



**University of  
Zurich** <sup>UZH</sup>

**Faculty of Law**

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# **Introduction to Legal Philosophy**

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

Dr. des. Pascal Meier, RA, MSc (LSE)

# 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



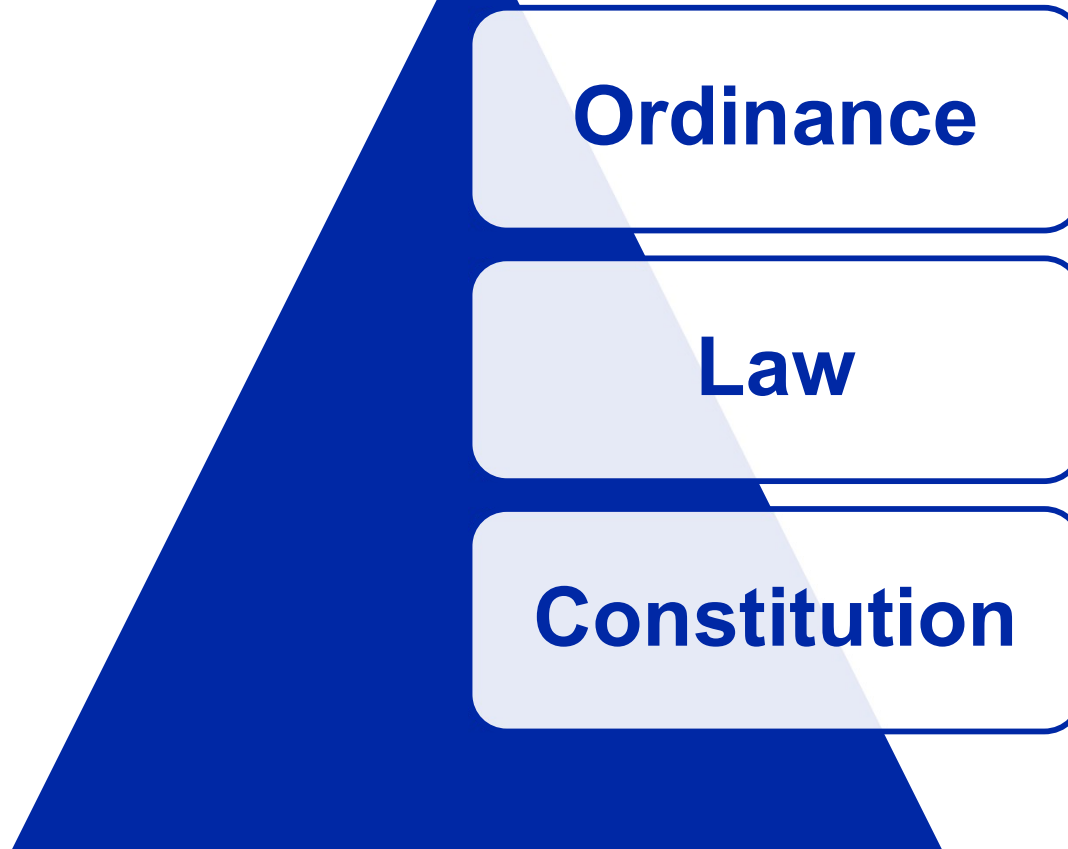
# Polizei büsst in Zürich Altstetten Velofahrer auf dem Trottoir

*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!!



???

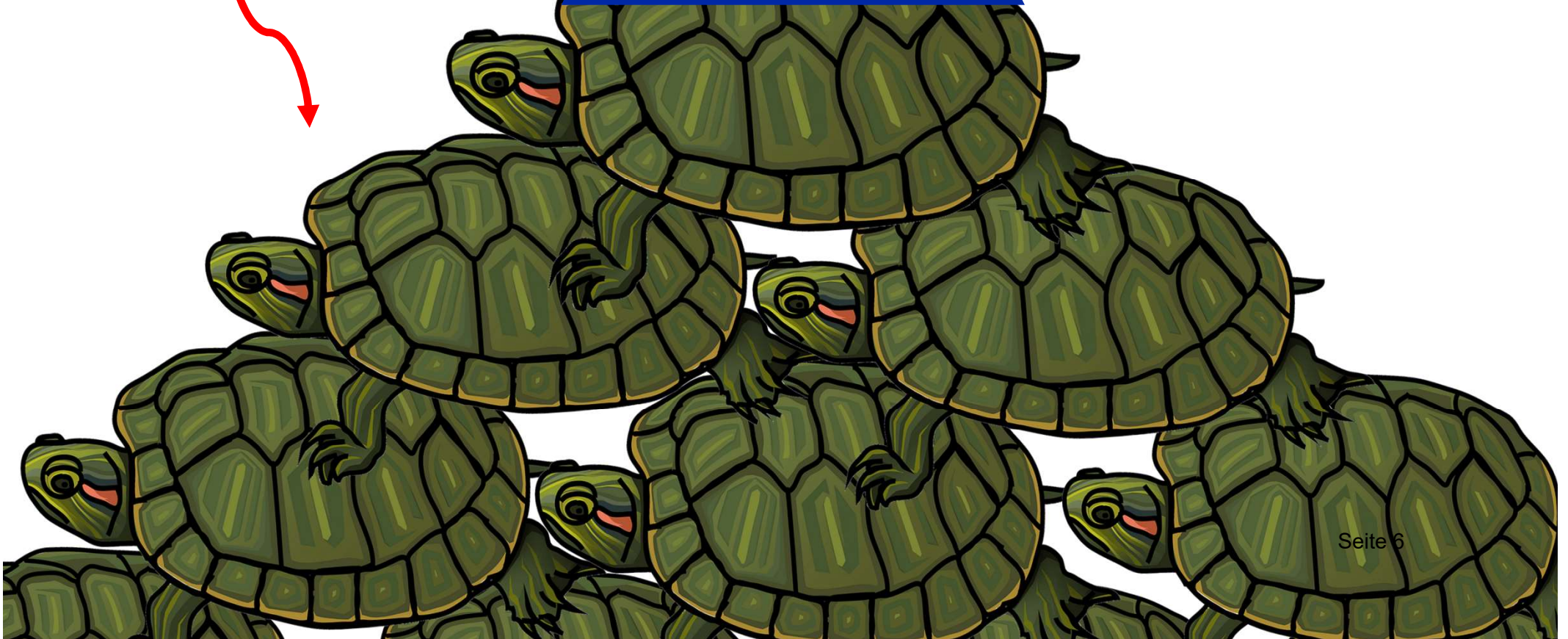
Why does it matter?  
Coercion!



Ordinance

Law

Constitution



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.

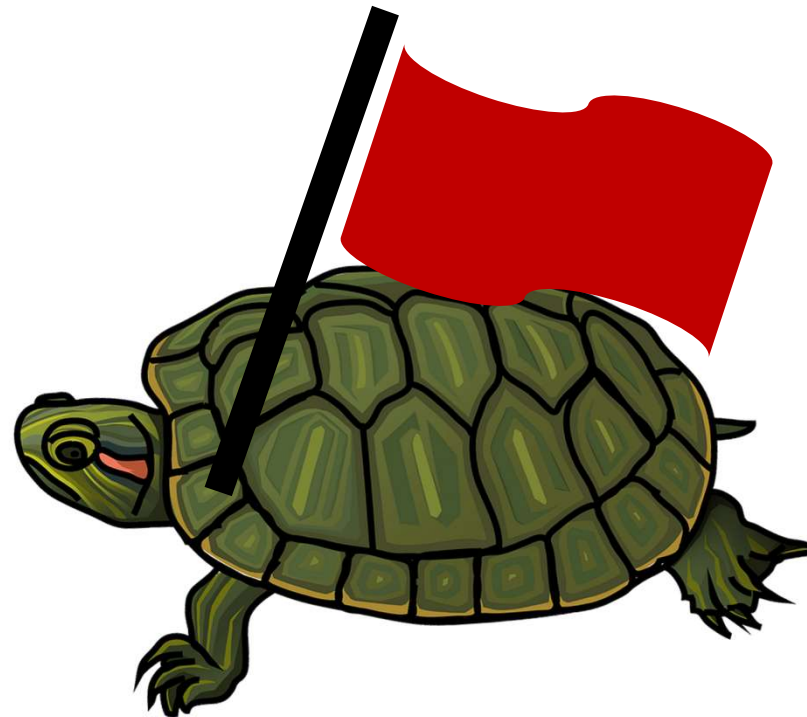
**Explanatory**

**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 control the working class, e.g. by passing parking regulation. The law is just the superstructure of the economy.

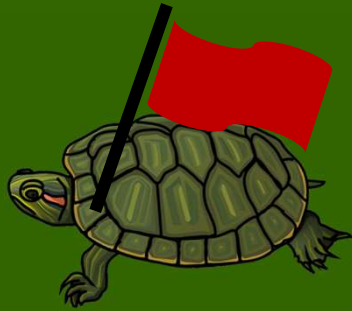




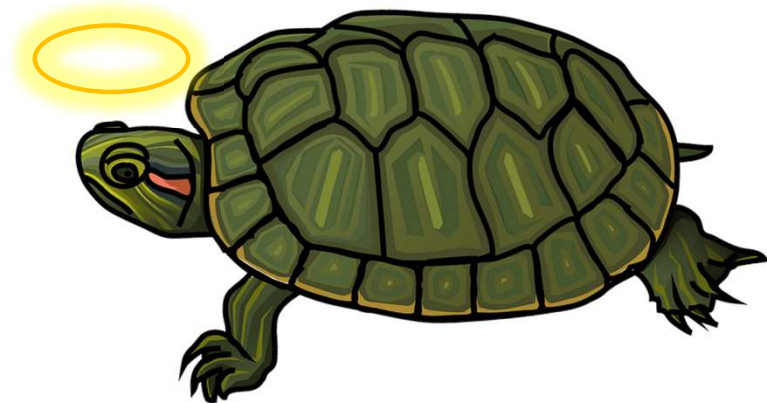
Explanatory

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

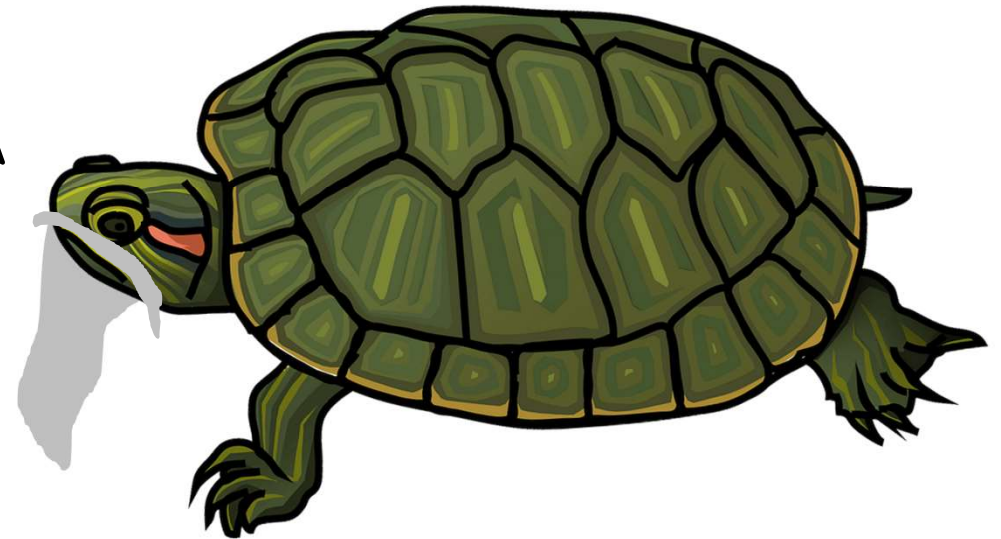


Analytical

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.



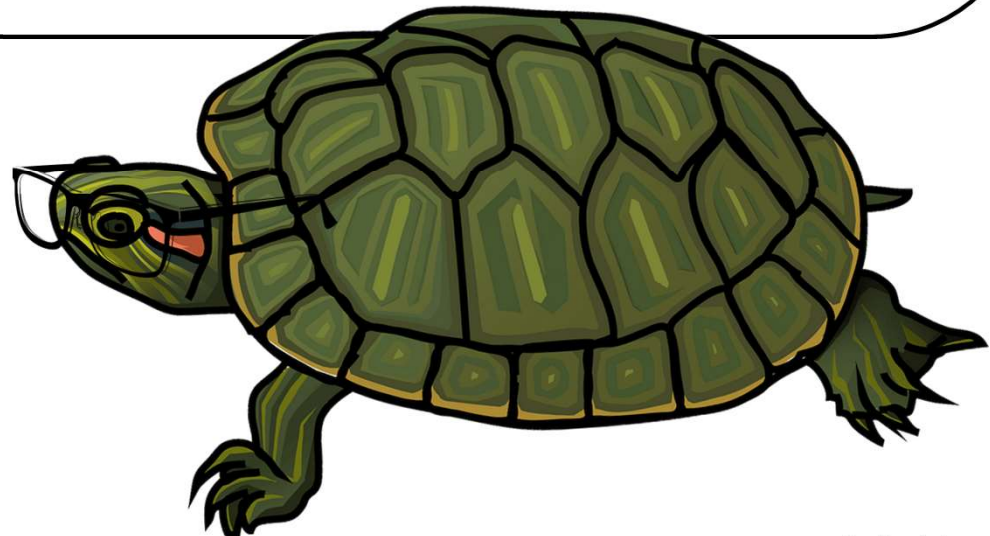


Explanatory

Analytical

Normative

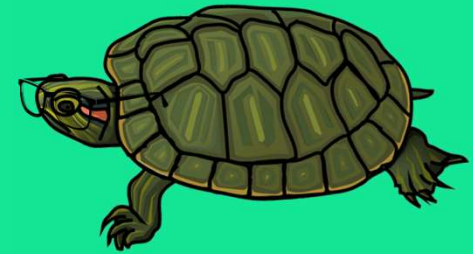
To my *duty* to pay the fine corresponds a *right* on the part of the state to claim payment of my fine. Moreover, the statement “It is *prohibited* to park here” means the same as “It is *obligatory* not to park here.” And both are true under the same conditions as the statement “It is not *permitted*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



Explanatory



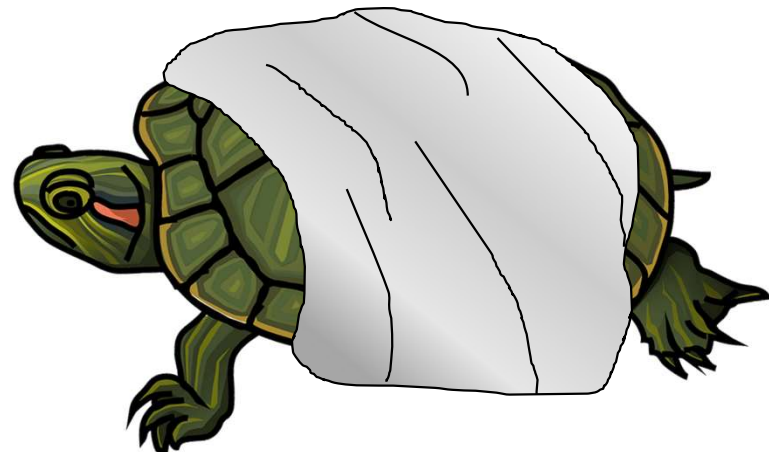
Analytical



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.

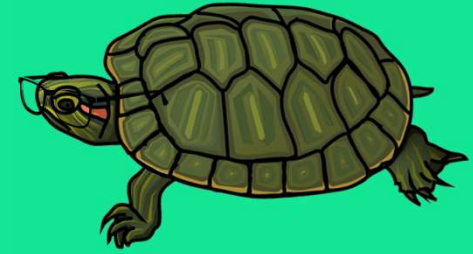




Explanatory



Analytical



Normative



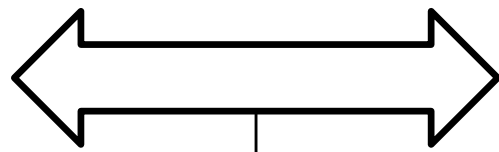
- regulates external behaviour
- enforced by sanctions

# Law

# Morality

- experienced as mandatory by individuals
- effective primarily through influence on agents' motivation, not necessarily enforced

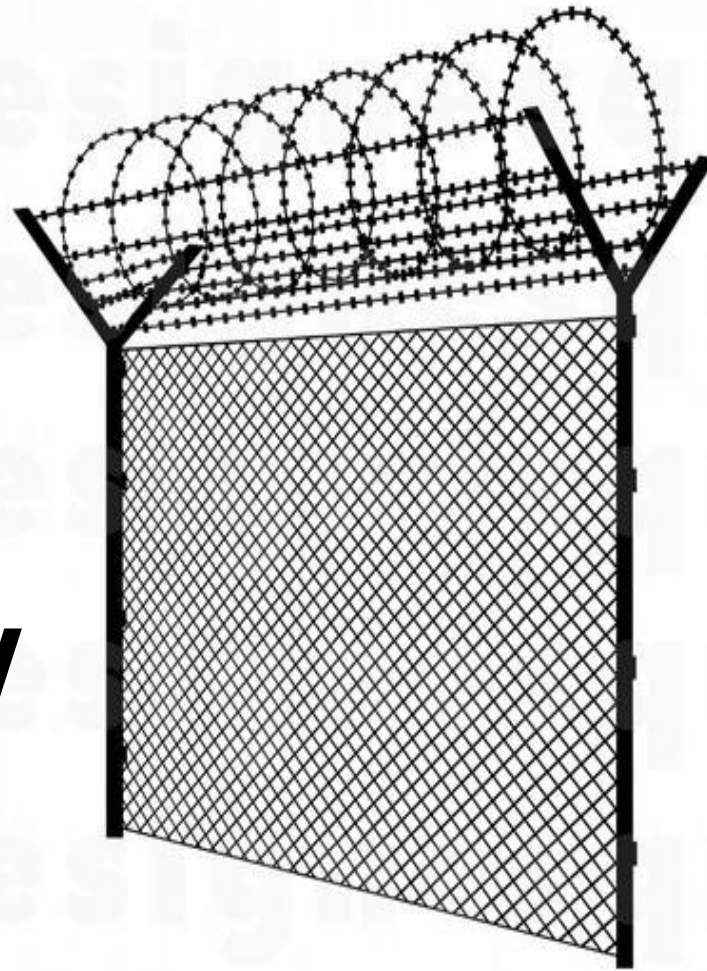
**Law**



**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

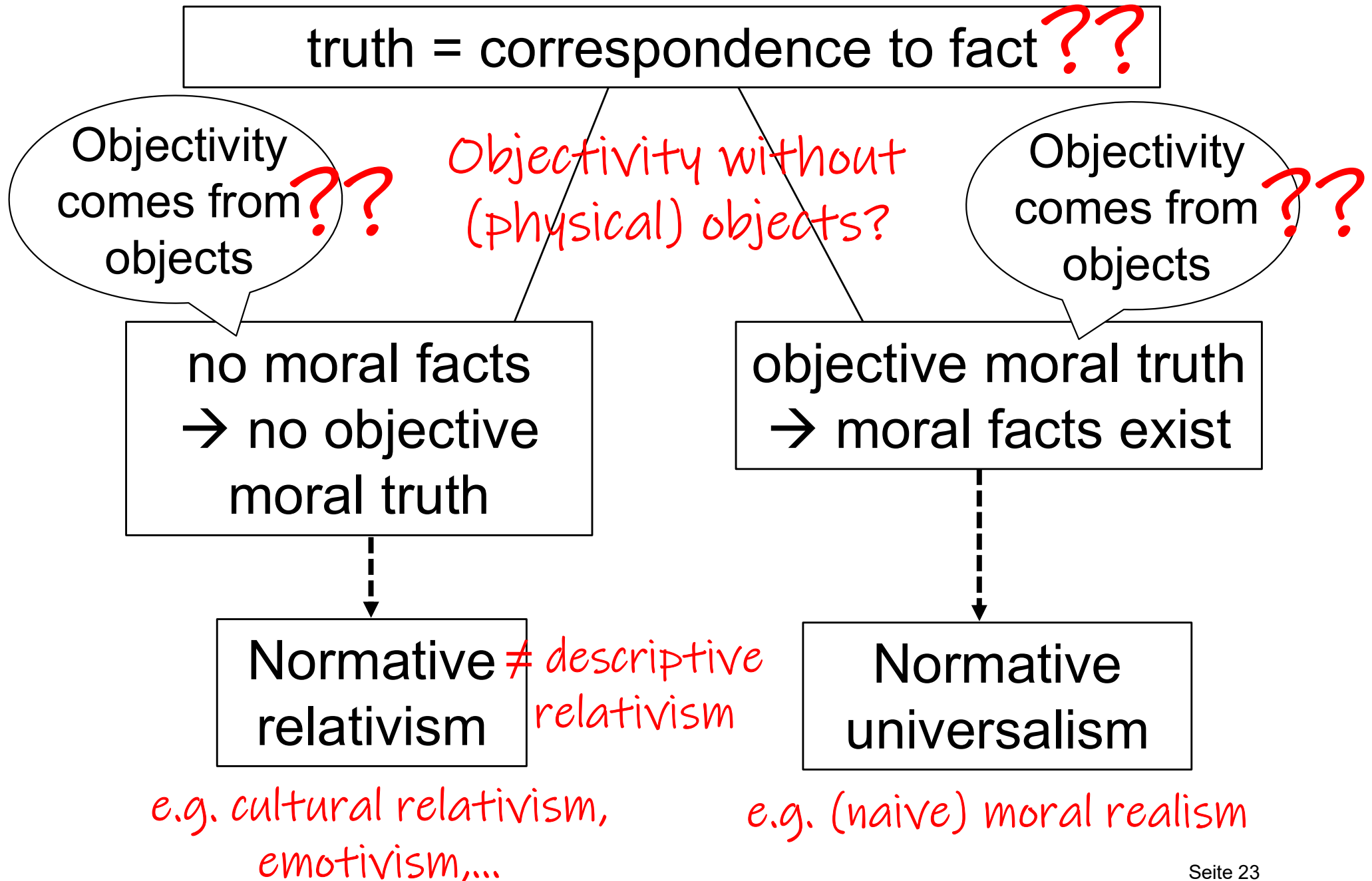
# Law Morality

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

# 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 / refer to?
      - Moral ontology
  - Objective truth?

# Moral epistemology, moral ontology, objectivity

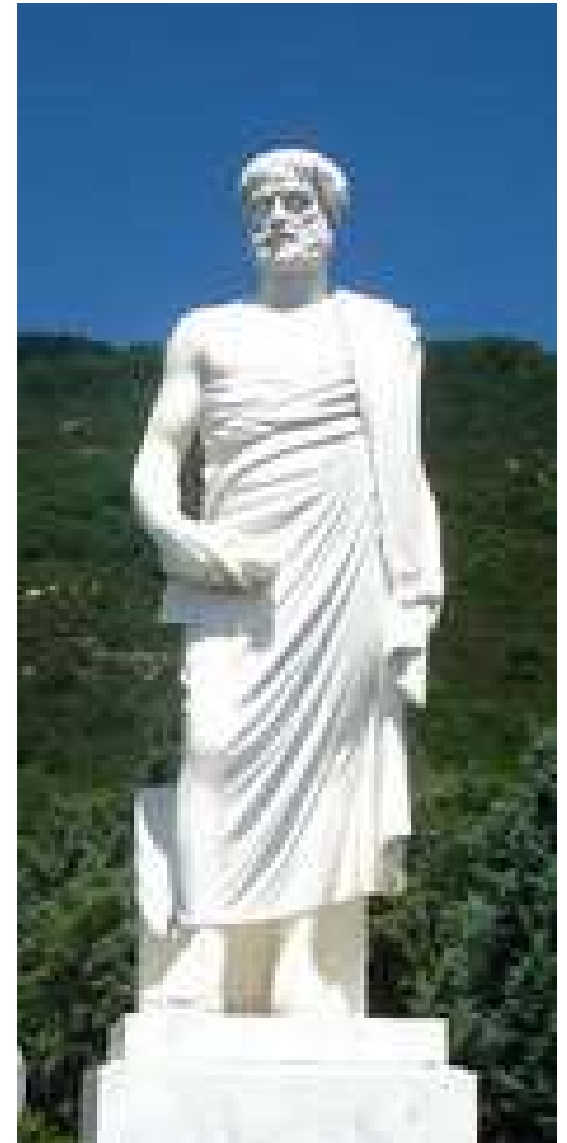






# Theory of Justice

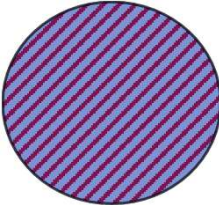
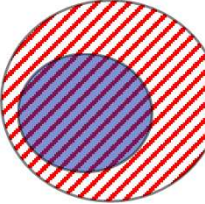
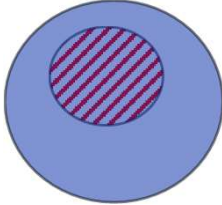
- Foundations in antiquity (Socrates, Plato, Aristotle)
  - Objective and universal
    - Justice is a matter of insight, not of individual preferences or pleasure
    - Some things are just/unjust or good/evil independently of whether an agent thinks so
  - What is just?
    - Justice as a distribution problem
    - Justice as 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)

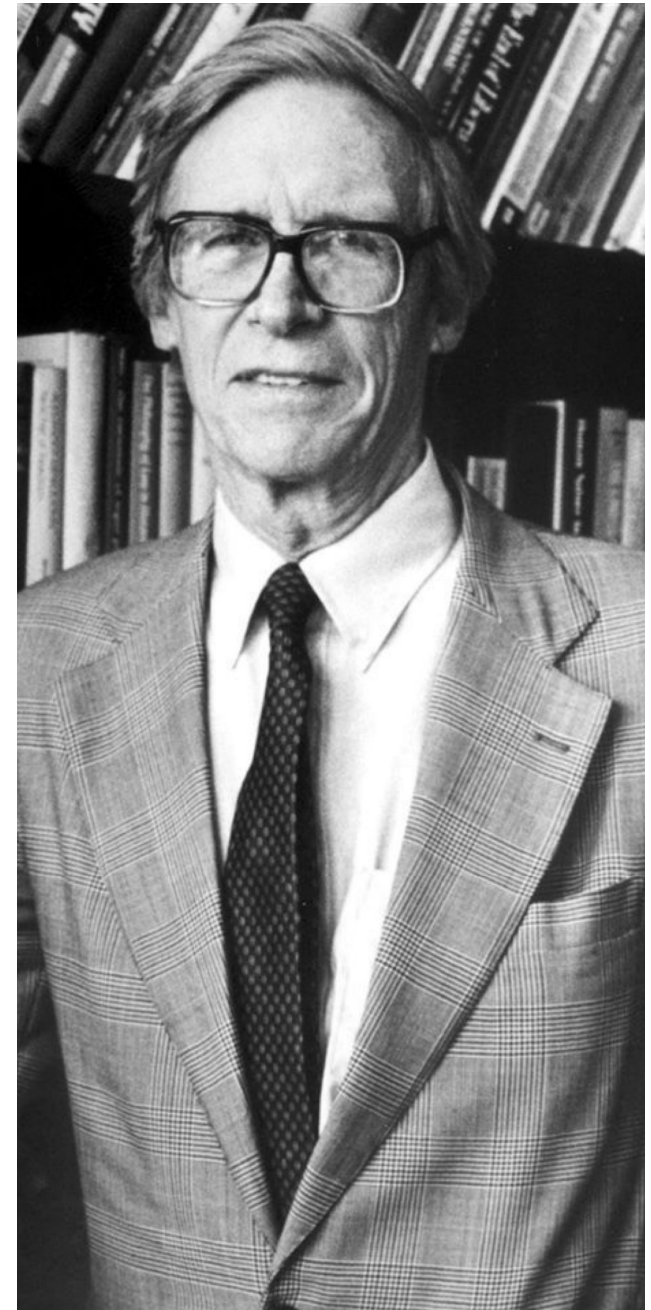
- Justice as the foundation of the construction of society
  - Distributing basic rights, liberties, opportunities ~ criterion
  - Democracy? Oligarchy? Aristocracy? Tyranny?
  - Plato's hierarchical vision?
- Justice / ethically good life related to happy life

- *Justice* ↔ *Happiness* ? 
- *Justice* → *Happiness* ? 
- *Happiness* → *Justice* ? 
- *Justice* ⇝ *Happiness*

- 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
  - Social contract theory
  - Veil of Ignorance
    - Don't know their social status, class, talents, preferences
  - All have an equal say in choosing the principles of justice
  - 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