**Legal Realism –**

Leiter claims that the realists were not generally conceptual rule skeptics – indeed, they did not offer a theory of law at all, but relied upon an essentially Hartian theory

they spoke about the law as a decision of a court because they were speaking about the law from the perspective of what a lawyer would say to a client, not because they were offering a theory of law

* The client is not interested in what the law actually is, but only in how a court that took the case would likely decide

But he did say that Cohen was a conceptual rule skeptic

Does one see this position (that the law is the concrete decision of a court) in Cohen article?

Green: No –

But Cohen and the realists did offer a theory of law, as we shall see

What are Cohen’s criticisms of legal rules?

* 1st criticizes certain types of legal rules
* Example of presence of a corp. as reason for personal jurisdiction
* does not provide guidance to a court because it is really the conclusion of an argument based on other (moral and factual) considerations

Is that true of all legal rules for Cohen?

* no
* Any suggestion of radical indeterminacy in law? No
* Any suggestion of appeal to judicial supremacy to say law is what a court says it is? No

he offers a prediction theory of law in which the law is reduced to patterns of official behavior and attitudes in general, not the particular decision of a court

* What is his motivation for prediction theory of law –
* reducing law to social facts
* then a court should make a moral decision about what to do given those facts
* allows the law to be more accurately described and moral judgment about whether to follow the law to be more accurate
* Cohen does not say that the law is the decision the court that gets the case will issue, but that the law is what courts in general will decide
* Notice Hart rejects the prediction theory even understood this way
* missing the internal point of view – the fact that officials point to standards (legal norms) as the reasons for their decisions rather than pointing to social facts about official practice and their consequences for morality or prudence

Notice as well

Shapiro can explain through planning theory of law why officials end their justification with legal norms rather than pointing to the moral and prudential consequences of social facts about legal practices – legal norms are plans

So can Dworkin – legal norms are associative obligations identified through the moral interpretation of legal practices – can deviate from straight moral obligations

So the realists did offer a unique theory of law, different from hart’s, Shapiro’s, and Dworkin’s

Now Greenberg’s moral impact theory of law

* Start with account of standard picture
* the content of the law is primarily constituted by linguistic (or mental) contents associated with the authoritative legal texts.
* True of Austin
* Shapiro
* is this always true of Hart?
* what about custom as a source of law?

here is one way of thinking of the SP

* it is tied to the idea that law has authority
* once there is an authority then the law is in a sense what the authority says
* that seems to be captured by the SP
* even if the law is something, like custom, that does not consist of a particular person speaking, the law is still the content of the custom
* it is, in effect, what the custom says

compare Dworkin’s theory of law

the content of the law is the set of principles that best *morally justifies* past legal and political practices.

Notice that no direct relationship betw lang and legal content

this violates the standard procure

and it does not have a authority

Notice that the principles that best fit and justify legal practices can diverge from morality

Now moral impact

The legal obligations are those moral obligations created by the actions of legal institutions.