



Scholl Institute of Bioethics

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The Scholl Institute of Bioethics is a nonprofit, Judeo-Christian organization that addresses bioethical issues including euthanasia, physician-assisted-suicide, the withholding or withdrawing of food and water from non-dying patients, brain death, organ transplantation, genetic engineering, and the rights of disabled or mentally ill persons.

Are Human-Made Laws Always Moral?

By Miguel A. Endara, Ph.D.

Towards the end of World War II, as the Allied forces began to occupy former German strongholds and camps, they began to make horrific discoveries. Previously, there had been only rumors of abuse of Jews and others in concentration camps. But now, the story was undeniable. As the rest of the world began to discover the magnitude and extent of the abuse, many began to cry out for justice. As a response to this cry, the Nuremberg Trials began in November 1945. Here, Nazi leaders were tried for, among others, “crimes against humanity.”

By way of self-defense, the Nazis claimed that they were merely following orders; they were obeying the decrees and statutes of their country. After all, Germany was an independent and autonomous nation. By what moral or political authority did the Allied judges condemn their actions and sentence their leaders?

In their self-defense, the Nazis seemed to assume that, either, all the laws of a country are moral or that the only type of morality that exists is the human-made laws or human laws, what we call *positive law*. Our human condition is such that we have perpetually wondered whether human laws are always moral or are the only type of moral laws. Around 441 BC, the Greek playwright, Sophocles, wrote *Antigone*, named after the heroine. In this play, Antigone dares

to defy the law of the king of Thebes, Creon, to not bury her brother, Polynices. In the philosophical apex of the play, Antigone declares that the statute of King Creon was not “set by the gods” and that no one can “override the unwritten and unailing statutes of heaven.” Clearly, as in the case of the Allied judges, Antigone recognizes that there is a difference between the laws set by human beings and the “statutes of heaven.” Human laws are not always moral and are not the only type of moral laws, for there is a higher law, a moral law above human law.

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In the thirteenth century, philosopher and theologian, Thomas Aquinas, in his Treatise on Law in *Summa Theologiae* I-II Q. 90-108, lucidly analyzes the distinctions between types of laws. According to St. Thomas, human laws are directives of reason made and disseminated by those who have charge over a community, for the common good. Natural laws are moral laws that we discover by reason and experience that promote human well-being or flourishing. The first and most general of these is to “do good and avoid evil.” We see what this means through more specific natural laws that include, among others, laws to preserve human life, educate one’s offspring, and avoid ignorance.

According to St. Thomas, legitimate human laws are

applications of the natural law. That is, human laws are the working out of natural laws given variables such as history, culture, geography, and technology in a specific place and time. Bereft of this connection with the natural law, the human “law” is not a true law, for it lacks moral legitimacy.

St. Thomas also connects human and natural law to his theology. Natural laws, according to St. Thomas, are the part of statutes within the mind of God, the eternal law, that humans may discern. Finally, divine law is the part of the eternal law that God has made known to humans through the revelation of the Old and New Testaments.

Human laws are not always moral and are certainly not the only type of law that exists. But, what about the laws of the United States, are they moral? In the field of bioethics, we’ve seen many questionable statutes, for example, those pertaining to the legalization of abortion, euthanasia, and

embryonic stem cell research. These laws have something in common: they legalize the intentional killing of innocent human beings. The question to ask ourselves then is, does the legalization of the intentional killing of human beings connect with the natural law? In other words, are these human laws applications of the natural law? Given that one of the most basic natural laws is the preservation of human life, laws that legalize abortion, euthanasia, and embryonic stem cell research cannot be applications of the natural law. These, then, are morally illegitimate laws.

For those of us who believe in natural law, some US laws are immoral. It is up to us to figure out which ones are not subject to natural law and how these undermine human flourishing. Then, we may begin to come up with arguments that have currency in the public square for the repeal of such laws.

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WARNING!

IN SEPTEMBER GOVERNOR BROWN SIGNED INTO LAW AB 282.

What did this bill do? It amends the California Penal Code “to prohibit a person whose actions are compliant with the End of Life Option Act from being prosecuted for deliberately aiding, advising, or encouraging suicide.”

Who can take advantage of this bill? AB 282 would allow an “interested witness” to legally aid, advise, and encourage a patient to commit suicide—and sign off on the method of suicide—while gaining financially from the patient’s death. Please be aware! Are your documents up to date? Send \$5 to Scholl for a very helpful “Advance Health Care Directive”.

We now have the brochure: “A Closer Look at Physician-Assisted Suicide” in both English and Spanish.
\$.25 cents each or \$.20 cents each for 100 or more.