

# **Noah Niswander**

## **The Legal System and Ethics**

### **Portfolio**

#### **Table of Contents**

- 1. The Necessity of Ethics (On the Peloponnesian War) (2)**
- 2. Our Unalienable Rights (On the Universal Declaration of Human Rights) (3)**
- 3. A Moral Death (On Plato's Apology) (4)**
- 4. Unjust Justice (On To Defend a Killer) (5)**
- 5. A Privileged System (On To Defend a Killer Discussion) (6)**
- 6. An Untruthful System (On To Defend a Killer Discussion) (7)**
- 7. Justice in Purpose (On Plato's Crito) (8)**
- 8. The Extent of Language (Sentence on Aristotle's Ethics) (9)**
- 9. Intend versus Outcome (On Would You Save A Boy From Drowning?) (10)**
- 10. Moral Virtue - Aristotle (On The Queen v. Dudley) (11)**
- 11. One Thousand To One (On Blackstone's Ratio) (12)**
- 12. A Joyous Society (On The Ones Who Walked Away From Omelas) (13)**
- 13. A Question of Justice (On Principles of Morals and Legislation) (14)**
- 14. Intrinsic Morality (On Summa Theologiae) (15)**
- 15. The Legal Phenomenon (On Legal Positivism) (16)**

### **The Necessity of Ethics**

The Greek philosopher Thucydides writes about the Melian Debate in his piece on the History of the Peloponnesian War, which discusses the negotiations between the aggressive Athenians and the neutral Melians. Throughout the text, I found it especially interesting how the Melians insisted on following their morals even if it meant their assured demise. This refusal to yield to an obviously superior force in the Athenian army keeps this story relevant two thousand years later.

First, the story opens with the Athenians rationally explaining to the Melians that the Melian islanders are outmatched and face no hope of defeating the more significant Athenian force. In doing so, they refuse even to pretend to have a righteous justification for invading the Melians. This refusal to moralize makes this interaction more sobering as it reveals that the Athenians are such a powerful force that they do not even need to feign righteousness to bend the world to their whims. This reality makes the Melian's refusal to negotiate even more surprising as they only serve to lose by not immediately surrendering. The idea of an invading force attempting to reason with the people they are invading is almost the antithesis of what we would come to expect in a conflict like this. Even after being offered security and tributary alliances, the Melians refuse to back down. They commit to fighting, even knowing they will almost assuredly lose. The Melians cling to hope and divine interference to protect their territory, thus choosing to die in virtue rather than survive in defeat. And so it happens: after the Melian's allies fail to cross the sea to defend them, the Athenians successfully drive the Melians to defeat, hanging most of their men in the process.

This story of unshakeable ethics on behalf of the Melian people in the face of destruction remains relevant today in defending the value of ethical reasoning. In fields such as law, we rely upon immovable ethical frameworks to keep society orderly and fair. Without such binding morality, societies such as the mighty Athenians are doomed to collapse—a reality they would soon face.

## **Our Unalienable Rights**

The United Nations Declaration of Human Rights was written by various authors and ratified by the United Nations General Assembly on December 10, 1948. The Declaration is a revolutionary document that intricately guides how every sovereign state determines its laws. As an American, I was struck by the similarities this document shares with our own Constitution. Whether we are conscious of it or not, our culture is defined by that Constitution. The freedom of speech, the press, and our freedom from discrimination and persecution shape nearly every aspect of our lives. Just as our Constitution shapes our lives, the UN Declaration of Human Rights shapes the lives of citizens worldwide. Despite its universal acceptance, the UN Declaration of Human Rights also underpins a great conflict in the modern world. Universal rights are ignored and defied by the countries that accepted this declaration, and there is an ongoing fight among the nations who follow this declaration regarding what the world of the future should look like.

On a topic more personal to this course, I realized in summarizing the Articles of the UN Declaration that it is notably difficult to adequately define what you wish to include. I am confident that the Declaration of Human Rights creators also struggled to keep each Article brief and precise. They surely wanted to expand upon and elaborate on each right as they related to the modernizing world. Today, we are faced with the challenge of maintaining these rights in the context of an ever-changing world. We must define how and to what extent the principles behind these human rights guide our everyday lives. We must also understand how these principles will shape the future world and how we will work today to ensure they keep a central role. Without our intentional efforts, the world will slide back into the grips of inequality and suffering. We must continue to do whatever we can to ensure that does not happen. Without agreed-upon human rights, we can never be equals, and without equality, we can never reach the fullest potential of humanity. Through collective action and dedication, a future of prosperity remains within our reach.

### **A Moral Death**

In 399 B.C., the Greek Philosopher known as Socrates was put before an Athenian Jury for the crime of corrupting the youth. Thirty years later, another Greek philosopher, Plato, ascribed Socrates's arguments to page in what became known as Socrates's "Apology." He did so as to serve as a damning indictment of Greek society. In what is, in effect, a closing argument, Socrates explores his religious beliefs with the jury. In doing so, he proves that he is not an atheist as the Court charges, but still, he faces the ultimate punishment of death. His post-condemnation remarks struck me as he elaborated upon the validity of his punishment compared to the punishment of the state that condemned him. Even in death, Socrates maintained an unwavering regard for his agnostic beliefs. Instead of seeking forgiveness, he seeks to warn the Jury of the mortal damnation they will face for their actions. This moral clarity, which Socrates holds in the face of his mortality, exposes a more significant argument facing society: whether to instill specific religious doctrine or to maintain freedom of worship. Ancient Greece clearly chose the former, but in doing so, they certified their eventual collapse, as Socrates warned.

Socrates's character strikes me personally as he represents not just himself but a greater cause that society still reckons with. Even today, in 21<sup>st</sup>-century America, there are arguments over the establishment of religion. The question that spurred Socrates's death is still one that is heavily prosecuted in our court system. I believe Socrates's prophecy to his Greek captors still rings true today. The establishment of one religion over another or over none at all will inevitably cause societal collapse. This is because the freedom of thought underpins every current of a healthy society. Without it, we become enemies of one another, and chaos reigns supreme.

For this reason, it is crucial that we do not forget Socrates's prophecy to the Athenian Jury, as it is, in fact, a warning for all time. Socrates, the man condemned to death, has outlived the collective memory of those who condemned him. In doing so, he was self-assured that he died a moral man.

## Unjust Justice

The 1989 Columbia University discussion “To Defend a Killer,” which included U.S. Supreme Court Justice Antonin Scalia, defense attorney Jack Litman, and Yale philosopher John Smith, covered some of the most controversial aspects of our legal justice system. Chief among these are the ethical codes placed upon defense attorneys and their clients. In examining the morality of such an ethical code, it’s essential to consider the real-life implications of some of the hypotheticals brought up in the discussion. One such hypothetical is that of John Barnes, a man who has killed many people, confiding in his attorney that another man was wrongfully convicted of a murder that Barnes had, in fact, committed, and that wrongfully convicted was sentenced to death. The dilemma of such a hypothetical is clear: if the attorney keeps Barnes’s confession secret, then a man who the attorney knows is innocent is doomed to an unjust death, but if the attorney passes on Barnes’s confession to the Courts to save the innocent man, then the attorney has violated their client’s trust and destroyed their public image. Through this evocative hypothetical, I find that the most just solution is the one that our system already upholds. That is, in the words of Jack Litman, “this single-minded zealotry is the only way in which a defendant’s rights can be protected.”

This “single-minded zealotry” is crucial not only to the rights of the defendant but also to the strength of the entire legal justice system. In our system, every actor has a role that comes with a set of responsibilities they must uphold. Every role serves the greater purpose of ensuring justice for all within our system. If, in the case of John Barnes, we allowed a divergence from the ethical bounds that define attorney-client privilege, we would be jeopardizing the entire justice system, as without strict adherence to each role’s specific bounds, an equal standard of justice cannot be ensured. For this reason, I would find the confession of Barnes’s attorney to the court to be not only ethically questionable but morally bankrupt. In saving the life of one innocent man, the attorney would be attacking the very system that protects countless others. The core reason that an innocent man was deemed to die was not because John Barnes’s defense attorney failed to violate attorney-client privilege to save him; it was because the court that tried him failed to deliver the correct result. It was the responsibility of that jury to deliver the correct verdict and considering the facts of the case as we know it, they failed to do so.

### **A Privileged System**

On Thursday, September 12, 2024, we discussed the various privileges afforded certain professions in a court of law. A privilege is afforded to a party that allows them to refuse to testify in a court of law against an individual they are assisting in some capacity. These privileges include relationships such as attorney-client, doctor-patient, ministerial, and spousal relations. Without these privileges, our society could not function.

Our society is guided by trust; without legal privilege, there can be no trust. It is vital that individuals have those who they know they can trust in their time of need. A patient, for example, must know that they can trust their Doctor with even their most embarrassing traits. Without that trust, a patient is more inclined to hide their suffering and thus exacerbate whatever may be afflicting them. A client in need of an attorney must know that they can trust their attorney with anything so that their attorney can give them their best defense. Legal privileges enshrine this trust as with them established, those who are in need can know that the people they seek guidance from can never be made to testify against them. If this were not true, society would devolve as those in need find assistance elsewhere, often through unhealthier or more dangerous means. We have a societal obligation to uphold privileges and privacy, as those who would be turned away from seeking help due to fear of public embarrassment would instead turn to more destructive forces that lower the quality of life for everyone involved. We also have an ethical obligation to uphold privilege, as without it, the ability to treat individuals in need fairly becomes impossible. Those in greater need of legal or medical assistance will feel more hesitation than those who only need minor assistance. Our compulsion to “save face” often overrides any other need, and the same holds true for legal and medical aid. Privilege is a crucial underlying factor in ensuring an equal opportunity for all to live a successful life. Everyone, no matter their creed or lifestyle, will one day be in a position where they will need help that is considered to hold privilege. For that reason, we must preserve these protections; the unjustness of life without them would be fatal to our morally-grounded society.

### **An Untruthful System**

On Thursday, September 12, 2024, we discussed the various privileges afforded certain professions in a court of law. A privilege is afforded to a party that allows them to refuse to testify in a court of law against an individual they are assisting in some capacity. These privileges include relationships such as attorney-client, doctor-patient, ministerial, and spousal relations. These privileges serve as a hindrance to the execution of justice, and for our system to survive, they must be eliminated.

Our society is guided by faith in our institutions, yet our institutions often yield a faithless result. This is most present in the American legal justice system, where privileges protect the very worst of our society. Too often, the guilty go free, and the innocent are imprisoned due to privileges. If someone in the room knows the truth—such as the attorney—then we have a societal obligation to ensure that the truth is heard. Through our system of legal privileges, we have constructed a legal structure that encourages lying by omission. Legal privileges serve no other purpose than hiding the truth for the guilty's benefit. A legal justice system that produces the wrong results cannot indeed be considered just or fair in any context. For true justice to be served, we must focus on our moral obligation to the victim instead of the defendant. This is not just for the victim's benefit but for society's benefit, as it is cruel and unusual to continue revictimizing the suffering to defend the defendants, and in doing so, we are allowing violent offenders to return to our society and continue to victimize more innocent people. By shielding a jury from the truth through privilege, we make that society of revictimization possible. Our system must not only focus on revealing the truth but also on achieving true justice. A jury must be able to consider the actual facts of a case to yield the most just results. If we continue to shield juries from the nuances that each case requires, then we will perpetuate a system of injustice that protects the evil at the expense of the innocent. To truly advance as a society, we must ensure that injustice never reigns. The most effective way to do this is to refocus our legal justice system on one crucial element: the truth.

### Justice in Purpose

Plato's *Crito* recounts a conversation between the philosopher Socrates and his student Crito on the eve of Socrates's state-ordered execution. Through this piece, Plato explores the conflict that Socrates faced between what was best for his immediate preservation and what was morally right under the common goal of law and societal order. In essence, Socrates decides that the morally righteous act of facing his execution is a better course of action than escaping to a surrounding city-state. He decides this by deducing that if he did escape, it would be perceived as a rebuke of the idea of Athenian law, and in doing so, Socrates would lose all external and internal credibility to speak or be listened to on the morals and ethics of society.

I found resonance in Socrates's refusal to break the code that had guided his entire life as it intersects with my philosophy of seeing the bigger picture before all else. Socrates realizes that in escaping the justice of Athenian law, he will forever be viewed as a hypocrite who couldn't stand up for his philosophy when it mattered most. In accepting his fate, however, he immortalized himself as the victim of an unjust state that was willing to execute a man for disagreeing with their status quo. In today's world, I notice people too often entranced in momentary impulses for immediate excitement, even at the expense of their long-term health. Whether through social media addiction or prioritizing conveniences, they fail to see the bigger picture of long-term purpose just as Crito did at the beginning of this piece. I, too, occasionally struggle to grasp the bigger picture of my life's purpose, but I know I should consider it in each decision I make. With Socrates, his purpose, as he knew it to be, was to teach a new way of thinking to the developing world so as to push humanity forward in its long-term goal of social and economic prosperity. He knew that had he, in that moment of existential turmoil, decided to flee the persecution of Athenian law, his purpose would forever be unmet. His adherence to his principles, even in the light of imminent demise, is the level of devotion to his greater purpose that I can only hope to achieve. This message of adhering to one's purpose, even at the cost of short-term success, is what I hope to carry forward into my professional life.



### **The Extent of Language**

All things within a group (NOT a partial nor negligible amount) that is an expression of human creativity (NOT mindless survival tasks) combined with (NOT separate from) all things within a group (NOT a partial nor negligible amount) that is a question about a topic (NOT a statement nor an answer to a question) combined with (NOT separate from) close to (NOT widely different from) all (NOT a partial nor negligible amount) demonstrations of activity (NOT lack of participation or inactivity) combined with (NOT separate from) that are common topics of interest (NOT a topic of disinterest or a subject which brings inaction) currently happening (NOT something currently not happening) and viewed by society (NOT a lack of interest nor a lack of individual insight) causing (NOT preventing something from happening) direction (NOT lack of direction) toward (NOT away from something) any (NOT nothing) positive outcome (NOT a negative outcome nor even an enjoyable outcome) combined with (NOT separate from) the fact that due to (NOT not because of) the specific statement in question (NOT any random statement or assertion) causing (NOT any unrelated event) our specific (NOT unspecified or indirect) positive outcomes (NOT a negative outcome nor even an enjoyable outcome) as previously been attested to be (NOT ignored or otherwise unclarified) to be correctly or justly (NOT thoughtlessly or maliciously) previously (NOT currently or in the future) stated or made clear (NOT kept silent on or unstated) to be causing (NOT preventing something from happening) the existence of (NOT the lack of or sudden disappearance of) the specific characteristics (NOT lack of characteristics or lack of details) toward (NOT away from something) the aforementioned characteristics (NOT succeeding or unrelated characteristics) every (NOT specific or exclusive) act or event (NOT inactions nor nothingness) are directed towards (NOT directed away from).

### **Intent versus Outcome**

On June 15, 2023, the YouTube channel Sprouts uploaded a video titled “Would You Save A Boy From Drowning?” This video explored the hypothetical of an ambitious child who built a raft and became stranded in the ocean. In examining this hypothetical, Sprouts explored the various philosophies we may use to decide whether to save the boy. Those being whether to measure the value of the time it would take to save the boy against the value of spending that time saving others who may be helped.

To answer the question of the video’s title: No, I would not save the boy. This is because I know I do not have the means to do so, and in attempting to save the drowning boy, I would put myself in a similarly dire situation that would distract from the rescue efforts of those who can save the child. As the philosophies discussed in this hypothetical relate to my life, I choose to measure the ethicality of one’s actions through the lens of intent versus outcome. We all convince ourselves that we intend to do good, but that intent isn’t always reflected in the consequences of our actions. For example, I may intend well in building a raft to go save the drowning boy, but in becoming stranded, I will have created an outcome where the saving of the boy may be more challenging. It is equally possible that people may not intend to do good, but the consequences of their actions reflect a good deed. This can be seen in the not-uncommon hypothetical of a fireman with a hero complex who rushes into burning buildings so that he can impress his community by carrying people to safety. The fireman may ultimately be doing good in rescuing those who are trapped in a blazing mass that was once habitable, but his intent of doing the deed solely to impress those around him is not an intent our society would consider particularly noble or sincere. In my eyes, the outcome should be celebrated, while the intent should be sympathized. If someone is doing a good act and their intent is not leading them toward a future immoral act, then I see no reason to stop or shame them. For example, the self-obsessed fireman still positively impacts society, even if his intent is ignoble.

On the other hand, if a genuinely well-intended person commits an immoral act, we should still sympathize with their intent, even if their actions negatively impact their community. Sympathizing with their intent doesn’t excuse the act, but they should not be cast in the same light as someone who did an immoral act with poor intent. It is through this lens of morality that we can best treat each other as a society, and we can best answer questions such as whether to save a drowning boy.

### **Moral Virtue - Aristotle**

In the Summer of 1884, a ship carrying four sailors—Dudley, Stephens, Parker, and Brooks—became stranded after a storm. After being stranded for a month, they ate through all of their food and supplies. Upon being left with no supplies and still with no hope of rescue, the four men realized that in order to survive, one of them must be killed and eaten. Instead of choosing any fair method of deciding who should die for the survival of the others, Dudley and Stephens decided to kill Parker as he was the youngest and had no family to support.

One way to analyze the ethics of this situation is through the lens of Aristotle's moral virtue. Aristotle's theory of moral virtue is defined by the balance between too little or too much of a particular trait. In other words, a person who follows the perfect balance of behavior is one of ultimate moral virtue. On the individual scale, Aristotle argues that virtue is the excellence of each person's individual character. Therefore, there is no set of all-defining rules to define what it means for us all to be virtuous.

Going back to the Dudley case, moral virtue would be demonstrated through sacrifice. That is, the virtuous solution as to what to do in their survival setting is for one person to sacrifice themselves for the survival of the group. The person who would be the most virtuous in sacrificing themselves would be Dudley, as he was the Captain of the Ship, and in being the Captain, he undertook the rest of the crew in his care. Aristotle would undoubtedly disagree with the decision to kill Parker as Parker neither sacrificed himself for the rest of the group nor did he assume any degree of care for the other sailors. In fact, as the youngest sailor, his killing would be the least virtuous act as it was the duty of the rest of the group to protect him. Instead, Dudley and Stephens chose to act selfishly and take the life of Parker without his consent nor without considering their own sacrifice. Under this light, the events that transpired on Dudley's stranded ship in July 1884 would be characterized by Aristotle as anything but virtue. Therefore, those events would be viewed as an example of precisely what not to do to achieve a morally virtuous character.

### **One Thousand to One**

On Tuesday, October 15, we discussed the concept known as Blackstone's Ratio. This ratio can be simplified in the Benjamin Franklin quote; "It is better 100 guilty persons should escape than one innocent person should suffer." Expanded out, this quote refers to the basic principle of law known as the burden of proof. That is whether we should have a legal justice system that places a high or low burden of proof upon which the state must prove to convict. In the United States, we have a high burden of proof for criminal proceedings, whereas to convict someone of a crime, a jury must find that person guilty beyond a reasonable doubt. In holding this high burden, though, we commonly allow guilty persons to go free simply because we do not have enough proof to find them guilty.

During our meeting, we discussed multiple scenarios where this burden of proof failed. In Leonard Mack's case, for example, a jury of his peers found him guilty of the attack and rape of a high school-aged girl. Even upon being released from prison, he had to live with the stigma of being an adjudicated rapist. This stigma harmed his ability to find employment and even to establish close relationships. After 48 years of this label, Leonard Mack was declared factually innocent of the crime as he had been exonerated of the crime via DNA evidence. In Mack's case, despite our high burden of proof, a jury of his peers found him guilty of a crime he did not actually commit. In Blackstone's maxim, Leonard Mack is the innocent man. However, even with the exception of cases like Leonard Mack, our legal justice system still sets more guilty persons free than innocent persons it convicts. Franklin's one hundred to one ratio still likely holds firm in its guidance of our modern justice system.

This conundrum still poses the question of where we as a society should draw the line as to how many guilty persons are set free to save the freedom of one innocent. I personally view these ethical decisions through the lens of whether they advantageously impact society or not. One innocent person has far greater potential to do good for society than one hundred or even one thousand guilty persons have the potential to do wrong. It is also not out of the ordinary for the wrongfully set free to still face some consequence for their action. For this reason, I draw the line at one thousand to one, regardless of who that one may be.

### A Joyous Society

On Thursday, October 17<sup>th</sup>, we collectively read “The Ones Who Walk Away From Omelas” from Ursula Le Guin’s *The Wind’s Twelve Quarters: Short Stories*. This short story explores a fictional city called Omelas, where people are happy and whimsical and participate in a great Festival of Summer, where all varieties of joyous events occur. It is then revealed that this happy society is only made possible through the suffering of one disabled boy locked in a damp, putrid cellar that every citizen of Omelas knows exists. Most citizens accept the reality that their prosperity is only made possible through the suffering of the helpless boy. Still, some choose to leave Omelas permanently, unwilling to accept a social contract they view to be so unjust. This story and the behavior of Omelas’s citizens is a reflection of our own society’s behavior.

I was struck by how multiple elements of Omelas interplay with some of the worst aspects of our modern world. Nazi Germany came to mind as the tortured boy seemed as if he could represent the groups that the Nazi Party deemed “problematic.” Just as those ethnic and religious groups suffered in camps of mass death and dehumanization, the boy suffered for what was wrongly perceived as the good for the rest of society. In an opposing vein, the tortured boy seemed to represent a Christ-like figure as those who follow modern Christianity view the suffering and death of Jesus Christ to be for the saving of all humanity who followed him. This comparison splits, however, when it is considered that Jesus Christ willingly died for that cause while the disabled boy had no choice.

As a society, we are often faced with the question of what it means to be moral. We endlessly argue and vote in elections over how the most basic issues should be addressed. And even regarding our legal justice system, we forever ponder whether our system is truly the fairest means of protecting society from itself. “The Ones Who Walk Away From Omelas” offers an answer to that question: our system is the fairest. No person in the society of Omelas is happy about the suffering of the boy; they only accept that his suffering is necessary for the greater happiness of humanity. Some even find no other option than to abandon their lives in protest of the injustice that the suffering boy is experiencing. No member of Omelas’s society can find true peace, as they all know the cost of their joy. Our modern world is imperfect, but it is that imperfection which enables true joy and happiness. It is through our legal system’s protection of the rights of the accused that more innocents do not have to suffer in prison. Through this, and even at the expense of allowing some guilty to go free, we can live knowing the innocent boy who had no choice in the state of his life may find peace in our modern society.

### A Question of Justice

In *Principles of Morals and Legislation*, Jeremy Bentham discusses the meaning of morality as it pertains to the utilitarian philosophy of thinking. At the same time, in his piece *On Liberty*, John Stuart Mill espouses the libertarian view of moralism, that is, the morality of an act is defined by how the absence of an act detrimentally impacts those around him. Together, these two perspectives inform how our American system of justice defines what constitutes unjust behavior and how we ought to punish those who fail to act justly.

In Bentham's *Principles of Morals and Legislation*, he notes that society should "take the balance; which, if on the side of pleasure, will give the general good tendency of the act, with respect to the total number of the community of individuals concerned; if on the side of pain, the general evil tendency, with respect to the same community" (Bentham 144). In other words, there can be no pleasure without pain, and any act that disrupts that balance toward pain should be disincentivized by a just legal system. An act such as murder, for example, should always be punished as even if it brings pleasure to one, it will always bring pain to others. In this light, utilitarianism manifests itself in a struggle between selfishness and selflessness. It is not wrong to be selfish so long as that selfishness does not cause pain to others, and it is possible to be so selfless that it is immoral in the pain it causes to yourself. It is by this principle that we criminalize looting during natural disasters, even if for the survival of a family, as the pain that theft brings to the community is far greater than the pleasure that the act may bring upon that family. In the same light, giving all your money to charity is frowned upon if the lack of funds causes you to starve, as the pleasure you are bringing upon the rest of society is unequal to the pain you are inflicting upon yourself. Our legal system only chooses to punish the pains that are inflicted upon others as oftentimes, the pain inflicted upon oneself is punishment enough for the act committed.

Mill expands on this idea by writing, "if grown persons are to be punished for not taking proper care of themselves, I would rather it were for their own sake, than under pretence of preventing them from impairing their capacity of rendering to society benefits which society does not pretend it has a right to exact" (Mill 162). Mill's teachings instruct the why as to our upholding of utilitarian thinking. Our legal system does not punish those who cannot support themselves, as society has no entitlement to one's own healthiness, especially if that society is responsible for one's misery. Still, as Mill contends, it is immoral for one to detriment themselves for the good of everyone else as it brings inordinate pain to both themselves and those who love them. It is only when that balance hangs too far in the direction of inflicting pain upon others that our system's mechanism for legal justice comes into play.

### **Intrinsic Morality**

In the 13<sup>th</sup> Century, an Italian theologian named St. Thomas Aquinas collected a volume of moral questions he titled *Summa Theologiae*. This collection established the theory of natural law, that is, the theory that humans are guided by an intrinsic sense of morality that informs us of the just and unjust actions toward a situation. This concept has been debated and toiled over for centuries. Still, the idea of a natural moral compass has been recognized and utilized in our creation of modern legal systems and how they should treat the society they represent.

In modern America, we have come to recognize certain acts as intrinsically wrong—that is, acts that are not morally justifiable under any circumstance. As such, we have developed a state-run system that systematically punishes those who break the written law. Our system has also come to recognize the supremacy of natural law through its use of juries. By leaving the judgment of one's actions in the hands of a jury of their peers, we have developed a system that allows perpetrators to seek forgiveness for an unjust act, as well as giving jurors the ability to not uphold laws that violate the natural conscience. Indeed, our system does not inherently condone the act of juries ignoring the law, but it has no safeguards to prevent it either. This element of legal justice exists with the understanding that naturally ordained rights, and wrongs are so fundamental that no matter what punishment a state lays forth for the act, the law will still be subverted through all possible avenues. Oftentimes, as aspirational attorneys, we get too distracted by the text of a law rather than its justness. Natural law fills that gap by giving us a baseline to examine whether a law is truly beneficial for society or will merely exist as a warning to conceal an inevitable behavior. I'm also struck by the inevitability of natural law, as no matter what a society does to stray away from it, the natural law will always win. In a way, that is comforting as it means tyranny can never last forever, but it also sows doubt in the laws that we do have for just purposes. For natural law to continue its supremacy in human development, it must always be respected so that society can reach its fullest potential.

### **The Legal Phenomenon**

For Thursday, November 7, we were assigned a reaction paper on legal positivism. In watching the three videos assigned on the topic, I came to understand that legal positivism is simply the idea that law is socially driven. We have long debated whether the law was truly set by man or rather was something that was driven by the inner essence of our nature: legal positivism answers that question.

Legal positivism states that law is set by the agreed-upon social standards of the time and, therefore, is ever-changing. This theory resonates with me as it is the theory that is most clearly grounded in reality. We have seen laws become widely popular and downright normal for a period that is no longer popular and is now considered unjust. Slavery or serfdoms, for example, were once considered just elements of large swaths of the public but are now universally agreed upon as being cruel and immoral. Perhaps natural law does exist, and there are certain immutable qualities of human morality, but for everything else, legal positivism fills up the gap. Through legal positivism, we can understand the guiding essence of law as it existed at any point in time. We can more thoughtfully learn about the laws of Renaissance Italy or the laws instituting social classes in a monarchical France. We can even use legal positivism to better understand societies which are universally condemned and viewed as being insidious.

Throughout this entire course, we have scrutinized and debated the decisions of others and how those decisions reflect upon our modern legal justice system. Legal positivism paints the background for everything we have discussed. As lawyers, it informs us as to the baseline of which laws are most respected and which are most reviled. It informs us of where modern laws came from and where they are currently going. And most crucial of all, it informs us how best to address an issue of the time and how to best advocate society's needs to policymakers. I could not think of a more fitting topic to end this portfolio on.