

# REBELS OF A NEW ERA

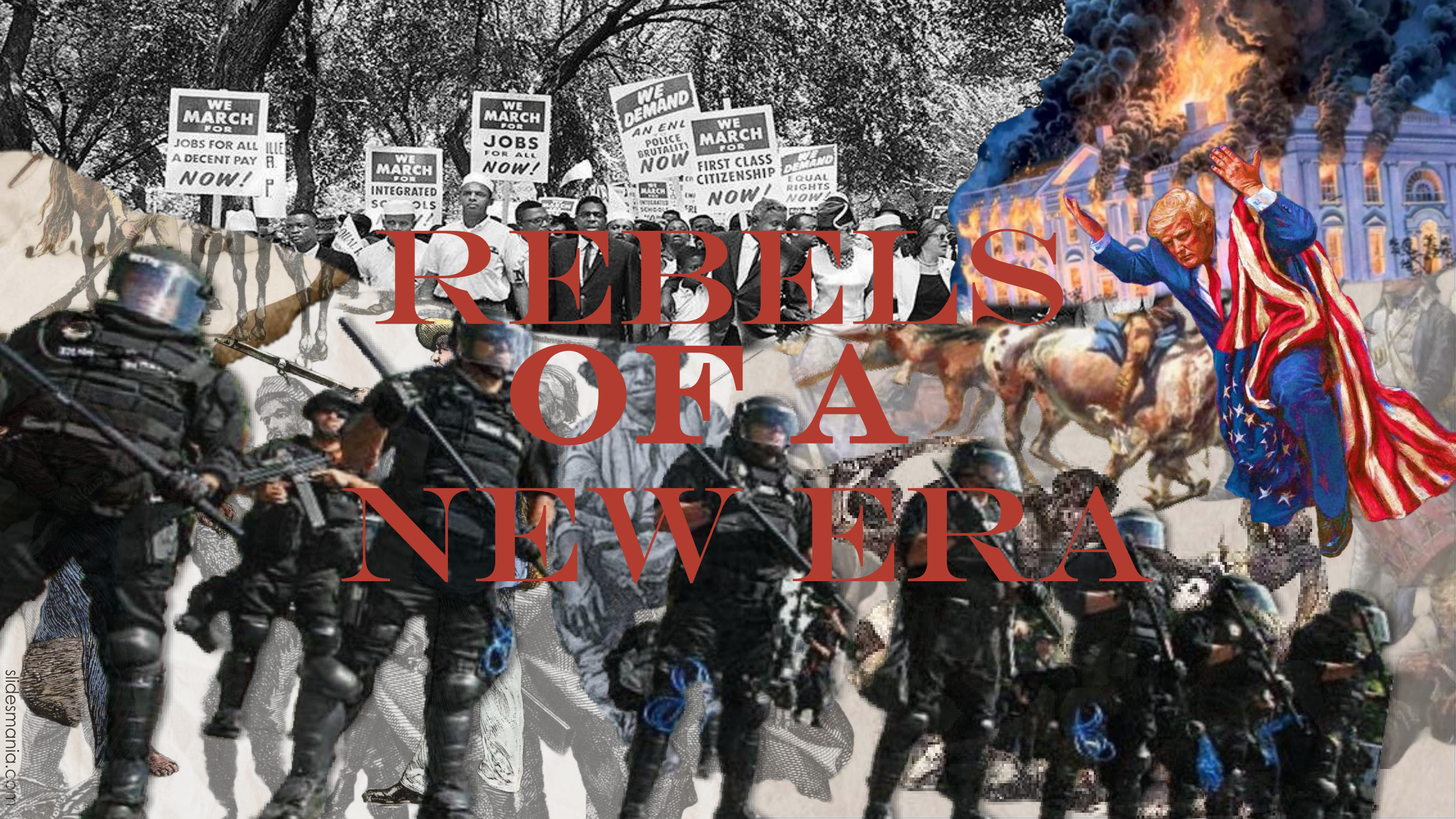




Table of  
contents.

01  
*An Introduction to  
Jurisprudence*

02  
*An Insurrectionist  
Genealogy from  
1785 – 1807*

03  
*Application to the Civil  
Rights Movement*

04  
*Where are we now? What  
can we do? Can we do  
anything?*

# Goals for this “Lecture”

- Introduce us to *Jurisprudence*, a specialization not commonly taught in law school (including UR Law)
- Expand our approach to rights discourse to view assemblies, movements, and insurrections themselves as expressions of *Law*

And let me make this clear up front....

- Goal is **NOT** to advocate for armed overthrow of the Government!



# 01



## Jurisprudence

The collection of theoretical foundations and procedures for the creation of law.

# Analytical v. Normative

Analytical jurisprudence should be very familiar to law students –  
it studies what the law *IS*

Normative jurisprudence is the study of what the law  
*OUGHT TO BE*

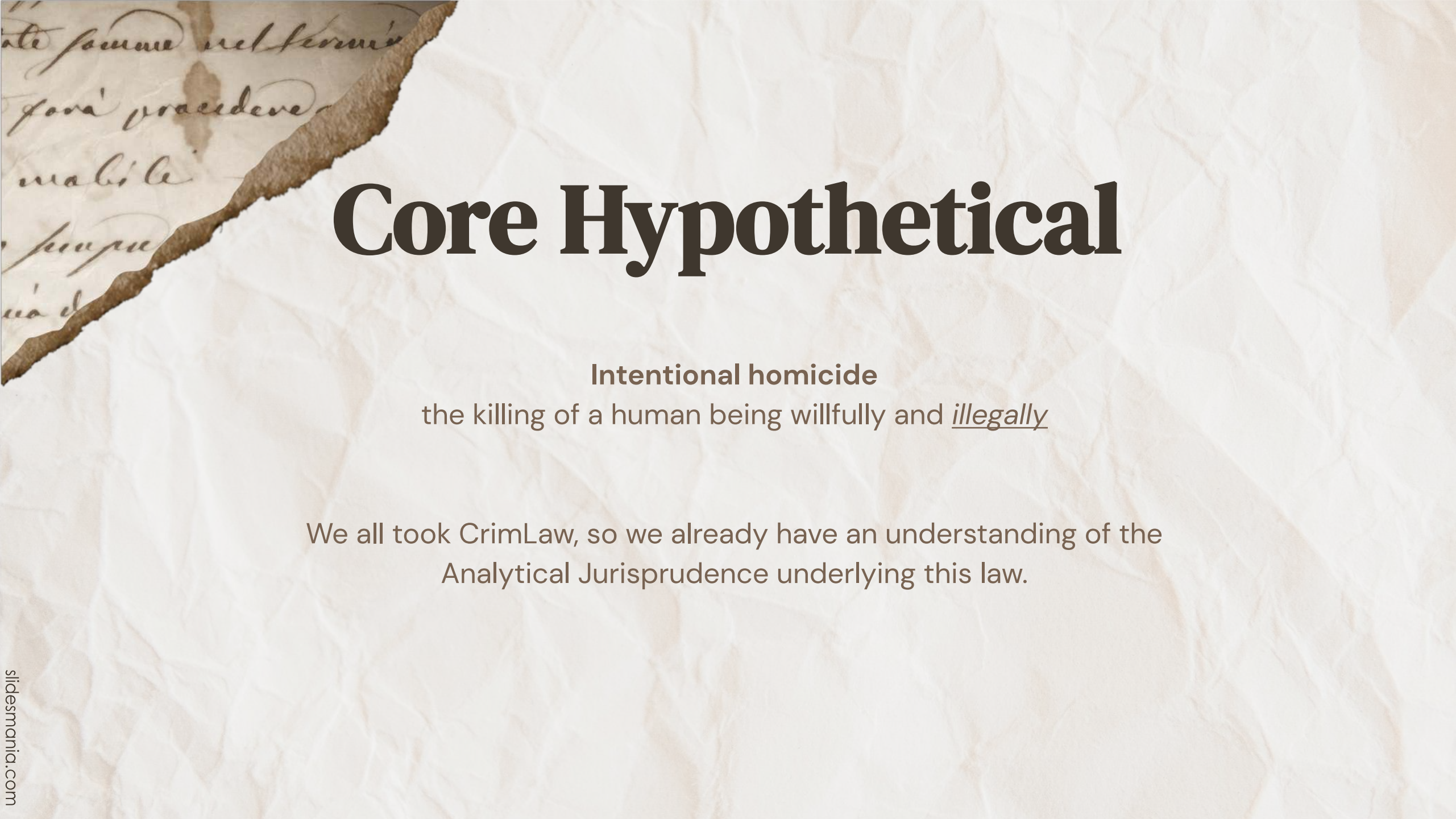


# Analytical v. Normative

Analytical jurisprudence should be very familiar to law students  
– it studies what the law *IS*

Normative jurisprudence is the study of what the law  
*OUGHT TO BE*





# Core Hypothetical

**Intentional homicide**  
the killing of a human being willfully and *illegally*

We all took CrimLaw, so we already have an understanding of the  
Analytical Jurisprudence underlying this law.



# Modes of Analytical Jurisprudence

## Natural Law Theory

- Law originates from the natural order.
- Universal, inalienable – all people have certain rights stemming from nature (or, less secularly, from Divinity).
- Our moral and ethical intuitions, alongside our biological functions, are the Law.

## Positivist Theory

- Law originates from validly regulated Governments. It is “posited” upon the Government’s people.
- Rights are a Government permit meant to regulate people’s behavior.
- Laws are valid regardless of morality and ethics.

# Natural Moral Law

Law is the natural order. Certain rights and moral values are inherent in human nature and can be understood universally, independent of enacted laws or societal norms.



# Did you know?

The Founders were HUGE fans of natural law philosophy. Differentiated from our colonial ancestors and European allies, natural law is expressly mentioned in many Constitutional provisions.

First Amend: Individual freedoms to speak, publish, have religious belief, and conduct religious activity.

Fifth Amend: No person shall be “deprived of life, liberty, or property”

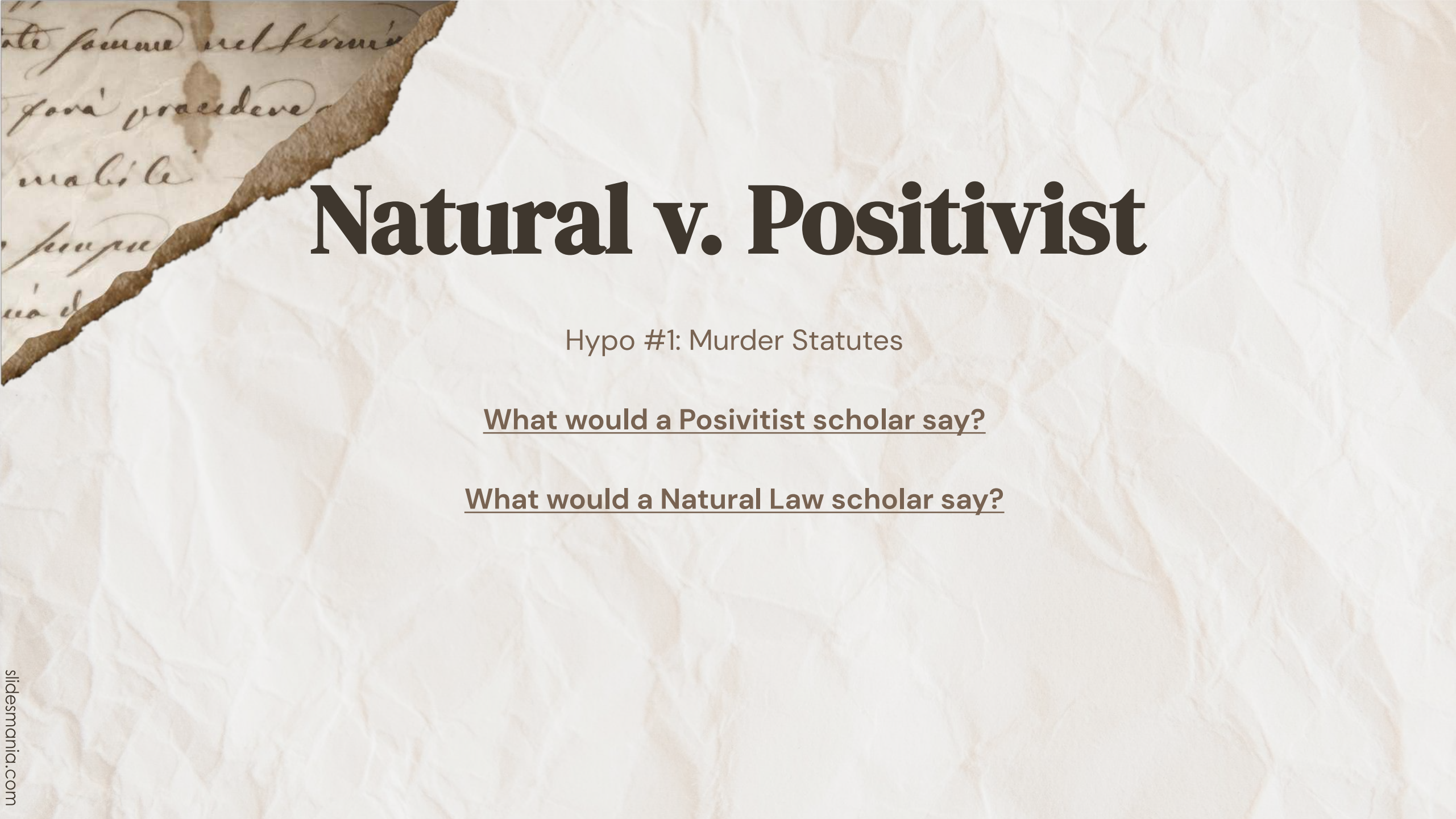
Tenth Amend: The People reserve to themselves their own individual rights, except where surrendered to States or Feds.

# Positivist Legal Theory

The Law is what the Government posits.

- 1) Pedigree Thesis: A directive is Law if it is posited by a valid Government.
- 2) Separability Thesis: The Law is distinct from moral intuition. Morality therefore does not constrain legal validity.
- 3) Discretion Thesis: The list of valid legal rules posited by Government are exhaustive, only supplemented by judicial discretion in cases.



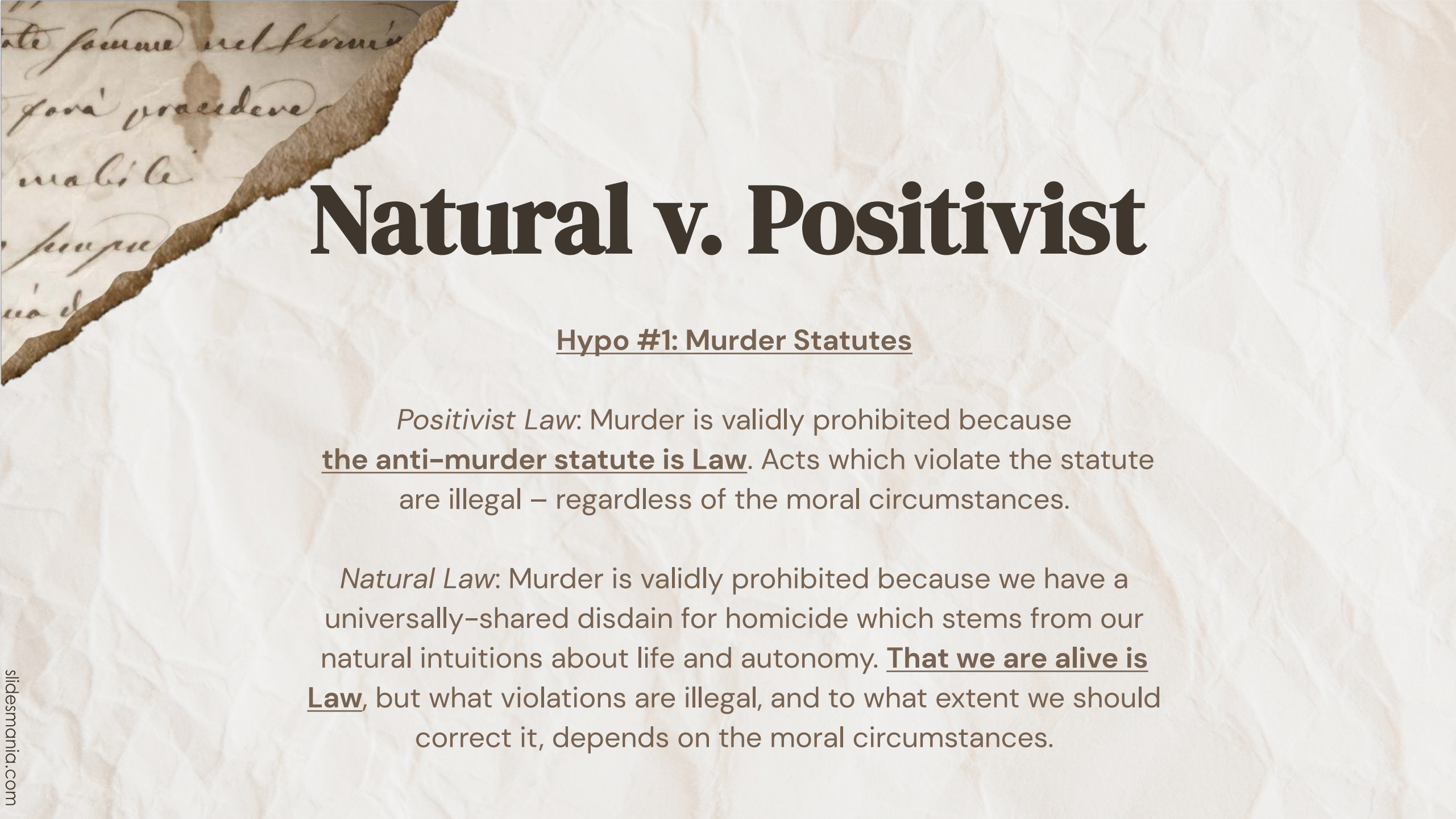


# Natural v. Positivist

Hypo #1: Murder Statutes

What would a Positivist scholar say?

What would a Natural Law scholar say?



# Natural v. Positivist

## Hypo #1: Murder Statutes

*Positivist Law:* Murder is validly prohibited because the anti-murder statute is Law. Acts which violate the statute are illegal – regardless of the moral circumstances.

*Natural Law:* Murder is validly prohibited because we have a universally-shared disdain for homicide which stems from our natural intuitions about life and autonomy. That we are alive is Law, but what violations are illegal, and to what extent we should correct it, depends on the moral circumstances.

**At the time of our founding, this was the balance of the natural legal order:**

- (1) the People have a natural right to self-defense against oppressive governments and**
- (2) the government has a right to posit laws toward its own self-defense.**

# Thesis: Our Rights are Dead

The positivist legal movement, beginning with the Federalists of the post-Constitution era, eroded the very values they embedded in our Constitution.

The erasure of this natural law foundation results in:

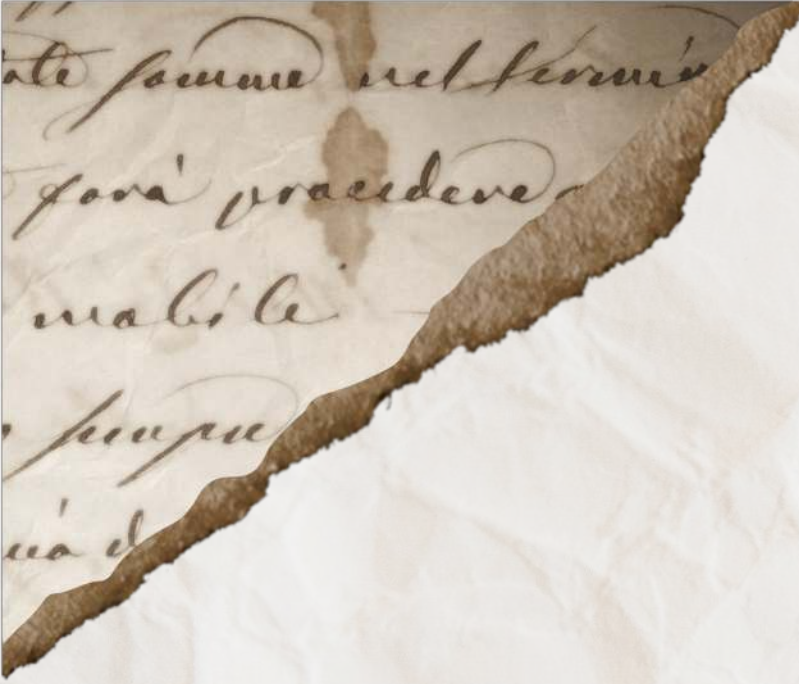
- 1) Preemptive and disproportionate violence against non-violent dissent;
- 2) The cooptation of discourse which favors Rights interpretations originating from the Government; and
- 3) The failure of Congress and the Supreme Court to impose effective limits on the use of Federal military authority and Executive war powers on domestic people.



# Revisiting Positivist Legal Theory

- 1) Pedigree Thesis: A directive is Law if it is posited by a valid Government. *TEXTUALISM and ORIGINALISM*
- 2) Separability Thesis: The Law is distinct from moral intuition. Morality therefore does not constrain legal validity. *Law cannot be interpreted through ordinary MORAL intuition.*
- 3) Discretion Thesis: The list of valid legal rules posited by Government are exhaustive, only supplemented by judicial discretion in cases. *Complaints about "judicial advocacy" are made in bad faith. JUDICIAL ADVOCACY, and no other advocacy, is the Law.*





**So...**  
**why Insurrection?**

# Brief History of Insurrection

1785

**Northwest Indian War.** Led to the Militia Act of 1792.

1791

**Whiskey Rebellion.** First instance that Federal Government called upon the military to defend itself.

1799

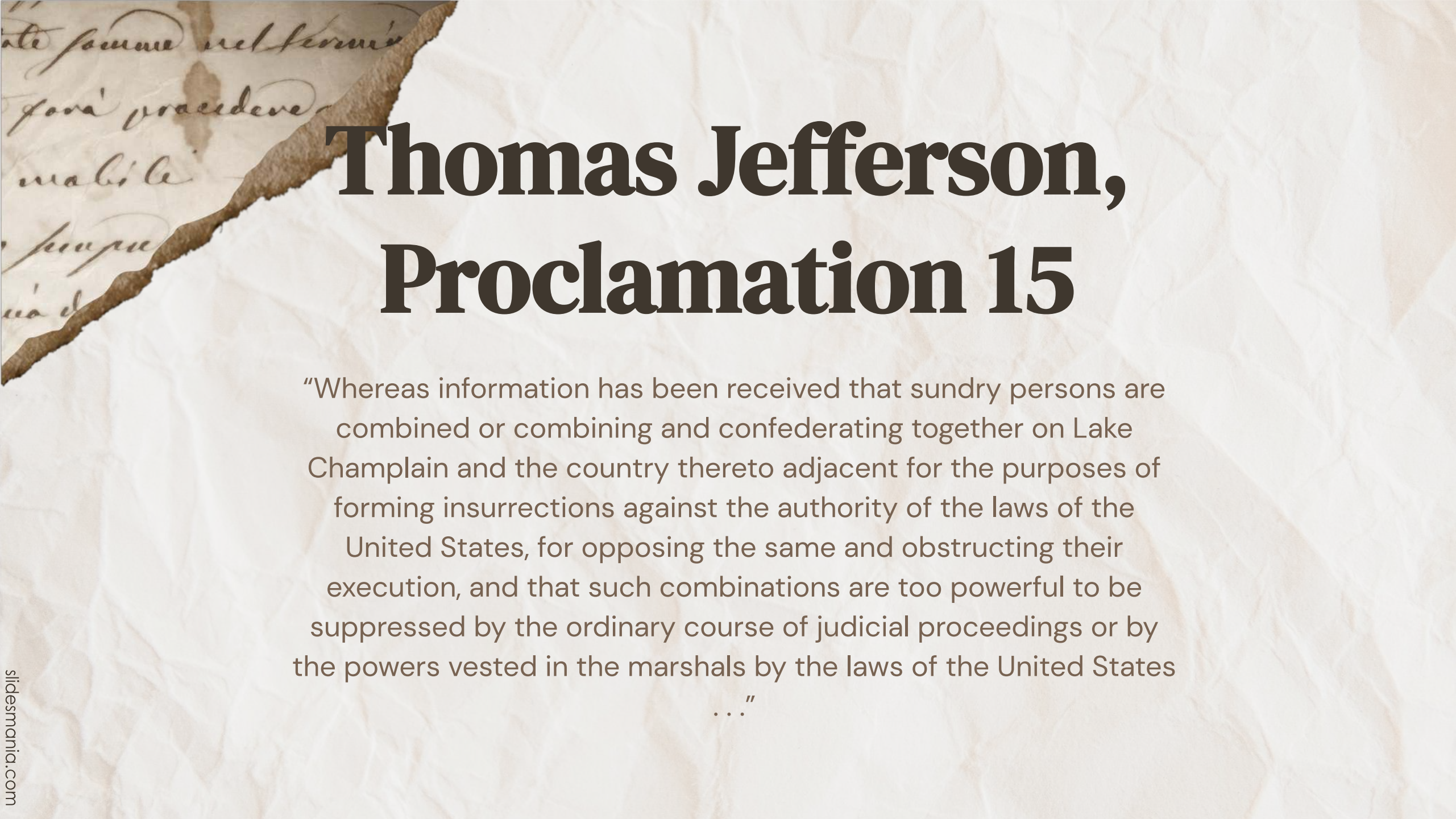
**Fries' Rebellion.** Alien & Sedition Act criminalized dissent in response to the Quasi-War.

1800

**Gabriel's Rebellion.** Failed slave uprising led the South to tighten of speech and travel.

1807

First invocation of the **Insurrection Act of 1807**



# Thomas Jefferson, Proclamation 15

“Whereas information has been received that sundry persons are combined or combining and confederating together on Lake Champlain and the country thereto adjacent for the purposes of forming insurrections against the authority of the laws of the United States, for opposing the same and obstructing their execution, and that such combinations are too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshals by the laws of the United States

...”

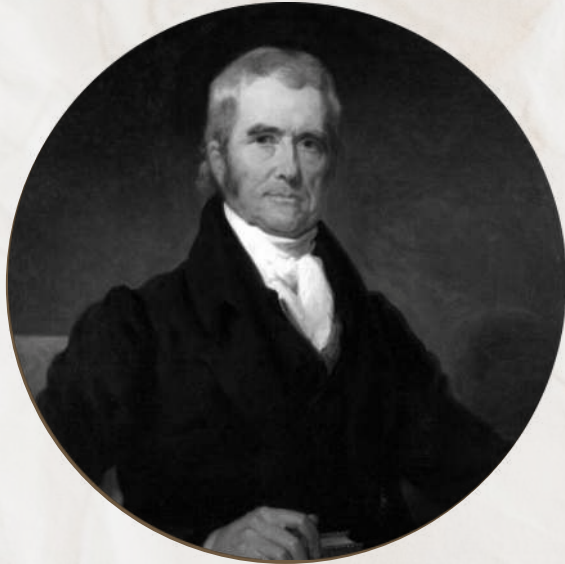


# Lake Champlain

## New York & Vermont

- Embargo Act of 1807: Full embargo on all foreign ships and vessels
- Smugglers violated the Embargo Act using Lake Champlain
- Insurrection Act of 1807 enacted to arrest smugglers.

# The Role of the Courts



**Marshall**

*Martin v. Mott* (1827):  
Presidents have  
exclusive power to  
declare insurrections.



**Elsworth**

*Calder v. Bull* (1798):  
Conflict with natural law  
not an absolute bar on  
federal authority.



**Waite**

*Presser v. Illinois* (1886):  
The states may prohibit  
private armies as police  
regulations.

# **The Civil Rights Movement & Now**



# Thank you!

Do you have any questions?

(531) 333-6754

