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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 is written by man to reflect these moral facts and their application to the governance of society. Morality suffers from an epistemic problem stemming from the fact that morality exists independently of human society; it is very difficult to learn moral facts with certainty, leading to large-scale disagreements on what is right and wrong. This creates a challenge when writing the law, as moral disagreements will also lead to disagreements on what laws should be written. Once the law is written, law does not suffer from the same epistemic problem as morality. The law is written explicitly in documents, making it easy to know what the law says. This demonstrates that the difference between morality and law lead to different philosophical challenges effecting each.

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 also morally wrong for an agency to enforce a law against that action. 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, while a particular lie may be morally impermissible, it must remain legally permissible because of the infeasibility and immorality of enforcing a law against it.

Examining the relationship between morality and the law can reveal systemic neglect of moral duties within society. Morally impermissible actions (or inactions) can often be legally permissible, which can result in their frequent occurrence by bad actors in society. The study of such cases should seek to create laws against the impermissible action whose enforcement is both feasible and moral. If this is possible, then the law should be codified, and the occurrence of the action eliminated. Consider, for example, slavery in the 19th century United States. While morally impermissible, the practice was legally permissible which led to systemic neglect of the moral duties of white people towards black people. Through hindsight, enforcement of a law against this practice is demonstrably feasible and moral, and hence the law against the practice should be codified. Hence examining the relationship between morality and the law is used to eliminate the systemic injustice in society.