainable personal states: regulative rules can in effect say not only 'Do X' or 'Do not do X', but also 'Be Y', in order to be entitled to benefit from membership of a particular association. 'Reserves must be ready to play at any time', 'Company representatives are to wear ties when calling on clients', and 'Cooks must have clean hands when handling food' are just a few examples of regulative rules which specify not acts but states of the kind indicated. It is, of course, true that any states specified in regulative rules will require the performance of some acts and/or the non-performance of others in order to be either attained or maintained, and to this extent all regulative rules, like all constitutive rules, concern acts; but the important point here is that unlike constitutive rules, regulative rules need not concern any specific form of action. For this reason any account or definition of regulative rules (like that

given earlier in this article) which associates these rules solely with particular acts must be deficient¹⁰

Regulative rules, in sum, are conditions relating either to behaviour or to attainable personal states under which members of an association are entitled to benefit from their membership of the association in question. Rules of this kind are thus never conditions of membership of any association; if such conditions do form rules these will be constitutive. Nor are they ever conditions for the receipt of specific benefits only. Instead they are always conditions under which those who are members of an association are entitled to the benefits at large that may result from membership of the association in question, though conditions of this kind may always relate specially to particular benefits ('All members to sign for equipment borrowed', for example). The principal benefit to be gained will usually be that which the association in question ostensibly seeks to promote but this need not be the case. So some people may be members of a prestigious sports club primarily for the social contacts or the kudos that it provides rather than for the opportunity to participate in the particular sport involved; for any or all of those benefits, however, entitlement is dependent upon compliance with all the club's general (regulative) rules.

A feature of regulative rules that is particularly noteworthy is that each distinct rule concerns only one condition of the kind indicated and thus concerns just one form of behaviour or one personal state though the way in

which these rules are actually specified can of course always involve more than one form of behaviour or state and in that event the specification would naturally concern more than one rule. Each regulative rule thus form a condition of entitlement and can accordingly be contrasted with any constitutive rule for these concern all the conditions under which action is deemed to have a particular result. An associated feature of note in that each regulative rule is logically independent of any other and can thus in theory always exist as an isolated entity though the specification of any particular regulative rule may in fact refer to, or imply the existence of, another rule of the same kind. In practice, of course, regulative rules tend to come in groups, or sets, as the vast majority of associations that have rules require that more than just one condition be met by their members before they are entitled to benefit from their membership. Constitutive rules, on the other hand, can and often do form systems, in which case they are logically interdependent.¹¹ This aspect of constitutive rules will be considered again below.

Constitutive rules, in sum, are the necessary and sufficient conditions under which action is deemed to have a particular result. As these rules concern the totality of such conditions they indicate all the defining characteristics of the product of the result in question. So a 'run' in cricket, for example, is defined, and must necessarily be defined, in terms of the conditions involved in the rule on how to produce a score of this kind. A further consequence of the nature of a constitutive rule is that the result

involved will vary from rule to rule as the conditions change. In the specification of any such rule the result thus needs to be expressly identified. This contrasts with regulative rules where the basic result that is deemed to occur (viz. loss of entitlement to the benefits that may be gained from membership of an association) is constant. Because of this the result need not be expressly identified in any specification of a regulative rule, the implication of the statement involved being sufficient to convey the necessary information. This is why regulative rules can be restated - and one reason why they are often presented - in imperative form ('No talking in the library', 'Thou shalt not kill') for imperative statements carry the implied rider' - otherwise you will (or at least may) suffer some disadvantage'. The disadvantage attaching to an imperative may in particular circumstances involve the imposition of a sanction and even some natural ill-consequence; nonetheless, when an imperative in effect states a regulative rule it will always imply loss of entitlement to the benefits that may be gained from the association involved, whatever else it might imply.

Constitutive rules exist as either independent or dependent entities, and in the latter case they form part of a system of constitutive rules. A constitutive rule is independent when production of the result that is deemed to occur under the given conditions is regarded as not just a condition of another constitutive rule. In such a situation production of the deemed result is, or can be, an end in itself and is not simply a step towards achieving a further end. An example of an independent constitutive rule would be that on how to confer a university degree or appoint to an

office A constitutive rule is dependent, on the other hand, when production of the deemed result is regarded as nothing more than a condition of the kind just described. In this case the conditions that form the dependent rule are satisfied only to fulfil a condition of another constitutive rule. So to return to a familiar example, the constitutive rule on how to score a run in cricket is dependent because such a run is scored only to satisfy a condition of another constitutive rule of cricket, in particular that which in effect states that a cricket team must score more runs than its opponent team to win a match.

Dependent constitutive rules simplify specification of the conditions which relate to a complex activity by enabling these to be set out in a system involving one basic, independent rule and a number of subsidiary, dependent rules which relate specifically to it: the independent rule states the conditions of the activity in outline and the dependent rules specify more precisely the conditions relating to particular acts involved. There can then also be dependent rules relating to anterior rules of the same kind. It follows from the nature of dependent rules that the deemed result, the product of that result, and the novel act which each concerns are fully explicable only in relation to the larger, embracing activity which forms the subject of the independent rule. A 'rule' and 'scoring a run', for example, can be fully explained only in the context of the game of cricket or some other activity.

The consequences of non-compliance with constitutive and regulative rules have already been indicated and can now

be considered in a little more detail. Non-compliance with any constitutive rule necessarily results in a complete failure to achieve the result that is deemed to be involved. This must logically be so, for the result in question is deemed to occur only upon the satisfaction of certain conditions and not otherwise. It also follows, of course, that non-compliance with any constitutive rule also results in failure to perform the novel act involved. So if a cricket batsman does not move all the way from one crease to another he does not score a run; more particularly in this case, he neither performs the novel act of 'scoring a run' nor achieves the result of scoring a 'run', and this is so no matter how far he may in fact have moved between wickets. Thus, from the point of view of either performing a novel act or achieving any deemed result, action which does not comply with the relevant constitutive rule is a nullity

Non-compliance with any regulative rule, on the other hand, results without more simply in lack of entitlement pro tanto to any benefits that may result from membership of the association concerned. Non-compliance does not of course necessarily prevent the receipt of any such benefits and herein lies the reason why we are ordinarily justified in criticising those who break regulative rules, for given that membership of any association is voluntary, then if receipt of the general benefits of membership is subject to certain conditions it is wrong for any member of such an association to benefit - and this of course includes simply being able to benefit - from membership when failing to observe these conditions even in part. The term 'wrong' here has a moral connotation¹² unlike the same word when used in respect of a

simple constitutive rule; the term 'right' likewise has a moral connotation when used in respect of compliance with a regulative rule, again unlike the same word used with respect to a simple constitutive rule. It is interesting to note in this connection the particular criticism that is sometimes levelled at those who clearly break a regulative rule, that they do not 'deserve' a particular benefit which they are nonetheless enjoying; language of this kind is significant both of the raison d'etre for regulative rules and of the consequence of non-compliance with them. We do not on the other hand criticise those who simply fail to comply with a constitutive rule for without more (i.e. without there being a reason why it is morally right to comply with such a rule) we have no reason to do so; at most we correct them, as we do for example when a novice to chess moves a chess piece wrongly.

Were it not for certain misapprehensions the final point here would not have to be made: this is the fact that there is no necessary connection between the rules which have just been considered and (punitive) sanctions. The threat of the imposition of a sanction serves as an inducement upon a person to act in a particular way. Threats of this kind may accordingly accompany regulative rules in order to induce compliance with the acts involved. Such inducement is not, however, necessary to regulative rules for there are always two inherent reasons for compliance with any rule of this kind; the first is the natural wish of humankind to do what is right and thus to deserve receipt of those benefits which may properly be enjoyed only upon certain conditions, and the

second is the equally natural wish of human beings to avoid being adversely criticised. The threat of the imposition of a sanction simply adds to these two reasons a further, though often more effective, reason for compliance, namely avoidance of the penalty that will, or at least may, be imposed in the event of default. Any connection between a regulative rule and a sanction is thus contingent, and is a practical and not a logical one. With constitutive rules the situation is altogether quite different for without more there cannot be any connection at all, either logical or practical, between sanctions and rules of this kind. Constitutive rules necessarily state no more than the conditions under which action is deemed to have a particular result. Unlike regulative rules they do not, without more, involve any reason why the action in question should be performed and accordingly they are not without more susceptible to any extraneous inducement to perform the acts involved. There are, however, situations in which constitutive rules do involve more, and these and their consequences will be considered in the next section.

There are two principal reasons why it is sometimes thought that there is a necessary connection between the rules being considered and sanctions. The first concerns the intimate relationship between regulative rules and criticism. It is based not just on the possibility of, but more particularly on the justification for, adverse criticism in the event of non-compliance with regulative rules. Adverse criticism is unwelcome, and so by definition is any

(punitive) sanction; criticism, moreover, is imposed ab extra, as also is any sanction. May not criticism accordingly be regarded as a form of sanction with the result that the former will bear the same relationship to regulative rules as the latter?¹³ Certainly there are similarities between criticism and sanctions. However, the important feature of criticism here is that it is a normal human response to a natural consequence of breach of any regulative rule, that consequence being recognition by any individual cognisant of the fact just stated that another is doing wrong (here by benefitting from membership of an association whilst not satisfying all the relevant conditions of entitlement). A distinctive feature of a sanction, on the other hand, is that its imposition is not a normal response of the same kind but instead is wholly additional to any such response.

The second reason concerns constitutive rules and attempts to assimilate nullity with a sanction. In short, it is based on the proposition that the principal result of non-compliance with any constitutive rule, namely failure to achieve the appropriate deemed result, is a form of sanction in that it is normally an undesired consequence and as such may fairly be regarded as a penalty for failure to comply with the rule in question. Not all undesired consequences, however, are sanctions, and failure to achieve a particular result due to a failure to satisfy the conditions which logically lead to that result is certainly not one of them. The imposition of a sanction is a contingent consequence of a particular event, viz. non-compliance with either an

order or a regulative rule; the form of any sanction, moreover, is logically independent of any aspect of the event involved. A nullity, on the other hand, is a necessary consequence of a particular event - in this case non-satisfaction of certain conditions - and its form is entirely dependent upon the result which is logically deemed to occur upon satisfaction of the conditions in question. A sanction, moreover, is undesired because its form, whatever that may be, is in fact unpleasant. A nullity is undesired primarily because something which is desired - viz. the deemed result - is not obtained.¹⁴

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FOOTNOTES:

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1 (1961), chs 3-6, esp. at pp.27-41, 54-56, 86-88

2 The implied reference here is to 'cluster concepts', though note also those concepts that have what Wittgenstein described as 'family resemblances'. For an account of the former, see e.g., Rolf Sartorius, 'Hart's Concept of Law' in Robert S. Summers, More Essays in Legal Philosophy (1971), at p.142 (drawing on the ideas of Hilary Putnam); for an account of the latter, see Ludwig Wittgenstein, Philosophical Investigations (3rd edn trans. G.E.M. Anscombe), paras. 66-67.

3 Lest there be any doubt on the matter, this article is primarily concerned with the relationship between the concept of rules and the concept of law; it is not concerned with the quite separate topic of the part that rules in fact play in resolving legal problems and in particular in deciding cases. On this latter question, see Ronald M. Dworkin, The Model of Rules, (1967) 35 U. Chi. L. Rev. 14. For references to some of the more important contributions to the ensuing debate on Dworkin's thesis, see footnote 2 of his most recent article on this subject, Social Rules and Legal Theory, (1972) 81 Yale L.J. 855. See also: Graham Hughes, Rules and Decision Making (1968) 77 Yale

L J. 411 Discussion of this particular topic presently shows every sign of becoming an industry

4 See Speech Acts (1969), pp. 33-36.

5 The term 'deemed' here implies common recognition by at least two people. On the essential 'public' element of rules (or at least regulative and constitutive rules), see Peter Winch, The Idea of a Social Science (1958), ch.1, sec. 8.

6 Cf. H.L.A. Hart who states in the course of an initial study of what are basically regulative and constitutive rules that they '[b]oth ... constitute standards by which particular actions may be ... critically appraised [as being the 'right' or 'wrong' thing to do]' (original italics), op.cit. supra n.1, at p.32; and see also p.56. Hart then immediately adds: 'So much is perhaps implied in speaking of them both as rules', loc.cit. The equation of rules with standards has since become popular, no doubt largely as a result of these statements by Hart. However, any general proposition to the effect that rules are basically standards of the kind stated (and it is not absolutely clear that Hart intended to go that far) can be criticised on at least three grounds. First, such a proposition concerns a consequence rather than the central feature of rules; rules (or at least regulative and constitutive rules) constitute standards of appraisal only because they are first of all recognised as being the conditions under which (subject to the final objection) particular action is deemed to have a certain

effect. Second, the proposition in question applies uneasily to constitutive rules where non-compliance without more strictly results not in a wrong action but simply in failure to act in a particular way; moreover, although compliance with both constitutive and regulative rules are spoken of as 'right', they are right in two very different senses, a matter which will be explained later in the text. Finally regulative rules can concern states as well as actions, a matter which will also be explained subsequently in the text. Another popular generalisation concerning rules is that they are 'guides for conduct or action'. This statement, however, is without more too wide to be satisfactory as it comprehends general principles besides rules.

7 For considerations of rules of thumb (maxims), see John Rawls, Two Concepts of Rules, (1955) 64 Phil.Rev 3, at pp. 18-29 (concerning the 'summary' conception of rules), Joel Feinberg, Supererogation and Rules, (1961) 71 Ethics 276, esp. at pp. 283, 285, and Joseph Raz, Practical Reason and Norms (1975), at pp.59-62. On fundamental moral rules (moral principles) see Marcus G. Singer, Moral Rules and Principles, in A.I. Melden (ed.), Essays in Moral Philosophy (1958), p.160; D.S. Schwyder, Moral Rules and Moral Maxims, (1957) 67 Ethics 269.

8 For another account of constitutive rules, see John R Searle, loc.cit. supra n.4. See also John Rawls, loc.cit. supra n.7 (concerning the 'practice' conception of rules) and H L.A. Hart, op cit. supra n 1 (concerning power-conferring rules). For a criticism of Searle's distinction between regulative and constitutive rules,

see Joseph Raz, op cit supra n.7, ch 4.

- 9 For another account of regulative rules, see John Searle, loc.cit. supra n.4. (But cf. Joseph Raz, loc.cit. supra n.8). See also H.L.A. Hart, op.cit supra n.1, chs.3-5 (concerning 'primary' rules).
- 10 It is sometimes asserted that regulative rules can indicate not only what is required or prohibited but also what is permitted (see, e.g., Newton Garver, Rules, in Paul Edwards (ed.), The Encyclopedia of Philosophy (1967), vol.VII, pp.231-33, and J.C.Smith, Legal Obligation (1976), p.230). Upon the analysis presented in this article regulative rules cannot 'permit' as permissions cannot be conditions; at most what would appear to be permissive regulative rules (e.g., specifications of what a person 'may' do) are simply statements indicating that certain acts are not the subject of any regulative rule. For further on this general subject, see Joseph Raz, op.cit. supra n.7, at pp.85-89.
- 11 Although regulative rules cannot by themselves form a system they can nonetheless form part of a general system of rules in that they can be logically connected to a system of constitutive rules. Rules of many games and the rules of legal systems are obvious examples in point; see generally Joseph Raz, op.cit. supra n.7, at pp.111-23, and with special reference to legal systems, H.L.A. Hart, op.cit. supra n.1, at pp.92-93 (referring back to the defect of uncertainty under a regime of 'primary' (i.e. regulative) rules mentioned at p 90) See also J.C. Smith, op cit. supra n 10, ch.11

- 12 This proposition may appear contentious for given the theory in the text it would certainly mean, for example, that it is morally wrong not to comply with rules of etiquette and good manners, which many people would deny. Part of the problem here concerns the province of morality, and on this opinions differ; see, e.g., the observations by Joel Feinberg, op.cit. supra n.7, at pp.404-5. If it is morally right to obey regulative rules, then as will become more apparent in the next section there is a relatively unexplored relationship between law and morality.
- 13 For a similar argument by H.L.A. Hart to demonstrate a coercive element in moral obligation, see his essay Legal and Moral Obligation in A.I. Melden (ed.), op cit supra n.7, at pp.102-3. It is interesting to note that Hart does not repeat this argument in The Concept of Law
- 14 See also H.L.A. Hart, op.cit. supra n.1, at pp.33-35; cf. Philip Mullock, Nullity and Sanction, (1974) 83 Mind 439.