



**Universität
Zürich** ^{UZH}

Rechtswissenschaftliches Institut

Introduction to Legal Philosophy and Legal Theory

Chair of Philosophy and Theory of Law, Legal Sociology and
International Public Law, Prof. Dr. iur. Matthias Mahlmann

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Lecture Plan

- A sample case
 - Some problems of legal philosophy
- A map of legal philosophy
 - Three kinds of theories
 - Some sample theories
- Law, morality, and their relationship
- Moral epistemology and moral ontology, relativism and universalism
- Some theories of justice and human rights



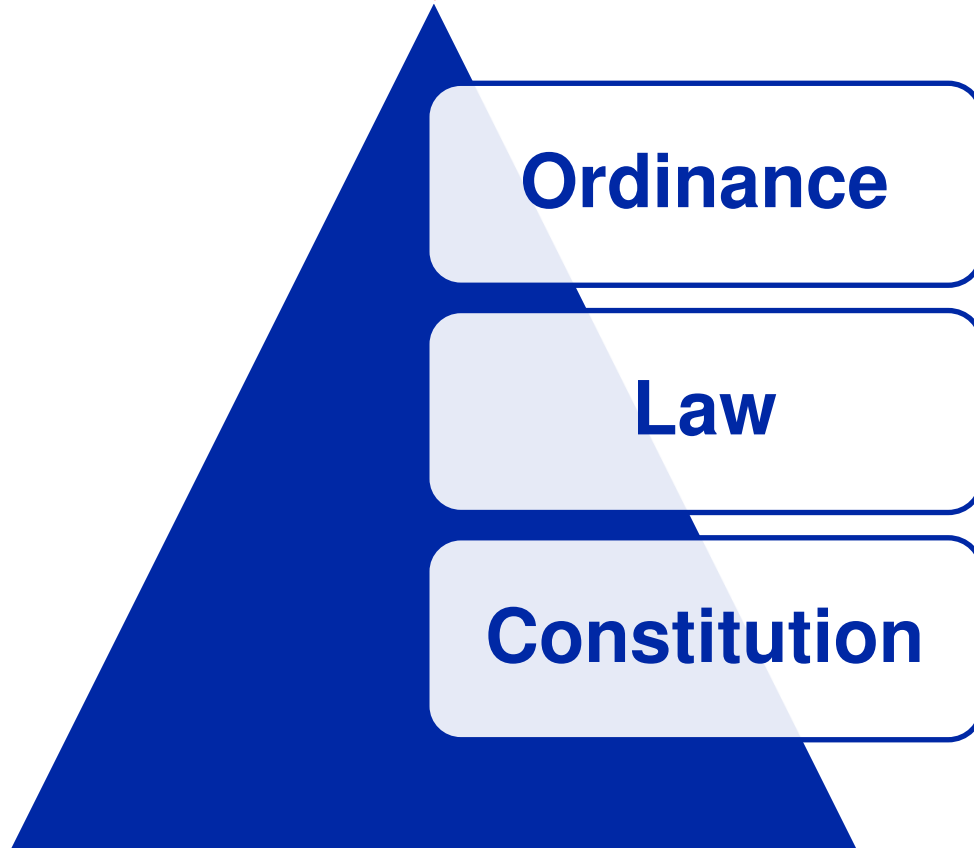
Polizei büsst in Zürich Altstetten Velofahrer auf dem Trottoir

In Zürich Altstetten hat die Polizei einen Velofahrer mit 40 Franken gebüsst, weil er zum Parkieren aufs Trottoir gefahren ist.



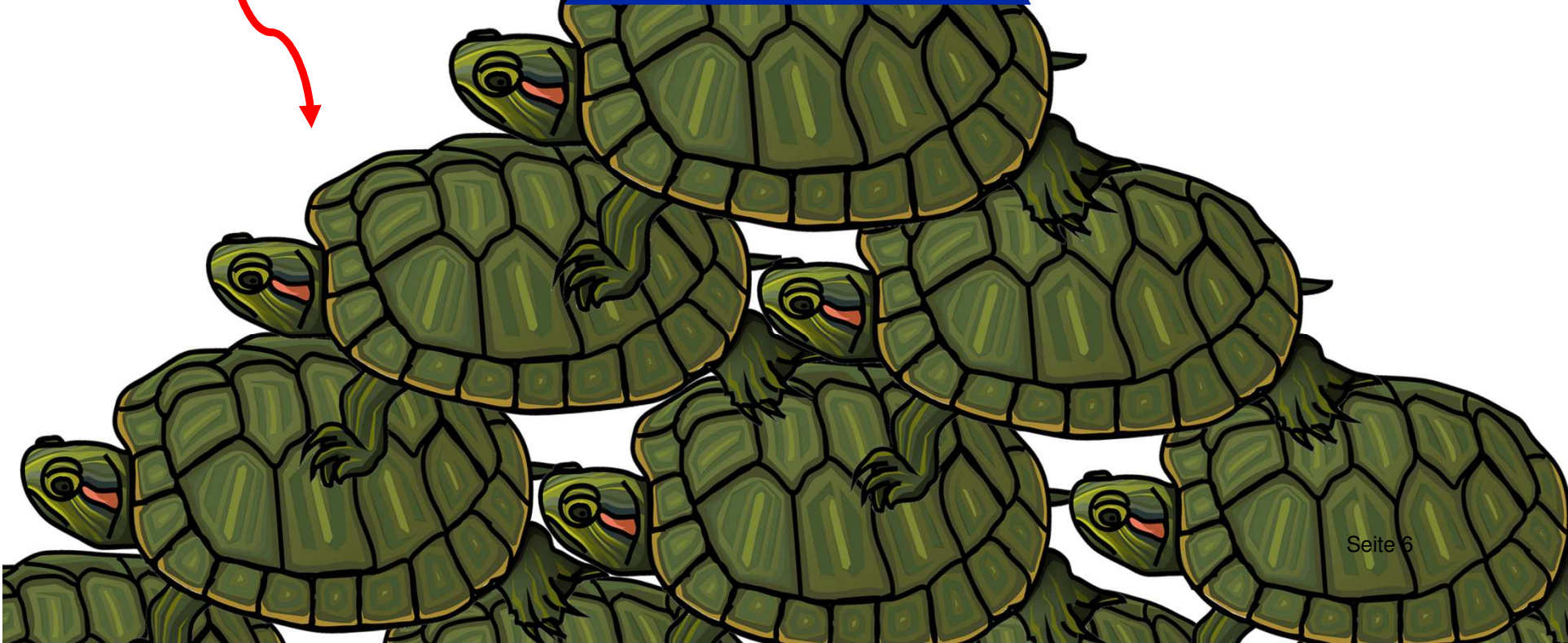
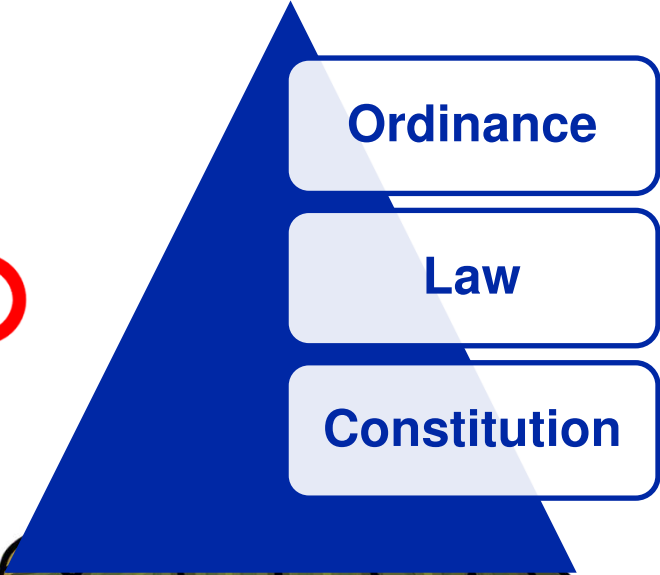
Ein Velofahrer veranschaulicht auf Twitter die Strecke, für die er gebüsst wurde. - Twitter/Mario von Rickenbach

my ☠️💣😞
parking ticket!!



???

Why does it matter?
Coercion!



Hypotheses about causal connections between a phenomenon requiring explanation and a factor which explains it.

Philosophical, logical, structural, linguistic [...] analysis of concepts and relationships in order to understand them better.

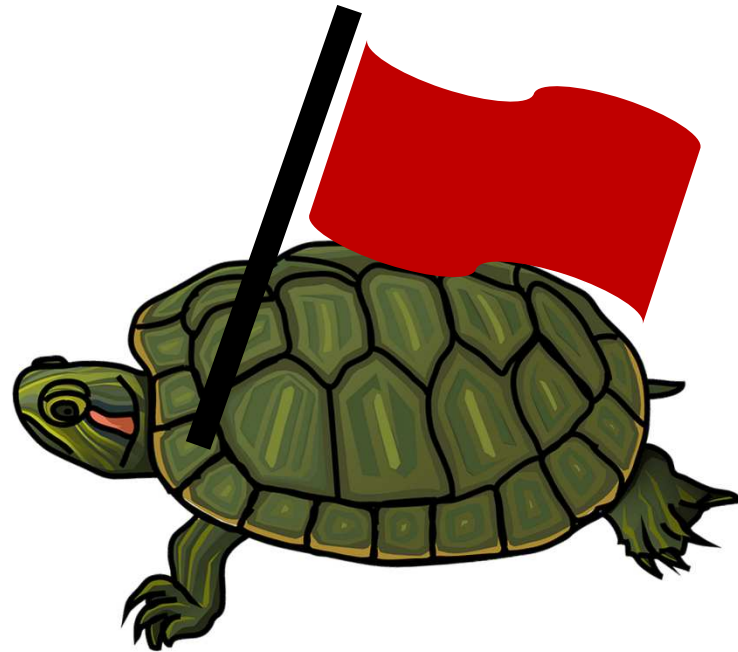
Explanatory

Analytical

Normative

Evaluative or prescriptive theories, concerned with what one ought to do, implying norms, rules, obligations, values, goals, goods etc.

The social classes in possession of the means of production use the law to oppress the working class, e.g. by passing parking regulation. The law is just the superstructure of the economy.



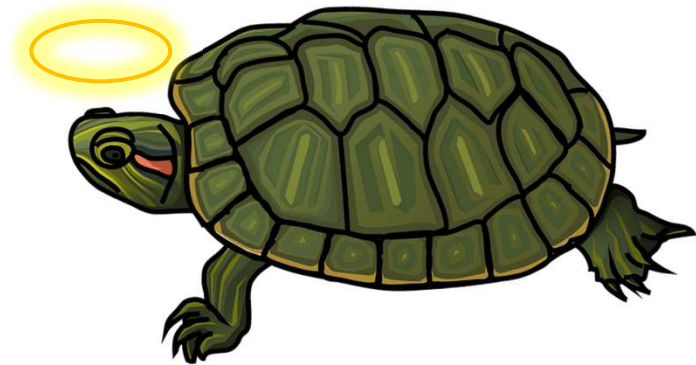
Explanatory

Analytical

Normative



Men should live so as to please their maker, as outlined in the holy scripture. In God's kingdom, He rules over everything. Thus monarchy, being the image of heavenly order, is the right form of government.



Explanatory

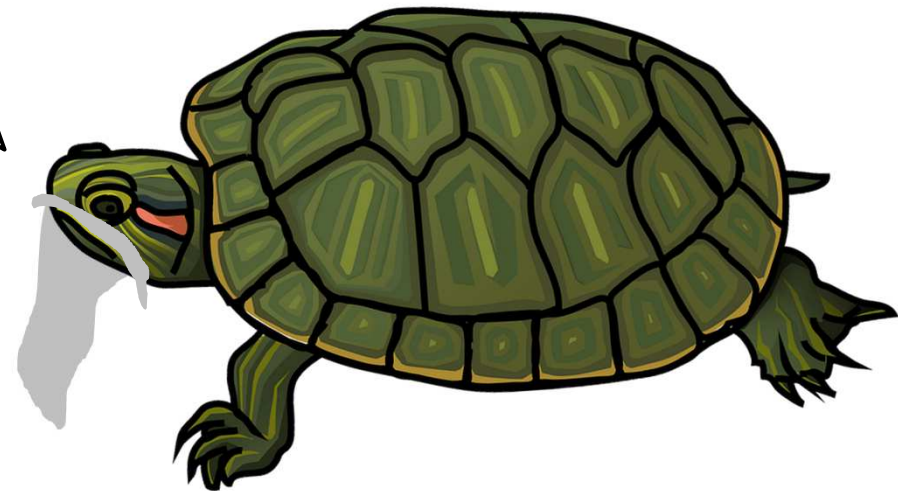


Analytical

Normative



It is functional for a society to be organised by way of law. Societies organised in this way are more efficient in using their scarce resources. Thus, they prevail over other, less efficient societies, and their way of organisation comes to dominate.



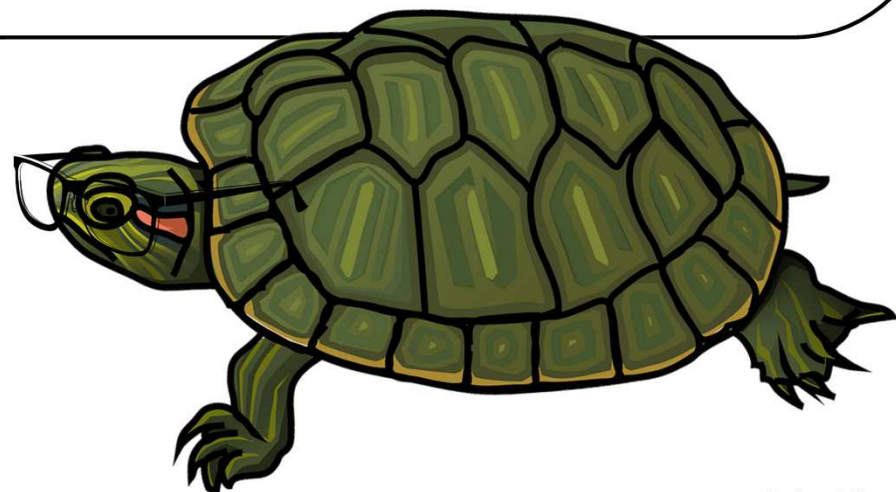


Explanatory

Analytical

Normative

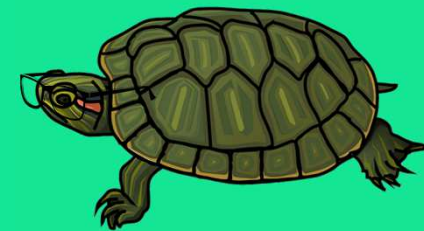
To my duty to pay the fine corresponds a right on the part of the state to claim payment of my fine. Moreover, the statement “It is prohibited to park here” means the same as “It is obligatory not to park here.” And both are true under the same conditions as the statement “It is not permitted to park here”. So, “obligation”, “prohibition” and “permission” are interdefinable.



Explanatory



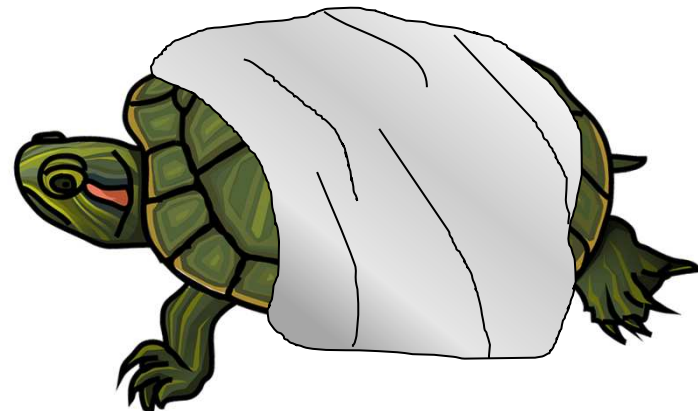
Analytical



Normative



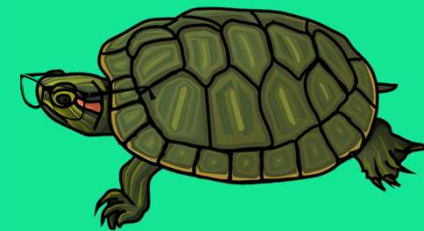
Every person has certain rights. Respecting these rights requires giving them a say in all matters which concern them. Everyone has the same basic rights. Thus, they should all have an equal say on their common affairs, and the same opportunities to get into leadership positions in their society. A democratic system with equal and universal franchise and fair equality of opportunity respects these basic rights. Hence, it is a just system of government.



Explanatory



Analytical



Normative



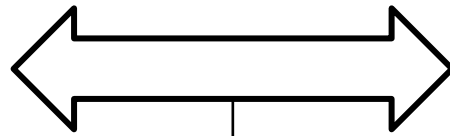
Law

- regulates external behaviour
- enforced by sanctions

Morality

- experienced as mandatory by individuals
- effective only through influence on agents' motivation

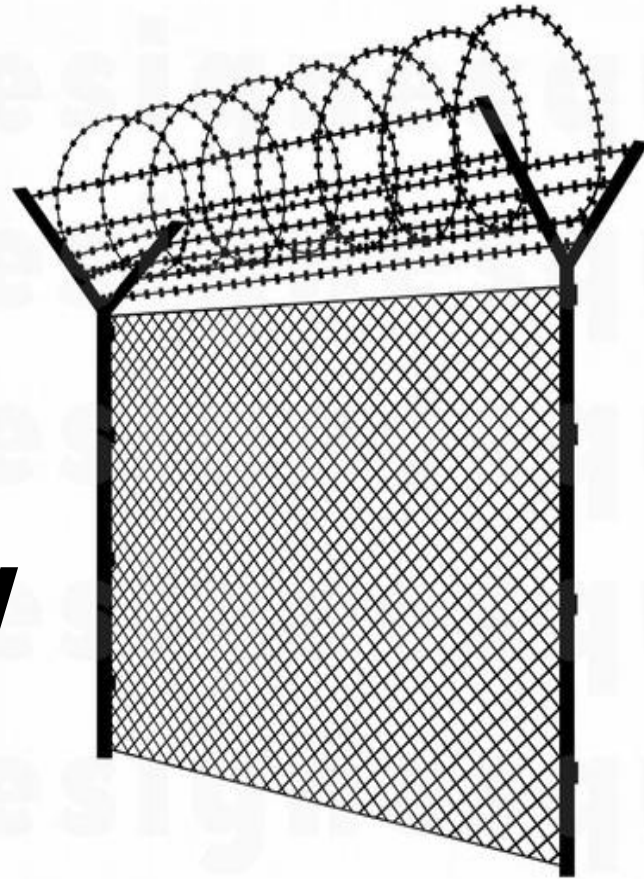
Law



Morality

Validity
Interpretation

Law



Morality

- Law valid independently of its legitimacy
- Interpretation independent of ethical background theories
- E.g. Legal Positivists H. Kelsen, H.L.A. Hart

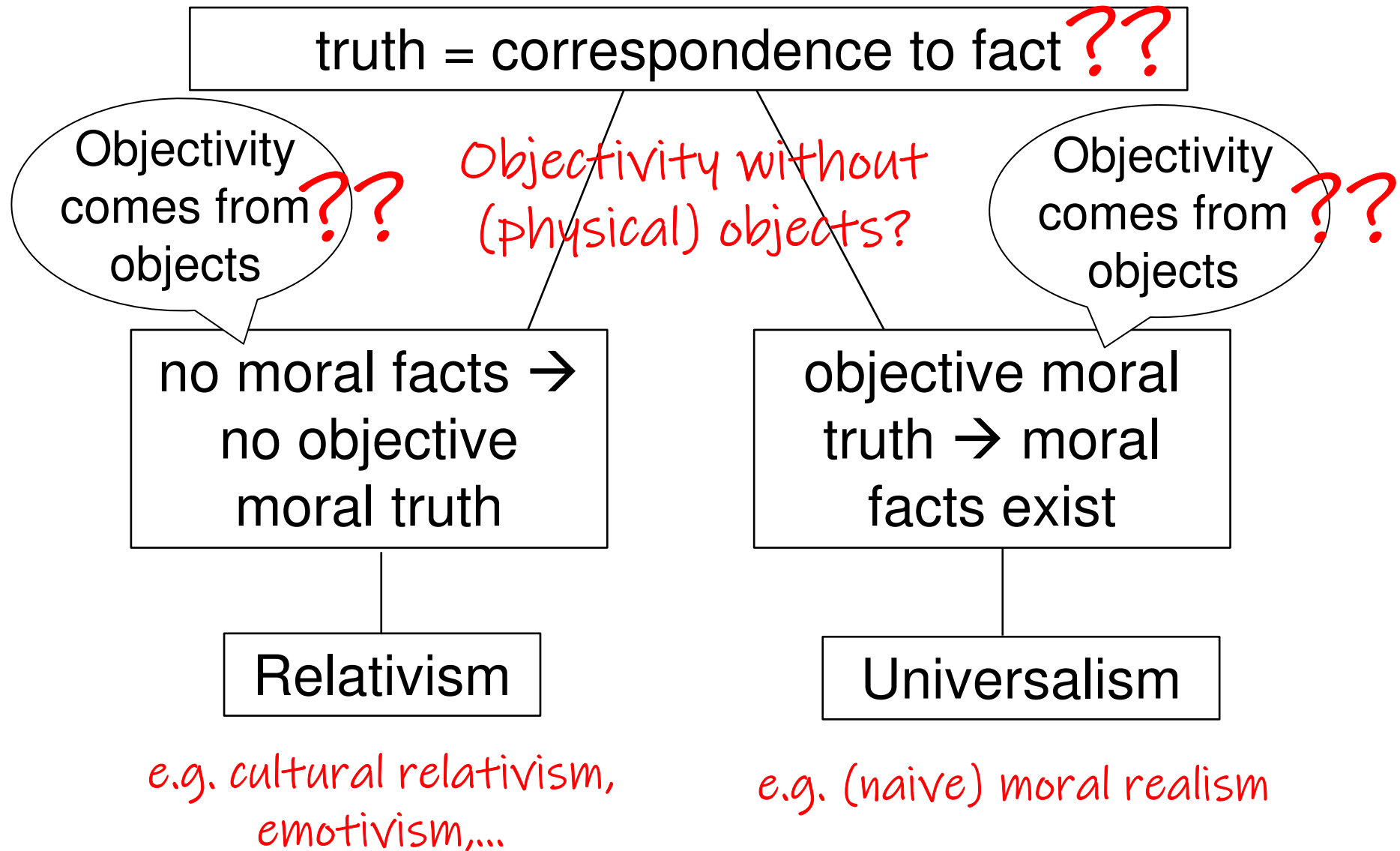
Law Morality

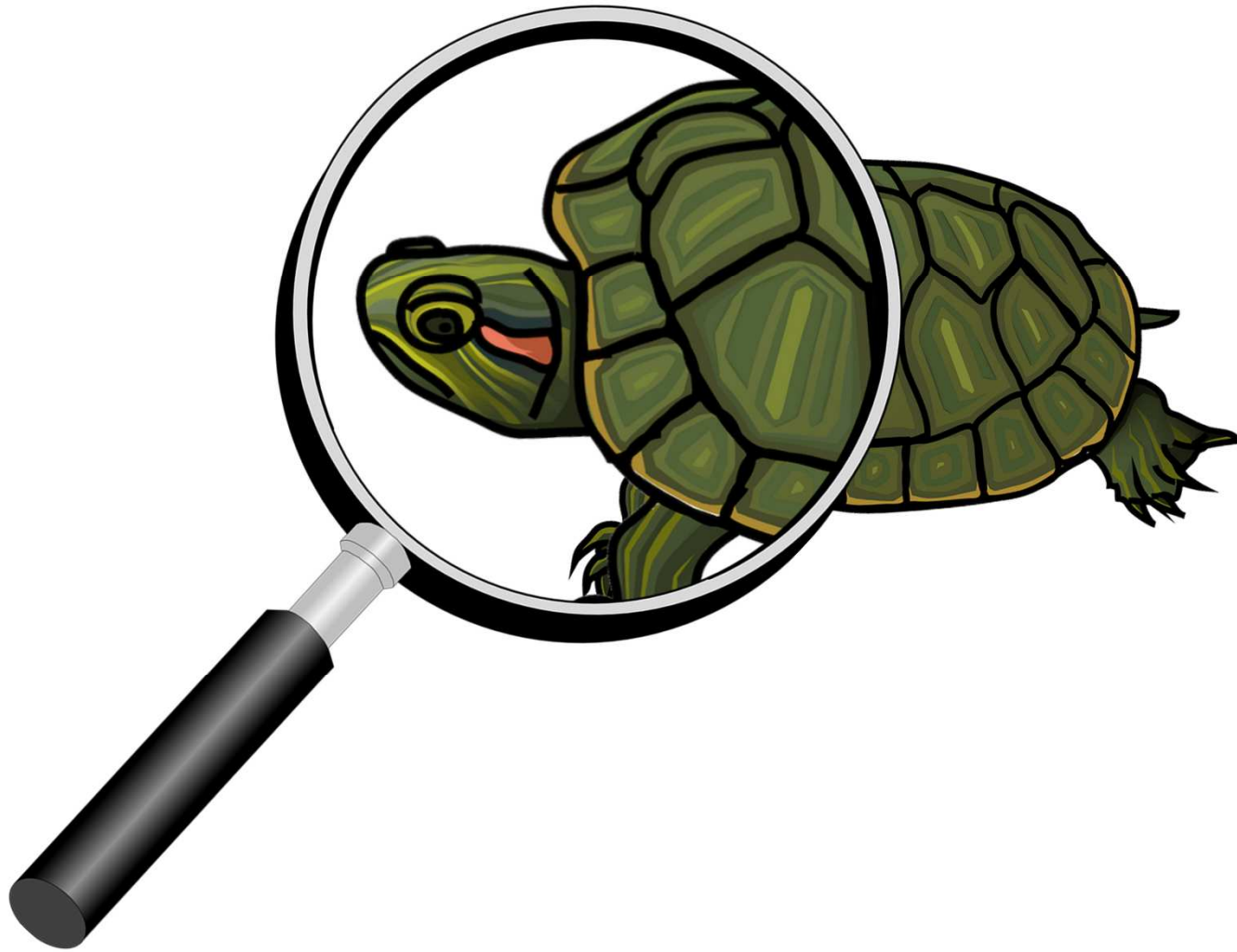
- Law is integrated with morality
- Legal validity depends on legitimacy
- Interpretation depends on ethical background theories
- E.g. Ronald Dworkin

Moral epistemology, moral ontology, objectivity

- Epistemology
 - How do we get to know things? What can/can't we know?
 - What makes a statement true or false?
 - Science produces objectively true knowledge
 - Empirical method
 - Facts as truth-makers
 - Correspondence theory of truth
 - Ontology (cf. "entity")
- Moral epistemology
 - How do we get to know what is right and wrong?
 - In virtue of what is a normative statement true or false?
 - No observation, no experiments?
 - Moral entities for statements to correspond to?
 - Moral ontology
 - Objective truth?

Moral epistemology, moral ontology, objectivity





Theory of Justice

- Foundations in antiquity (Socrates, Plato, Aristotle)
 - Objective and universal
 - Justice is a matter of insight, not of individual preferences or pleasure
 - Some things are just/unjust or good/evil independently of whether an agent thinks so
 - What is just?
 - Justice – a distribution problem
 - Justice – a matter of principles
 - Give to everybody their due (“suum cuique”)
 - Proportional equality
 - The contentious issue
 - Criterion of distribution
 - Performance? Need? Humanity?

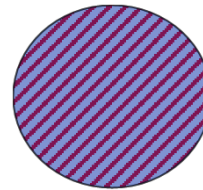


Aristotle, 384-322 BC

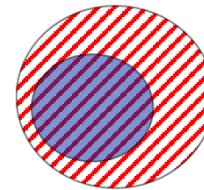
Theory of Justice (continued)

- Justice as the foundation of the construction of society
 - Distributing basic rights, liberties, opportunities ~ criterion
 - Democracy? Oligarchy? Aristocracy? Tyranny?
 - Plato's hierarchical vision?
- Justice / ethically good life related to happy life

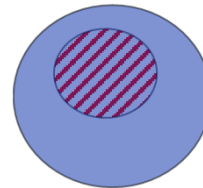
• *Justice* ↔ *Happiness* ?



• *Justice* → *Happiness* ?



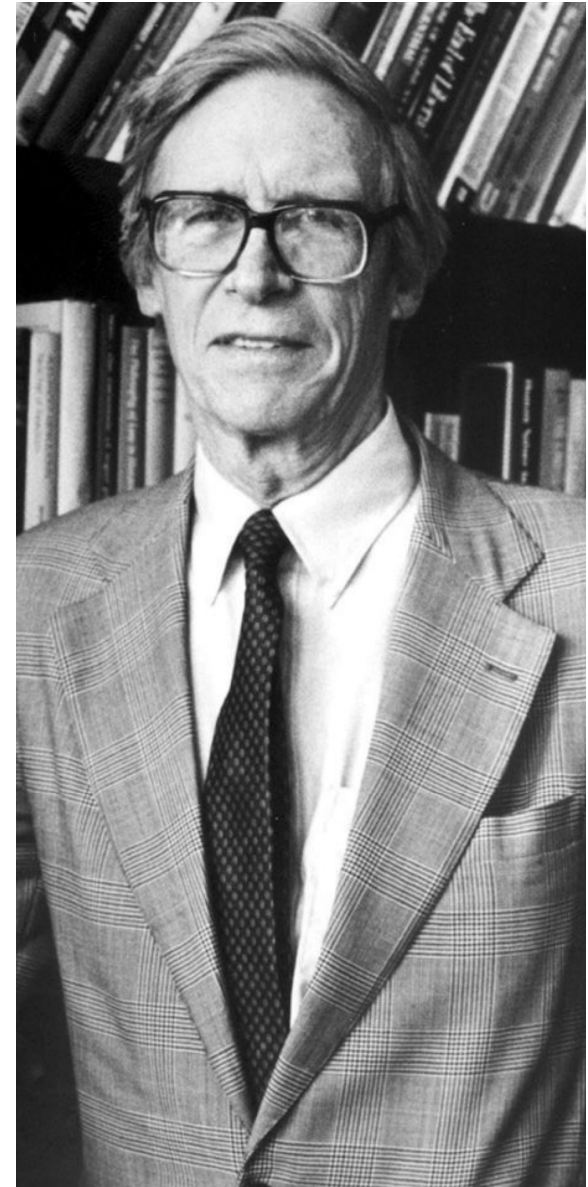
• *Happiness* → *Justice* ?



- Socrates: It is better to suffer injustice than to do injustice
 - The intrinsic good of an ethical life
 - The intrinsic good of a legitimate legal order

Theory of Justice (continued)

- Modern theory: John Rawls
 - Contract theory
 - Veil of Ignorance
 - Two principles of justice:
 1. Maximal, equal, universal freedom
 2. a) Unequal distribution of wealth and income only if this is to the benefit of those worst-off
b) Equal access to economic opportunities and public office



John Rawls, 1921-2002

A Concept of Justice

1. Same standards for everyone
2. ... to be applied equally
3. Equality as default principle
4. Reasonable determination of criteria of distribution
5. Preservation of equal dignity as human being

Theory of (Human) Rights

- Roots in natural law tradition
- ... and social contract theory
- Enlightenment, practical reason and dignity
- Kant's categorical imperative
- The idea of universalisation:
"Act only in accordance with that maxim through which you can at the same time will that it becomes a universal law."
- The principle of humanity:
"So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means."



Immanuel Kant, 1724-1804

Theory of (Human) Rights (continued)

- The concept of right:
„Right is therefore the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom.“
- One natural subjective right:
„Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only right belonging to every man by virtue of his humanity.“



Immanuel Kant, 1724-1804

Contemporary Human Rights Theory

- Why human rights?
 - Protection of agency and personhood?
 - Interests or needs?
 - Capabilities?
- A promising way forward:
 - A theory of basic universal human goods
 - Life, respect of the person, bodily integrity, freedom, legitimate equality
 - A political theory of realising basic universal human goods
 - Normative principles
 - Justice
 - Solidarity

