

Taking a Social Approach to Rights

1. What's a moral right?
2. How does ignorance affect rights?
3. Some problems with the usual accounts
4. A new theory

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1. What is a Moral Right?

What are we theorizing about?

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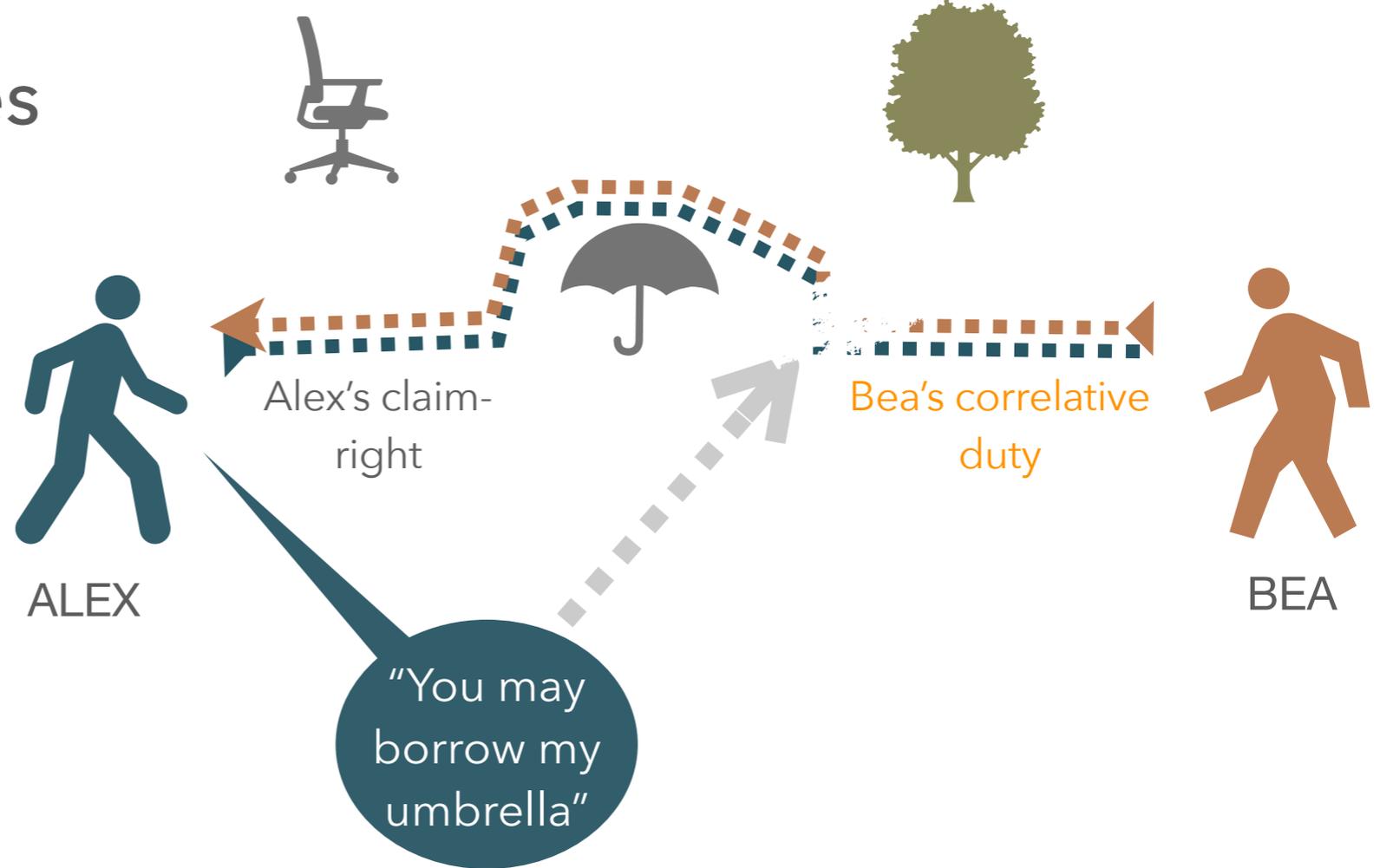
WESLEY NEWCOMB HOHFELD

Hohfeld's Classification

Liberties

Claims

Powers



- Consenting
- Promising
- Commanding
- Gifting
- Unjustly attacking

Steiner's 6 Features of Rights

1. Rights are constituted by rules.
2. Rights signify a bilateral normative relation between those who hold them (subjects) and those against whom they are held (objects).
3. These relations entail the presence or absence of prescribed encumbrances on the conduct of objects.
4. These encumbrances consist either in objects' duties, or in their lack of capacity to alter those or other encumbrances.
5. Rights are exercisable.
6. This exercisability consists in the capacity to control objects' encumbrances by either extinguishing or enforcing them.

Constitutive Roles of Rights

“rights are essentially about who is owed what by whom. [...] rights are concerned with *interpersonal distribution* [...] or more specifically the ways persons' conduct can affect that distribution.”

“Theories of moral rights advance views about how specific other persons' valued services should be interpersonally distributed by enforceable systems of rules.”

- **Security:** rights function to secure moral goods for rights-holders.
- **Distributive Fairness:** the demands of objective rights mark a fair (just) distribution of those moral goods.

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- **Correlativity:** objective rights imply correlative (enforceable) duties owed by the duty-bound to the rights-holder.
- **Guidance:** rights provide reasons for action that agents can appreciate and use for deliberation before knowing what the specific downstream consequences of their actions will be.
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“rights are essentially about who is owed what by whom.”

[Steiner, 460]

Right action

Did Bea do the
right thing?

Rights

Did Bea do **what she
owed to Alex** to do?

Content of Claim Rights: What Grounds Them?

When does A have a right to B's x-ing?

Interest/benefit theory

The fulfillment of the claim can generally be expected to serve the holder's important interests.

Will/choice theory

Whether the claim is fulfilled or waived is properly subject to the holder's authority or choice.

The “primacy” of rights

Lots of interesting questions we could ask:

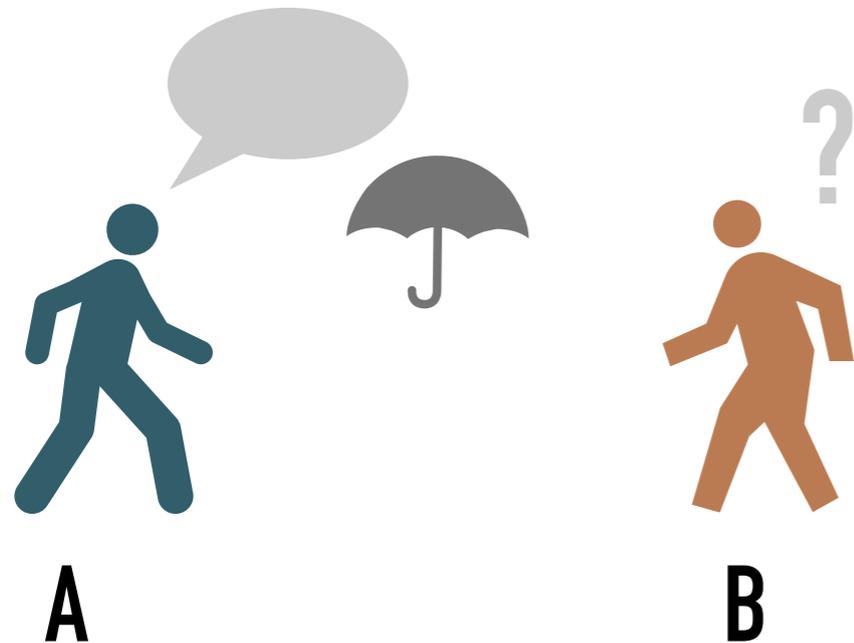
- Do rights “trump” other considerations?
- Can the demands of rights conflict?
- Is it permissible to infringe less stringent rights in order to protect more stringent rights?

But I want to focus on a different issue.

2. How does ignorance affect rights?

The motivating puzzle
and two leading theories

Normative Opacity Problems



1. B must decide whether to do some action X
2. B is in a position to know that Xing would infringe A's rights, *unless* A has exercised a particular normative power.
3. The best available evidence leaves her uncertain whether A has intentionally exercised that power.

what do the **duty-bound** owe to the **rights-holders**?

2. How does ignorance affect rights?

The motivating puzzle and two leading theories

Opacity Problems for One

Which cup should you pick?



Outcome-Relative (Objectivist*)

	Under Left	Under Right
Pick Left		
Pick Right		

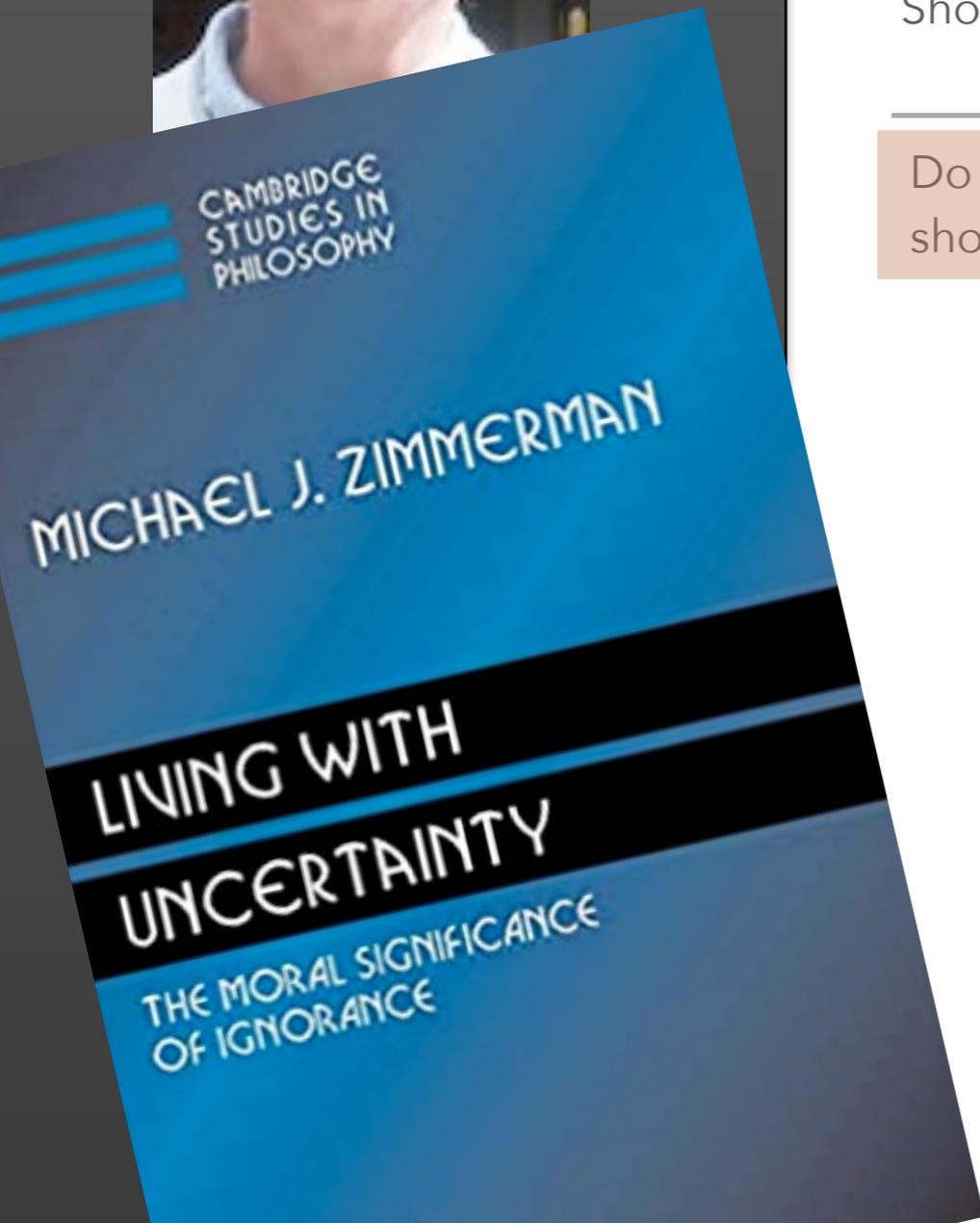
Evidence-Relative (Subjectivist*)

	▼ Under Left	Under Right
Pick Left		
Pick Right		

	Under Left	▼ Under Right
Pick Left		
Pick Right		

2. How does ignorance affect rights?

The motivating puzzle and two leading theories



Theory 1: Evidence-Relative (Subjectivist*)

	Alex is attacking	Alex is not attacking
Shoot him		
Do not shoot		

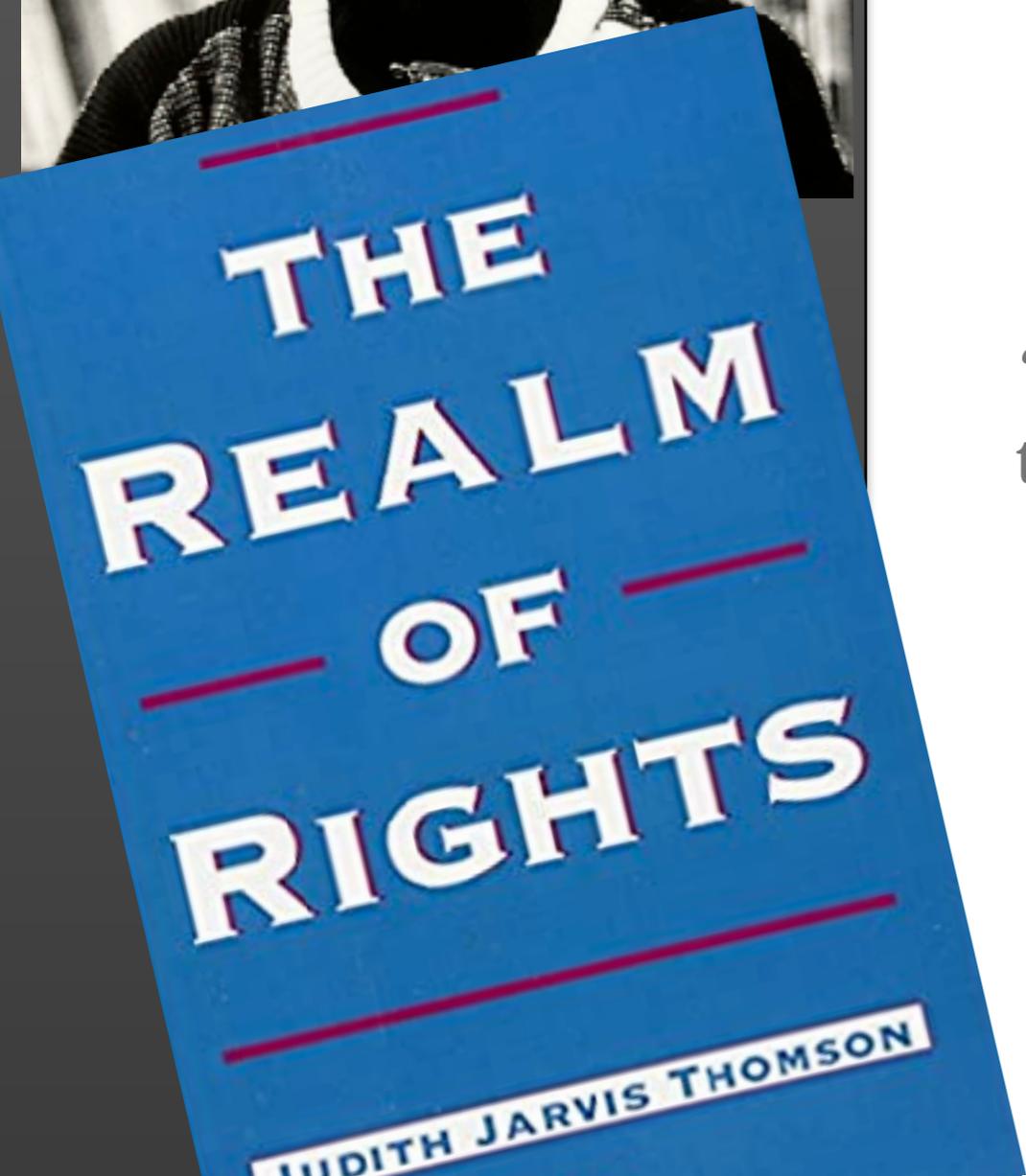
	Alex is attacking	Alex is not attacking
Shoot him		
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“One’s right to life, and, indeed, one’s rights in general are hostage not only to the abilities but also to the evidence possessed by those against whom one’s rights are held.”

- Michael Zimmerman, *Living with Uncertainty* (2008), p. 112

2. How does ignorance affect rights?

The motivating puzzle and two leading theories



Theory 2: Outcome-Relative (Objectivist*)

	Alex is attacking	Alex is not attacking
Shoot him		
Do not shoot		

“Of course the agents are not at fault in these cases if they do proceed. But they will infringe a claim if they know they will cause these outcomes to come about, and nevertheless proceed anyway. And how could their victims have a claim against them that they not proceed-being-at-fault-in-doing-so, if they do not have a claim that they (all simply) not proceed?”

- Judith Jarvis Thomson, *Realm of Rights* (1990), p. 233

3. Some problems with the usual accounts

The roles of rights
And how risk pools

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The roles of rights and how risk pools



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Misleading evidence is disproportionately likely to affect members of social groups stereotyped as 'dangerous' or 'consenting'



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Theory 2: Outcome-Relative (Objectivist*)

	Alex is attacking	Alex is not attacking
Shoot him		
Do not shoot		

Members of social groups stereotyped as 'dangerous' or 'consenting' are disproportionately likely to suffer others' **mistakes**

what do the **duty-bound** owe to the **rights-holders**?



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**Theory 1:
Evidence-
Relative
(Subjectivist*)**

**Theory 2:
Outcome-
Relative
(Objectivist*)**

X

X

X

X

X

X

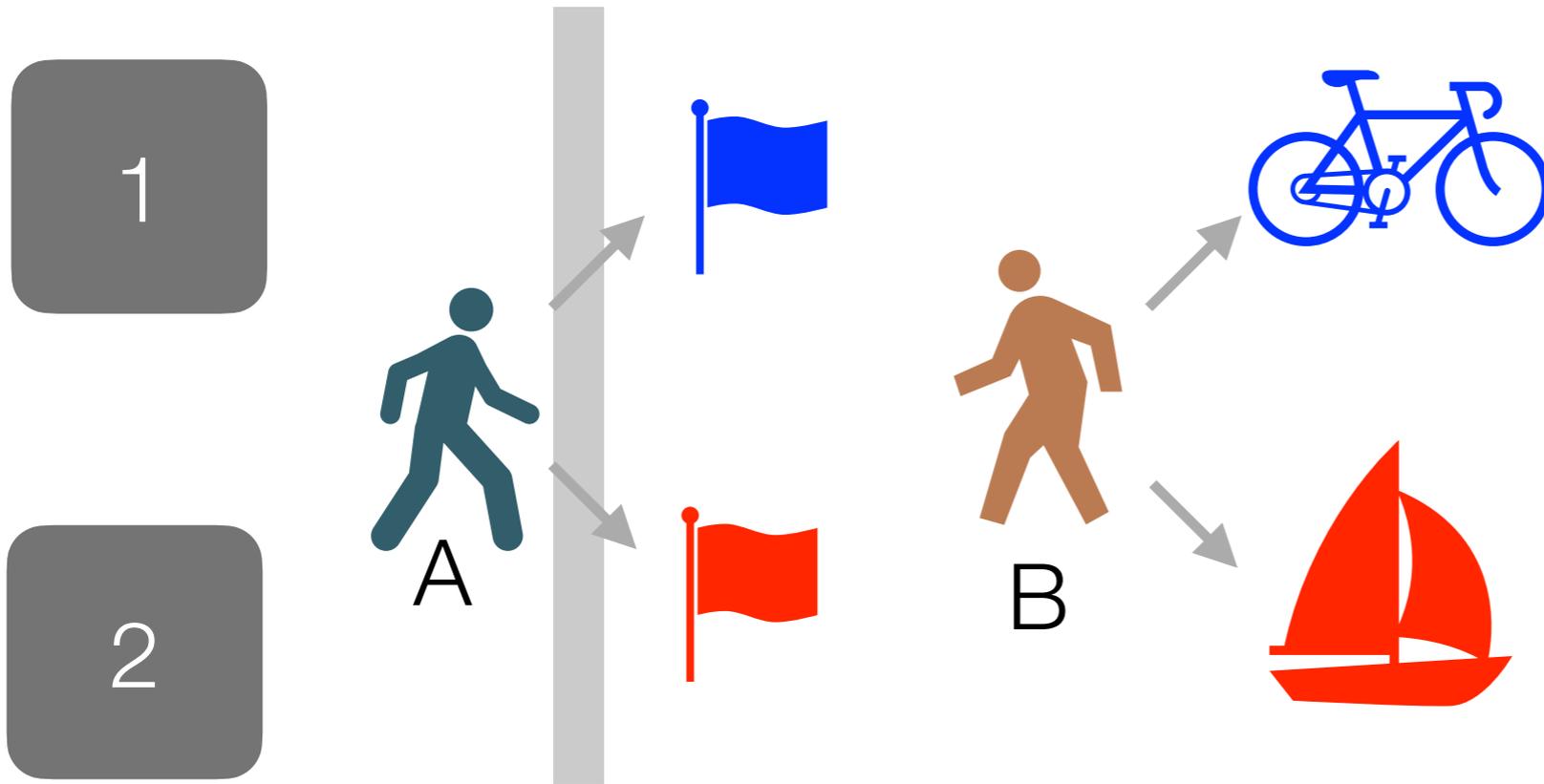
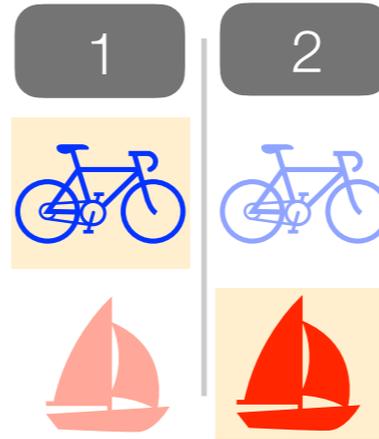
X

4. A new theory

Taking the Social Approach

Opacity Problems for Two

What does B owe it to A to do?



1			
2			

2			
1			

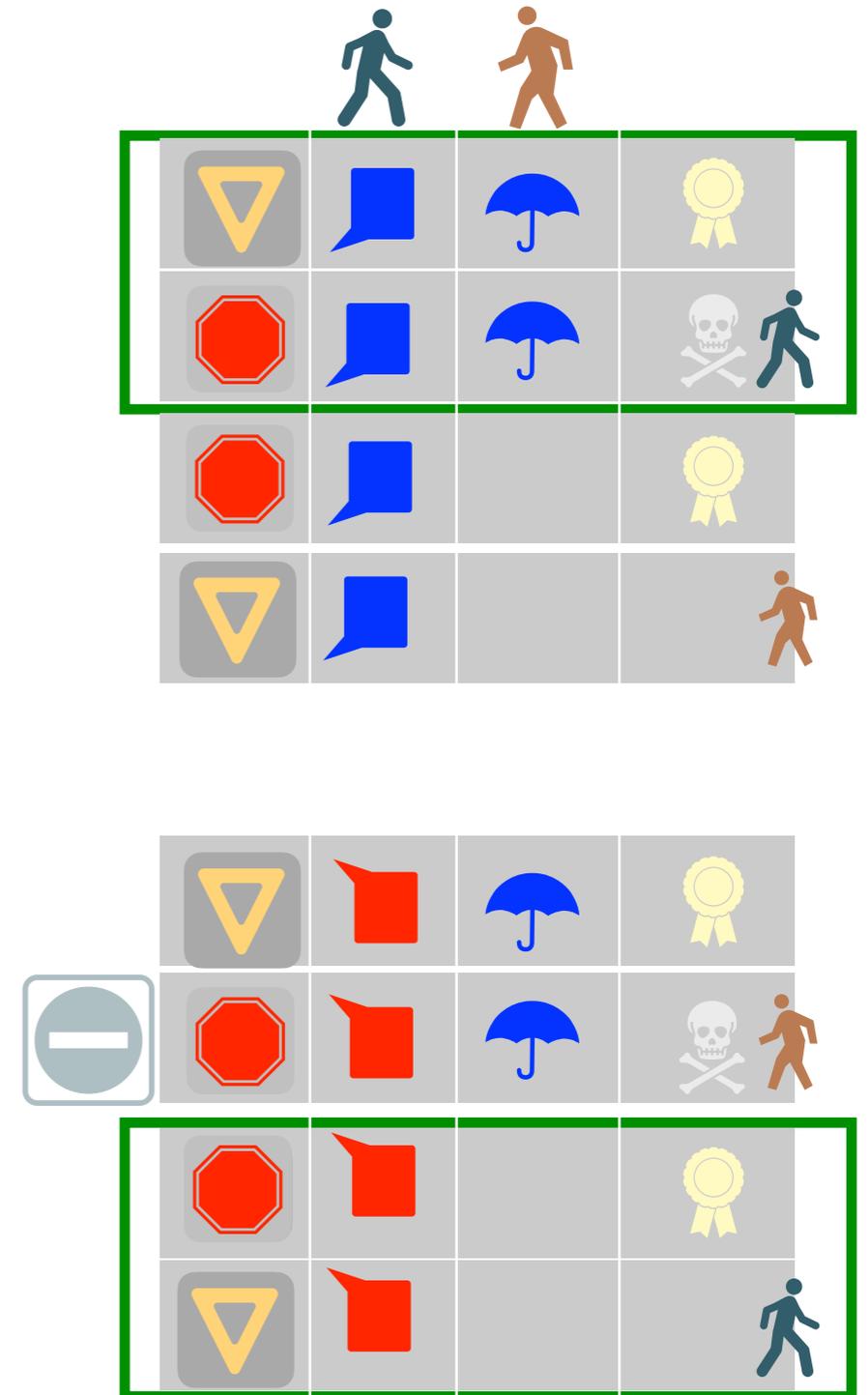
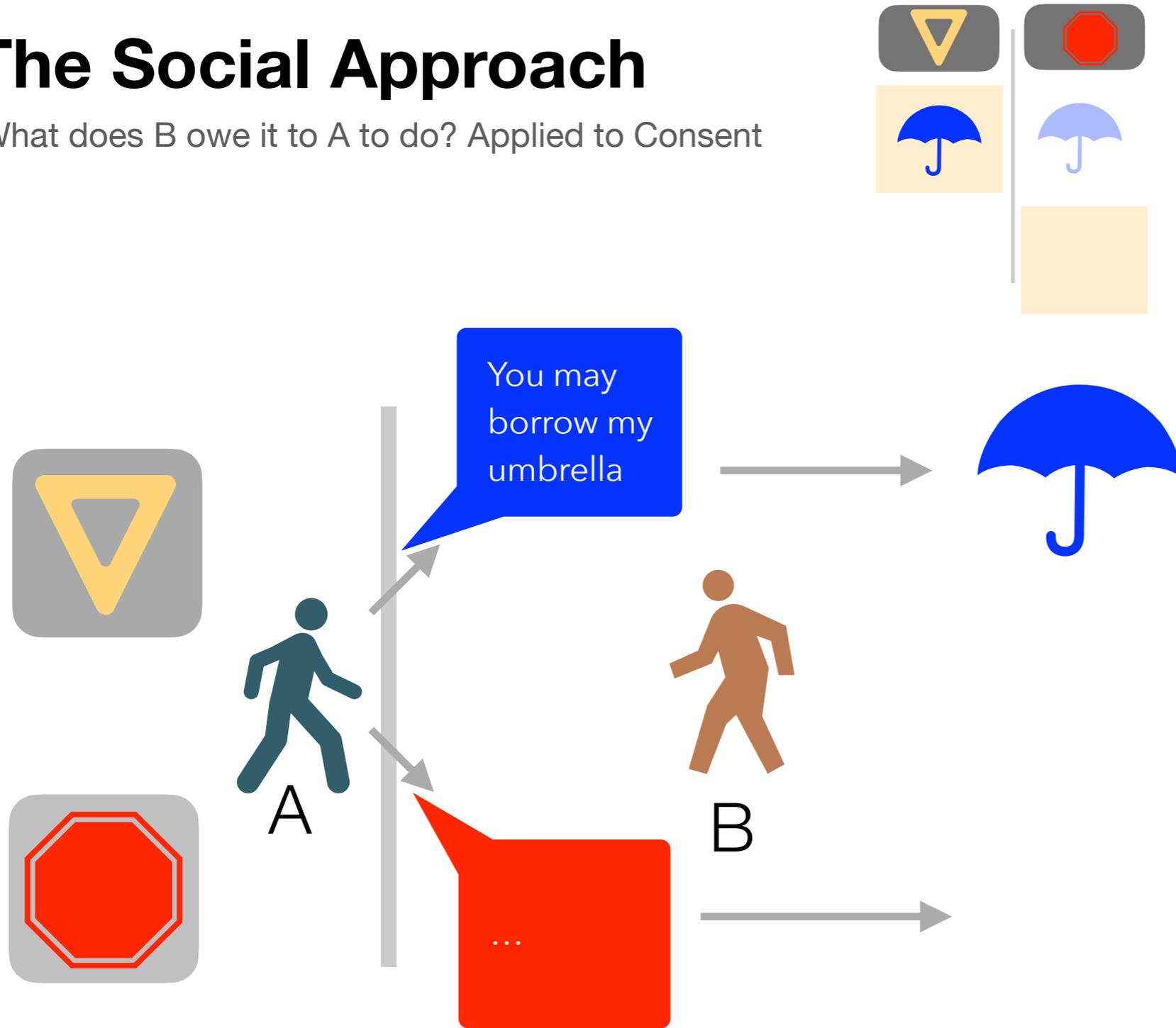
1			
2			

2			
1			

For more, see:
 David Lewis, *Convention*
 Brian Skyrms, *Signals and Evolution of the Social Contract*

The Social Approach

What does B owe it to A to do? Applied to Consent



For more, see:

Renee Jorgensen Bolinger, 'Moral Risk and Communicating Consent', *Philosophy & Public Affairs*

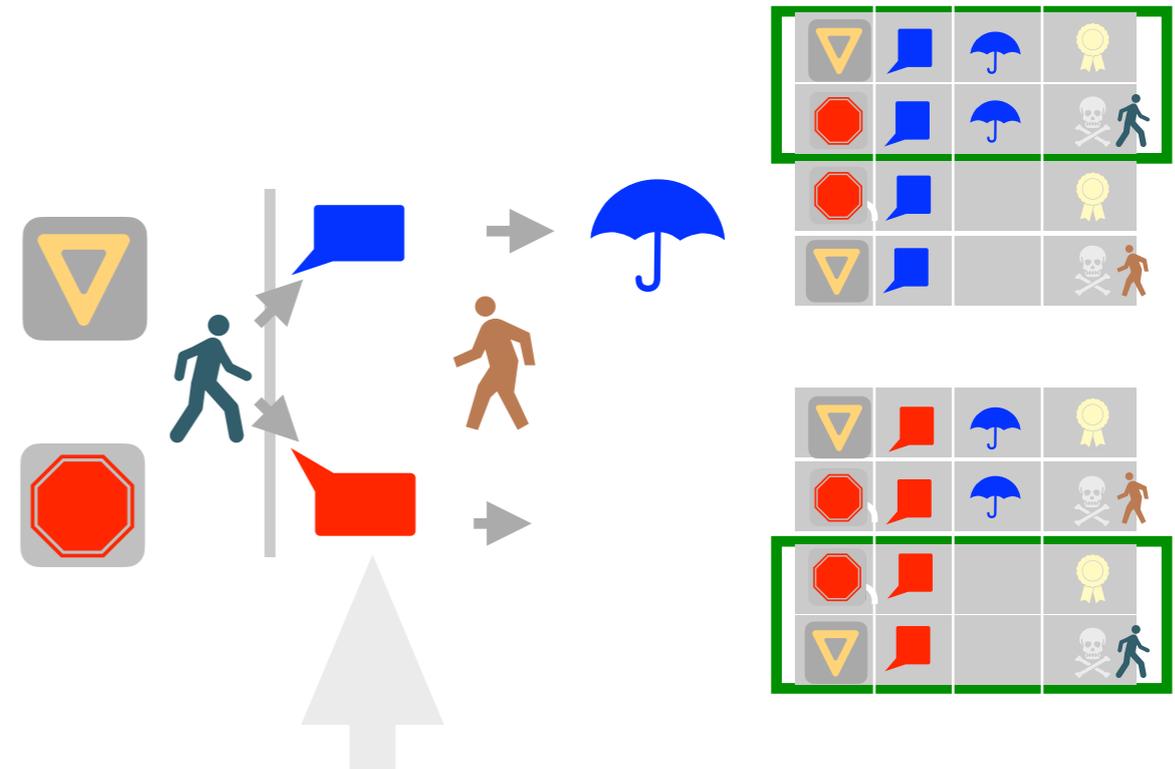
'The Moral Grounds of Reasonably Mistaken Self-Defense', *Philosophy & Phenomenological Research*



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Theory 3: The Social Approach



Depends on having **public, avoidable** signals for all normative powers.

Insulates A from B's **other** misleading evidence... **if B is held responsible** for their errors.

Wrapping up

“By attending to the general characteristics of moral rights, we can learn something about the demands of justice—about how the legal realm must be in order to be just.”

[Steiner, 460]

what do the **duty-bound** owe to the **rights-holders**?

1. Rights are constituted by rules.

5. Rights are exercisable.

Evidence-Relative

Choose your best evidence-relative **prospect** for A

Outcome-Relative

Secure the optimal **outcome** for A

Social Approach

Do your part in an optimizing **coordination norm**: follow A's signals