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HPS/Pl 183: Bioethics  
Gurcan

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Short Assignment 1

*Q: In 250-500 words: What, if anything, is the difference between the law and morality, and what may be the reasons why their prescriptions can diverge at times? What may be the significance of examining the relationship between the law and morality?*

*R: \* Note: for this question, I will speak on morality through the lens of moral realism since we mentioned in class that in bioethics, we assume rejection of moral relativism.*

Morality differs widely from the law, in that morality exists independently of human beliefs and society. The law, on the other hand, is a construction of a society that prescribes how society will organize itself. Morality has total coverage – for a given choice, there is a fact about whether choosing A or B is morally right or wrong. The law applies only to those types of choices or situations that we have deliberately written about, which leaves gaps in places where moral facts do exist. Morality suffers from an epistemic problem, stemming from the fact that morality exists independently of human society; it is very difficult to gain knowledge of what is right or wrong in some situations. The same problem doesn’t crop up for the law, which is clear about what is legal or not. The law suffers from a different problem, in that since it is hard to decide what is right or wrong, it can be hard for societies to decide what **should** be legal or not.

The prescriptions of the law can differ from the prescriptions of morality due to the requirement of enforcement. Morality is simply an objective fact about the rightness or wrongness of an action – for example, lying is wrong. The law, however, must be enforced. A law like “Individuals may not lie” is simply not feasible to enforce. Enforcing such a law would require total knowledge of the statements made by individuals on the part of an enforcement agency, data that is simply not feasible to collect. It can also be true simultaneously that an action is morally wrong, but for an agency to enforce a law against that action is also morally wrong. In the lying case, one would argue that the enforcement agency would be wrong to enforce a law against lying because in collecting the necessary data they would violate all individuals’ rights to privacy within the society. So, although the law would be equal to morality in its prescriptions, it would be both infeasible and immoral to enforce, and therefore should not be written into the law.

Examining the relationship between morality and the law can reveal systemic neglect of moral duties within society. This can be done through 2 means. Either one identifies a way in which the prescriptions of the law differ from the prescriptions of morality in a way that is feasible to repair – for example the reversal of a law permitting slavery – or one identifies a gap in the law that has been allowing the certain moral duties to go legally neglected. An example of this case would be tax loopholes, in which the ultra-wealthy may be able to avoid paying their fair share due to under specification of the law. This means there is a gap in the law allowing the wealthy to shirk their moral duty of paying their fair share into society.