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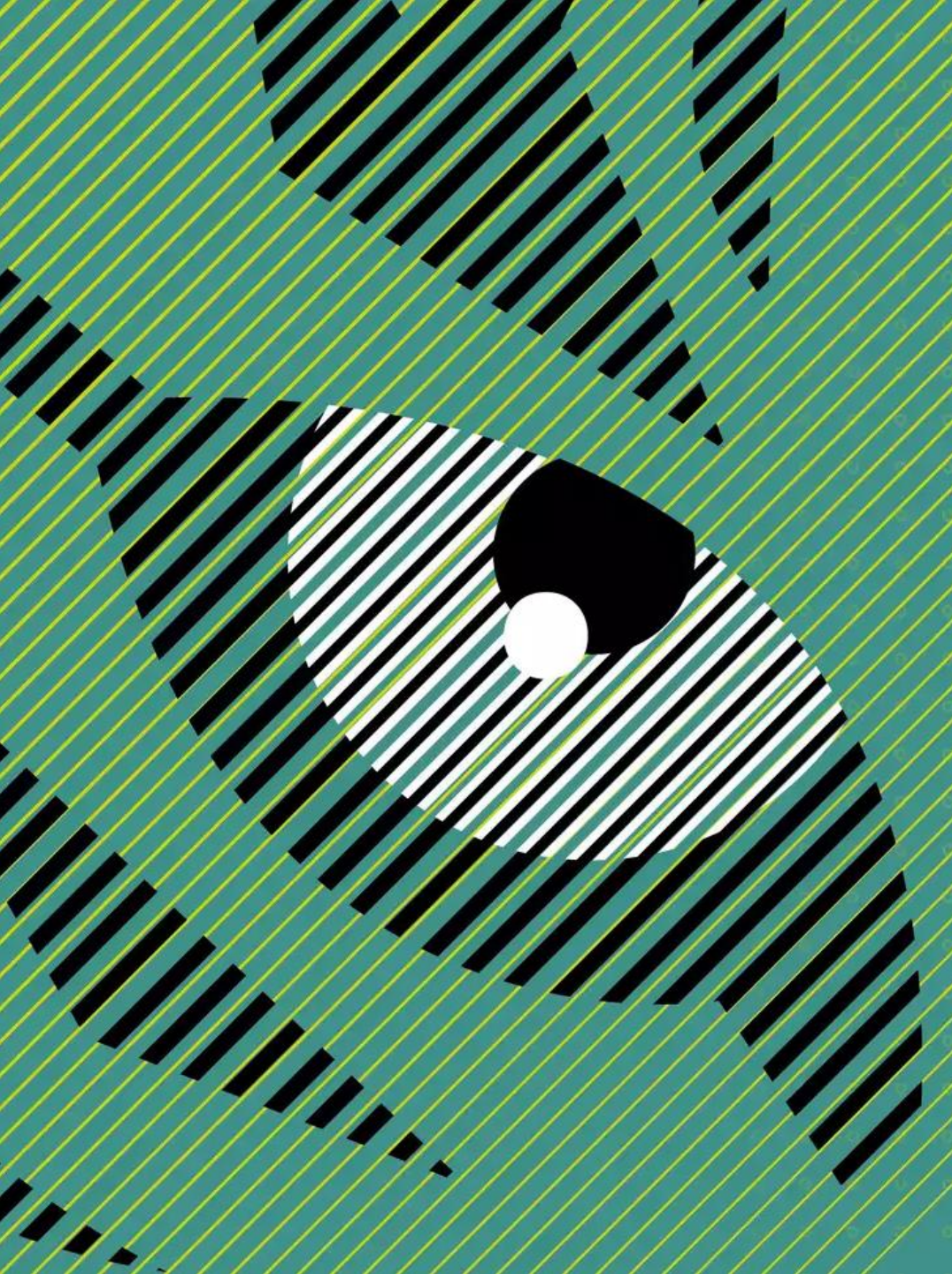


Animal Rights Law

SS 2026

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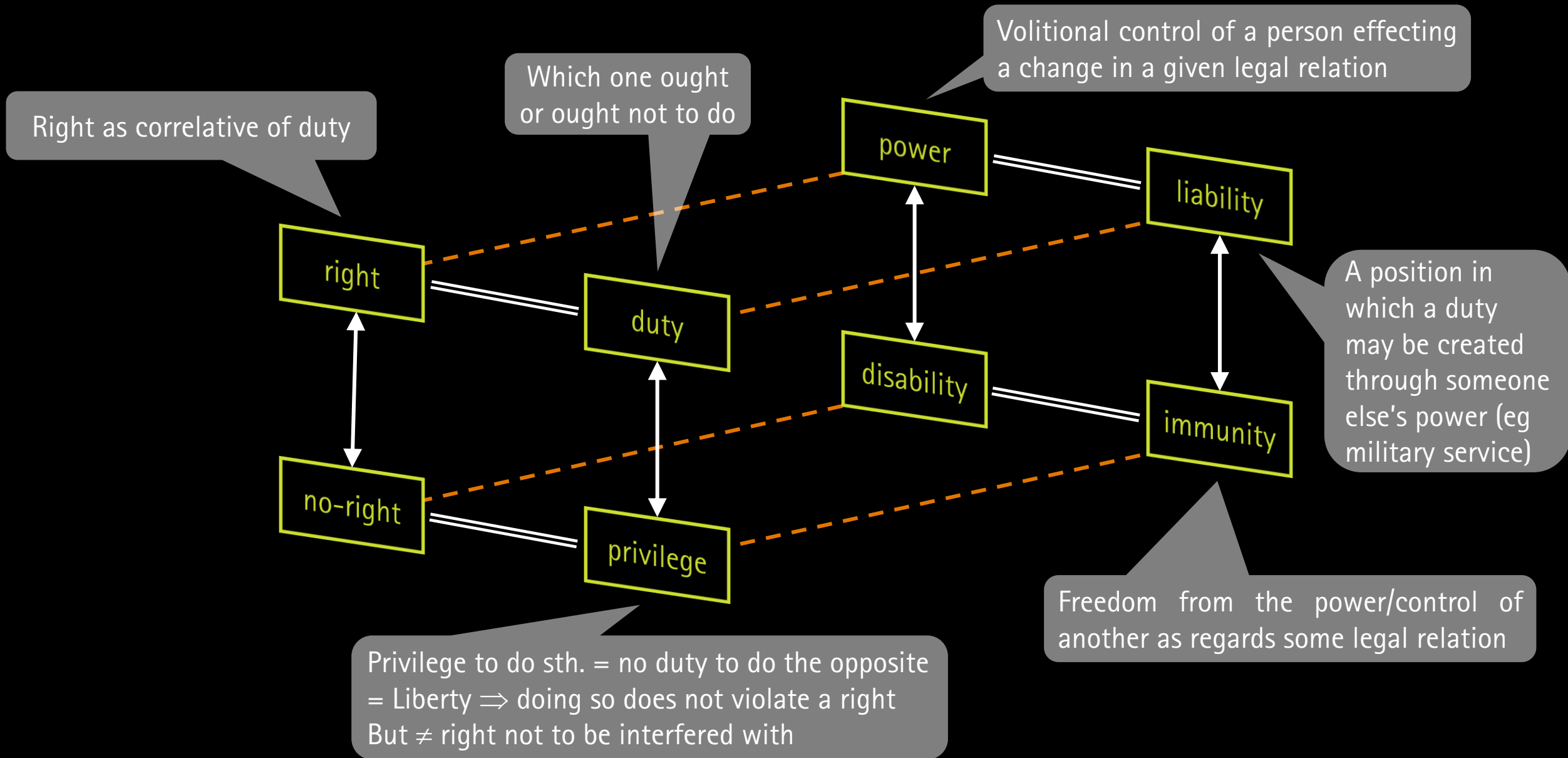


Unit 4:
Theories of subjective rights
for animals

Overview

- 1) Simple vs. fundamental rights (student presentation 2)
- 2) Hohfeldian analysis of rights
- 3) Who can have rights?
 - Constructivist views
 - Will theory vs. interest theory
- 4) Rights vs. obligations
 - Symmetry/reciprocity vs. correlativity of rights and obligations
 - Obligations of animals?
 - Historical animal trials (student presentation 3)

Hohfeldian analysis of rights → [Wesley N. Hohfeld \(1913\)](#)



Constructivist views

- Rights as **artificial/fictional constructs** of the law that can be shaped according to societal needs or the requirements of legal reasoning
- Approach of positive law / **legal positivism**
- No metaphysical/philosophical explanation needed
- *Hans Kelsen, Pure Theory of Law (1934/1960)*:
 - Primarily, rights are merely the **logical reflex of obligations**.
 - “The concept of a legal obligation refers exclusively to a positive legal order and has **no moral implication whatever**.”
 - “[T]he essence of the right that it is more than a mere reflex of a legal obligation consists in the fact that a legal norm confers upon an individual the **legal power** to bring about by a law suit the **execution of a sanction** as a reaction against the nonfulfillment of the obligation” = “*right in the technical sense*”

⇒ Anything goes?

Will theory / choice theory of rights

= Someone is a rights-holder if she can determine **by her own will/choice** whether someone else should act in a certain way, and thereby restrict his freedom.

- Main proponents: *John Austin, Friedrich Carl von Savigny, Bernhard Windscheid, H.L.A. Hart, Ronald Dworkin*
 - Rights = spheres of **autonomy** ⇒ rights-holder as "**small-scale sovereign**" (H.L.A. Hart)
 - Function of rights: expressing and protecting choices made by **autonomous individuals**
 - Precondition: Ability to choose how to exercise one's rights ⇒ **free will, autonomy**
- ⇒ Applications to animals?
- Can make decisions for themselves
 - Can show legally relevant behaviour ("**agency**")
 - But no will with regard to the **legal relevance** of their acts
- ⇔ Arguments against the will theory:
- Cannot explain inalienable rights
 - Leads to the conclusion that **infants, humans in a coma or with severe cognitive impairments** cannot have rights

Interest theory / benefit theory of rights

= Someone has a right if her **interests or well-being** is a sufficient reason to hold others under a corresponding duty.

- Main proponents: *Jeremy Bentham, Rudolf von Jhering, Joseph Raz, Matthew Kramer, Neil MacCormick*
 - Function of rights: protecting the interests/the wellbeing of rights-holders
 - Precondition: **Ability to have interests**
 - Broad and narrow definitions of interests
 - Broad definition of interests: **Sentience** as sufficient condition for interests
 - Additional condition: **intrinsic value?**
- ⇒ Applications to animals?
- Animals that are sentient (+ have intrinsic value) **can have interests** serving as grounds for their rights
- ⇔ Arguments against the interest theory:
- Can lead to an **"inflation" of rights** (content of rights + holders of rights)

Symmetry/reciprocity of rights and obligations

The relationship between rights and obligations is subject to different theories not to be confounded: (1) symmetry/reciprocity; (2) correlativity

(1) Symmetry/reciprocity of rights and obligations:

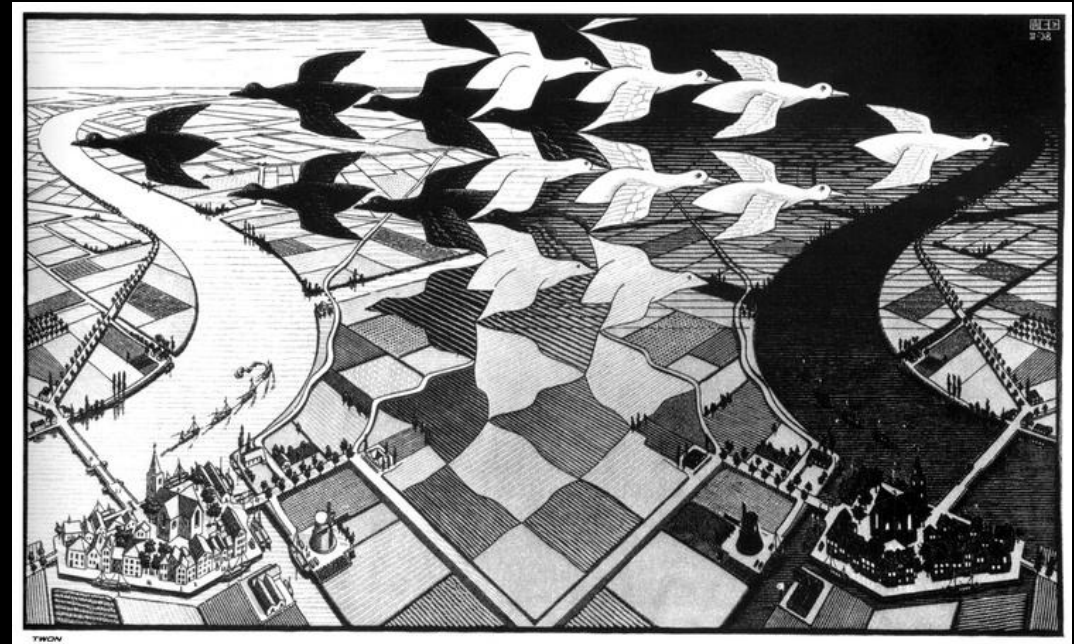
Rights and obligations always come together
in the same person

⇒ One can only have rights if one can have obligations

⇒ Background in contractualist theories

(→ Unit 1)

↔ **Current legal reality:** legally incapacitated humans as rights-holders



Correlativity of rights and obligations

The relationship between rights and obligations is subject to different theories not to be confounded: (1) symmetry/reciprocity; (2) correlativity

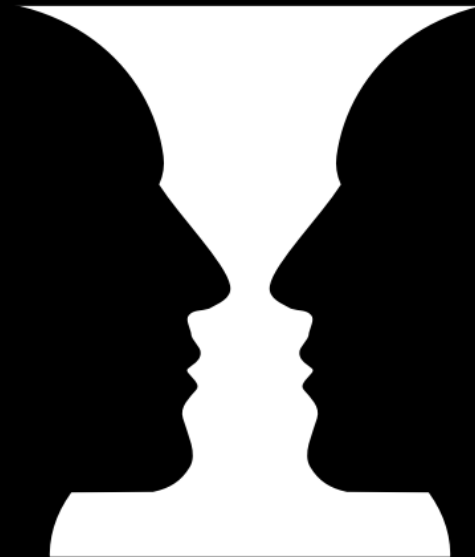
(2) Correlativity of rights and obligations:

Rights and obligations always come together
in the different persons

⇒ One can only have a right if someone else
has an obligation to comply with the right

⇒ **Legal relation** between rights-holder and
duty-bearer

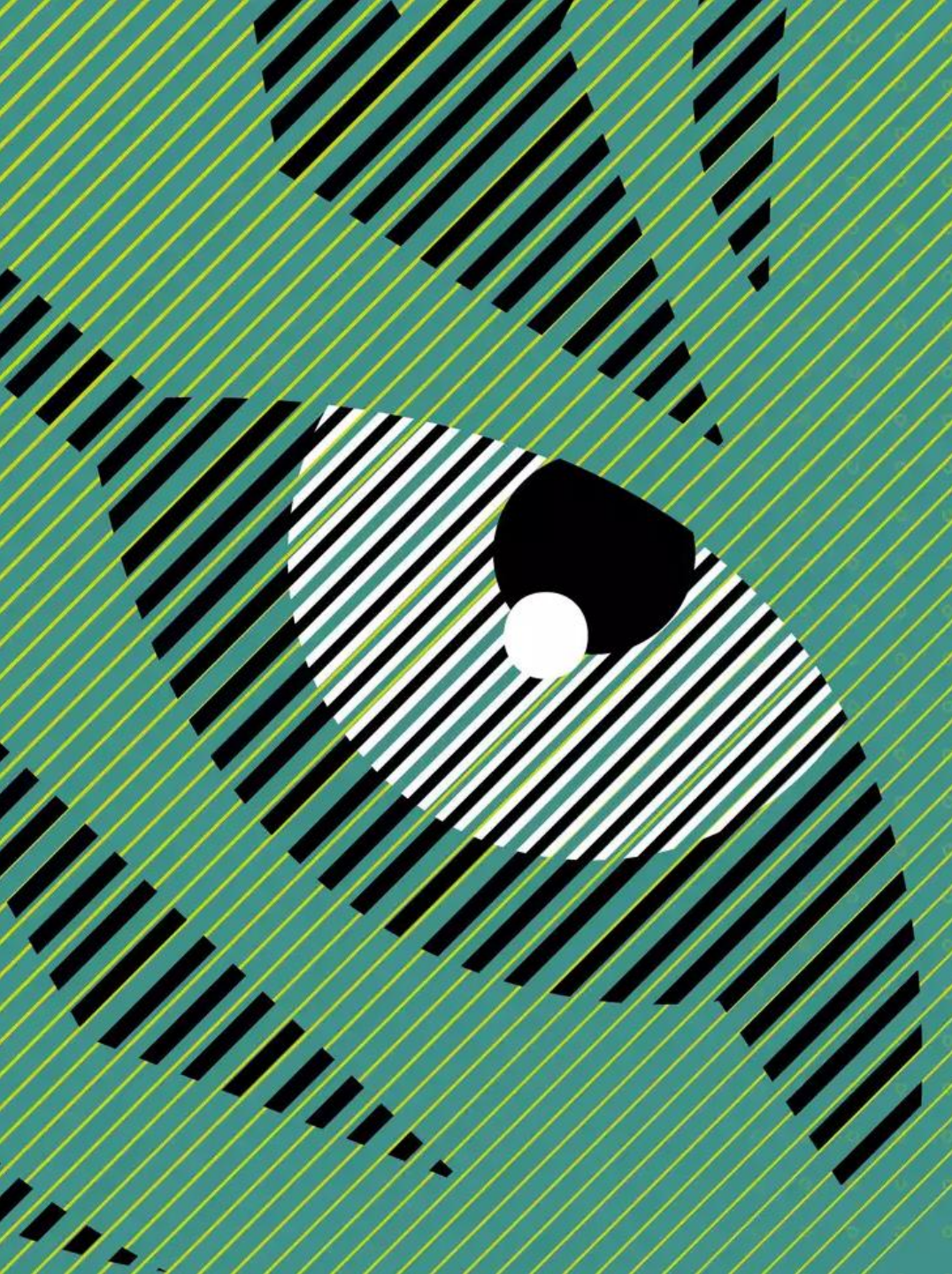
⇒ Difference between **subject of rights** and
subject of duties (Leonard Nelson)



Obligations of animals?



- Obligation = prescription of a certain behaviour
 - ⇒ Steering of behaviour by
 - **communicating** the obligation
 - **threatening detriments** in case of non-compliance or
 - **promising benefits** in case of compliance
 - Problems:
 - Animals **cannot comprehend** textual forms of communication used in law
 - Animals **cannot judge and accept** the underlying reasons for an obligation imposed by human laws
 - But:
 - **Other ways of communicating** obligations (eg fences) and incentives (eg rewards)
 - Does the law require behaviour out of duty beyond mere **conditioning effects**?
 - Historical example: Animal trials (9th to 20th century) → **student presentation 3**
 - Individual animals or groups of animals as defendants in **criminal proceedings before ecclesiastical and secular courts** (esp. France, Germany); charges: injuring/killing someone / destroying crops
 - Convictions (esp. death penalty), but also acquittals and settlement contracts with animals
 - Explanation: Restoring the **divine order**, creating narratives to **cope with crisis events**
- ⇒ *Animal obligations are conceivable at least as legal fiction with instrumental purpose*



Unit 5: Personhood for animals

Overview

- 1) Animals as Persons or Things
 - Abolitionism and its critique (student presentation 4)
 - New welfarism: Things holding rights (student presentation 5)
- 2) The current in-between status of animals as neither things nor persons
 - The dereification of animals
 - Social membership of animals (student presentation 6)
 - Animals as family members
- 3) Avenues to personhood for animals
 - Traditional views of personhood
 - The bundle theory of personhood (student presentation 7)
 - Habeas corpus petitions for animals (student presentations 8 + 9)



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