



Debunking Social Rules

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Structure

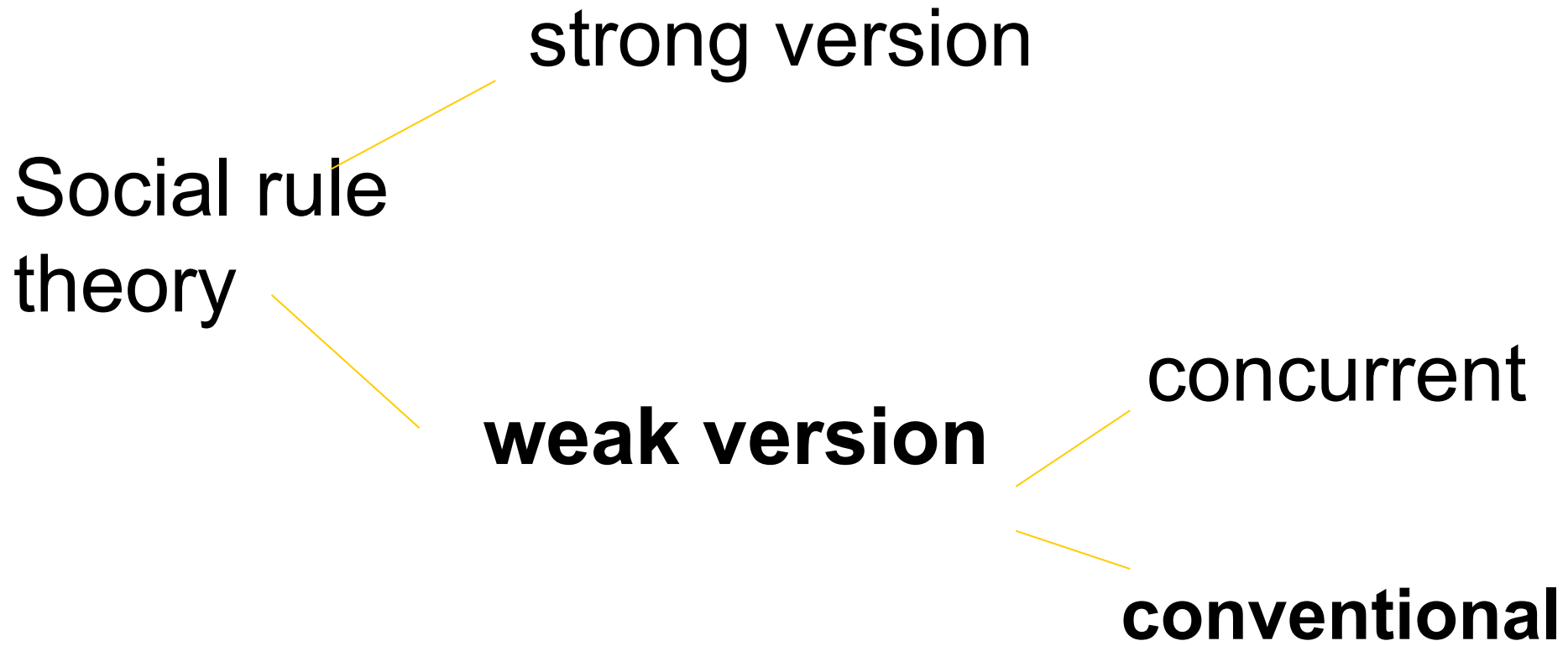
- Dworkin's critique of the *deficiency* of rule of recognition
- Dworkin's critique of the *nature* of rule of recognition as social rules

The Skeleton of Legal Positivism

1. The Pedigree thesis.
2. Judicial discretion thesis.
3. Legal obligation thesis:
legal obligation → legal rule

Dworkin's reconstruction of social rules

- duty → social rules
- social rules → practice condition
- practice condition → concordant actions of social members
- Thus, duty (of judges) → concordant actions of social members (judges)



Strong and Weak Social Rules

- Strong social rules: *whenever* anyone asserts a duty he must be understood as presupposing the existence of a social rule and signifying his acceptance of the practice the rule describes.
- Weak social rules: it is simply *sometimes* the case that someone who asserts a duty should

Strong and Weak Social Rules

- Dworkin's step 1: If the social rule theory is to be plausible, it must be weakened to the ***weak*** version.

Concurrent and Conventional Morality

- concurrent morality: a community displays a concurrent morality when its members are agreed in asserting the same normative rule, but they do **not** count the fact of that agreement as an essential part of their grounds for asserting that rule.
- conventional morality: the agreement of asserting/acceptance the same rule is the basis of the rule.

Dworkin's step 2: The social rule theory must be furthermore confined to conventional morality: only conventional morality relies upon people's practice.



The Social Rule Theory and Conventional Morality

- The social rule theory cannot explain the fact that people may still disagree about duty's **scope**.
- Moreover, judges may still have a duty to decide a case, in spite of the fact that no social rule imposes that duty.

The Social Rule Theory and Conventional Morality

- Most importantly, social rule theory correctly identifies yet misleadingly characterizes the relationship between social practice and normative judgments:

Social rule theory assumes the normativity of social rules from:

- A. the concordant action of social members, e.g., everyone gives a red-bag for wedding
- B. the consensual attitude of social members, e.g., everyone agrees that I should give a red-bag, aka it's wrong to do the otherwise. Hence, I should give away a red-bag too.

Q: whether the fact that everyone does

social practice justify
values,  **Rules/laws**

Economic concerns,
etc



Dworkin's step 3: Even the social rule theory confined within conventional morality still fails as it cannot explain *all* conventional morality.

