Tom Santa Maria 9/6/10

The Difference Between What is Legal and Frowned Upon

Observing someone enjoy a single grape from a farm’s plentiful grape vine without paying for that measly grape may make one slightly uncomfortable. All the same, it is unlikely that anyone would immediately report this person to the police as a thief, and it is probably less likely that an officer would even bother to pursue anyone for stealing a single grape. This situation can justly be defined as a shade of gray; it may not be right, yet that may not make it explicitly wrong. In a graver sense, scenarios like this are encountered all too frequently in varying degrees of immorality in the story of, and those stories surrounding, the life and times of Henrietta Lacks. The Immortal Life of Henrietta Lacks by Rebecca Skloot, illustrates the painfully serious conflict between actual laws and codes of conduct for medical professionals who seem to think they were acting ethically, when more likely they broke boundaries.

In keeping with the fact that Henrietta’s story deals primarily with what was at the time uncharted territory Skloot explains precisely what the laws regarding the issues were. In her afterword Skloot succinctly addresses the legality of Henrietta’s situation, “Don’t doctors have to tell you when they use your cells in Research? The answer is no-not in 1951, and not in 2009...” (Skloot, 315). The sad reality born from this frank statement is that in the eyes of the law Americans have few rights when it comes to their own cells. Cells are not a person’s property once they are extracted from the body. From this perspective it seems as if Henrietta and her family may never have had much claim to her cells at all. While there is certainly a breach of trust in Henrietta’s case, it is perhaps more forgivable than some of the others conditions mentioned in the novel. After her discussion of the Southam case Skloot tries to clarify the legality of the issue, (Dr. Southam injected living people with cancer- just to see what would happen.) “But the Nuremberg Code – like all other codes that would come after it – wasn’t law...” (Skloot 131). Evidently this abuse of a doctor’s power was not illegal (There is probably an important disparity between legal and “not illegal.”) Though the Nuremberg Code would have identified this behavior as unethical, the American doctors did not feel that the code applied to them. They called it “the Nazi Code.” After all, in their eyes the Nazis were hideous murderers. Surely American doctors could only be great scientists aspiring to improve the world and its inhabitants. While both of these situations were at least partially permissible by law, the question remains: should society allow this sort of behavior to be undertaken by our doctors.

Despite the obvious tension in the book, several accounts from doctors claim that they always acted in accordance with moral standards. One such instance is reported by Rebecca years after the removal of Henrietta’s cells by Dr. Hsu, a Hopkins doctor who worked with HeLa cells, “I think Mr. Lacks pretty much already knew that his wife made a contribution and are very aware of the value of HeLa cells...They are very nice family, so they very nicely let us draw blood.” (Skloot, 183). This retelling is in stark contrast with what almost every single one of Henrietta’s family members said. This begs the question is Dr. Hsu blatantly lying? Though this recounting is perhaps not entirely truthful, it may be rather aggressive to say that Dr. Hsu is deliberately lying. It is more probable that in their excitement the scientists, such as Hsu, did not even notice the family was left unaware of the processes in motion. In retrospect they believe the Lacks family was thrilled to make such an important contribution to medicine. What is more, years after the acquirement of Henrietta’s cells an assistant to the president of Hopkins wrote, “In keeping with almost universally accepted practice at the time physicians...did not seek permission to use tissue removed as part of diagnostic and treatment procedures. Also, in keeping with traditions...the cultures were shared freely...” (Skloot, 225). This is an affirmation of the doctors’ interactions from a more modern point of view. Once again, no one is chastised, instead the ethical concerns are pardoned by the what is in essence being declared the ethical deficiencies of the time. The doctors asked to testify in the Southam case also reinforce Southam’s procedure:

They argued it was unnecessary to disclose all information to research subjects or get

consent in all cases, and that Southam’s behavior was considered ethical in the field

Southam’s lawyers argued, “If the whole profession is doing it, how can you call it

‘unprofessional conduct’’” (Skloot 134).

This latter sophistic argument is enough to fool many people with its invincible rationality. The better question undoubtedly is: how can you say that it is unnecssary to inform patients that you are injecting them with cancer?

Ultimately, with or without a code of laws the actions of the researchers conducting these various studies are immoral. The great case in point is the mention not only of the Nuremberg Code on page one hundred and thirty one, but also the Hippocratic Oath. Even if doctors would not act in accordance with a “Nazi Code” could they shirk an oath that they took to “do no harm” that dates back millennia? To readily shun such a timeless promise seems farfetched at best. Furthermore, sociologist Barabara Wyche acknowledges that there are, “moral and ethical issues that surround the “birth” of HeLa, and the “death” of Mrs. Lacks.” (Skloot, 224). She notes that the family “has suffered greatly...” (Skloot, 224). Should this not be enough to deem the actions unethical, or even deplorable?

The reality is that more likely than not, the scientists mentioned in Skloot’s work acted unjustly. The fact is it should not matter if their research was in line with others of the time. The fact is it should not matter that the choices they made were legal decisions. Ethics goes beyond these points. It is possible that compared to ethics laws and social constructs are superficial. There simply should not be a situation that makes injecting someone with cancer acceptable. Even if it was illegal, laws often have loopholes, moral codes are not porous, they are firm and resolute.