**Moral impact theory:**

the way that social facts about legal practices can change our moral profile and so create (accd to Greenberg) legal content

examples:

without a legal system, it may be morally permissible for people to use violence against others who attack or threaten to attack them or their families or allies.

By maintaining a monopoly on the use of force, effectively protecting people against violence, and reliably punishing wrongdoers, a legal system can make violence morally impermissible, except in a very narrow range of circumstances.

legal practices can make what is morally permissible morally impermissible

great moral importance of advance notice of punishment and the indeterminacy—or at least uncertainty—with respect to what punishment is morally appropriate, the punishment of wrongdoers is in general morally problematic without action by legal institutions.

The idea is that legal practices can make one’s moral obligations more concrete and definite

Democracy can make even morally flawed choices morally obligatory

etc.

problems:

Suppose a government persecutes a particular minority group.

this creates a moral obligation to protect or rescue the minority group, to disobey the directives, to try to change the policy, and so on.

but those moral obligations cannot be legal content

*The Moral Impact Theory* (version 3): The content of law is that part of the moral profile created by the actions of legal institutions in the legally proper way.

Green worries about “the legally proper way”

* one idea is that it must be good moral consequences to be in the legally proper way
* but what about good consequences that are deviant?
* “legally proper way” may be relying on the SP
* What is a legal institution
* we need that to figure out the social facts whose moral impact create legal content
* his theory sounds positivist – like Shapiro

two big problems –

arbitrary and immoral laws

* solution
* can have a positive effect even if have immoral content
* but really immoral may not be law
* really is a revision of our concept of law…?