Introduction to Morality, Justice and the Law

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MORALITY, JUSTICE, AND THE LAW: THE CONTINUING DEBATE
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Philosophers and legal scholars have long debated whether and to what degree law and morality are or should be connected. Several related questions are suggested by that debate. What is the primary function of "the law"? When is it legitimate to break the law? Do lawyers, judges and lawmakers have a duty to "morality" that transcends their duty to law? What role should religion play in lawyering and the law?

The opening book in this series on Contemporary Issues, Morality and the Law, published in 1988, focused on two issues: the famous Hart-Devlin debate on laws dealing with homosexuality and civil disobedience. This new volume, initially conceived as an "update" of that earlier volume, instead grew into an entirely different book. Indeed, one of the goals of this volume is to illustrate that questions about morality, justice, and the law transcend sexual morality and similar issues that are traditionally linked with the term "morality." Questions about morality and justice permeate all aspects of the law.

This book starts with a theoretical discussion of law and morality. The initial essay in section one is a landmark piece by Oliver Wendell Holmes. Published in the Harvard Law Review in the waning years of the 19th century, it is the beginning of 20th century legal philosophy—so says Robert George, author of the second piece in this section. "The Path of the Law" by Holmes emphasizes difficulties that result from confusing morality and the law. Acknowledging that the two are related in a variety of ways, Holmes' argument that the two are distinct employs his "bad man" imagery. A bad man may not care at all about the morality of his act, but he cares considerably about its legality, a separate issue. The bad man cares, Holmes maintains, because the law is simply a prediction of what the bad man will suffer should he behave in certain ways.

Disagreements over the relationship between law and morality gave birth to a variety of positions in the twentieth century. George's essay "What is Law? A Century of
Arguments” begins with a discussion of Holmes’s essay and then addresses other views that emerged in jurisprudence such as legal realism and its emphasis on the indeterminacy of the law (its subjectivity), the varied expressions of the natural law position, and the legal positivism of John Austin and H.L.A. Hart. George is most interesting in his discussion of ambiguities in the views of Holmes and the consequent ambiguous connection between the views of Holmes and the 20th century legal realists with whom he is often identified. Concerning the “separation thesis” of law and morality, George acknowledges the truth in it, but he also recognizes the insight of the natural law position with regard to the derivation of just positive law from the natural law.

Ira Peak’s essay on Ronald Dworkin and Hart interprets these two giants in the philosophy of law as positioning themselves between the natural law position of Thomas Aquinas and the legal positivism of John Austin—with Dworkin having more affinity with natural law and Hart with legal positivism. Peak’s primary concern is to show that difficulties faced by both Dworkin and Hart can be rectified by applying some of the insights of Michael Polanyi’s understanding of the nature of science and the scientific community to an understanding of law and the legal community. In the process, Peak helpfully explicates the positions of both Dworkin and Hart.

Dworkin is also the focus of the next essay, Cass Sunstein’s review of Dworkin’s recently published Justice in Robes. Contrasting Dworkin with the judicial philosophies of Justices Antonin Scalia and Clarence Thomas, Sunstein discusses such distinctions as semantic originalism (Dworkin) and expectation originalism (Scalia and Thomas). Sunstein also provides a helpful discussion of Dworkin’s critique of the legal pragmatism of Richard Posner. While Sunstein accepts Dworkin’s claim that moral principles inevitably play a role in legal interpretation, he rejects on grounds of the fallibility of judges the suggestion that judges, in a grand way, should “deploy their own moral and political judgments” in judicial interpretations.
The book then turns to more concrete questions of morality and lawyering, an area rich for ethical debate. The first piece in this section is John J. Worley’s foreword to a law review symposium exploring the lawyer’s duty to promote the “public good.” Worley uses a lawyer’s dilemma in the novel The Just and the Unjust as a point of reference: the lawyer has been asked to represent a college, the beneficiary of a will, to the detriment of four sympathetic and deserving sisters whom the testator sought to disinherit out of spite. Worley contrasts two competing visions of the lawyer’s role: the “neutralist conception,” which endorses the view that the lawyer zealously pursue his client’s objectives, and the “perfectionist theory,” which advocates that the lawyer promote values beyond those of his clients. Worley then critiques the contributions of theorists from both camps; in the excerpt here, we include Worley’s analyses of the contributions of John M. Finnis and Robert J. Araujo.

Finnis uses natural law principles to defend a neutralist view. In his view, lawyers have no duty to ensure that clients “conform to communal norms,” but that at the same time, lawyers are constrained by natural law principles, such as an absolute injunction against lying. Thus, a lawyer may zealously defend a client who is guilty of heinous crimes, but he may not resort to perjury to get him off. Araujo writes from the perfectionist view, arguing that lawyers should be judged by the virtues of justice, prudence, courage and wisdom. While finding much to admire in Finnis’s and Araujo’s work, Worley criticizes Finnis’s absolutist position against lying, which would forbid lying even in a situation where a lie might save a life. However, Worley acknowledges that an “absolutist objection” to lying in court proceedings is justified because of the extraordinary negative consequences for the justice system if lying became pervasive. Regarding Araujo, Worley questions whether his virtue-centered theory provides enough practical guidance for lawyers, but acknowledges that Araujo importantly reminds us that we should not simply ask, “What is the right thing for the good lawyer to do?” but also “What kind of person is the good lawyer to be?”

Linda Meyer’s article, “Between Reason and Power: Experiencing Legal Truth,” follows. Meyers begins her piece by quoting a question frequently asked of lawyers:
“How can you defend the guilty?” Meyers goes on to discuss the role of rhetoric in lawyering, offering a persuasive defense of rhetoric as being much more than just sweet talk or a means of manipulation. She makes the important point that, in court, the ultimate questions are not questions of fact (which are often disputed), but questions of action. Juries must decide, for example, whether to convict or acquit a defendant. Given that decision makers are forced to make decisions based on incomplete and sometimes conflicting information, rhetoric plays an important role in seeking common ground with the listener and seeking to share the speaker’s version of truth.

Meyer necessarily suggests that “the truth” can transcend narrow facts such as: did the defendant pull the trigger? This theme is also present in Charles Ogletree’s following article, “Beyond Justifications: Seeking Motivations to Sustain Public Defenders”. When asked how he could defend guilty clients, Ogletree says that he used to respond, “with pleasure.” He acknowledges, however, that the work of criminal defense advocacy often leads to disillusion and burnout. Therefore, he sets out in his article to go beyond providing justifications for such work, and to provide motivations for it. He starts by analyzing conventional justifications for criminal defense work – including the Sixth Amendment right to counsel provided by the constitution and professional standards calling for zealous representation. He then tells the compelling story of his own personal experience as a defense lawyer deeply shaken by the news that his beloved sister had been brutally murdered. Shortly after the murder – which remained unsolved – he was asked to defend a man who himself was accused of rape and murder. Despite new-found empathy for victims of crime, Ogletree accepted the representation, and indeed threw himself into it. He believed that the client (referred to as Craig Strong) had been treated wrongly by the police, and when he first met Strong, he found a frightened man who needed help. Ogletree was devastated by his client’s ultimate conviction.

In the concluding section of his article, Ogletree describes both empathy and a vision of heroism as sustaining motivations for defending his clients. By empathizing with a client, Ogletree was able to look beyond what the client may have done: “I viewed Strong as a person and as a friend, and thus I was able to dissociate him from the
person who had murdered my sister. I did not blame him, nor did I resent him because I had been victimized by crime. Instead, I viewed Strong as a victim as well.” Moreover, by seeing the work of defending indigent criminal defendants as heroic, it provided an ability to argue persuasively: “by extending the definition of heroism to encompass the listener, the lawyer may be able to convince the jury to adopt that course of action that will produce the noblest and most just result.”

Taken together, Meyer’s and Ogletree’s articles provide a compelling response to those who view defense lawyers as unethical manipulators who simply seek to “trick” juries into finding their clients not guilty. Such lawyers are not “lying,” they are simply arguing for a broader version of the truth as they see it: a truth that takes into account injustices suffered by a client with whom the lawyer strongly identifies.

The next selection in this lawyering section is an excerpt from Russell Pearce and Amelia Uelmen’s article, “Religious Lawyering in a Liberal Democracy: A Challenge and an Invitation”. In the section excerpted here, Uelmen explains why a “neutralist” approach to lawyering, where the lawyer is simply a “hired gun” for her client, is ultimately unsatisfying. She explains that that particular conception of lawyering (which is also discussed in Worley’s opening piece) is not consistent with the view of lawyers at the time of the Federalist Papers, when lawyers were considered part of the elite group of “learned professionals” charged with pursuing the public good. The shift to a “hired gun” conception troubles many, especially because unequal access to legal service then results in unequal justice. The religious lawyering movement, she argues, provides a “robust framework” for lawyers to integrate their personal morality and consider the public good in their work for clients. Religious lawyering, for example, can provide a compelling reason for a person of religious background to provide services to the poor. Uelmen goes on to defend religious lawyering against objections that it is unfair to clients and dangerous for a liberal democracy.

In Samuel Levine’s “Reflections on the Practice of Law as Religious Calling, From a Perspective of Jewish Law and Ethics,” Levine notes that lawyers face unique challenges
both substantively and procedurally. He suggests that lawyers even on opposing sides may “serve justice” consistent with Jewish law. For example, prosecutors can work for justice while defense lawyers can embrace the role of representing society’s most vulnerable. Procedurally, lawyers may be challenged by, for example, being called upon to cross-examine witnesses in hostile and embarrassing ways. Such challenges do not lend themselves to easy resolution, but Levine suggests that individual circumstances and conditions must be considered and that it may be “particularly appropriate” for a lawyer’s religious and personal values to provide guidance.

The final piece in this section is Martha Minow’s essay published in the University of Pennsylvania Law Review, “On Being a Religious Professional: The Religious Turn in Professional Ethics.” Minow acknowledges the growing trend in discussions of religion in professional contexts and posits that the last two centuries saw a period of secularization followed by a period of increased religiosity. Moreover, she points out that "left-leaning parents" have found common ground with religious groups in social justice and cultural issues.

Minow describes her reaction to the increased role of religion in the professions as "ambivalent," an ambivalence which she says is embodied in the First Amendment of the Constitution, which simultaneously protects free exercise but also prohibits the establishment of religion. Minow acknowledges that religious teachings have informed movements she admires, such as the civil rights and antiwar movements and the War on Poverty. She also believes that the "boundaries of reasonable liberal conceptions of justice" evolve over time, shaped by life experiences and "multiple sources of values and beliefs," including religious beliefs.

At the same time, Minow believes that political discourse must be accessible to those who do not share the speaker's religious views and warns that "triumphalism," which she acknowledges infects secular as well as religious "true believers," may insulate some from rational response. She also worries that if lawyers working within a religious framework eschew an adversarial posture in favor of conciliation, our current system
predicated upon "competitive fact-finding and argument" will not work. She also expresses concern about bias and exclusion of those who do not share the religious professional's beliefs. Ultimately, she concludes that resisting the view that one's religion provides all the answers for either the religious professional or her clients is possibly "the most critical challenge" for those in the religious lawyering movement.

Section Three then turns to civil disobedience. Ronald Dworkin's thoughtful article, "On Not Prosecuting Civil Disobedience," was written during the height of the Vietnam War but remains relevant today. Dworkin starts with the proposition that not all civil disobedience is punished; prosecutors have discretion to forbear prosecution for a variety of reasons. He then asks what the thoughtful citizen should do in the face of a law whose legitimacy is unclear. He examines three possibilities: (1) that the citizen should obey doubtful laws, even if he thinks they are wrong (2) that the citizen may follow his own judgment and disobey doubtful laws, until an institutional authority such as a court has ruled the other way, and (3) that he may continue to follow his own judgment with regard to doubtful laws, even in the face of a contrary court ruling (even from the Supreme Court), while taking that court ruling into account. Ultimately, he supports position three, making clear that even the Supreme Court sometimes reverses itself (as on the question whether a person should be compelled to salute the flag), and thus that a reasonable citizen may follow his judgment if he has a reasoned belief that a law is unconstitutional.

The other selection in this short section is William H. Pryor's article, "Christian Duty and the Rule of Law". Pryor, writing as the Attorney General of Alabama, defends his decision not to resist a court order calling for the removal of a monument depicting the Ten Commandments, which had been located in a state building. Pryor himself does not believe that the display of the Ten Commandments is unconstitutional, and demonstrators were enraged by the removal of the monument. Nevertheless, Pryor argues that it was both his legal duty and his duty as a Christian to comply with the court order. Relying on Biblical texts, Pryor argues that the Bible supports respecting government authority, even though it does provide justification for disobeying the government in the interest of
Christian duty or obligation. Quoting Martin Luther King Jr.’s reliance on St. Augustine and St. Thomas Aquinas for the proposition that “[a]n unjust law is a human law that is not rooted in eternal or natural law,” and also quoting King’s injunction that “[o]ne who breaks an unjust law must do so openly, lovingly and with a willingness to accept the penalty,” Pryor then distinguishes King’s resistance to segregation from Pryor’s own disagreement with the modern court order banning the monument. The Christian faith, Pryor posits, does not depend upon the existence of a monument in a government building. Moreover, defiance of a court order is not akin to the civil disobedience engaged in by King. Taking a slightly different position than Dworkin’s, Pryor suggests that a court order must be obeyed, relying also on the example set by Lincoln in Lincoln’s opposition to the Dred Scott Decision: “When the judiciary interprets the Constitution erroneously, we still retain all the lawful tools of political opposition that President Lincoln employed.” Among other things, Pryor suggests that we can urge the overruling of erroneous precedents or even amend the Constitution.

The fact that the Constitution is subject to different interpretations—interpretations which are frequently shaped by moral views—is very much at issue in the next section, Section Four, which turns to an examination of capital punishment. We first excerpt two Supreme Court cases where Justices had widely divergent views about the “right result.” In capital cases, which turn on the Eighth Amendment’s proscription of cruel and unusual punishment, the Court has conventionally looked at “evolving standards of decency,” which surely implies consideration of conventional standards of morality and justice. Whether capital punishment is constitutional at all is an issue that the Court has struggled with, with further debate emerging about particular aspects. Recently, the risk of executing the innocent has come to the fore in the capital punishment debate, and that risk is discussed in all three of the selections in this section.

In Herrera v. Collins, the condemned prisoner claimed to be “actually innocent” of his crime of conviction and sought to present newly discovered evidence that he said would exonerate him. The relevant state statue, however, forbade consideration of the new evidence because of a strict time limit on the presentation of new evidence. As a moral
matter, the execution of an actually innocent man would be barbaric. It was not as clear, however, that the Constitution—"the law"—would forbid it. As the Court explained, freestanding claims of innocence based on newly discovered evidence, absent an "independent constitutional violation" has not traditionally been a ground for relief on a federal habeas corpus claim, although the case upon which the majority chiefly relied, *Townsend v. Sain*, did not involve a defendant facing execution. Ultimately, however, the majority "assume[d], for the sake of argument in deciding this case, that in a capital case a truly persuasive demonstration of 'actual innocence' made after trial would render the execution of a defendant unconstitutional." Because of the "disruptive" effect of entertaining innocence claims after the fact, however, the Court noted further that the "threshold showing for such an assumed right would necessarily be extraordinarily high." Because petitioner in that case did not satisfy the Court's majority that he had met that high burden, his claim was rejected.

In a controversial concurring opinion, Justice Scalia took a much harder line, making clear that the Constitution itself would not forbid the execution of an innocent. According to Scalia, the Constitution simply does not demand that the courts consider "newly discovered evidence of innocence" after conviction. In other words, so long as the underlying trial was consistent with due process, even compelling evidence of innocence need not be considered—though Scalia noted it would likely lead to an executive pardon. He ultimately joined the opinion of the majority, even though the majority was unwilling to say that the execution of an innocent would be constitutional. In that regard, Scalia noted: "I can understand, or at least am accustomed to, the reluctance of the present Court to admit publicly that Our Perfect Constitution lets stand any injustice, much less the execution of an innocent man who has received, though to no avail, all the process that our society has traditionally deemed adequate." (Footnote omitted.)

In a dissenting opinion very different in tone, three justices led by Justice Blackmun took the position that "[n]othing could be more contrary to contemporary standards of decency, or more shocking to the conscience, than to execute a person who is actually
innocent.” According to the dissenters, the Eighth Amendment to the Constitution, which forbids “cruel and unusual punishment,” itself provides a mechanism for a person to challenge capital punishment on the basis of innocence, as does the Due Process Clause. The dissenters further found that the affidavits presented by the petitioner warranted consideration by the lower courts in the first instance. Acknowledging prior doubts about the constitutionality of capital punishment under current law, Blackmun concluded as follows: “Of one thing, however, I am certain. Just as an execution without adequate safeguards is unacceptable, so too is an execution when the condemned can prove that he is innocent. The execution of a person who can show that he is innocent comes perilously close to simple murder.”

The Herrera case, which has been the subject of debate for some time, is followed in this volume by the Supreme Court’s most recent opinion on capital punishment, Kansas v. Marsh, decided on June 26, 2006. In that case, the Court considered the constitutionality of Kansas’s sentencing scheme, which provides that the death penalty “shall be imposed” if the jury finds aggravating and mitigating circumstances to be in equipoise.

Respondent Marsh was convicted of brutal murders of a woman and her toddler. The jury found the existence of three aggravating circumstances and did not find those circumstances to be outweighed by mitigating circumstances. In accordance with the sentencing statute, the jury then sentenced Marsh to death. Marsh appealed, arguing that the Kansas statute created an unconstitutional “presumption in favor of death” by providing for the death penalty where mitigating and aggravating circumstances are equally balanced. The Kansas Supreme Court agreed with Marsh, but a majority of the United States Supreme Court disagreed.

In the majority opinion written by Justice Thomas, Thomas explained that a jury’s process of weighing aggravating and mitigating circumstances is simply a means to decision. Because the jury knows that the consequence of a decision that the circumstances are in equipoise will mean that a death sentence will be imposed, its conclusion that the factors are in fact equally balanced “is a decision for death and is
indicative of the type of measured, normative process in which a jury is constitutionally tasked to engage” when determining whether a death sentence is appropriate.

Responding to the dissent’s concerns about the error rate in capital sentencing, Thomas responds that the logical consequence of that argument is that the death penalty itself can only be just in an error-free system. “Because the criminal justice system does not operate perfectly,” he goes on, “abolition is the only answer to the moral dilemma the dissent poses. This Court, however, does not sit as a moral authority.” Finding that the Court’s precedents permit states to authorize capital punishment even in an imperfect system, he ultimately found no constitutional violation.

As he had in Herrera, Scalia wrote a separate concurring opinion in Marsh, responding specifically to the claims of the dissent about the risks inherent in capital punishment. In his Marsh opinion, he noted that he found it inappropriate for judges to “heap either praise or censure” upon legislation it confronts, “lest it be thought” that the judges’ interpretation was driven by their own personal policy choices. Plainly believing that the dissent was driven by such a policy choice, he lamented that the dissent’s claims about the condemnation of innocents would be “trumpeted abroad” as vindication of “sanctimonious criticism” that America’s death penalty is “somehow unworthy of a civilized society.” His opinion went on to document, in some detail, questions and limitations regarding the studies and other authority relied upon by the dissent to support its views about the risks of capital punishment. While acknowledging the imperfection of the system, he concluded that the possibility of mistake in imposing the death sentence under the current American system “has been reduced to an insignificant minimum.” Given the support of a majority of Americans for capital punishment, it is not the Court’s “proper business” to impose “judicially invented obstacles to its execution.”

Four justices, led by Souter, dissented, making numerous references to moral considerations in capital sentencing. While states have leeway in devising a capital sentencing scheme, a sentence of death must be a “reasoned moral response” to the defendant’s circumstances: the death penalty must be reserved for the “worst of the
worst.” The dissent deemed it “morally absurd” that the Kansas law would require execution even if aggravating factors did not outweigh mitigating ones.

Moving beyond the Court’s prior precedent calling for “reasoned moral judgment” in sentencing, the dissenters next argued that new factual considerations must be considered in assessing the Eighth Amendment prohibition of cruel and unusual punishment: repeated exonerations of inmates sentenced to death in recent years. Going into some details regarding studies of wrongful convictions, the dissent concluded as follows:

In the face of evidence of the hazards of capital prosecution, maintaining a sentencing system mandating death when the sentencer finds the evidence pro and con to be in equipoise is obtuse by any moral or social measure. And unless application of the Eighth Amendment no longer calls for reasoned moral judgment in substance as well as form, the Kansas law is unconstitutional.

In the various opinions of the Justices excerpted from the Herrera and Marsh cases, it is clear that the justices take very different positions about the morality of an imperfect capital sentencing system. Scalia, for example, who believes that the chances of a wrongful execution have been reduced to an “insignificant minimum” also believes that the system, even given its inevitable errors, remains constitutional and that the Court is not empowered to “invent obstacles” to a system supported by a majority of voters. Taking a similar view, Thomas explicitly states that the Court does not sit as a “moral authority” to resolve the moral dilemma posed by the risk of wrongful executions. Other justices, however, plainly take the view that the risk or error is relevant in determining whether the constitutional prohibition on “cruel and unusual punishment” is violated by aspects of capital sentencing, and, particularly, in Marsh, the dissenters explicitly use the language of morality to support their view.
The final piece in this section is Mark Osler’s provocative new article, “Crucifixion and Execution: The Trial of Jesus Christ as Capital Punishment.” Starting with the point that both presidents Bill Clinton and George Bush support capital punishment and that both presidents also made their Christian faith a part of their “public and political persona,” Osler argues that Christ’s execution should inform the modern debate about capital punishment. Initially, he argues that Christ’s trial provides a “moral basis for eliminating capital punishment” because it involves the execution of an innocent, a risk which Osler describes as a compelling objection to the capital punishment system today. Moreover, Osler likens aspects of Christ’s trial -- including a rush to judgment, the role of the mob and inadequate representation -- to modern capital procedures. Using Texas’s procedures as an illustration, Osler argues that the sentencing process is too rushed, that there is inadequate political insulation for Texas judges who must respond to an electorate, and that representation is not fully effective and sometimes conflicted. (It is interesting to recall that Texas’s sentencing system, with strict time limits on the consideration of new evidence, is at issue in the Herrera case.) Ultimately, Osler concludes powerfully that “[i]n holding the sacred story of Christ’s trial up to the profane capital processes used in the United States . . . one sees that present procedure, and perhaps the existence of the death penalty at all . . . do not match up with the lessons to be gleaned from the trial of Christ himself.”

Finally, this volume examines the current raging debate on immigration. Issues of morality and the law are plainly intertwined in this context. On a fundamental level, when a person makes the choice to cross a border without sanction, he is choosing to break a law. Many people are virulently opposed to “amnesty” for such persons because it appears to condone the flouting of our laws. On the other hand, some believe that there is a moral imperative to help the less fortunate. One proposed Congressional bill would actually criminalize the providing of such assistance. Is such a law immoral?
The awareness of several social realities and several value commitments are at the heart of the essay by Mary Ann Glendon. Among the social realities are the inevitability of migration and this country’s need for immigrants who can contribute to our declining workforce. Among the values she emphasizes are the rights of individuals in adverse circumstances to migrate from one country to another in the pursuit of work and the importance of the United States as a society for whom operating under the rule of law is fundamental—a matter relevant to the illegal immigrant problem. Glendon expresses concern that tensions over immigration are exacerbated both by immigration alarmists who inflame nativist sentiments and immigration advocates who fail to appreciate the significance of the strains involved in integrating immigrants into social structures and institutions. Glendon calls for a “fuller and better-informed” public discussion of the immigration issue with the hope that a solution can be reached that mediates between amnesty without qualification and punitiveness.

George Friedman argues in “Borderlands and Immigrants” that the current immigration debate is a question that needs to be [separated into two inquiries]. He distinguishes among immigrants to the United States from other parts of the world such as Asia or the Middle East, immigrants from Mexico who move to areas of the United States far removed from the border between Mexico and the States, and Mexican immigrants moving into “borderlands that were created by U.S. conquests.” Friedman emphasizes that historical experience has repeatedly shown that those who recognize the economic advantage of absorbing immigrants have been correct in their dispute with those who fear immigrants. But, he argues, the issues arising as a result of migration to borderlands that once were under the control of the country from which the immigrants are coming need to be considered in their particularity.

In his essay “Immigration Quotas vs. Individual Rights,” Harry Binswanger explicitly defends “phasing-in open immigration into the United States.” Individuals should be legally permitted to move to the United States, seek employment, and purchase property at will. The grounds for his normative legal claim is a moral claim about individual rights—rights one has, he emphasizes, by virtue of being a human being not because one
is an American. Binswanger is not advocating automatic citizenship and he does recognize the need for protection against criminals, terrorists and those who have infectious diseases. But he is convinced of and argues for the economic and spiritual advantage of unlimited immigration.

Victor Hanson maintains that illegal immigration is a moral issue and he poses a series of questions as a way of emphasizing his point. Is it ethical for the Mexican government to assist her citizens in migrating illegally to the United States by providing them with survival guidelines? Is this encouragement not an immoral way for Mexico to avoid needed social reform in its own country? Is it moral to hire illegal aliens? Is it fair to unemployed U.S. citizens to have to compete for jobs with illegal immigrants? Is it moral to require that some obey the law but permit illegal aliens an exemption? These questions, Hanson argues, are legitimate and to raise them does not entail that one is a racist or nativist.

The brief piece by Cardinal Theodore E. McCarrick, Archbishop of Washington, D.C, agrees with Hanson that the immigration issue is a moral one, but McCarrick’s moral focus is quite different. He is fundamentally concerned that faith communities respond to immigrants as newcomers, many of whom are downtrodden and oppressed. He specifically opposes the Border Protection, Anti-Terrorism, and Illegal Immigration Act of 2005 passed by the House of Representatives as punitive and unfair in its scope and he supports the Secure America and Orderly Immigration Act introduced in the Senate by John McCain (R-AZ) and Edward Kennedy (D-MA). While Cardinal McCarrick does not explicitly support civil disobedience in this context, it is interesting to note that others have argued that any law that forbids helping immigrants should be disobeyed on moral, including religious, grounds.

The concluding opinion piece by Kathleen Parker is in response to recent immigrants taking to U.S. streets protesting and demanding rights “in Spanish while waving Mexican flags.” Despite her “over-the-top pro-Latino and pro-immigrant” proclivities, she surmises that such actions on the part of illegal aliens will be counterproductive.
Acknowledging the complexity of the immigration issue, she notes that the right of political protest is a citizen’s right and that the responsibility of legislators is to pass laws serving the interests of U.S. citizens.

The issues represented in this volume are complex and multi-faceted and we acknowledge that there are further dimensions to all of them that are not explored in this volume. Moreover, space permitted inclusion of only a handful of the myriad topics impacted by considerations of “morality, justice and the law.” By providing materials addressing philosophical issues as well as concrete modern moral dilemmas, we hope to at least begin a process of discussion about the extent to which morality and the law are—and should be—connected.