

REBELS OF A NEW AGE: ON THE NATURE OF AUTHORITY

*

CONTENTS

INTRODUCTION.....	2
I. SYNOPSIS OF NATURAL LAW LIMITATIONS ON AUTHORITY.....	5
II. EMPIRICAL AND DEONTOLOGICAL CONDITIONS PRIOR TO THE REVOLUTION, 1607 - 1774....	9
III. REVOLUTIONARY PRAXIS AND THE PRECEPTIVE OBLIGATIONS OF PEOPLE.....	12
CONCLUSION.....	15

* J.D. Candidate, University of Richmond School of Law, May 2027.

INTRODUCTION

“God is dead! God remains dead! And we have killed him! How shall we comfort ourselves, the murderers of all murderers!”[†] With the might of the U.S. federal militia is wielded at the States and its people, the murderers of moral authority must be identified.

On June 7, 2025, President Trump mobilized thousands of California National Guardsmen to Los Angeles to protect federal Immigration & Customs Enforcement (ICE) facilities from civilian protests.[‡] Trump mobilized or discussed mobilizing similar forces in Washington D.C., Portland, Chicago, Memphis, and many others; both with and without the support of state Governors.[§]

Some of these deployments^{**} were carried out under the guise of Title 10 of the Armed Forces code, which allows for the federalization of the National Guard to repel invasion, suppress rebellions, or execute federal laws.^{††} On the other hand, Title 32 U.S.C. § 501(f) allows the President to order a state’s National Guardsmen to perform training or other duties in support of missions at the request of the President.^{‡‡} For the purposes of §501(f), Title 32 retains authority to direct the state’s National Guard in the Governor.^{§§} Where a state’s Governor deploys its National Guard in Title 32 status, or consents to a request by the President to deploy under such status,

[†] Frederich Nietzsche, *The Gay Science* 120 (Bernard Williams ed., Josefine Nauckoff trans., Cambridge Univ. Press 2001) (1882).

[‡] Press Release, USNORTHCOM, USNORTHCOM statement regarding protection of federal property and personnel in the Los Angeles Area (June 8, 2025).

[§] See, e.g., Adrian Saenz et al., What to Know About National Guard Deployments in Memphis, Tennessee, and Other Cities, Associated Press (October 11, 2025), <https://apnews.com/article/national-guard-troops-memphis-cities-0554c0428e23cf336404fc8a21d632bf>.

^{**} While the author recognizes the proper term for these actions is “federalization,” many sources call these activities “deployments.” This Article will use both terms interchangeably where necessary.

^{††} 10 U.S.C.A. § 12406 (West current through P.L. 119-36).

^{‡‡} 32 U.S.C.A. § 502(f)(1) (West current through P.L. 119-36).

^{§§} See 32 U.S.C.A. § 328(a) (West current through P.L. 119-36).

deployment is argued to not frustrate the Posse Comitatus Act, which prohibits the federal militia from participating in state law enforcement.^{***}

The interchange between Posse Comitatus prohibitions and deploying the National Guard under Title 32 status creates a tension between legal authority and moral authority. Federal courts are now tasked with resolving this tension. In response to federalization, state Attorney Generals filed suits in federal district court alleging, *inter alia*, violations of the Posse Comitatus Act; in some of which, courts held the federalization of state National Guard under color of Title 10 and Title 32 for stated federal missions likely exceeded presidential authority.^{†††}

Regardless of the merits of claims by parties in these cases that protests are rebellious in nature or that federalized troops are harming surrounding communities, and appreciating the preliminary nature of these proceedings, every party in each proceeding alleges escalating tensions between protesting civilians and the federal administration.^{‡‡‡}

^{***} The federal government has not reached consensus as to the relationship between Title 32 status and the Posse Comitatus Act (PCA). Some opinions confirm Title 32 status evades PCA's prohibitions. *See, e.g.*, Memorandum for the General Counsel, Department of the Army, from the Office of Legal Counsel, *Re: Use of Federal Troops to Protect Government Property and Functions at the Pentagon Against Anti-War Demonstrators* (Oct. 4, 1967); Memorandum for Robert E. Jordan, III, General Counsel, Department of the Army, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Statutory Authority to Use Federal Troops to Assist in the Protection of the President* (Nov. 12, 1969); *Mueller v. City of Joliet*, 943 F.3d 834, 837 (7th Cir., 2019) (“The Posse Comitatus Act likewise only bars the Army and Air Force from domestic law enforcement, but does not apply to Title 32 National Guard duty.”). *But see, e.g.*, Memorandum for the Deputy Attorney General, from Mary C. Lawton, Deputy Assistant Attorney General, OLC, *Re: Law Relating to Civil Disturbances* 10 (Jan. 6, 1975) (describing the Department’s position that Title 10 must be invoked to use troops for activities that “involve criminal law enforcement”); *Use of the National Guard to Support Drug Interdiction Efforts in the District of Columbia*, 13 Op. O.L.C. 91, 91 n.2 (1989) (“We have been informed by the Department of Defense that ‘[t]he D.C. National Guard, like the State and Territorial National Guards, may normally be called into federal service for civil law enforcement purposes only pursuant to [Title 10].’”).

^{†††} *See, Illinois v. Trump*, 155 F.4th 929, 938 (7th Cir. 2025) (“we cannot say the administration is likely to succeed in demonstrating that the President lawfully federalized the Guard under [Title 10].”); *D.C. v. Trump*, No. 25-cv-3005 at 54 (D.D.C. November 20, 2025) (Opinions – 2025) <https://ecf.dcd.uscourts.gov/cgi-bin/Opinions.pl?2025> (holding the deployment of the National Guard to Washington D.C. under Title 32 for domestic law enforcement purposes is likely prohibited by the Posse Comitatus Act); *Oregon v. Trump*, No. 3:25-CV-1756-IM, 2025 WL 2817646, at 13-14 (D. Or. Oct. 4, 2025) (holding deployment of National Guard to Portland under color of Title 10 status likely exceeded Presidential authority). *But see, Newsom v. Trump*, No. 25-CV-04870-CRB, 2025 WL 2501619 (N.D. Cal. Sept. 2, 2025), *rev’d per curiam*, 141 F.4th 1032, 1052 (9th Cir. 2025) (holding the president’s federalization of California National Guard in Los Angeles was likely within statutory authority under Title 10).

^{‡‡‡} *See* Complaint for Declaratory and Injunctive Relief ¶ 29, *Newsom v. Trump*, *supra* note 9 (“Defendants deployed ‘[a]bout 90 National Guard troops,’ ‘dozens of federal officers,’ and ‘17 Humvees [and] four tactical vehicles’ to a Los Angeles park in ‘a densely populated immigrant neighborhood.’”) (quoting Watson & Weber, What to Know About

On January 20, 2025, President Trump ordered the secretaries of the Department of Defense and of the Department of Homeland Security to review whether it was necessary to invoke the Insurrection Act of 1807 to defend the U.S.-Mexico border.^{§§§} In response to push-back from Governors and federal courts, Trump signaled a desire to invoke the Act in order to facilitate further deployment of federalized Guardsmen and Marines to quell alleged “invasions from within.”^{****} The Act allows the President “to call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.”^{††††}

This statutory language illustrates not only the breadth of presidential authority as written in positive enactments of law, but also raises an ontological question that this Article explores: what is a morally valid law? A normative question arises from this inquiry, that if a government wields a morally invalid law against its people, what may its people do?

The authority to effectuate the circumstances our nation currently finds itself in was vested in the federal Government long ago. All governments have always been at liberty, in a sense, to impress its militia upon its people, yet this impression comes with natural consequences. This balance, of the government’s authority to assert order, through its military or otherwise, and of its people insisting order through resistance to unjust laws, is a foundational principle embedded into our nation’s political history and tradition.

the Troops and Federal Agents in LA’s MacArthur Park, Associated Press (July 7, 2025), <https://tinyurl.com/mvsjm34m>; Defendants’ Opposition to Plaintiffs’ Motion for a Preliminary Injunction, *Newsom v. Trump*, supra note 9, 2025 WL 2532257 at 5 (“Protesters pinned down several [federal] officers who were left severely outnumbered while trying to defend a parking garage connected to several federal buildings”).

^{§§§} Proclamation No. 10886, 90 Fed. Reg. 8327, 8328 (Jan. 20, 2025).

^{****} David Klepper and Konstantin Toropin, Trump’s use of the National Guard sets up a legal clash testing presidential power, Associated Press (October 6, 2025), <https://apnews.com/article/trump-national-guard-legal-clash-presidential-power-1ed22e89bcdebc8d3e5bd9238373dc45>.

^{††††} 10 U.S.C.A. § 252 (West current through P.L. 119-36)

The precursors to the American Revolution, and the Revolution itself, represents a series of insurrections against the monarchical authority of Great Britain. Our nation's claim of sovereign governance was founded upon the belief that a government's purpose is to protect the natural, fundamental, and inalienable rights of all people; not merely the divine purpose to conform to a patriarchal order of the monarchist tradition, nor for the purpose to levy order against chaos. This Article argues that the moral legitimacy of authority must be adjudged not only through the lens of positivist law, but through the incorporation of pre-political equities that shape a people's moral relationship to its government. This type of equity, I argue, and not the written laws of a government, entitles people to resist positive law and negate their government.

The framers who vested power in the federal government to raise and deploy its military to quell insurrection also are the same framers who reserved certain powers to the people to negate configurations of unbridled moral authority. The people reserved those natural, universally-shared interests, to be exercised when the government forfeits or abridges its own moral authority. When a government cedes its moral authority to protect these natural rights, then it is a natural obligation of the people to resist such government. In such circumstances, the governments' laws cease to have legal validity, and it is at the people's discretion to resist the law's authority over them.

The legal theories supporting the American Revolution have been eroded, advanced by a positivist legal movement which exacerbates the number of military actions a State or the Federal government may take to quell peaceful protest, justifies preemptive and disproportionate violence against critics in political opposition, and perpetuates policy failures attempting to limit executive authority and capacity to retaliate against insurrectionists.

This Article insists it is necessary for the people to, once again, establish jurisprudential limitations upon the central government. I aim to explore the normative utility of what I call

preceptive equities, a type of pre-political equity derived from natural legal theory and apply such equities to characterize the limits of binding authority over people. This Article does not call or desire specific action, nor does it characterize the present material circumstances as requiring certain responses, but rather I offer a necessary theoretical analgesic to quell federal overreach by balancing practical moral implications of authority.

Part I creates a cartograph of the origins of natural law and provides a basic synopsis of these theoretical tenets and language. Part II describes the material conditions facing the thirteen colonies prior to the American Revolution, setting an empirical baseline for when insurrectionary activity was not only successful, but when such action became necessary. Lastly, Part III offers a synthesis of natural legal theories to expand the ontological status of jurisprudence to include Preceptive Equities, those “self-evident,” non-codified, universal facets of human life which governments may not displace or infringe.

By applying preceptive equities to the current federalization of the military, where there is no credible, real, or actual threat of overthrowing federal sovereignty, the mere act of invoking the Insurrection Act would constitute a federal cessation of moral authority. The use of the military to quell localized incidents of dissent, the manner of its use, and the socioeconomic conditions facing the nation increases the possibility of resistance and insurrection—and history may, akin to how the nation valorizes the American Revolution, judge such resistance kindly.

I. SYNOPSIS OF NATURAL LAW LIMITATIONS ON AUTHORITY

“The assertion of that principle, at that time, was the word ‘fitly spoken’ which has proved an ‘apple of gold’ to us. The Union and the Constitution are the picture of silver, subsequently

framed around it. The picture was made not to conceal or destroy the apple but to adorn, and preserve it. The picture was made for the apple—not the apple for the picture.”^{###}

While the United States and its Constitution embodied a plurality of natural and positivist legal theories, natural law served as the *a priori* intellectual principles on which colonists relied to reject the law of England and to inform the foundational logic of the U.S. Bill of Rights. This Part seeks to articulate the limitations of a government to assert its authority by exploring natural law’s theoretical origins. The purpose of natural legal theory here is to demonstrate there are pre-political, universal elements, often unexplored by courts, which drive humanity’s relationship to the hierarchized authority. Noting also, that in describing natural legal theory, the Article necessarily describes Western constructs and shall seek to avoid essentializing notions of universalism that downplay the plethora of alternative global frameworks for law and authority, including within the Western world.^{§§§§}

The earliest example of a legal theory believed to support the overthrow of a government is found in the ancient Chinese political doctrine, the Mandate of Heaven.^{*****} The Mandate of Heaven posited that Heaven (*t’ien*) bestowed a mandate (*ming*) on a virtuous ruler, the reigning Son of Heaven. If the Son of Heaven were forced to abdicate his ruling title, the doctrine presumed that the Son “lost the mandate.”⁺⁺⁺⁺ During the Zhou dynasty, Chinese Confucian philosopher Mencius further articulated the legitimacy of a people’s overthrow of a despot government; relying

^{###} Abraham Lincoln, Fragment on the Constitution and the Union (January 1861) (Roy P. Basler ed., *The Collected Works of Abraham Lincoln*, Vol. 4 at 168-69 (Rutgers Univ. Press, 1953)). Here, Lincoln describes the relationship between the principles of the Declaration and the purpose of the Constitution by referencing Proverbs 25:11, “A word fitly spoken is like apples of gold in pictures of silver.”

^{§§§§} See, Heiner Bielefeldt, “Western” Versus “Islamic” Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion of Human Rights, 28 Pol. Theory 90-121 (2000).

^{*****} Sources differ on when precisely the Mandate of Heaven (*T’ien ming*) began and end as authoritative doctrine, but most agree it began in Ancient China. See, e.g., T’ang Chün-i, *The T’ien Ming [Heavenly Ordinance] in Pre-Ch’in China*, 11(4) Phil. E. and W. 196 (Jan. 1962) (“The doctrine of *ming* first appeared in the pre-Ch’in period [Ch’in, 221-206 B.C.]”); Dingxin Zhao, *The Mandate of Heaven and Performance Legitimation in Historical and Contemporary China*, 53(3) Am. Behav. Scientist 419 (Nov. 2009) (finding the Zhou dynasty, 1046 to 256 BCE, posited the doctrine as a legitimization tool).

⁺⁺⁺⁺ Michael Nylan, “*Empire*” in *the Classical Era in China (304 BC-AD 316)*, 46 *Oriens Extremus* 75 (2007).

on the Mandate's principles: "[In a state] the people are the most important, the altars to the land and grain are next, and the ruler is the least important. For this reason, one who wins over the common people becomes the Son of Heaven."^{####} Mencius proposes there are four "sprouts," comprising human nature, articulated as disparate virtues as the foundation for ethical human flourishing:

"The feeling of compassion is the sprout of *benevolence*. The feeling of disdain is the sprout of *righteousness*. The feeling of deference is the sprout of *propriety*. The feeling of approval and disapproval is the sprout of *wisdom*. People having these four sprouts is like their having four limbs. To have these four sprouts, yet to claim one is incapable (of virtue), is to steal from oneself."^{§§§§§} (emphasis added)

While Mencius did not devise a democratic formulation of governance, it seems apparent that, long before a time where people's rights as against a representative republic gained dominance, pre-Christian philosophers cognized a natural assemblage which structures the ethical relationship between people and various authorities, both divine and human.^{*****} Exclusive reliance on medieval, European, Western, or Enlightenment-era concepts of natural morality hardly lends one to hold these concepts as universal.⁺⁺⁺⁺⁺

Despite seeming ancient origins, whether the mandate to overthrow one's government is based upon principles of natural law requires defining natural law. Yet the term *natural law* remains confounding as neither *natural* nor *law* have strict or consistent definitions. The articulations of early representatives of natural realism serve as a useful framework. Namely, the works of Cicero

^{####} Mencius, *Mengzhi*, 7B14.1 at 187 (Bryan W. Van Norden trans., *Mengzi with Selections from Traditional Commentaries*, Hackett Publishing Co., 2008).

^{§§§§§} *Id.*, 2A6.6 at 47.

^{*****} For more on the comparison between Mencius and other natural law thinkers, see Richard Kim, *Natural Law in Mencius and Aquinas* 140 (Michael R. Slater et al. eds., *Confucianism and Catholicism: Reinvigorating the Dialogue*, 1d Ed., May 2020).

⁺⁺⁺⁺⁺

and St. Thomas Aquinas each, within the context of their disparate time periods and political environments, viewed law as a product of humanity's natural intuition and reasoning with a universal character.

Borrowing from Aristotle and the Stoics, Cicero wrote that law is "highest reason, implanted in nature, which orders those things that ought to be done and prohibits the opposite."^{####} Reasoning, a distinguishable feature of humanity, is, Cicero argues, indebted to a universal, eternal, and unchanging character.^{#####} The conformity to this natural law is decisive of whether law is just or unjust; and whether an authority is any authority at all.^{*****} While the warrants of Cicero's political reasoning for the existence of natural law do not necessarily depend on the existence of a particular religious deity,⁺⁺⁺⁺⁺ this function of natural law changed in the Christian era, where it served to respond to challenges against the Christian canon.⁺⁺⁺⁺⁺

St. Thomas Aquinas was a major actor driving this change. For Aquinas, law is "nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated."^{#####} In nature, all human beings, Aquinas argues, are bound by natural laws and, because of some element of nature, humans can ascertain what such laws are through reason. A human-created law is properly effective only if it allows its subjects to become

^{####} Marcus Tullius Cicero, *De Legibus*, 1 § 18 (David Fott trans., Cornell Univ. Press, 2014) (in conversation with Atticus), <https://www.nlnrac.org/classical/cicero/documents/de-legibus.html>.

^{#####} See, Marcus Tullius Cicero, *De Re Publica*, 3 §33 (C.W. Keyes trans., Harvard Univ. Press, 1970) (found on <https://www.attalus.org/>) (in conversation with Laelius).

^{*****} Cicero, *De Legibus*, *supra* note 21, 2 § 13 ("Therefore Law is the distinction between things just and unjust, made in agreement with that primal and most ancient of all things, Nature; and in conformity to Nature's standard are framed those human laws which inflict punishment upon the wicked but defend and protect the good.")

⁺⁺⁺⁺⁺ Setting aside ambiguities in Latin translation, this point remains debatable. References to religion, faith, clergy, and God are present in both C.W. Keyes' and David Fott's translations of Cicero's works. *But see*, Adam Seagrave, *Cicero, Aquinas, and Contemporary Issues in Nature Law Theory* 502, 62(3) *The Rev. of Metaphysics* (Mar. 2009) ("Cicero's 'purpose' extends beyond what is 'useful to the people' . . . rather, that it will amount to something 'so far as learning is concerned,' that is, philosophically.")

⁺⁺⁺⁺⁺ See Hans Rapp, *Michel Villey on Modern Natural Law*, 65(3) *Archives for Phil. of Law and Soc. Phil.* (1979) ("natural law is regarded as divine and absolute while at the same time restricted to essentially human concerns").

^{#####} Aquinas, *ST I-II*, q. 90, a. 4, co. (Benziger Bros. ed., Fathers of the English Dominican Province trans., Christian Classics Ethereal Library, 1947) (found online at <https://www.ccel.org/a/aquinas/summa/cache/summa.pdf>).

good, either simply or in some particular virtuous respect.^{*****} When a law-giver creates laws which are only useful or pleasurable to the law-giver, or “tyranny”, the moral balance of universal ethics is disrupted and Aquinas holds such governments are unjust.⁺⁺⁺⁺⁺⁺ Similar to Cicero, Aquinas also speaks on the role of leaders in producing good virtues and holds that unjust governments lack legitimate authority altogether.⁺⁺⁺⁺⁺

Notably, Aquinas believed the Catholic/Abrahamic God was ‘he who has care over the community’ (as product of caring for the whole universe);^{§§§§§§§§} and the *Summa Theologiae* argues in support of a lengthy series of virtues closely aligned with the Catholic doctrine of the time.^{*****} While there are some natural law scholars who posit atheistic or secular views of the natural law,⁺⁺⁺⁺⁺⁺ the theist position of the Thomasian natural law cannot be avoided. For much of the scholarship on the subject, the Christian, Jewish, and Islamic God is the originator of natural law which binds all humans.⁺⁺⁺⁺⁺

There are plethora fascinating discussions occurring with respect to where, or from whom, our natural senses for virtue and morality originate. The political and legal notions advanced by Aquinas, however, that there are certain moral truths within our universe deeply embedded in our

^{*****} *Id.*, q. 92, a. 1, co. (“it follows that the effect of the law is to make men good simply. If, however, the intention of the lawgiver is fixed on that which is . . . useful or pleasurable to himself . . . then the law does not make men good simply, but in respect to that particular government.”)

⁺⁺⁺⁺⁺⁺ Aquinas, *De Regiminie Principium*, bk. I ch. IV (I. Th. Eschmann rev’d, Gerald B. Phelan trans., The Pontifical Institute of Mediaeval Studies, 1949) (found online at <https://www.kolbepoundation.org/gbookswebsite/studentlibrary/greatestbooks/aaabooks/aquinas/regno.html>).

⁺⁺⁺⁺⁺ Aquinas, *ST I-II*, q. 92, a. 1, ad. 4 (“A tyrannical law, through not being according to reason, is not a law . . . but rather a perversion of law”).

^{§§§§§§§§} *Id.*, ad. 1. (“The natural law is promulgated by the very *fact* that God instilled it into man’s mind so as to be known by him naturally.”) (emphasis added).

^{*****} See, Dennis M. Doyle, *Thomas Aquinas: Integrating Faith and Reason in the Catholic School*, 10(3) J. of Catholic Education 347 (2007) (“One of [Pope Leo’s (1879)] main points was that there is no conflict between science and Catholic faith properly understood, and that in fact scholastic philosophy, as best represented by Aquinas, anticipated and support the best of modern science.”).

⁺⁺⁺⁺⁺⁺ See, e.g., David Novak, *Does Natural Law Need Theology?*, First Things (Nov. 2019), <https://firstthings.com/does-natural-law-need-theology/>.

⁺⁺⁺⁺⁺ See, e.g., Aquinas, *supra* note 25, q. 94, a. 2, co. (“there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God”).

human experience, and those truths can be ascertained through practical reasoning, does not require theist rational and is sufficient for understanding the reasoning and law of natural rebellion.^{§§§§§§§§} While exploring the religious traditions grounding the natural law heritage embedded in our Constitution is outside the scope of this Article, the notion that there are certain self-evident and universal truths is deeply familiar to the people of this country and our conceptualization of our legal rights. The question for the judiciary, when exploring natural justice theories, is not to identify differences between multiple group's possibly disparate conception of universal truths: it is to identify similarities.

Central to Aquinas's rendition of natural law are the natural hierarchies of binding authority, in the form of primary and secondary precepts. Primary precepts of natural law are those which are "self-evident," as they describe humanity's relationship to the divine or cosmic order.^{*****} These primary precepts include "good is to be done and pursued, and evil is to be avoided,"^{††††††††} and also include: preserving human welfare;⁺⁺⁺⁺⁺⁺ warding off the obstacles to a human's opportunity to use their life to do good; to pursue sexual intercourse; educate offspring; and respecting those living in the society around you as equal beings of and in nature.^{§§§§§§§§} These

^{§§§§§§§§} Aquinas writes against the notion only those who believe in the gospel gain knowledge of natural law, only that any knowledge we gain about natural law incidentally is knowledge about God. *See*, Aquinas, *supra* note 25, q. 94, a. 4, ad. 1. ("not that whatever is contained in the Law and the Gospel belongs to the natural law . . . but that whatever belongs to the natural law is fully contained in them."). *See also*, Jonathan Crowe, *Natural Law with and without God*, 4 Australian J. of Law and Religion 17-18 (2024) ("There is also a middle position [between theist view and atheist view]: . . . natural law ideas . . . although logically independent of theism, cohere with it in such a way as to make both natural law and theism more appealing.").

^{*****} Aquinas, *ST I-II*, q. 94, a. 2, co. ("Now a thing is said to be self-evident in two ways: first, in itself; second, in relation to us.").

^{††††††††} *Id.*

⁺⁺⁺⁺⁺⁺ While Aquinas expressly says "preserving human life" is a primary precept, *ST I-II*, q. 94, a. 2, co., this is commonly misinterpreted to conclude 'human life' is a universal concept upon which we are bound. Humanity and its lives are not universally or intrinsically good. Rather, the preceding clause discloses we have "an inclination to good in accordance with the nature which he has in common with *all* substances: *inasmuch as* every substance *seeks* the preservation of its own being." *ST I-II*, q. 94, a. 2, co. (emphasis added). The universality Aquinas speaks of points to our directive to "seek," or pursue, our own preservation as is limited to how other "substances" [read: organisms] seek preservation; i.e., eating, drinking water, procreation, etc.

^{§§§§§§§§} *See Id.*; William Sweet, *Persons, Precepts, and Maritain's Account of the Universality of Natural Law*, 14 Études Maritainiennes (Maritain Studies) 143-44 (1998) (citing Jaques Maritain, *La loi naturelle ou loi non-écrite*: texte inédit, établi par Georges Brazzola. (Fribourg, Suisse: Editions universitaires, 1986)) ("Other 'first precepts' he

are examples, among likely many others, of what I consider universal: the pre-political, natural drivers of any organism, in any society across time, which we can hold to be true despite having no direct or express evidence of their certainty, without a need to reason.*****

Secondary precepts, then, are merely those precepts which are “analytically entailed” from primary precepts.+++++++ These secondary precepts are not necessarily universal, inalienable, and unchanging in the primary sense. Instead, secondary precepts are derived exclusively from reason and our moral intuition.+++++++ Such reasoning, when it comports with any primary precepts, is a part of the natural law.+++++++ It is from this stature that authoritative human laws are created.***** “But if . . . [human law] deflects from the law of nature, it is no longer a law but a perversion of the law.”+++++++

Synthesized, natural law can be defined as having these fundamental characteristics: (1) its divine, cosmic, or natural origin; (2) its binding upon all humanity; (3) its most basic primary precepts are self-evident and absolute; (4) its secondary precepts, including human-created laws, are deduced through human moral reasoning and applied to specific times and practices; and, (5) secondary precepts are binding upon all of humanity, insofar as they conform to primary precepts

refers to are: ‘act according to what you are’ and ‘act like a man’ . . . Other times he says that ‘the absolutely first principle’ is ‘act according to reason’.”).

***** I am skeptical that any individual has the capability to conclude with certainty whether anything is universally “good” or “evil.” It is universally true we humans can understand, infer, and experience beings and acts as good or evil by way of circumstantial, indirect, or instinctive reference to our surrounding environment. To Aquinas, it is the pursuit of this understanding and the pursuit of the common good, ambiguous or detrimental as its results may be or as relative the reasoning used to achieve those result, that is the universal “good”; and the failure or obstruction of human reasoning pursuits and the obstruction to the pursuit of common goods as a universal “evil.”

+++++++ Sweet, *supra* note 37, at 162.

+++++++ Aquinas, *supra* note 35 (“all other precepts of the natural law are based upon this: so that whatever the practical reason naturally apprehends as man’s good (or evil) belongs to the precepts of the natural law as something to be done or avoided”).

+++++++ *Id.*, ad. 2. (“All the inclinations of any parts whatsoever of human nature, . . . in so far as they are ruled by reason, belong to the natural law, and are reduced to one first precept . . . so that the precepts of the natural law are many in themselves, but are based on one common foundation.”)

***** See Aquinas, *ST I-II*, q. 91, a. 3, co. (“from naturally known indemonstrable principles, we draw the conclusions of the various sciences, the knowledge of which is not imparted to us by nature, but acquired by the efforts of reason, so too it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination of certain matters.”).

+++++++ Aquinas, *ST I-II*, q. 95, a. 2, co.

of nature and facilitates a common good or virtue. So posited, our legal rights arising under the Constitution, as we understand them today, are equivalent to natural law's secondary precepts.

People's rights must be supplemented by consideration of our singular shared experience: our initial temporal abstraction from civilization. We are born *tabula rasa* and only afterwards learn to maneuver through civilization and law as we build upon our knowledge of the world and foster improved reasoning. It is thus this formulation of natural law that gives way to our modern understanding of rights as was articulated in the Enlightenment era, that closely aligns with the rationale of the revolutionary American, and that which enabled us to lawfully overthrow our colonial masters. The next Part investigates the pre-Revolution era through a method of equity identification: what conditions, material or otherwise, give rise to a prioritization of universal equities as against a sovereign authority?

II. EMPIRICAL CONDITIONS PRIOR TO THE REVOLUTION, 1607 - 1774

Because secondary precepts of law are a pursuit of reason, in order to determine what the law regarding rebellion *is*, as was articulated and later embedded in the modern Constitution, we might consider an empirical approach to illustrate the natural condition of the world in the time before the Revolution.^{#####} This is useful, not as a framework to understand the Framers' intentions and semiotic meaning of the Constitution, but to ascertain what principles, purposes, and criticisms were relevant to the colony's decision to negate British sovereignty by force.

It was not long after Britain settled their first (surviving) colony in Jamestown in 1607, that it faced social, political, and even environmental upheaval. Droughts thwarted colonial settlers

^{#####} G.W.F. Hegel, *On the Scientific Ways of Treating Natural Law . . . and its Relation to the Positive Sciences of Right* at 117 (T.M. Knox trans., Univ. Penn. Press, 1975) (1802-1803) ("the positive sciences comprise . . . not only historical matter but also concepts, principles, relations, and, in general, much which in itself belongs to reason and is supposed to express an inner truth and necessity.").

thrice from settling in the Roanoke Islands.^{§§§§§§§§§§} In spite of drought, Virginia colonies soon flourished with their first cash crop, tobacco, and the Virginia Company was quite well-positioned to connect various industries of interest to Britain’s ongoing connection with the East India Trading Company.^{*****}

No analysis of agricultural trade in the late seventeenth century is complete without due mention of the Virginia Company’s laborers: consisting primarily of indentured servants and the enslaved. The earliest Black people arrived in the Virginia colony circa 1618 and were placed into a pre-existing system of indentured servitude, with pay and similar freedoms English (read: white) servants held.⁺⁺⁺⁺⁺ This dualling caste of labor systems, of impoverished or indebted white indentured, and Black indentured servants and slaves, eroded and colonists gradually replaced this system with racialized chattel slavery of Black people within approximately fifty years after settling in Jamestown.⁺⁺⁺⁺⁺

^{§§§§§§§§§§} See David W. Stahle, et al., *The Lost Colony and Jamestown Droughts*, 280(5363) *Science* 564 (1998) (finding initial colonies in Roanoke Island and the desertion of Jamestown were due to extreme droughts and dryness between 1587 and 1612).

^{*****} See, generally, Edmond Smith, *The Global Interests of London’s Commercial Community, 1599-1625: Investment in the East India Company*, 71(4) *Econ. Hist. Rev.* 1118, 1120; *The Origins of Empire: British Overseas Enterprise to the Close of the Seventeenth Century* Vol. 1 at 48 (Nicholas Canny ed., Oxford Univ. Press, 1998) (“the first Royal Charter for the Virginia Company solemnly laid claim to what was, in effect, all the territory of North America not actively occupied by the Spanish”) (citing *The Three Charters of the Virginia Company of London* (1606, 1609, 1612)).

⁺⁺⁺⁺⁺ Randolph M. McLaughlin, *The Birth of a Nation: A Study of Slavery in Seventeenth-Century Virginia*, 16 *Hastings Race & Poverty L.J.* 1, 3-5 (Winter 2019) (finding early African laborers were given wages on account of their Spanish baptism, granting their freedom under English common law, and the lack of preexisting contractual obligations akin to English indentured servants) (citing Va. Writers’ Program, St. of Va. Conservation Comm’n, *The Negro in Virginia* 1 (1940)). But see, Phillip Alexander Bruce, *Economic History of Virginia in the Seventeenth Century* 65 (1907) (“In the beginning, [the negro] was simply a servant for life, different from the white servant in the length of his term of service.”). I mention that Black people were paid, not intending to gloss over what I see are only nominal differences between indentured servitude *for life* and slavery, but to catalogue, consistent with the constraints upon the scope of this Article, certain value-laden historical perspectives on the structure of the laboring class and of Black people in the Virginia colony. It should come as no surprise that the system of indentured servitude in the colonies was quickly supplanted by slavery well before the turn of the century following the settlement of Jamestown. See also, Mary Sarah Bilder, *The Struggle over Immigration: Indentured Servants, Slaves, and Articles of Commerce*, 17 *Immigration & Nat’y L. Rev.* 3, 10 (1995-1996) (“This initial perception that immigrants were articles of commerce and the subsequent conviction that white immigrants should not carry the same legal label as black slaves caused a century of conflict in the development of federal immigration law”).

⁺⁺⁺⁺⁺ See, McLaughlin, *supra* note 47, at 14-17 (cataloguing several statutes beginning 1660 regulating the relationships between white indentured servants and Black slaves).

After learning to cultivate cash crops, Southern Colonies going forward relied extensively on agricultural trade with not only Britain, but the surrounding indigenous people: the Powhatan Confederation in Tsenacommacah, comprising approximately 30 districts extending along what is now the tidewater region of Virginia.^{§§§§§§§§§§} The First (1609-1614), Second (1622-1632), and Third (1644-1646) Anglo-Powhatan Wars, encumbered, to say the least, the trade relations between the Virginia Company and Britain, as well as social cooperation between the Company and the indigenous people.^{*****} Following the Third War, settlers and the Powhatan Confederacy brokered the Treaty of 1646, placing indigenous peoples under the control of the King of England, confining them to a tract of land north of the York River, and, *inter alia*, to return “negro” hostages.⁺⁺⁺⁺⁺

The economic encumbrance and the lack of autonomy to make economic decisions, enacted under the guise of (often false) claims of violence from surrounding indigenous districts, produced a cultural affect toward the indigenous of hatred that culminated in the one of the first violent protests against British rule: Bacon’s Rebellion in 1676.^{#####} While Nathaniel Bacon cites disgruntlement over decades-old economic policies in his Declaration, all of the points raised are questions regarding colonial autonomy. From this, it is possible that crossing certain unostentatious conditions, not necessarily observable, quantifiable, or restricted to a certain time, gives rise to a perception that sovereign authority can be tested by the sovereign’s subjects.

^{§§§§§§§§§§} For more information about the Powhatan Confederation and its historical roots in the region, I refer you to the works of fellow Virginia Helen C. Roundtree. See, *generally*, Helen C. Roundtree, *Pocahontas’s People: The Powhatan Indians of Virginia Through Four Centuries* (1996).

^{*****} See, J. Frederick Fausz, An “Abundance of Blood Shed on Both Sides,” 98(1) *The Va. Mag. of Hist. and Biography* 3, 53 (1990) (“The indiscriminate killing of innocent civilians with no leverage in official policies forever precluded the trust and friendship that might have developed to spare the ‘many Christians and Indians [who] fell in the Wars between them.’”) (quoting Robert Beverly, Jr., *The History and Present State of Virginia* (1705)).

⁺⁺⁺⁺⁺ Virginia Council and Assembly, 1643-62, Laws, Thomas Jefferson Papers Series 8, Virginia Records Manuscripts, 1606-1737, Manuscripts Division, Library of Congress.

^{#####} See, Declaration of Nathaniel Bacon in the Name of the People of Virginia, July 30, 1676 (4 Mass. Hist. Soc. Collections 184-87, 1871) (accusing Virginia Governor William Berkeley of unjust taxes, employing nepotism in selecting magistrates, and, most of all, failing to “destroy [Indians] who then were in open hostility”).

The aftermath of Bacon's Rebellion, with sights of Jamestown burning and aristocratic plantations plundered, saw an increased intensification of slavery.^{§§§§§§§§§§} Fear of slave insurrections spread and the legislature caught wind, enacting strict statutes curtailing the freedom of enslaved Black people from congregating, carrying weapons, or travel from their owner's property.^{*****} In 1682, perhaps with the intent to rebuild the burnt-down colony with "free" labor, the English elites in legislature enacted another statute which cast all non-Christian Africans brought into the Virginia Colony as slaves for life.⁺⁺⁺⁺⁺ This enactment runs contrary to primary precepts of natural legal theory, the universal notion that people seek flourishing; and this contrariness gives rise to increased attention to the contingency of human-asserted authority over people.⁺⁺⁺⁺⁺

The families and households who owned slaves dominated the Virginia Colony's economy. The excessive cost of labor required to produce tobacco, alongside an overproduction of tobacco products after Bacon's Rebellion, led to a significant price decrease and resulted in additional measures by colonial authorities to regulate the tobacco industry in Virginia.^{§§§§§§§§§§}

^{§§§§§§§§§§} McLaughlin, *supra* note 47, at 24 ("It is not clear whether the planters actually perceived the threat of a united servile class, and thus sought to instill and foster racism, or whether their own racist ideologies prompted their legislative edicts.").

^{*****} See, *Id.* at 25 (citing 2 Statutes at Large 481 (William Heller Hening ed., 1823)).

⁺⁺⁺⁺⁺ *Id.* at 26 (citing 2 Statutes at Large at 491-92) ("... all servants ... which from and after publication of this act shall be brought or imported into this country ... are hereby adjudged, deemed and taken to be slaves to all intents and purposes, any law, usage or custome to the contrary notwithstanding.").

⁺⁺⁺⁺⁺ A fact cannot be avoided: St. Thomas Aquinas's *Summa Theologiae*, and most seventeenth and eighteenth century natural law philosophers, defend slavery. See Alan Watson, *Seventeenth-Century Jurists, Roman Law, and the Law of Slavery*, 68 Chi.-Kent L. Rev. 1343 (1993). While more thoughtful discussion is required on this subject, suffice it to say that slavery does not occur in nature without human-facilitated involvement; that slavery is, to say the least, an impediment to human flourishing; and, where a human-created institution affects a substantial portion of civilization is prohibited from exercising autonomy, independence, and inhibited from pursuing flourishing, it cannot be said such institution serves a "common" good. Even under a Thomasian view of just laws, which at the time defended what Aristotle calls "natural slavery," slavery in practice and as an institution is deeply misaligned with natural law virtues.

^{§§§§§§§§§§} Authorities enacted a statute in May 1730 which subjected tobacco warehouses to strict inspections after European merchants complained of poor tobacco quality from Virginia. See Emily Salmon and John Salmon, Tobacco in Colonial Virginia (Virginia Humanities, *Encyclopedia Va.*, Dec. 2020) (<https://encyclopediavirginia.org/entries/tobacco-in-colonial-virginia/>).

Following economic turmoil resultant of Great Britain's participation in the Seven Years War (1756-1763), Britain exerted further economic control over the thirteen colonies of the United States, namely via: (i) the Stamp Act of 1765,^{*****} (ii) the Declaratory Act of 1766,⁺⁺⁺⁺⁺ and (iii) the Townshend Acts, in particular the Sugar Act of 1764 and the Tea Act of 1773.⁺⁺⁺⁺⁺ Each of these acts were passed by the British parliament, and the colony legislatures did not have a seat in the lawmaking den across the Atlantic. These acts exemplify human-created laws, a prospective secondary precept, imposed without reciprocal acknowledgment of colonists' primary claims to autonomy. In due course, we begin to see increased instances of colonial resistance to the new tax regimen sprout up in the decade between 1765 and 1775.

Alongside these economic circumstances, there are substantial cultural and social changes occurring at the start of the eighteenth century. For one, a significant influx of immigrants, as well as the ebbing of freed Black slaves and indentured servants, entering urban areas broke much of what we colloquially consider the racial homogeneity of the pre-revolution colonies.^{§§§§§} As a second, a seemingly sudden shift in religious discourse, occurring between 1730 through 1750, led to the First Great Awakening and the revival of Calvinism, a less strict denomination

^{*****} King George III, An Act for granting and applying certain stamp duties, 1765 (instituting a tax in the form of stamps, payable in British, non-colony, currency).

⁺⁺⁺⁺⁺ King George III, An Act for the better securing the Dependency of His Majesty's Dominions in America upon the Crown and Parliament of Great Britain, 1766 (overturning the Stamp Act, holding the colonies in America were equally subject to Britain's tax systems and laws as Britain's own citizens). Historians hold the Declaratory Act was an attempt to assuage British parliament, who found repealing the Stamp Act unappealing, that Britain remained the taxation authority over its colonies. See, Derek Watson, *The Rockingham Whigs and the Townshend Duties*, 84(332) *Eng. Hist. Rev.* 561, 562 n.3 (Jul. 1969) (citing Hardwicke Papers, Brit. Mus., Add. MS. 35430, fos. 31-32, Rockingham to Yorke, Jan. 17, 1766).

⁺⁺⁺⁺⁺ The Townshend Acts, or Duties, are a series of taxation duties levied against American colonies between 1667 and 1671 to relieve Britain from its heavy tax burdens. Historians disagree on the precise number of Townshend Acts enacted: four, see, Alexandra P. Langer, *British Public Opposition Surrounding the Townshend Duties Crisis* (August 2022) (M.A. thesis, University of Chicago) (on file with Knowledge UChicago); five, see, *Encyclopedia of U.S. Political History* at 369-371 (Andrew W. Robertson ed., Sage Publications, 2010).

^{§§§§§} See, Gary B. Nash, *The Social Evolution of Preindustrial American Cities, 1700-1829: Reflections and New Directions*, 13(2) *J. Urban Hist.* 115, 119 (1987).

which emphasized the role of dissent in religious discourse and the maintenance of a personal relationship to the Christian God.^{*****} The arts and sciences in the colonies also gained considerable spread at this time. The poems of Bishop Berkeley, the writings of Benjamin Franklin, and modernizing architectural endeavors each played a pivotal role in shaping the cultural landscape and the burgeoning sovereign identity of the pre-revolution colonies.⁺⁺⁺⁺⁺

These overlapping economic, cultural, and intellectual pressures created a crisis of preceptive equity. The **gap** widened **between the** colonial **authority** by **Britain, the** material and practical obstacles **colonists** faced in maintaining its relationship as subject to Britain's authority, and the cultural milieu giving people occasion to prioritize their independent, pre-political identity. It is this era into which the American Revolutionaries were born.

While the Boston Massacre of 1770^{*****} and the passage of the Tea Act of 1773, granting full commercial authority over the colonial trade of tea in the East India Company,^{§§§§§} serve as the initial violent sparks of what would ultimately become the

^{*****} On the First and Second Great Awakenings, and significant theological transitions and revivals, see, generally, Edwin S. Gaustad, *The Theological Effects of the Great Awakening in New England*, 40(4) *Miss. Valley Hist. Rev.* 681 (Mar. 1954).

⁺⁺⁺⁺⁺ See, Joseph J. Ellis, *Cultural and Capitalism in Pre-Revolutionary America*, 31(2) *Am. Quarterly* 169, 173 (Summer 1979) ("the American opposition to the Stamp Act and to English imperial policies 'have awakened the spirit of freedom' and thereby demonstrated that America was fertile ground for creative artists") (quoting John Trumbull, *An Essay on the Use and Advantages of the Fine Arts* 5-7 (New Haven, 1770)); Nash, *supra* note 59, 13(2) *J. Urban Hist.* at 127 ("[tax records between 1740 and 1765] confirm what was evident architecturally in the cities . . . growing economic inequality might have continued for some time without objections if middle- and lower-class city dwellers had not seen the amassing of great fortunes as one of the main causes of the growing poverty and indigency that afflicted every city"); Mary Sarah Bilder, *The Struggle over Immigration: Indentured Servants, Slaves, and Articles of Commerce*, 17 *Immigration & Nat'y L. Rev.* 3, 23-24 (1995-1996) (finding growing instances of cultural discomfort in continued migration of white indentured servants and treatment of such servants as articles of commerce in the decade prior to the revolution).

^{*****} Boston Massacre describes a riot, ensued after a heated argument between a lone British soldier and a colonist. Five colonists were killed in British soldiers' attempt to quell the riot. While worth noting this could count as an abuse of military discretion, the amount of propaganda from both colonial activists and Britain misrepresented the violence (i.e., calling it a "Massacre") and the intentions of actors at the riot. See, Neil L. York, *Rival Truths, Political Accommodation, and the Boston "Massacre,"* 11 *Mass. Hist. Rev.* 57 (2009) ("Even now, popular memory of the 'massacre' has less to do with what occurred in the courtroom than with the informal trial that occurred outside the court among the people.").

^{§§§§§} For tracing the historical events of the Boston Tea Party, and the cultural relationship between colonists and tea cultivation, see, Abhilasha Jaiman, *Boston Tea Party*, 4(10) *Int. J. Multidisciplinary Rsch. in Sci., Eng'g, Tech., & Mgmt.* 1443 (Oct. 2007).

praxis of revolutionary theory, the negation of British sovereignty began far earlier. The next Part lays the theoretical foundation for assessing when British sovereignty ended. It was not when we declared independence, or when we “won” the American Revolution; rather, sovereign authority ended a century earlier when the imbalance of preceptive equities became self-evident.

III. REVOLUTIONARY PRAXIS AND THE PRECEPTIVE OBLIGATIONS OF PEOPLE

Looking upon the Constitution and the Bill of Rights, each were not promulgated as a regulation of people. The Constitution itself does not contain binding laws, but it serves as useful heuristic instructing a government to consider the preceptive equities of its subjects, the People.***** H. Wayne House characterized the natural law entailed by Declaration of Independence as being “like sinew to the bones” of the positivism of the Constitution.+++++

Contained within the Declaration of Independence, the Constitution, and other foundational national documents, one finds the blending of several jurisprudential criteria. One may view these documents through in the works of Aquinas, John Locke, David Hume, and Thomas Paine; as relates to natural law doctrine.***** One may also find these documents reflect the works of Thomas Hobbs, H.L.A. Hart, John Austin, and Jeremy Bentham; as relates to

***** A person may define themselves as a pirate and commit felonies, despite that U.S. Const. Art. 1, § 8, cl. 10 prescription to Congress of a power “to define and punish Piracies and Felonies committed on the high Seas.” Even if the present common attitude towards pirates is overwhelmingly negative, it need not be so. This consensus is subject to eventual change. Much perhaps to the chagrin of Peter Pan, there may come a time where people do not ask for pirates to be punished. Similarly, it is entirely possible, if not likely, pirates currently do not want to be punished.

+++++ H. Wayne House, *Influence of the Natural Law Theology of the Declaration of Independence on the Establishment of Personhood in the United States Constitution*, 2 Liberty U. L. Rev. 725, 729 (2008).

***** See, e.g., Edwin Vieira Jr., Rights and the United States Constitution: The Declension from Natural Law to Legal Positivism, 13 *Ga. L. Rev.* 1447, 1448 (Summer 1979) (“History shows that the Constitution embodies the principles of natural law.”); Review: The Role of Natural Law in the American Revolution, 108(5) *Harv. L. Rev.* 1202 (Mar. 1995) (reviewing John P. Reid, *Constitutional History of the American Revolution: The Authority of Law* (1993)); Andrew J. Reck, Natural Law in American Revolutionary Thought, 30(4) *Rev. of Metaphysics* 686 (Jun. 1977); Lester H. Cohen, The American Revolution and Natural Law Theory, 39(3) *J. of the Hist. of Ideas* 491 (Jul.-Sept. 1978); Philip A. Hamburger, Natural Rights, Natural Law, and American Constitutions, 102(4) *Yale L. J.* 907 (1993).

the doctrines of legal positivist theory.^{§§§§§§§§§§§§§§§§} We find Constitutional criteria in reliance on English common law traditions, as expressed by the famous jurists William Blackstone, Sir Edward Coke, and Sir Matthew Hale.^{*****} Each posits essential jurisprudential questions and approaches concerning what laws bind humans and how are they created, and, arguably, each has representation within the Constitution and Bill of Rights.⁺⁺⁺⁺⁺

While I tend to agree with the proposition, and imagery, that the sinew of the Declaration and the bones of the Constitution service distinct sectors of political vitality. My response is that jurists should grow an aversion to classifying these key historical documents as the product of any particular or limited set of theoretical principles. When the issue is the extent of federal moral authority, we must view these documents not as theoretically disparate, but foundationally the same.

Sinew *must be* bone, and bone *must be* sinew; for without one another, neither can move the body in practice. So too with theories of authority—jurists must not only rely on the tools we created to interpret statutes, Constitution, and other written directives as law; but must learn and develop tools of moral philosophy. Because, if the abolition of chattel slavery in the United States is indicative, the law *is* more than what is codified and positivist laws must align with universal moral obligations binding upon all humanity.

^{§§§§§§§§§§§§§§§§} See, e.g., Gary Lawson and Guy Seidman, The Hobbesian Constitution: Governing without Authority, 95 *Nw. U. L. Rev.* 581, 583 (Winter 2001) (referring to theories relying on claims of necessity and implied consent to justify exercise of government authority outside of formal legal limits); Kent Greenwalt, The Rule of Recognition and the Constitution, 85(4) *Mich. L. Rev.* 621 (Feb. 1987); Edward A. Purcell Jr., Democracy, the Constitution, and Legal Positivism in America: Lessons from a Winding and Troubled History, 66 *Fla. L. Rev.* 1457 (July 2014).

^{*****} See, e.g., Michael J. Gerhardt, The Role of Precedent in Constitutional Decision-making and Theory, 60 *Geo. Wash. L. Rev.* 68, 109-10 (1991); Rupert Cross and J.W. Harris, Precedent in English Law 125-64 (Clarendon 4th ed. 1991); Melvin Aron Eisenberg, The Nature of the Common Law 50-76 (Harv. 1988); Herbert Pope, The English Common Law in the United States, 24(1) *Harv. L. Rev.* 6 (Nov. 1910).

⁺⁺⁺⁺⁺ See generally, Neil Walker, The Idea of Constitutional Pluralism, 65(3) *Modern L. Rev.* 317-359 (May 2002); Stephen M. Griffin, Pluralism in Constitutional Interpretation, 72 *Tex. L. Rev.* 1753-1769 (June 1994); Neomi Rao, Pluralism and the American Constitution (Am. Enter. Inst. for Pub. Pol’y Rsch. ed. 2023) (2023); Sonu Bedi, The Pluralist Constitution, 32(4) *Critical Rev.* 369-380 (2020).

Preceptive equities are a union of these allegedly disparate legal theories. Not to be confused with remedial equities taught in law schools (e.g., those equities valuing restitution, fairness, or preventing unjust enrichment); or those equities which bolster existing positive laws by filling in the gaps of common law. Preceptive equities negate authority on grounds of universalist morality. Such equity is pre-political and universal in character, it does not depend on individual notions of morality, or relative societal values respecting morality. Rather, the analysis hinges upon how well positive laws comport with universal demands and opportunities, such as those described earlier as primary and secondary precepts.

Humans are not bound to a nation's laws merely because such laws are enacted by a governing nation; instead, humans are bound by primary precepts of natural law. In this light, preceptive equities are those rights, entitlements, and liberties not necessarily granted to people by a nation, but are granted to people by sheer virtue of being human. As such, nations must continually justify the exercise of positive laws, and such exercise is limited by natural-law-derived intuitions about human agency. Nations must define positive laws and their relationship to the maintenance of moral authority to exercise those laws.

Analyzing the practical utility of preceptive equities, and whether any given law is binding upon a person or is morally void, I explore through the language of natural law theory.

- (1) Preceptive equities originate from the divine, cosmic, or natural or biochemical, not from individual moral choices or societal, cultural, or environmental traditions;
- (2) Preceptive equities give rise to the primary precepts of nature law, which are binding upon each and every organism, not merely humans or human-citizens;
- (3) Preceptive equities are understood through humanity's intrinsic intuitions—one need not be well-read to identify preceptive equities, nor does one need to be told what is

- right or wrong to understand what features constitute people's preceptive equities;
- (4) Secondary precepts of law, including human-created laws, are obtained through both analytical and normative reasoning; and,
- (5) Secondary precepts of law may become binding law, insofar as:
- a. They do not inhibit anyone's pursuit toward or access to those facets, needs, and capacities inherent to being human (e.g., food, water, travel and movement, speech, autonomy, choice of community, self-determination, and self-identification);
 - b. Serve a common, not strictly universal or merely majoritarian, good or goods; and,
 - c. Are effectively promulgated so as to be deemed binding upon each and every human.

Preceptive equities do not determine whether a statute, government decision, judicial opinion, or the like should be invalidated. Instead, preceptive equities determine whether a person retains a choice to obey sovereign authority over them. If a secondary precept is not binding upon a person, the person may choose to disobey it.

As a basic example, a nation enacts a statute requiring people within that nation's borders to pay a reasonably-priced income tax. The imposition of a tax is not something originating from some divine, cosmic, or natural or biochemical influence; it is human-created. It is thus a prospective secondary precept, and because it was created through a process of human reasoning, it is subject to fallibility and challenge.

On promulgation, a tax statute could never be promulgated to all humans in that nation such that the imposition of the tax is understood by everyone as a mandate akin to the mandates of

our bellies to eat. We must then determine the nature of the tax's character, purpose, and effect; and, we then run into problems. Taxes come at direct cost to a person's ability to afford universally-shared needs, i.e., food. Taxes require a human to earn sufficient income to not only afford the tax but afford the good.

Therefore, within this framework, this over-simplified tax statute is not binding law, even if promulgated under a well-reasoned belief such a tax serves a common good. People may still choose whether to obey it or not. Under this approach, there are few statutes which are truly binding on people—and, for each statute, it is the task of a government, desirous to enforce its statutes, of persuading people of such statute's goodness.

The teleology of preceptive equities is illustrative, that there are authorities which can never be avoided regardless of what a nation's laws say. If we refuse the mandate of our lungs to breathe, we will die. If we refuse the mandate of our stomachs to eat, we will die. By enacting directives and enforcing them as though we will die if we refuse, the government positions itself as a constant threat. But this threat is not some intangible cosmos or biochemical mechanism, unreachable by our bodies and tools; this is a government, made up of real tangible people. We cannot petition the universe to save us from our own starvation, or appeal to a God for oxygen; but we can appeal to other people, and we can petition for the assistance of others.

Where even if some in our communities are rendered incapable by their government of pursuing these universal and unchanging goods and virtues, we can conclude, as the founders implicitly and expressly did, the laws of such a government are unjust. The U.S. Constitution acts not as the formation of a national identity, but a heuristic of sovereignty and its aims. A government who imposes and strictly enforces its non-binding laws upon non-persuaded people, will likely, over time, be the target of insurrectionist activity.

As applied to the American Revolution, there are many statutes, judicial holdings, socioeconomic conditions, and executive actions which presently limit people's good faith capacity to believe these conditions are just and that the government has maintained its authority.##### Placing economic burdens on individual people to the benefit of those in government;##### widening economic disparities between people and elite aristocrats;***** surging divisions of national identity;+++++++ mass incarceration

Public trust in the federal government has steadily declined since the mid-twentieth century. *See, e.g.,* Public Trust in Government: 1958-2025, *Pew Research Center, Washington D.C.* (Dec. 4, 2025) (<https://www.pewresearch.org/politics/2025/12/04/public-trust-in-government-1958-2025/>) (finding 17% of surveyed Americans believe they trust the federal government to do what is right at least most of the time); Ted Jenkin, Why don't we trust the government anymore?, *Fox News* (August 3, 2024) (<https://www.foxnews.com/opinion/why-dont-we-trust-the-government-anymore>) ("only 2% of Americans now believe that the government consistently acts correctly"); The State of Public Trust in Government 2025, *Partnership for Public Service* (August 12, 2025) (<https://ourpublicservice.org/publications/the-state-of-public-trust-in-government-2025/>) ("In 2025, public trust in the federal government remains low—as has been the case for decades.").

See, generally, Matthew Barbabella et al, Insider Trading in Congress: The Need for Regulation, 9 *J. Bus. & Sec. L.* 199, 237 (Spring 2009) ("... based on the feelings of Americans and the obvious analogy to corporate insider trading, that Congressional insider trading is inequitable and should be illegal."); Hakan Yilmazkuday, Unequal inflationary effects of tariffs across socio-demographic groups, 22(56) *Int. Econ. And Econ. Pol'y* 55, 56 (2025) ("The unequal distribution of the inflationary burden carries significant policy implications for inequality, economic stability, and social welfare ... [and] necessitates targeted measures ... designed to reduce the financial strain on those most affected by tariff-induced inflation."); Daniel J. H. Greenwood, Essential Speech: Why Corporate Speech is Not Free, 83 *Iowa L. Rev.* 995, 1069 (Aug. 1991) ("Corporate participation in the political process distorts that process in a way that is quite different from the background distortions caused by our general failure to separate the spheres of money and [political] debate.").

***** *See, generally,* Jonathan J. B. Mijs and Elizabeth L. Roe, Is America coming apart ? Socioeconomic segregation in neighborhoods, schools, workplaces, and social networks, 1970-2020, 15(6) *Socio. Compass* e12994 at 11 (Mar. 2021) ("As the joint growth of income inequality and segregation turns material divisions into social divisions, rich and poor Americans are increasingly unlikely to know one another or share the same spaces."); Dania Davis and Christian E. Weller, Economic Inequality, the Digital Divide, and Remote Learning During COVID-19, 49(1) *Rev. of Black Pol. Econ.* 41, 42 (2022) (finding racialized, intergenerational wealth inequality was exacerbated during the COVID-19 pandemic due, in part, to mandatory remote learning policies); Andreas Kalyvas, Oligarchy and Political Modernity: Conceptual Transformation and the Politics of Wealth, 32(2) *Constellations: Int. J. of Critical and Democratic Theory* 201, 202 (June 2025) ("The modern 'age of refinements' and 'gentle mores,' of manufactures and industry, world trade, luxury, and arts, the age of the global division of labor and the wealth of nations, ... an age proudly proclaimed as the 'liberty of the moderns,' is paradoxically also an age relatively oblivious to or uninterested in oligarchy.").

+++++++ *See, generally,* Samuel L. Perry and Joshua B. Grubbs, The religion of White identity politics: Christian nationalism and White racial solidarity, 104 *Soc. Forces* 453, 468 (Feb. 2025) (documenting the relationship between "White racial consciousness and solidarity (including identity salience, a sense of racial pride and commonality, and the normative commitment to work on behalf of race) and seemingly 'race-neutral' questions about the nation's 'Christian' heritage and the need for 'Christian' hegemony."); Olena Mishalova et. al., Russia's War in Ukraine as a "War for Identity" and Appropriation of Cultural Tradition, 15(1) *Ethics in Progress* 73, 90 (2024) (arguing that, in addition to economic and political circumstances, a nation's cultural identity and historical traditions are targets for warfare); Curtis R. Ryan, Identity Politics, Reform, and Protest in Jordan, 11 *Stud. in Ethnicity and Nationalism* 564, 574 (2011) ("the pervasive power of the politics of identity, ethnicity, and

and immigration laws akin to the pre-eighteenth century indentured servitude system;##### and the use of the solders where general state law enforcement would suffice.

Each of the conditions visible today were present in the decades leading up to the American Revolution. “From whatever angle you approach it, the present offers no way out.”#####

CONCLUSION

At the time of our founding, the synthesis of Enlightenment-era natural law, positivism, and English common law embodied in the U.S. Constitution fashioned a balance between a person and their obligations, not a zero-sum balance between the interests of a person and their government. For insurrectionary activity, the balance of preceptive equities is as such: (1) humans have a right to refuse non-binding laws, and (2) thwarted governments have a right to attempt to impose non-binding laws. Where this balance is upset, the annals of rebellious history are co-extensive with our nation’s traditions. This balancing of preceptive equities is the task of the United States federal government, and especially so for the judiciary.

Invoking the Insurrection Act to exert federal authority over States and people, purposed against protests not in the slightest demanding or executing a complete overthrow of the federal government, violates not merely individual liberties guaranteed under the Constitution, but universal equities. Here, the mere imposition of military authority, directed at substantially peaceful protest (an exercise of humanity’s inherent ability to speak, assemble, move, and self-

nationalism can be used . . . to divide and rule, or even to bludgeon the democratic opposition into submission.”)##### See, generally, Scott W. Duxbury, Peculiar Institution? The Legacy of Slavery and Prison Expansion in the United States, 1970-2015, 41(1) *Just. Q.* 114, 134 (2024) (finding incarceration rates steeply increased in states that heavily relied on slave labor and that experienced large demographic changed during the Great Migration); Samira Musleh et. al., Alien academics: Colonial social mobility, datafied subjectivity, and white-collar indentured servitude in U.S. higher education, 18(3) *J. Int. & Intercultural Commc’n* 215, 222 (2025) (analogizing contemporary extraction of immigrant academics and reduced social mobility to a modern form of indentured servitude).##### The Coming Insurrection (*L’insurrection Qui Vient*) 23 (Editions La Fabrique ed., Semiotext(e) trans. 2009) (2007).

actualize), on false grounds that States are incapable of enforcing federal law, is equitable breach.

Heavy reliance by federal governing bodies on a positivist calculus, which presumes a sovereign has the authority to enforce any of its rules, has resulted in a moral unbalancing in the law. Over time, people's choice to conduct themselves non-violently has been coerced by hundreds-year-old states and judicial rulings. None of which, under the preceptive equities rising to laws which bind us all, have any true authority over the people. Federal courts and Congress can serve as an adequate check against abuse of executive military discretion by repealing statutes and overturning holdings which allow the president to unilaterally declare an insurrection and subject such declarations to judicial review. Such recalibration would not merely revive formal separation-of-powers principles; it would be one step to restore the moral architecture underlying legitimate authority. However, this Article highlights the need for authoritative checks against the federal government existing outside the limits of formal legal doctrines.

Without an active and expedient effort to restore a pluralist balance to conceptions of legal ontology, to protect the equities inherent to all life, our union will die. The murderer of murderers will not be the dancing frogs in Portland, the rioters in Los Angeles, or the Governor of Illinois.

It will be the federal government itself.