we now have an egg theory – at the apex of a legal system there is a rule authorizing a lawmaker

but what brings this rule (or norm) among officials into being –

keep in mind Hume’s challenge – cannot derive an ought only from an is

1. What are different senses of a norm (ought)?
   1. P. Green draws arrow on board—is it an ought?
      1. in one sense yes – it is something that you can fail to abide by
      2. can think of it as an abstract object – a standard of behavior without there necessarily being a reason to abide by that standard
      3. Is that what the law is? An abstract object just telling you to do something, without our having any reason to abide by it?
      4. if that were the case Hume’s challenge would not be a problem – an ought in this sense can be fully descriptive
   2. probably an ought in a stronger sense -
      1. hypothetical Imperative? these are objective matters of fact
         1. If…then Imperative
         2. *if* you want to avoid accidents *then* drive on the right
         3. *If* you want to dispose of a body, *then* you ought to put it in a tub with lye, then hydrochloric acid, then check for dental fillings
      2. Is this what the ought of the rule of recognition is?
      3. Completely verifiable, dependent on facts in the world
         1. these oughts are not normative in the sense mentioned in Hume’s challenge either
            1. you can reason from the descriptive to a hypothetical imperative
         2. but the ought of the hypothetical imperative depends upon your desires – without the relevant desires, no ought
         3. eg if you want to get into accidents then you have no reason to drive on right
   3. Distinguish hypothetical imperatives from Categorical Imperatives (eg morality)
      1. Non-hypothetical
      2. You ought to keep your promises, and that isn’t dependent on your desires
         1. you don’t get out of the obligation by saying that you don’t want to keep your promises
      3. Moral norms create ends: when you see and recognize them, they motivate you to act in accordance
      4. These norms obligate independent of people’s desires
         1. People may not want to act morally, but they are still obligated
      5. these are the oughts that Hume thinks cannot be derived from the descriptive
      6. notice how strange these moral norms are – they give us motivations
         1. what science (whether physical or social) describes is instead motivationally inert –
         2. they don’t appear in science
      7. some conclude that all moral judgments are false – talking about stuff that does not exist
      8. others use… expressivism
      9. moral judgments are not talking about anything at all – so are neither true nor false
      10. “you ought to take your hat off in church” is not the description of a normative fact – it is the expression of the positive attitude toward people taking their hat off in church
      11. it is like “hooray taking your hat off!”
      12. there is a connection between normative judgment and motivation not because you are describing some weird normative fact, the recognition of which motivates you, but simply because you are expressing the desire that motivates you without describing anything at all.
      13. this avoids Hume’s challenge – no reasoning from descriptive to normative facts because there are no normative facts made in normative judgments
   4. Hart’s view of the ought of social rules uses expressivism
      * 1. the ought used by participants is not a hypothetical imperative – it can be categorical
      1. but it is not a description of a normative fact
      2. there are no normative facts at all
      3. instead there are simply normative judgments which are the expression of our attitudes toward descriptive facts
         1. Tends to relativism? 🡪 different attitudes could lead to different oughts?
         2. Does expressivist have to admit that different attitudes would lead to different oughts?
         3. Not necessarily🡪 don’t have those different attitudes right now
         4. Right now I don’t like torturing kittens, so I will right now say that a world where I like torturing kittens is a bad world
         5. what my negative attitude is toward is kitten-torturing- I right now hate all worlds in which it exists even if I like it in that world
   5. so Hart tries to explain the normativity of social rules (including the Rule of Recognition) through expressivism
   6. What are the attitudes officials have towards the Rule of Recognition – Hart says:
      * 1. Lots of reasons: morality, paycheck, traditions, etc.
        2. Not fear of sanctions because then it’s not a social norm 🡨 Hart
      1. but there is a problem – can we explain why officials criticize one another for not abiding by the RoR if their reason to abide by the RoR is to get a paycheck – how can the fact that I think I should abide by the RoR to get a paycheck justify your abiding by it?
      2. Officials have to think that they’re morally obligated because that’s the only thing that can explain their criticisms of each other – this is a common criticism of Hart
         1. doesn’t mean that law is based in morality
         2. Law doesn’t depend on morality, it depends on moral attitudes
         3. these are the attitudes expressed in the normative judgments made by participants in a RoR