

Rules and the validity of a Legal System

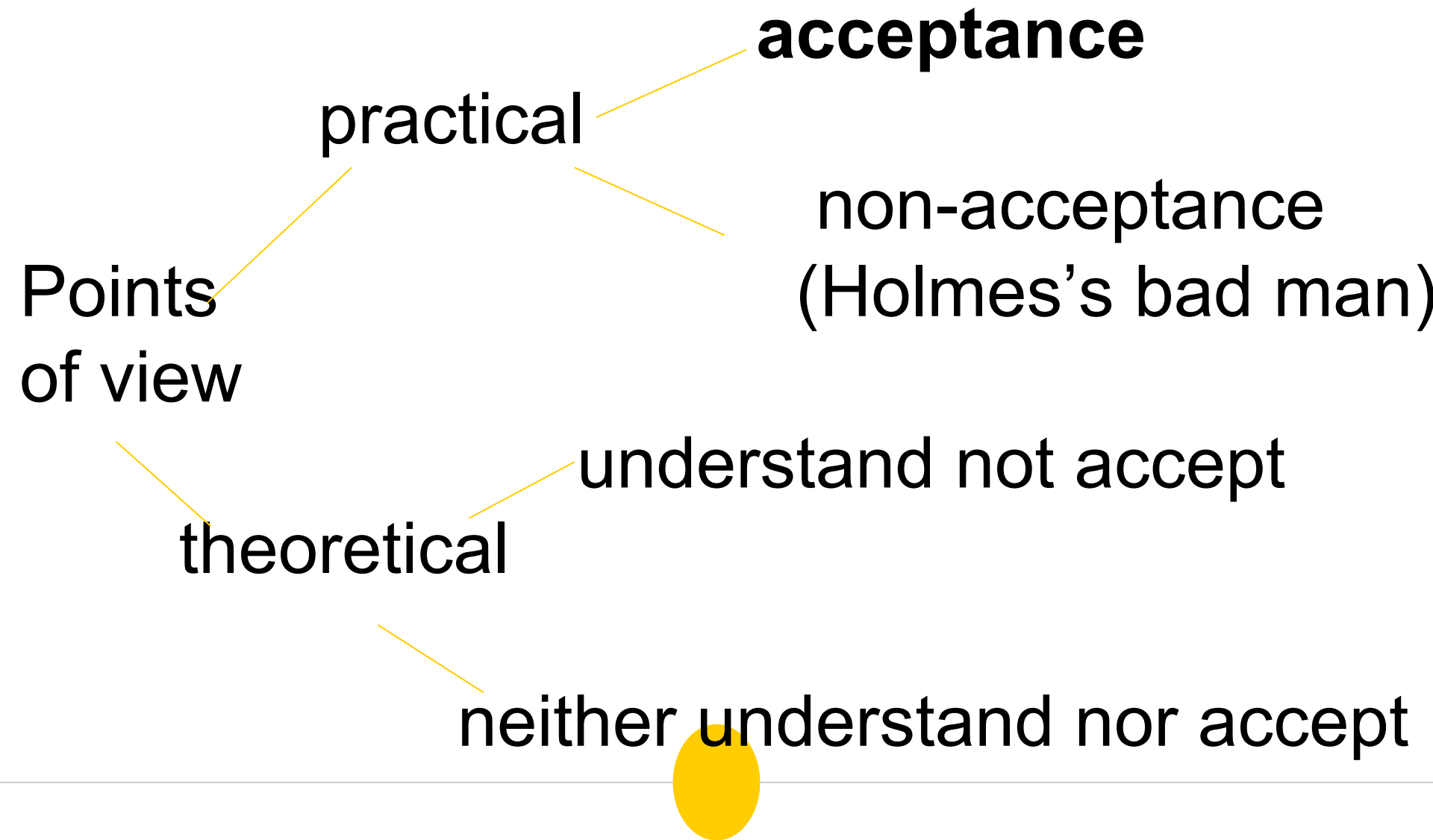
Zhang.tu@mail.shufe.edu.cn

Structure

- Understanding legal obligation
- Law as the combination of two-tiers of rules
- Rule of recognition as the foundation of a legal system

Understanding Legal Obligation

- Hart argued that there's distinction between *was obliged to* v. *had an obligation to*, what for?
- How does he assimilate command theory with prediction?
- What's the problem of characterizing legal obligation as prediction of sanctions? What has command theory missed?



“What the external point of view, which limits itself to the observable regularities of behavior, cannot reproduce is the way in which the rules function as rules in the lives of those who normally are the majority of society...as guides to the conduct of social life, as the basis for claims, demands, admissions, criticism, or punishment....”



Law as combination of two-tiers of rules

Two different types of rules:

- What is primary rules?
- What kind of world would be sustainable with the presence of mere primary rules?

Defects of Primary Rules call for Secondary Rules

- What are secondary rules?
- Why are secondary rules called for?
What are the defects of only primary rules?
- Are rule of change and rule of adjudication also rule of recognition?
Why?

Rule of Recognition manifested

- ☉ The **use** of unstated rules of recognition by courts, in identifying particular rules of the system, is characteristic of the *internal* point of view.
- ☉ An internal statement manifesting the internal point of view: it is the law that...
- ☉ An external statement: in America/Europe, their law is...

The *Validity* of Law and the *Efficacy* of Law

- On one hand, an internal statement concerning the validity of a particular rule of a system *presupposes* that the system is generally efficacious.
- On the other hand, it is wrong to say that statements of validity *mean* that the system is generally efficacious.

The Rule of
Recognition
as a social
rule

fact: external

norm: internal



The double feature of social rules

- social rules as facts: external point of view of observers
- social rules as normative: the insider participator of legal practice's practical attitude of **rule-acceptance**, aka, internal point of view
- How's social rules differing from moral rules?

The Rule of Recognition as A Social Rule

- ⦿ What does “a legal rule exists” mean?
- ⦿ What determines the validity of rule of recognition?
- ⦿ What does it mean when we say rule of recognition exists?

The Rule of Recognition as The Foundation of a Legal System

two minimum conditions for the existence of a legal system:

On the one hand, those rules of behavior which are valid according to the system's ultimate criteria of validity must be **generally obeyed**.

On the other hand, its rules of recognition specifying the criteria of legal validity *must be effectively accepted* as common public standards of official behavior **by its officials**.

The Rule of Recognition as The Foundation of a Legal System

- What is crucial is that there should be a unified or ***shared official acceptance*** of the rule of recognition containing the system's criteria of validity.

the best | the middle | the minimal | no law

Primary rules ← ordinary people: in | in/ex | ex | ex



Secondary rules ← legal officials: in | in | in | ex



How do you evaluate Hart's concept of law as a type of social rules?

