

WORKSHOP

COLLECTIVE

DECISION-MAKING

AND THE RULE OF LAW

8-9 JULY 2022

In Defense of a Substantive Conception of the Rule of Law

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Abstract

The rule of law has implications for how we evaluate in practice the acceptability of various legal systems. Yet the philosophical debate about the appropriate content of the rule of law has come to a dead end. The most popular view, one shared by Joseph Raz, HLA Hart, and others is that the rule of law must embody at most formal or thin rule of law criteria. I want to defend a conception of the rule of law which includes substantive individual rights as the appropriate way to understand the ideal of the rule of law and the ways in which it should serve as an evaluatory benchmark for various legal systems. I will argue that the only defensible conception of equality before the law, an essential formal criterion of the rule of law, is one that includes substantive rights such as sovereignty rights, freedom of speech, and due process rights among others.