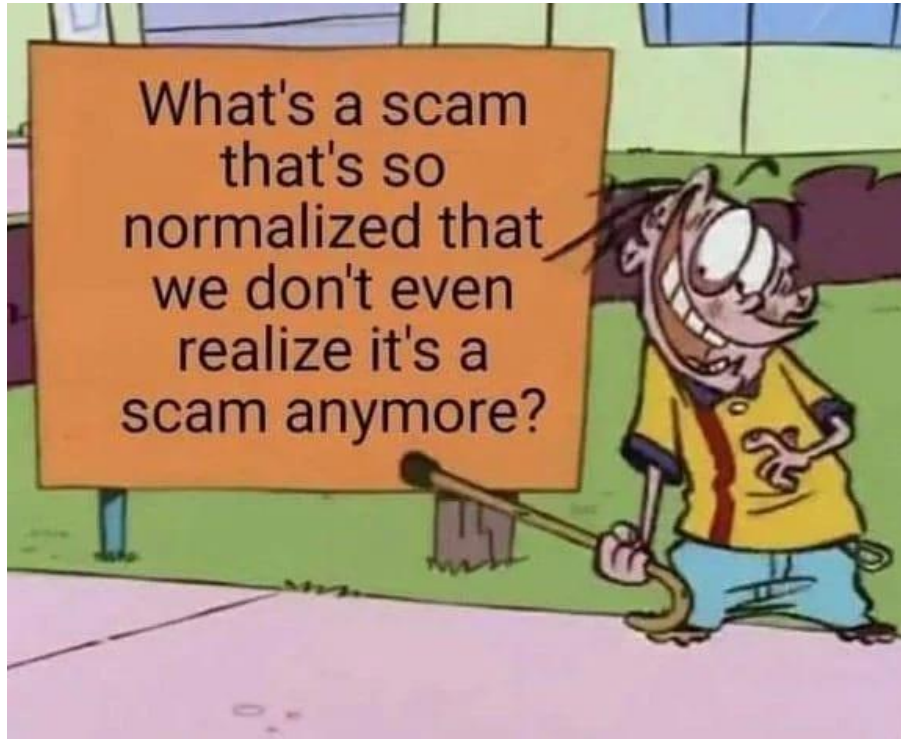




**Lone Ethical Holdout, or Just a Sucker:  
How to make rules that aren't obeyed.**

# MOTIVATION: THE MEME



- Scams so normalized that we don't even realize that they are scams anymore (according to Reddit).
  - Inkjet ink cartridges
  - Diamonds
  - Rent-to-own furniture
  - Ticketmaster
  - "Tell me the truth, I won't get mad"
  - Prescription eyeglasses (for \$400)
  - College pricing models
  - "Hot MILFs in your area"
  - Scientific journal membership
  - Cat food

# MOTIVATION: THE QUESTION



AI image illustrating texting and talking on a mobile phone while driving, used to boost engagement on X.

- X post: “What are rules that are so commonly disregarded that you would be a sucker to follow them?”
  - No personal use for work computers/email.
  - Paying use tax.
  - Dress codes at casual workplaces
  - Not sharing streaming service passwords
  - No smoking in outdoor, public parks
  - No loitering signs.
  - Bar closing times (“only newbies leave early”)
  - Downloading copyrighted music
  - Not tipping at self-service places (“No one tips at a coffee shop where you pour your own—don’t fall for the guilt screen.”)
  - No bicycles on sidewalks.

# MOTIVATION: FEDERAL LAW EXAMPLE

- 18 U.S.C. § 1461: Prohibits mailing obscene matter through the U.S. Postal Service. This includes "every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance." Penalties can include fines and up to 5 years in prison for a first offense, with up to 10 years for subsequent offenses.
- 18 U.S.C. § 1462: Bans the importation or transportation of obscene materials across state lines or into the U.S., including via common carriers (e.g., FedEx, UPS) or electronic means (e.g., the internet). This applies to "any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation," as well as obscene recordings or devices. Penalties mirror § 1461: fines and up to 5 years for a first offense, 10 years for subsequent ones.
- 18 U.S.C. § 1465: Prohibits the production and transportation of obscene material for sale or distribution. This includes possessing obscene material with the intent to distribute it across state lines or internationally. Penalties are the same as above.
- 18 U.S.C. § 1466: Targets businesses engaged in the sale or transfer of obscene material, requiring them to maintain records of transactions involving obscene matter. Violation can lead to fines and up to 5 years in prison.
- 18 U.S.C. § 1468: Prohibits distributing obscene material via cable or subscription television, with penalties including fines and up to 2 years in prison.
- Also see 47 U.S.C. § 223, 47 U.S.C. § 559, 18 U.S.C. § 1460, 18 U.S.C. § 1463, 18 U.S.C. § 1464

# MOTIVATION: FEDERAL LAW EXPLANATION?

- 1973 Established the “Miller-test” in Miller v. California which set a strict standard for obscenity.
- 1977 Smith v. United States affirmed that it is juries who affirm “community-standards” for obscenity
- 2005 Established the Obscenity Task Force to combat internet pornography.
  - 2007 Joseph R. Francis (Girls Gone Wild), charges dismissed due to procedural issues with his arrest.
  - 2008 Paul Little (Max Hardcore), convicted, Florida jury.
  - 2010 John Stagliano, acquitted, jury found material to not be obscene, Washington D.C. jury.
  - 2011 Ira Isaacs, convicted, videos concerning bestiality, Los Angeles CA jury.
- DOJ’s Obscenity Task Force was rolled into the “Child Exploitation and Obscenity Section” 2011.
- “As with any federal matter, the Department focuses its limited investigative and prosecutorial resources on the most egregious cases, particularly those that facilitate child exploitation or involve the sexual abuse of children.” – [DOJ spokesman Nanda Chitre, 2011.](#)
- “Those aren’t easy cases to bring. Juries don’t like them.” – [former prosecutor from the Los Angeles DOJ office, 2007.](#)
- “No one wants to be chasing around Playboy or Lady Chatterly’s Lover ... Would you rather be chasing terrorists, or some guy who reads Hustler?” – [Joe DeMarco, formerly a prosecutor in the Southern District of New York.](#)

# MOTIVATION: NORMALIZATION OF DEVIANCE

- Hat-tip: Daniel Patrick Moynihan titles an article in the American Scholar titled ["Defining Deviancy Down"](#).
- The term "normalization of deviance" comes from 1996 book [The Challenger Launch Decision](#).
- Normalizing Deviancy: "The normalization of deviance is a process by which deviance from correct or proper behavior becomes normalized in a corporate culture. It occurs when the organization incrementally accepts small deviations from the norm, and these deviations become the new norm over time, because they do not immediately result in catastrophic failure."

## Defining Deviancy Down

DANIEL PATRICK MOYNIHAN

IN ONE OF THE FOUNDING TEXTS OF SOCIOLOGY, *The Rules of Sociological Method* (1895), Emile Durkheim set it down that "crime is normal." "It is," he wrote, "completely impossible for any society entirely free of it to exist." By defining what is deviant, we are enabled to know what is not, and hence to live by shared standards. This aperçu appears in the chapter entitled "Rules for the Distinction of the Normal from the Pathological." Durkheim writes:

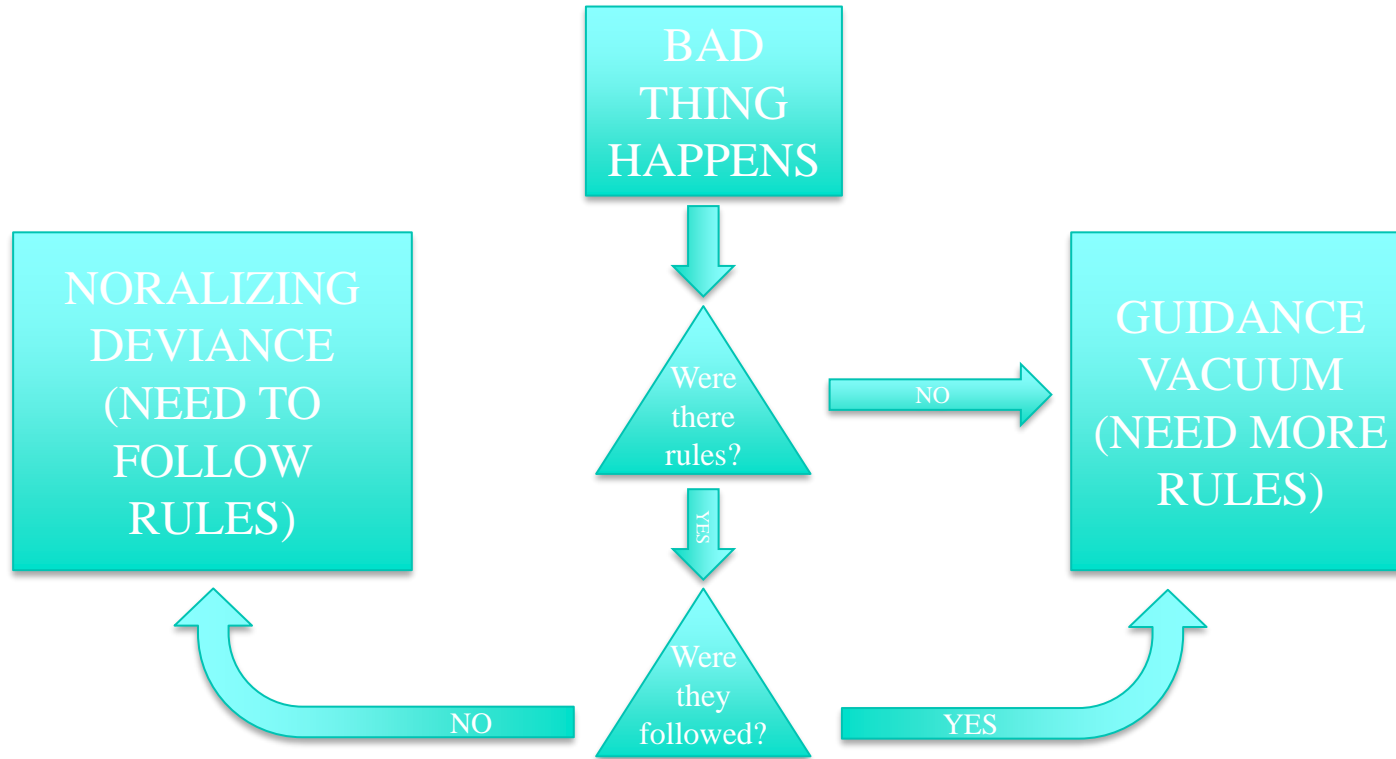
# MOTIVATION: NoD Examples

- [Space Shuttle Columbia Disaster \(2003\)](#)
- [Ford Pinto Fuel Tank Issue \(1970s\)](#)
- [Titanic's Lifeboat Shortage \(1912\)](#)
- [Deepwater Horizon Oil Spill \(2010\)](#)
- [Lion Air & Ethiopian Crashes \(2018-2019\)](#)
- [Oxytocin Misuse in Labor \(2024\)](#)
- [Operating Room Sterility Breaches \(ongoing\)](#)
- [U.S. Army Apache Helicopter Crash \(2015\)](#)
- [Costa Concordia Shipwreck \(2012\)](#)
- [Healthcare: Venous Air Microembolism in Chest CT Angiography \(Ongoing\)](#)
- [Piper Alpha Oil Platform Disaster \(1988\)](#)
- [Flixborough Chemical Plant Disaster \(1974\)](#)
- [Gardner Museum Art Heist \(1990\)](#)
- And many, many more...



Image from the surveillance camera during the 1990 Gardner Museum Art Heist.(NBC).

# MOTIVATION: ETHICAL FRAMEWORK FOR RULES?





# MOTIVATION: The Price of Following the Rules

Do you know of rules that detract from safety?

- (Machine workers, N=3) I got many examples of OSHA requirements for machine tools that make the tools difficult to use and encourage them to be used in an unsafe way.
  - Badly placed light curtains
  - Safety features that require the user to interface more often with the dangerous parts of the machine
  - Many features that encourage unsafe maintenance or clearing of ordinary jams or failures.
- (Aviation Technician, N=1) Overreliance on Checklist Protocols
  - Encourages unnecessary maintenance which introduces new risks.
  - Discourages proactive measures to identify some problems prior to failure.
- (Soldiers, N=3) Many cases of where the orders or directives are found to be entirely inappropriate for the situation.

## CAN THERE BE A HEALTHY CULTURE OF RULE BREAKING?

# MOTIVATION: GAME THEORY

	Rule SHOULD be Followed	Rule SHOULD NOT be Followed
Rule Followed	Conscientiousness, Ethical Adherence	“Normalizing Compliance”
Rule NOT followed	Normalizing Deviancy	“Principled Deviance” “Civil Disobedience”

# MOTIVATION: GAME THEORY

Normalizing Compliance: The process by which a group or society accepts and perpetuates adherence to a rule, law, or practice that is widely recognized as unhelpful, outdated, unethical, or harmful, often due to tradition, fear of repercussions, or lack of critical questioning.

Principled Deviance: The deliberate and morally justified act of rejecting a rule or norm that is outdated, unethical, or harmful, in order to promote organizational effectiveness, uphold higher ethical standards, or promote societal good.

# MOTIVATION: NORMALIZING COMPLIANCE (USSR)

The regimental commander has maps and orders from above, while I have nothing but a rifle, a pistol, and an entrenching tool. As such, they have the burden of giving orders, while I must see those orders enforced. Somewhere up above a general looks at a map and it seems reasonable to him to change the front line. He sends down an order."

"At such and such a point, move 5 kilometers forward." Well, as luck would have it there turns out to be a river just at that point, the White Sturgeon. It's deep and swift, in open terrain. It would be convenient and relatively safe to dig some trenches and sit behind this natural obstacle. But an order is an order, and I can't say that it's technically impossible to cross here, even though from a sane man's point of view it is indeed impossible to cross; we have no boats, nor planks, nor are there nearby trees to cut into rafts.

Another predicament lies in the fact that all the soldiers in my regiment come from the steppes. Not only can they not swim, but I'd wager that they've never even seen a river in their entire lives.

I relay the orders to advance the front to the men under my command. Looking confusedly at the rushing river and each other, one of the slant-eyes that speak Russian says "Comrade Lt. Sir, I can't go in the water. I don't know how to swim." He looks back at the others, and they nod their agreement. I know that it's better to drown a soldier than to show irresoluteness or insubordination to orders given from a commanding officer. Even if they all have to drown, it's better than what could happen to us all if we disobey an order. Besides, I already reported to the Major upon receiving the order that there are no boats. He told me to do it anyway. Steeling myself for what I must do, I pull out my service revolver, cock it, and point it at the face of the cucumber in front of me. "Get in the water you son of a bitch! I'll give you to the count of 3 to get in there, or you'll never go anywhere else." The soldier starts sweating. With a worried look on his face he glances from me to the other men. I shove the gun into his face and yell for him to hurry up. He quickly turns and hustles to the river bank. Holding his pack up above his head in one hand and his rifle in the other, he steps into the water, evidently trying to wade across. Of course the strong current immediately seizes him and carries him down the river as he ineffectually thrashes about. He disappears under the water and is swept downstream, apparently drowning. Some of the others don't speak Russian, but they understand when I point my pistol at them that they must also wade into the river. All the rest of the cucumbers that I force into the river drown.

I walk into the Major's tent, where he sits examining lists of supplies, equipment, and other such logistical paperwork. He looks up at me as I enter. "What do you have to report Comrade?" "Comrade Major, there are only 5 men left in my company."

"WHAT!? What did you do to them!? I didn't hear a single shot!"

"They all drowned crossing the river, Comrade Major."

"What do you mean 'drowned'!? I'll shoot you right here like a dog!"

"As you will Comrade Major, but I did report to you that there were no planks or logs to be found in the area, that the river is deep and swift, that it can't be forded. You told me to stop arguing and to just obey orders."

"You blockhead! What a stupid way to destroy a whole company!"

The Colonel arrives shortly in a groundcar. "I gave you five hours to cross the river!" he shouts as he enters. "Have you carried out the order!?"

"No, Comrade Colonel, we've sustained heavy losses."

"Losses?" .."Well. That's fine. If there weren't any losses our heads would roll. What happened? Everything's quiet, I didn't hear a single shot from over here. Did they all get knifed or what?"

"No. Drowned. The company that was to cross over were all slanteyes. Never saw a river before. Naturally they drowned, since there was nothing to float on."

"You son of a bitch! Why didn't you take some pontoons? We've been dragging a whole transport of pontoons around! I could give you as many as you want!"

"I no longer need them Comrade Colonel. There are five cucumbers left in the first company, ten in the second, maybe twenty in the third. There's no one left to cross." The Colonel ponders for a moment.

"Well, you'll just have to cross anyway. What counts is the fact that the order has been carried out, even if only one man makes it."

# MOTIVATION: PRINCIPLED DEVIANCE (USA)



Crimson Tide (1996)



A Few Good Men (1992)



Band of Brothers: The Last Patrol (2001)



Generation Kill: Stay Frosty (2008)



Star Trek: The Menagerie (1966)



Paths of Glory (1957)



The Caine Mutiny (1954)



3:10 to Yuma (1957)

# MOTIVATION: NORMALIZING COMPLIANCE (RUSSIAN)



The Ascent (Voshozhdeniye, 1977)



The Cuckoo (Kukushka, 2002)



Come and See (Idi i smotri, 1985)



The Cranes Are Flying (Letyat zhuravli, 1957)

# MOTIVATION: NORMALIZING COMPLIANCE (CHALLENGER)

- NASA put pressure on Morton Thiokol management to approve the launch.
- Morton Thiokol engineers objected but were overridden by their management.
- Morton Thiokol engineers followed every rule:
  - They recommended against launch in a timely manner to the appropriate people.
  - They were overridden by superiors over concerns beyond the engineers' purview.
  - The only actions they could have taken would be to break chain-of-command, go to NASA directly or to the media.
- Does Normalization of Deviance not include breaking chain-of-command or airing dirty laundry?
- Wouldn't this be an example of Normalizing Compliance?

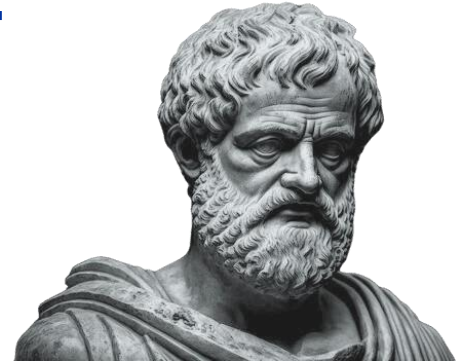
# WHAT IS A HEALTHY CULTURE OF RULE BREAKING?



# WHAT ARE BAD RULES?

# WHAT IS LAW: ARISTOTLE

- *Nicomachean Ethics* (Book V)
  - "The law bids us do both the acts of a brave man... and those of a temperate man... and similarly with regard to the other virtues and forms of wickedness, commanding some acts and forbidding others" (V.1, 1129b).
- *Politics* (Books I, and III)
  - "Man, when perfected, is the best of animals, but when separated from law and justice, he is the worst of all" (I.2, 1253a).
- Law is
  - In Accordance with nature, and community, and human standards.
  - A rational framework that commands virtuous behavior and forbids vicious behavior
  - Aimed at cultivating a good life for the *polis* and aligns with human flourishing
  - Superior to personal rule because it is impartial and stable.
  - It exists for common good independent of individual interests.



Aristotle (c. 384 to 322 B.C.)  
Translations by H. Rackham, Loeb Classical  
Library (Cambridge, MA: Harvard University  
Press, 1932).

# WHAT IS LAW: CICERO

- *De Re Publica* (Book III)

- “There is indeed true law in agreement with right reason, which extends to everyone, unchanging and eternal, which calls to them to duty by its command, and deters from fraud by its prohibition ... No dictate can be exchanged for it, nor can part be removed, nor can it be abrogated entirely. We cannot be absolved from true law either through the senate or the people, nor does it seek an explainer or interpreter. Nor is there one law in Rome, another in Athens, one now, one back then, but one law binding holds together all peoples and all times, eternal and unchanging. God, as though the sole master and leader, is the framer, judge, and inventor of this law.” (III.22, or III.33, or Lactant. Div. Inst. 6.8.6)

- *De Legibus* (Book I, II, III)

- “... law is the highest reason, embedded in nature, which orders that those acts which are right be done, and prohibits acts contrary. This same reason, when established and developed in the mind of man, is law ... Reason, when perfected, is rightly called wisdom; and the law which is born of reason is established in accordance with nature.” (I.18-19)



Marcus Tullius Cicero (106-43 BC)  
Translations by me

- Natural Law

- Any law at variance with nature lacks legitimacy
- It is man's nature to demand and to receive justice
- Any unjust law is no law at all.

- Difference from Aristotle

- Aristotle based law in constitution of the *polis* and in habit.
- Cicero only recognizes Natural Law

# WHAT IS LAW: THOMAS AQUINAS

- What is an unjust law
  - "Laws may be unjust in two ways: first, by being contrary to human good... either in respect of the end, as when an authority imposes on his subjects burdensome laws, conducive not to the common good but rather to his own cupidity or vainglory; or in respect of the author, as when a man makes a law that goes beyond the power committed to him; or in respect of the form, as when burdens are imposed unequally on the community... Such are acts of violence rather than laws... Wherefore such laws do not bind in conscience, except perhaps in order to avoid scandal or disturbance... Secondly, laws may be unjust through being opposed to the Divine good: such are the laws of tyrants inducing to idolatry, or to anything else contrary to the Divine law: and laws of this kind must in no way be observed."  
(*Summa Theologiae* I-II, Q.96, Art. 4)
- Difference from Aristotle
  - Aristotle sees bad laws as misaligned with reason or the constitution, whereas Aquinas ties law to nature and the divine will.
- Difference from Cicero
  - Aquinas allows that law may change from place to place and from time to time but agrees that there is a divine and eternal law.



Thomas Aquinas (1225-1274)

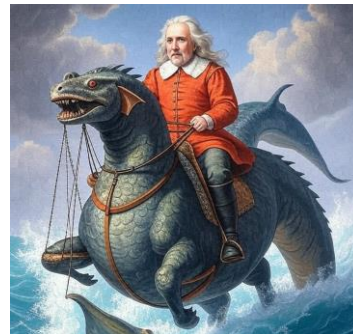
Translations by me

- Contrary to Human Good
  - END: Laws serving the ruler's greed
  - Authority: Laws exceeding the lawmakers jurisdiction
  - Form: Laws distributing burdens unfairly
- Contrary to the Divine Good
  - Laws violating divine law
  - These must never be followed, "We must obey God rather than men."

# WHAT IS LAW: THOMAS HOBBES

- *Leviathan*

- "Law, properly, is the word of him that by right hath command over others." (Chapter 15)
- "Civil law is to every subject those rules which the commonwealth hath commanded him, by word, writing, or other sufficient sign of the will, to make use of, for the distinction of right and wrong... The legislator is he... that hath the supreme power ... The law is a command, and by a man's own will he cannot be subject to the laws; but by the will of another he may, and by the will of the sovereign he is."
- "The obligation of subjects to the sovereign is understood to last as long, and no longer, than the power lasteth by which he is able to protect them... The end of obedience is protection; which, wheresoever a man seeth it, either in his own or in another's sword, nature applieth his obedience to it." (Chapter 26)
- "No man is bound by the civil law to obey it in those things which are against the law of nature, as to wound himself, or to kill another innocent person." (Chapter 21)



Thomas Hobbes (1588-1679)

- Legal Positivist View

- Laws are imposed by a ruler due to their coercive power and do not need to correspond to morality.
- The sovereign is above all laws and his laws may not inflict injury

- Response to bad laws

- Obedience is assumed because it is preferable to the "war of all against all".
- Only exception is for self preservation (for self or for others).
- No general right to rebellion or disobedience.

# WHAT IS LAW: JOHN STUART MILL

- “The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection... The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.” (*On Liberty*, 1859, Chapter 1)
- “Society can and does execute its own mandates; and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practices a social tyranny more formidable than many kinds of political oppression... The rules which obtain among themselves appear to them self-evident and self-justifying.” (*On Liberty*, Chapter 4)

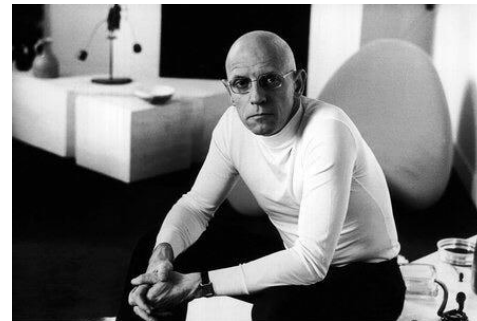


John Stuart Mill (1806-1873)

- Law is based in utility
  - Laws are justified by their ability to increase happiness and reduce suffering
- Bad Laws
  - A law must respect liberty until liberty poses harm or risk to others.
  - Laws that inflict more suffering than bring about happiness are bad.

# WHAT IS LAW: MICHEL FAUCAULT

- “We must not place the reality of power in the law, nor must we suppose that the law is the form in which power is exercised... Power is not something that is acquired, seized, or shared, something that one holds on to or allows to slip away; power is exercised from innumerable points, in the interplay of nonegalitarian and mobile relations... The law is one of the ways in which power is exercised, but it is not the only one, nor the most fundamental.” (*Discipline and Punish*, 1975, p. 27)
- “The law is not born of nature, nor is it the direct expression of the will of the sovereign in the old sense... It is a set of tactics, a technology of power, which is bound up with the emergence of the state and the management of populations... Law is a strategic device, not a universal principle.” (*Society Must Be Defended*, Lectures, March 17, 1976, p. 239)



Michel Foucault (1926-1984)

- Law is a Social Construction
  - Law is an instrument of power
  - Laws are positions of the powerful in a power struggle, they are not related to justice.
- Bad Laws
  - Laws are a tool of power to regulate and normalize. A law that works contrary to interests of power might be said to be bad, but not in a moral sense.

# EXCUSES 1: CONTRARY TO PURPOSE

Rule: No talking in the library!

Purpose: Maintain an atmosphere of concentration and productivity

Exceptional Circumstance: A fire has broken out in the library.





# EXCUSES 1B: CONTRARY TO GREATER PURPOSE

Rule: Shop workers (machinists) are not to be interrupted for phone calls while working on a machine.

Purpose: Avoid wastages of time and materials caused by interrupting sensitive work.

Greater Purpose: Prioritizing production and the worker's attention over trivial interruptions that could be handled at a different time.

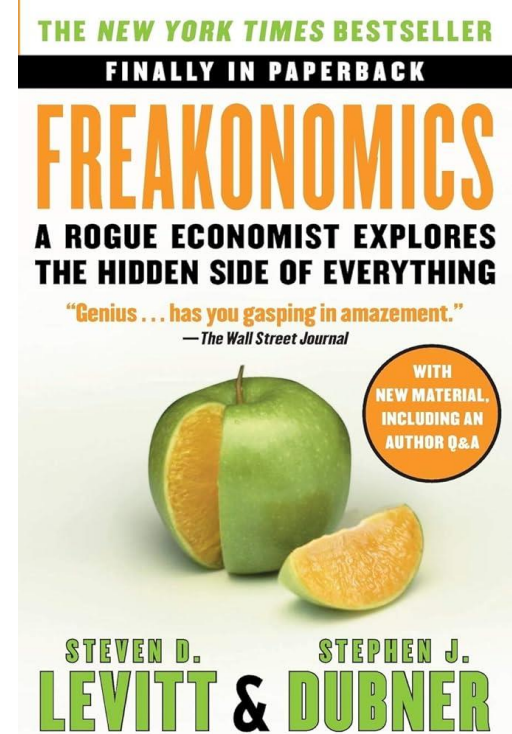
Exceptional Circumstance: Wife calls with urgent information regarding their child.



# EXCUSES 1C: SMALL PENALTIES

"Imagine for a moment that you are the manager of a day-care center. You have a clearly stated policy that children are supposed to be picked up by 4 P.M. A number of parents disregard the rule, though, sometimes being as much as an hour late. You decide that a small fine - say, \$3 per late pickup - will solve the problem by discouraging tardy parents. But when you begin assessing the fine, the number of late pickups actually increases! What happened?"

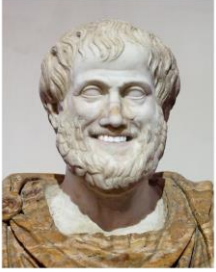
Levitt, Steven D., and Stephen J. Dubner.  
*Freakonomics: A Rogue Economist Explores the Hidden Side of Everything*. William Morrow, 2005, p. 23.



# EXCUSES 1C: SMALL PENALTIES

[SCOTUS, 2008] “... All of them punished the discharge (or loading) of guns with a small fine and forfeiture of the weapon (or in a few cases a very brief stay in the local jail), not with significant criminal penalties. They are akin to modern penalties for minor public-safety infractions like speeding or jaywalking. And although such public-safety laws may not contain exceptions for self-defense, it is inconceivable that the threat of a jaywalking ticket would deter someone from disregarding a “Do Not Walk” sign in order to flee an attacker, or that the Government would enforce those laws under such circumstances. Likewise, we do not think that a law imposing a 5-shilling fine and forfeiture of the gun would have prevented a person in the founding era from using a gun to protect himself or his family from violence, or that if he did so the law would be enforced against him. The District law, by contrast, far from imposing a minor fine, threatens citizens with a year in prison (five years for a second violation) for even obtaining a gun in the first place.”

# EXCUSES 1: PURPOSE



"The equitable is just, but not the legally just but a correction of legal justice. The reason is that all law is universal but about some things it is not possible to make a universal statement which shall be correct... And this is the nature of the equitable, a correction of law where it is defective owing to its universality." (*Nicomachean Ethics* V.10, 1137b)



"When a case arises wherein the observance of that law would be hurtful to the general welfare, it should not be observed... For instance, if in a besieged city it be an established law that the gates of the city are to be kept closed, this is good for public welfare as a general rule: but, if it should happen that the enemy is in pursuit of certain citizens that are defenders of the city, it would be a great loss to the city, if the gates were not opened to receive them: and so in that case the gates ought to be opened, contrary to the letter of the law, in order to maintain the common welfare, which the lawgiver had in view." (*Summa Theologiae*, I-II, Q. 96, A.6)



"The intention of the legislator is always supposed to be equity: for it were a great contumely for a judge to think otherwise of the sovereign. He ought therefore, if the words of the law do not fully authorize a reasonable sentence, to supply it with the law of nature; or if the case be difficult, to respite judgment till he have received more ample authority... The letter of the law is that which is delivered in the text; but the sense of the law is that which is delivered by right reason, in conformity with the intention of him that made the law." (*Leviathan*, Chapter 26)

## EXCUSES 2: INCAPACITY

Circumstance: I was teaching my daughter to drive a stick shift. While making a left turn onto a residential street, she flubbed the downshift and jumped the curb before stalling on the shoulder of the road in full view of a police officer.

Rule: Careless driving applies to operating a vehicle “in a careless or negligent manner likely to endanger any person or property, but without wantonness or recklessness ...” MCL257.626b.

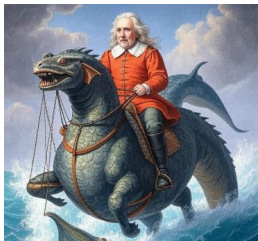
Result: Police officer was amused and did not bother with a warning.



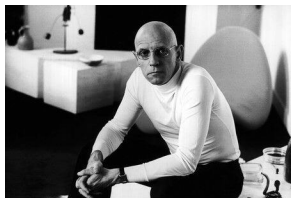
## EXCUSES 2: INCAPACITY



“No one is bound to do what is impossible, nor is anyone blameworthy for failing to do what lies beyond his power... The essence of justice lies in the intention, not merely in the act, for a man may do harm without evil intent, and then he is not unjust.” (*De Officiis*, III.95)



“A covenant not to defend myself from force, by force, is always void... Nor is it possible for any person to covenant to be obedient in all things, where the act required is impossible... For no man is bound to do that, which is not in his power to do.” (*Leviathan*, Chapter 14)



“Power is not exercised simply as an obligation or a prohibition on those who ‘do not have it’; it invests them, is transmitted by them and through them... The law does not ask whether one can obey; it imposes its categories, and in doing so, it produces the very incapacity it claims to judge.” (*The History of Sexuality*, Volume 1, 1976, p. 88)



## EXCUSES 3: VAGUENESS

Lord of the Flies:

Chapter 2: Ralph: "We've got to have special people for looking after the fire. Any day there may be a ship out there... and if we have a signal going, they'll come and take us off."

Chapter 4: Jack and his hunters go to hunt a pig. Ralph: "There was a ship. Out there. You said you'd keep the fire going and you let it out!"



William Golding, *Lord of the Flies* (Faber and Faber, 1954)

## EXCUSES 3B: IGNORANCE

"What's the charge against me? What authority is conducting these proceedings?' K. asked.

'You'll be informed of everything in due course,' said the warder, who was now lighting a cigarette, while the other nodded as if this were a perfectly reasonable reply.

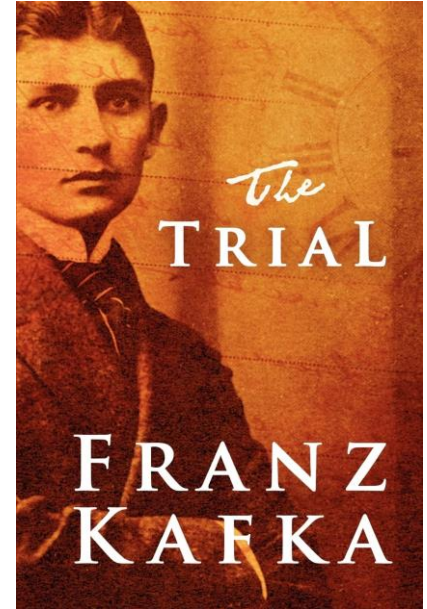
'You are under arrest, that's all you need to know for the moment. I'll report your questions to the authorities.'

'But I insist on knowing what I'm accused of!' K. shouted.

The warder looked at him with mild surprise. 'Don't get excited,' he said. 'It seems to us that you're making a great fuss about nothing. After all, what does it matter? You're under arrest, and that's that. You'll find out the rest soon enough.'

'But how can I defend myself if I don't know what I'm accused of?' K. demanded.

The warder shrugged. 'That's your affair,' he said."





# EXCUSES 3C: ARBITRARY APPLICATION

Jacksonville, FL: Law against “loafing, wandering, or strolling around without lawful purpose.”

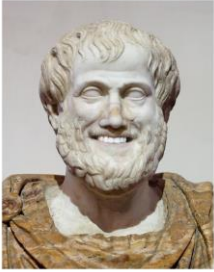
Cincinnati, OH: Law against three or more people assembled in public in a manner “annoying to persons passing by.”

California: Law requiring individuals in public to provide “credible and reliable” identification to police at account for their presence.

Result: All, struck down by SCOTUS, *Papachristou v. City of Jacksonville* (1972), *Coates v. City of Cincinnati* (1971), *Kolender v. Lawson* (1983)



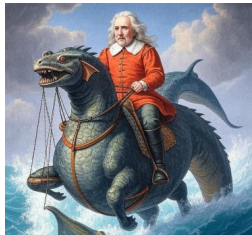
# EXCUSES 3: UNCERTAINTY OF APPLICATION



“It is thought that acts done in ignorance are not voluntary, but only when the agent is ignorant of what he ought to know... But everything that is done by reason of ignorance is not voluntary; it is only what produces pain and repentance that is involuntary... Now every man is supposed to know the laws of his city, unless his ignorance is due to carelessness, which does not excuse; but if the ignorance is invincible, as when a law is not published, or a man is unavoidably absent, he is not blamed.” (Nicomachean Ethics II.5, 1113b–1114a)



“If the ignorance be such as to excuse from sin altogether, as is the case with a madman or an imbecile, then he who acts in ignorance does not sin... But if the ignorance is vincible, it does not altogether excuse, because it is due to negligence... Ignorance of the law, when it is of those things which one is bound to know, does not excuse.” (Summa Theologiae, I-II, Q. 19, A. 6)



“Ignorance of the law of nature excuseth no man; because every man that hath attained to the use of reason, is supposed to know, he ought not to do to another, what he would not have done to himself... But ignorance of the civil law excuseth sometimes; as when the law is new, and not yet sufficiently published... For no man can be obliged to obey that, which is not sufficiently declared to be his duty.” (Leviathan, Chapter 27)

## EXAMPLE 4: IMPROPER AUTHORITY

- Preston Square Townhomes Owners Association, an HOA in Dallas, TX, imposed a rule prohibiting residents from parking certain vehicle on public streets near the neighborhood.
- Residents did not comply
- Court ruled the HOA fines unenforceable.



Cochran v. Preston Square Townhomes Owners Association (2011)

## EXAMPLE 4: IMPROPER AUTHORITY



"What of the many deadly, the many pestilential statutes which nations put in force? These no more deserve to be called laws than the rules a band of robbers might pass in their assembly." (*De Legibus* III.2)



"Law, properly, is the word of him that by right hath command over others." (*Leviathan*, Chapter 15)



"The ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community; every citizen not only having a voice in the exercise of that ultimate sovereignty, but being, at least occasionally, called on to take an actual part in the government, by the personal discharge of some public function... Representative government is the only form which can secure this." (*Considerations on Representative Government*, 1861, Chapter 3)

## EXCUSES 5: CONTRARY TO JUSTICE

"In the course of one of these dark winters—the winter of 1795—Jean Valjean was arrested for stealing a loaf of bread. He was a man of whom little was known; he had no trade save that of a pruner of trees, which he had followed in his native town of Faverolles. His mother was dead; his father, a tree-pruner like himself, had been killed by a fall from a tree. Jean Valjean had only one relative left—an elder sister, a widow with seven children, the eldest ten years old, the youngest one. This sister had brought him up. So long as her husband lived, they had struggled on somehow; but when he died, leaving her alone with her brood, existence became impossible. One winter evening, when there was no fire in the house and no bread, Jean Valjean, driven to desperation by the sight of his sister's hungry children, broke the window of a baker's shop and took a loaf. He was seen, pursued, and captured. The baker lodged a complaint; Valjean was arrested, tried, and condemned. The theft was undeniable; there were witnesses; the law was explicit. He was sentenced to five years at the galleys."



Victor Hugo, *Les Misérables*, trans. Isabel F. Hapgood, 1887, Volume I, Book Second, Chapter VI, slightly abridged for clarity. <https://www.gutenberg.org/ebooks/135>



## EXCUSES 5B: CONTRARY TO NATURAL LAW

“I, [name], do utterly testify and declare in my conscience that the Queen’s Highness is the only Supreme Governor of this realm... in all spiritual or ecclesiastical things or causes, as well as temporal; and that no foreign prince, person, prelate, state, or potentate hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm; and therefore I do utterly renounce and forsake all foreign jurisdictions... so help me God.”



The Oath of Supremacy Under the Elizabethan Religious Settlement (England, 1559)

# EXCUSES 5C: CRIMES AGAINST HUMANITY

Principle IV: “The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.”

Principle VI (c) Crimes Against Humanity: “Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connexion with any crime against peace or any war crime.”



Nuremberg Trial, 1945

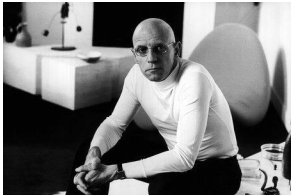
# EXCUSES 5: JUSTICE



“Out of all the material of the philosophers’ discussions, surely there comes nothing more valuable than the full realization that we are born for justice, and that right is established not by opinion but by nature...” (*De Legibus* II.10-11)



“Justice is a name for certain classes of moral rules, which concern the essentials of human well-being more nearly... The sentiment of justice... in its more elevated form, is grounded on the principle of utility, aiming at the general happiness... We usually say, that justice is done... when a person’s rights are protected... The rules of justice are those which secure to individuals the possession of those things which are necessary for their happiness—security of person and property, equality before the law, and the right to be heard.” (*Utilitarianism*, Chapter 5)



“The law is a set of tactics, a technology of power, which is bound up with the emergence of the state and the management of populations... Law is a strategic device, not a universal principle... It does not aim for justice but for governance.” (*Society Must Be Defended*, Lectures, March 17, 1976, p. 239)



# Avoiding NoD, NoC

# RULES AND NORMALIZATION OF DEVIANCE AND COMPLIANCE

- Avoiding Normalization of Deviance means enforcing the rules that should be enforced.
- Avoiding Normalization of Compliance means not enforcing rules that should not be enforced.

# RULES FOR RULES 1

- Should serve a recognizable purpose
  - Should be enough leeway to modify the application of a rule so that it serves that purpose.
  - The purpose of the rule should be clear in the hierarchy of priorities.
  - The penalties for breaking a rule are indicative of the rule's priority.
- Rules should be applied to those that can follow them
- Rules must be clear and specify
  - Who has responsibility
  - What is required or prohibited
  - Must be consistently applied for the same people and activities.

# RULES FOR RULES 2

- Rules must arise from an accepted and recognized authority
  - Nature, custom, leader, boss, elected officials.
- Some rules are so contrary to justice and basic fairness they will be rejected
  - Rules should (generally) not require a person to harm himself.
  - Rules should (generally) not require harm to family or loved ones.
  - Rules should (generally) not require a person to lie.
  - Rules should (generally) not require conduct that “shocks the conscience.”

**THANK YOU**