

Hershovitz, Scott. *Law is a Moral Practice*. Cambridge, Massachusetts: Harvard University Press, 2023. vi+256. \$39.95.

What are the various pieces of a community? When social scientists explore these concepts, they think about what makes a community unique. They think about the numerous interactions between people in a community and indicate the facets of what the community's culture might be. The various social science disciplines have different perspectives, opinions, and lenses when explaining the construction of a community. However, one of the more interesting perspectives is how rules impact a community's creation and foundational pieces. Rules dictate the various policies a community creates, and these policies, combined with their government structure, contribute to the culture and development of a town, city, or nation-state. Hershovitz's new book, *Law is a Moral Practice*, touches on these rules while highlighting that they serve as the basis of morality in American society. Hershovitz also notes the various pieces of the legal profession and how it ultimately uses morality (and potential competing concepts of morality) as the foundational pieces of legal arguments. Hershovitz notes that how law is practiced shapes morality.

As noted by numerous scholars, standards are based on rules—and Hershovitz notes that rules or laws shape how we think of moral concepts in American society. What is morality, and how does it shape these important concepts in society? According to T.M. Scanlon, “terms such as “moral,” “morality,” and “morally wrong” frequently occur in personal discourse and political opinion” (Scanlon, p. 243). “A common element in these different views of morality is that moral standards are ones that we all have good reason to accept as a normally conclusive basis for deciding what to do and for assessing our claims against others” (Scanlon, p. 243). Morality is a complicated subject. What may be “moral” to one person, may be different to another—and yet, these perspectives play out in a court of law.

Hershovitz's book touches on a number of important philosophical questions. It highlights the basis of morality in American society by noting how rules and laws become the foundational elements of morality. He writes, "It's clear that legal practices play a major part in our moral lives—that they figure, prominently and perhaps indispensably—in determining what we owe each other across a wide range of contexts" (p. 172). Hershovitz also poses important questions about morality and law, sometimes highlighting the idea that if a law isn't moral, perhaps individuals may not obey laws (p. 175). These are questions that scholars have noted in a variety of different contexts for how this impacts the development of policies and the construction of organizational goals. He also notes another important question: the practice of law sometimes highlights how two competing moral concepts may be the basis of legal arguments (p. 175).

Hershovitz's book is broken into seven chapters that break down the concept that law is the basis of society's morality. Each chapter title takes an important stance on how Hershovitz develops his argument. The chapters are entitled "Chapter One: A Moral Practice; Chapter Two: A Tale of Two Textualists; Chapter Three: not a Set of Norms; Chapter Four: An Immoral Practice; Chapter Five: Stop! In the Name of Law; Chapter Six: Roy Moore and the Rule of Law; Chapter Seven: lawyers and Morality; and Conclusion: Law is a Moral Practice." Hershovitz explains that in chapter one, he "develops the idea that law is a moral practice—a practice that aims and creating, extinguishing, enforcing, articulating, arranging and rearranging our rights and responsibilities." I'll also argue that litigation poses moral questions, and I'll try to isolate the moral questions that we contest in court from the ones that we don't," (p. 14). Hershovitz builds on this by noting that "law is a set of norms" and shapes how lawyers practice law (p. 14). And, while "law is a set of norms," Hershovitz also notes that in some cases, "law

can be arbitrary, stupid or just plain evil” (p. 14). Hershovitz writes, “This fact...is not a barrier to thinking that law is a moral practice. Indeed, seeing that law is a moral practice will allow us to think in a more sophisticated way about the moral significance of bad legal practices” (p. 14). Hershovitz’s book is an interesting argument and highlights much about the philosophies in American legal practices that impact the development of American society.

This book is an important read for students of philosophy, law, political science, and public administration—or those who simply want to understand more about morality as a social construct. It is an important addition to the literature for Hershovitz’s own arguments that morality is simply a “behind-the-scenes” piece of American culture and law.

References

Scanlon, T.M., (2011). What is Morality? In Shephard, J., Kosslyn, S., and Hammonds, E., (Eds.,) *The Harvard Sampler: Liberal Education for the Twenty-First Century*. Cambridge, Massachusetts: Harvard University Press.

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