

## **Are Human Laws Always Moral**

Toward the end of the Second World War, as the Allied forces began to occupy the German strongholds and camps, they began to make horrific discoveries. Previously, there were 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 just obeying the decrees and statutes of their country. After all, Germany was an independent and autonomous nation. By what moral authority did the Allied judges condemn their actions and sentence them?

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 the positive law. Our human condition is such that we have perpetually wondered whether human laws are always moral. Around 441 BC, the Greek playwright, Sophocles, wrote a play entitled *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 statute of King Creon was not "set by the gods" and that no one can "override the unwritten and unfailing statutes of heaven." Clearly, as in the case of the Allied judges, Antigone recognized that there is a difference between the laws set by human beings and the "statutes of heaven." Human laws are not always moral, for there is a higher law, a law above human law.

In the thirteenth century, philosopher and theologian, Thomas Aquinas, in his *Treatise on Law* in *Summa Theologica* 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 through the use of reason and experience. The first of these is to "do good and avoid evil." More specific natural law precepts 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, 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 the eternal law (all statutes within the mind of God), 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. But, are the laws of the United States always 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, can these human laws be considered applications of the natural law? Given that one of the 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 compromise human well-being and flourishing if we are to begin to have success in our society working towards the repeal of such laws.