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ON THE POSSIBILITY OF SINGLE CORRECT ANSWERS IN LEGAL INTERPRETATION

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**ON THE POSSIBILITY OF SINGLE CORRECT ANSWERS IN LEGAL
INTERPRETATION**

A Thesis Presented for the
Master of Arts
Degree
The University of Tennessee, Knoxville

Francis Kwame Nyamekeh, Jr.
May 2023

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ABSTRACT

My thesis examines Dworkin's claim that there are objectively correct answers to controversial legal questions, and hence moral questions. A given moral statement is objectively true if it is true independently of what anyone believes or thinks about it. Dworkin asserts that the truth or objectivity of any moral claim depends solely on moral arguments. On the contrary, Leiter claims that any moral argument in favour of moral objectivity is empty and entails counterintuitive conclusions. Thus, moral arguments are neither necessary nor sufficient to support claims about moral objectivity.

Leiter nevertheless proposes that any forceful argument in favour of moral objectivity must appeal to objective naturalistic facts. Naturalistic facts are broadly understood as facts demonstrable, in principle, by ordinary methods of natural science. I argue that Leiter's attempt to restore this naturalistic conception of moral objectivity fails, for his arguments either generate confusion about the nature of moral arguments or misconstrue Dworkin's position altogether. I conclude by arguing that although there is such a thing as a non-naturalistic account of moral objectivity, there are also genuine hard cases in which legal principles do not determine uniquely correct answers.

The first section of my paper shall elucidate the problem of objectivity in legal interpretation in light of moral objectivity. In my second section, I only discuss crucial features of Dworkin's internal justification of morality that respond to this problem of moral objectivity. In my third section, I explore how Leiter's criticisms challenge Dworkin's internal account of moral objectivity. However, in the fourth section, I argue that Leiter fails to respond substantively to Dworkin's concerns about moral objectivity. I shall also assess the extent to which my criticisms illuminate concerns about single correct answers to questions in legal interpretation.

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INTRODUCTION

My thesis investigates the objectivity of law, precisely the degree to which existing authoritative legal standards provide definite answers to legal questions. Can the law be objective only if it relies on legal rules? Is the law objective given that it is also anchored on sound political morality or some cultural morality? If laws are objective only if they rely on political morality, does it follow that there must be correct answers to questions involving our political morality?

Hart argues that what the law is, is always a question of fact to be settled by legal reasoning in accord with the rule of recognition. If legal reasoning in a particular case reveals that there is no applicable law, legal officials exercise quasi-legislative powers to fill the gap. Hart's view aligns with logical positivism, which typically categorises knowledge as either synthetic a posteriori or analytic a priori. According to Hart, genuine legal materials cannot be synthetic a priori.

The analytic/synthetic distinction is a semantic distinction, involving the truth and meaning of statements. Analytic truths are propositions that are true or contradictory by virtue of the meaning of words. Synthetic truths, on the other hand, are truths that are true to the extent that they could be either confirmed or falsifiable by observation. Likewise, the a priori/ a posteriori distinction is an epistemic distinction: of how a proposition can be known. So, whereas a proposition is knowable a priori if it is knowable independently of experience, a proposition is knowable a posteriori if it is knowable via experience.

Hart believes that all genuine legal materials cannot analytic a priori given that analytic a priori truths tell us nothing substantive about the world; they are empty of

empirical content and tautological. Similarly, Hart claims that genuine legal materials cannot be synthetic a priori given that all synthetic truths, according to logical positivists, can only be acquired a posteriori. So, all genuine legal materials are synthetic a posteriori which can be correctly identified through a secondary social rule of recognition.

Conversely, Dworkin contends that there is only one correct answer to what the law requires in any legal case, which is discoverable by judges competent in legal reasoning. A judge's exercise of competent legal reasoning is a type of practical reasoning that is guided by all and only legally relevant materials.¹ Such relevant materials include but are not restricted to legal rules, precedents, and principles. Legal principles are relevant given that (i) their correctness is a matter of political morality and (ii) their contents relate to the politico-moral ambitions of legality.

Given that there is only one correct answer to what the law requires in any legal case, Dworkin's view implies that the law is always objective, even in hard cases. A genuine hard case is a particular legal case that cannot be brought under a clear legal rule or precedent because, given the facts of the case, it is unobvious and controversial what the law requires. Conversely, a pseudo-hard case arises when a particular lawsuit cannot be brought under any clear rule or precedent because the particular facts of the case are neither precise nor clearly stated. These cases are not genuinely hard partly because the facts surrounding the case are somewhat unclear.

¹ I use the term "practical reasoning" to refer a type of mental activity that allows agents to deliberate about what they ought to do and to act accordingly. A judge's exercise of competent legal reasoning, which is form of practical reasoning, gives rise to what they ought to do in certain legal cases. This type of reasoning differs from theoretical reasoning, which is primarily concerned with discovering what is true.

Thus, Dworkin believes that hard cases are those in which reasonable lawyers disagree about what the law requires. Dworkin supposes that judges must appeal to legal principles of justice and fairness to resolve such genuine legal disagreements. Legal principles are authoritative legal materials that enforce the values of justice, fairness, or some other dimension of morality to determine a single correct answer in legal cases.

So, it seems that if there is a single correct answer to every legal question, as Dworkin asserts, then there must always be a single correct answer to the politico-moral question of what the legal principles are and how judges weigh and balance them against one another. In particular, inasmuch as legal principles enforce the values of fairness and justice, legal principles derive their weight and force from morality.

As a result, moral arguments play a significant role in legal reasoning by justifying a judge's unique decision in a legal case. Dworkin implies that if any competent judge's legal judgement is objectively correct, then the relevant moral judgements that contributed to that decision must also be objectively correct. So, without the existence of objective moral values, Dworkin's argument suggests that legal objectivity is impossible.

Some meta-ethical thinkers, however, have developed scepticism towards the possibility of moral objectivity and, hence, legal objectivity. Such philosophers argue that although moral facts exist, they are only expressions of remorse, guilt, approval, disapproval, and accepted imperatives. J. L. Mackie, for instance, maintains that "prescriptive moral judgements are really subjective".² Thus, morality is subjective rather

² See J. L. Mackie's *The Third Theory of Law*. *Philosophy & Public Affairs*, 7(1), (1977, p. 10).

than objective. Accordingly, if moral scepticism were sound, it would mean that there cannot be correct answers to moral questions.

Brian Leiter and Ronald Dworkin have responded to this account of moral subjectivity. Leiter maintains that “if no naturalistic moral realist’s response to the [moral] sceptic succeeds, then Mackie’s charge some twenty years ago stands”.³ Naturalistic moral realism broadly proposes that objectivity in the natural sciences is sufficient for thinking about objectivity in ethics or moral theory.⁴ Like Hart, Leiter shares the logical positivist’s view that ‘synthetic a priori’ claims are nonsense. If moral truth is conceivable, it can only be understood as synthetic a posteriori truth.

Whereas Leiter suspects that Dworkin’s single correct answer thesis depends on the existence of synthetic a priori truth, Dworkin argues that the objectivity of any moral claim depends solely on moral argumentation. According to Dworkin, naturalistic facts do not play any significant role in determining the objectivity of any moral claim. So, it appears that Dworkin does not believe moral truths are synthetic a posteriori truths. Moral truth can only be determined by moral arguments.

My thesis examines Dworkin’s attempt to make a case for the objectivity of morality in light of Leiter’s criticisms. I argue that Leiter’s criticisms of Dworkin’s account of moral objectivity fail because Leiter’s arguments either generate confusion about the nature of moral arguments or completely misconstrue Dworkin’s position about moral objectivity. I conclude by arguing that although there is such a thing as (non-naturalistic)

³ See Brian Leiter’s *Objectivity, Morality, and Adjudication* (hereafter OMA) in B. Leiter (ed.), *Objectivity in Law and Morals*, Cambridge University Press (2001, p. 92).

⁴ Naturalistic facts are broadly understood as facts demonstrable, in principle, by ordinary methods of natural science.

moral objectivity, there are also genuine hard cases to which legal principles do not determine their uniquely correct answers.

In the first section, I will elucidate the problem of objectivity in legal interpretation in light of several accounts of moral subjectivity. My second section only discusses crucial features of Dworkin's internal justification of morality that address this problem of moral subjectivity. In my third section, I explore how Leiter's criticisms challenge Dworkin's internal account of moral objectivity.

I will further argue in my fourth section that Leiter's position only generates confusion about the nature of moral statements and, therefore, fails to provide a substantive response to Dworkin's concerns about moral objectivity. My final section evaluates the extent to which my criticisms illuminate concerns about single correct answers to questions in legal interpretation.

CHAPTER ONE

Legal Objectivity in Legal Interpretation

Hart and Dworkin agree that sometimes what the law requires for a particular set of facts is obvious to all, particularly judges who are competent at legal reasoning. In view of the fact that legal officials can reason from legal rules and judicial precedents, what the law requires is obvious and, thus, non-controversial. As a result, for some questions about what the law requires in some particular legal case, it is non-controversial and obvious that there is a single correct answer discoverable through competent legal reasoning and that the existence and correctness of this answer is, in some meaningful sense, 'objective'.

On the other hand, Hart rejects the view that in any legal case, what the law requires is always evident and non-controversial.⁵ In particular, Hart argues that since legal rules alone can dictate some particular outcome in some cases, judges exercise discretion by deciding such legal cases unconstrained by any legal material.⁶ Expressed differently, judges create new legal materials that did not exist before the adjudication because the existing legal materials say little or nothing about the impending legal case.

Nevertheless, as judges must always have general reasons for justifying their decisions, Hart believes this quasi-legislative role is constrained. Following Hart's reasoning, the judge's verdicts are not arbitrary. Given that laws are often considered objective when they can provide objectively correct answers to most questions surrounding

⁵ H. L. A. Hart, in his *Concept of Law*, asserts that the ignorance of facts, competing rules or precedents, the open-textureness of rules and precedents, amongst other things can account for legal indeterminacy. According to Hart, there are no legally correct answers to questions involving hard cases. See H.L.A Hart's *Concept of Law* (hereafter CL) (1994, p. 128).

⁶ According to Hart, legal rules and precedents may not decide every legal case because they are inadequate, unclear or sometimes contradictory. (CL, p. 127).

interpreting authoritative legal materials, Hart's view implies that the law is not always objective. Some scholars have often referred to this theory of legal interpretation as *moderate scepticism*.⁷

By recognising the existence and constraining effect of legal principles, Dworkin presents a theory of legal interpretation that is supposed to resolve problems that arise in hard cases. Dworkin contends that Hart does not acknowledge the role of legal principles.⁸ If legal principles were present, judges would only exercise *weak* judicial discretion when reasoning in hard cases. It must be observed that legal principles are distinct from legal rules in at least two ways.⁹

Firstly, principles are weighed relative to their relevance to any case. Hence, some principles are weightier than others. Given that one legal principle can be weightier than another principle, if these two principles conflict, both can still exist within a genuine legal system. The legal principle 'like cases are to be treated alike' may, for example, be weightier than the principle 'no one shall profit from their own wrong'. However, both can co-exist and function in a genuine legal system.

Legal rules, however, are either relevant or irrelevant to a case. No legal rule is more important than another, given that legal rules either apply or do not apply to a case. Therefore, if two contradictory legal rules exist in any legal system, at least one is invalid.

⁷ See Brink's *Legal Interpretation and Morality*, in B. Leiter's *Objectivity in Law and Morals* (2001, p. 12).

⁸ Dworkin distinction between principles and policies is important to this argument since the judicial branch ensures fidelity to principles while the legislative branch determines policies. Legal principles are standards employed in legal reasoning to enforce the values of justice, fairness, or some other dimension of morality to determine a single correct answer. See Ronald Dworkin's *Taking Rights Seriously* (hereafter TRS) Duckworth. (1977, p. 22-23).

⁹ TRS, p. 24

For instance, no genuine legal system can have a legal rule stating that vehicles must have permits and another stating that they do not.

Secondly, principles can be primarily identified in terms of their content, not their source or ‘pedigree’. Legal principles are general standards employed in legal reasoning to enforce the values of justice, fairness, or some other dimension of morality.¹⁰ Hence, the existence of principles is not contingent on a formal procedure such as a secondary rule of recognition. Instead, principles are authoritative legal standards that evolve into and devolve out of existence.

Legal rules can be, however, identified by their source. Rules are enacted or abolished by a decision procedure. Also, although legal rules may contain moral concepts, they can only be valid if a genuine legal system identifies and recognises them. On Hart’s account, genuine legal systems originate from a union of primary and secondary legal rules such that there is a shared criterion for correctly identifying valid primary and secondary legal rules through a particular secondary social rule (of recognition). Legal officials accept this secondary rule as a shared public standard of official behaviour.

Dworkin also highlights another characteristic of legal principles in his subsequent works. In Dworkin’s *Law’s Empire* (hereafter LE), he broadens his views about the role of legal principles by stating that judges rely on principles that explain some significant part of the prior institutional history and provide the best account for that institutional history. This account must have legal ‘fit’ (that the principles are coherent with past and future legal decisions) and ‘moral worth’ (that all legal answers must be morally justifiable).

¹⁰ TRS, p. 22.

Dworkin's single correct answer thesis is consistent with reasonable disagreements between perfectly competent legal judgements. That competent judges reasonably disagree over what this best answer is no more counts against the existence of a single correct answer than did the fact that competent astronomers of the 16th century disagreed over whether the solar system was heliocentric or geocentric counted against the existence of a single correct answer in that case. This analogy should not imply that judges employ a mechanical approach to discovering and applying legal principles to particular legal cases.¹¹ Instead, judges are to provide the best verdict that has legal fit and moral worth.

Dworkin's single correct answer thesis is less a descriptive claim about the results of competent legal reasoning than it is a methodological presupposition of competent legal reasoning. While Dworkin relies on what judges have and exercise, he assumes that there is a single correct answer as to what judges should, morally speaking, do, in order to discover whether there are really correct answers to such cases. If judges end up with several apparently equally correct answers, they must still not flip a coin but instead allow their conscience to decide which of the apparently correct answers is in fact correct.

Returning to Dworkin's objection to Hart's account of legal interpretation accordingly, Dworkin's rejoinder implies that any hard case that requires *strong* discretion misrepresents what occurs when judges reason about the law. Thus, *strong* judicial discretion is both a false image of what judges, in fact, exercise in hard cases and an indefensible account of what they should do.

¹¹ Mechanistic approaches to legal interpretation broadly characterise genuine legal reasoning as mechanical, such that no distinctive human judgement is required. Judges neither exercise weak nor strong discretion as legal rules, precedents, principles and policies serves as premises for judicial verdicts (conclusions). A judge's verdict is, therefore, inferred deductively from existing authoritative legal materials.

A judge exercises *weak* judicial discretion only when authoritative standards, such as legal rules and principles, limit her decisions about a legal case. More precisely, a judge exercises *weak* judicial discretion in no less than two ways. First, she exercises *weak* discretion through reasonable judgement by deciding, for instance, whether a legal rule or precedent is relevant to a given case. Second, a judge exercises *weak* discretion when she has the authority to decide on legal cases. So, when her decision is not overturned, though it may be erroneous, she exercises *weak* discretion.

Conversely, a judge exercises *strong* judicial discretion when authoritative standards do not limit her decisions about a legal case. In particular, when no authoritative legal material, such as legal rules, precedents, principles or policies, constrains a judge's decisions, Dworkin believes that the judge exercises *strong* judicial discretion as the reasons that support her decision are not based on or derived from any legal authority at all. Since the judge's reasons have no authority, she is not bound by any law when deciding how to resolve hard cases.

Dworkin asserts that Hart's discretion thesis – the view that judges should appeal to extra-legal reasons in hard cases – involves *strong* discretion. In view of the fact that no legal authority has identified these extra-legal materials as valid authoritative standards, they are not valid. Besides, since they are invalid, they lack authority and legitimacy. As they are neither legitimate nor authoritative, it presents judges as *making* law illegitimately and applying it retroactively. However, judges are not legally authorised to make valid legal rules because it exceeds their judicial function, as there is a separation of powers.

Thus, to the extent that judges employ and reason from legal principles of justice and fairness, Dworkin believes there is no room for *strong* discretion or discretion in the Hartian sense. So, for every hard case, a uniquely correct answer is waiting to be discovered to determine what the law requires. In other words, Dworkin holds that it is always possible to arrive at what the law requires by reasoning competently from existing applicable law. Dworkin's view implies that the law is always objective.

In summary, Hart makes three essential points. First, genuine legal systems are made up of only rules (primary and secondary rules). Second, legal officials appeal to such rules to resolve easy cases. Lastly, when such legal rules say little or nothing about any impending legal case, judges have and exercise judicial discretion, sometimes requiring them to orient their reasoning with extra-legal materials. Hence, laws are not always objective. There are no legally correct answers to questions involving many hard cases.

Contrariwise, Dworkin supposes that genuine legal systems comprise of legal standards such as rules, principles, and policies. Moreover, these authoritative legal materials are different kinds of standards. Also, legal officials appeal to these standards to resolve every legal case. In consequence, for every legal case, there are legally correct answers. As a result, the law is always objective. The only kind of discretion judges have and exercise involves no more than *a weak* form of judicial discretion.

Having provided an overview of Hart's moderate scepticism of legal objectivity and Dworkin's complete optimism about legal objectivity, I shall also provide an overview of the moral sceptic's challenge to particularly Dworkin's conception of legal objectivity as Dworkin infuses a substantial amount of moral reasoning into legal interpretation, and

more broadly, legality. Hart may not fall prey to this attack even if he holds a complete conception of objectivity, as Hart claims that a legal official need not identify moral judgements as part of a genuine legal system.¹²

According to Hart, morality's relevance is minimal, even if required. It might, however, be objected that Hart acknowledges that as a matter of fact a rule of recognition might validate certain moral or political moral principles or values as law or sources of law. However, Hart's inclusive positivism does not involve validating certain moral or political moral principles or values as law or sources of law due to their truth or correctness given that Hart claims our moral rules "may depend heavily on the operation of feelings of shame, remorse, and guilt".¹³

The Moral Sceptic's Challenge to Legal Objectivity

Recall that Dworkin claims that moral arguments play a significant role in legal reasoning by justifying a judge's uniquely correct decision in a legal case, given that judges employ legal principles to orient their reasoning when legal rules say nothing about a particular legal case. According to Dworkin, therefore, if any competent judge's legal judgement is objectively correct, the relevant moral judgements contributing to that legal judgement must also be objectively correct. Without moral objectivity, Dworkin believes legal objectivity may be inconceivable for many hard cases.

¹² Hart believes that although our moral beliefs can influence positive laws, these are merely contingent connections. Thus, law and morality are essentially separate entities. (CL, p. 204).

¹³ CL, p. 86

Dworkin claims that while judges employ and orient their reasoning with legal principles, they cannot make judicial verdicts without expressing moral judgements. Also, in view of the fact that legal principles contain moral predicates, judicial verdicts entail moral predicates. As a result, Dworkin's solution to hard cases infuses a substantial amount of moral reasoning into a judge's verdict. Thus, to the extent that Dworkin believes the law is always objective, morality must be objective. If Dworkin's views about legal objectivity are accurate, it implies that one could provide a plausible account of moral objectivity.

However, some philosophers have found this consequence absurd and implausible. To the extent that I cannot outline every moral sceptic's attack on the possibility of moral objectivity, I would like to distinguish four often conflated meta-ethical debates that have motivated and contributed to the moral sceptic's challenge. These include objectivists and non-objectivists; cognitivists and non-cognitivists; realists and irrealists; and naturalists and non-naturalists.

Cognitivism vs non-cognitivism

Consider a particular moral judgement, such as (1) 'Abortion is wrong'. Cognitivists commonly agree that (1) expresses a belief – an assertion capable of being true or false. Thus, cognitivists largely claim that, like factual judgements such as (2) 'There are fifty (50) states in the United States of America', moral judgements express beliefs about the world which are truth-apt: moral judgements can be assessed in terms of truth and falsity. However, if cognitivism is accurate, Dworkin's claim that there are correct answers to moral questions is still not accurate, given that moral judgements may express beliefs that may always be false.

Indeed, some cognitivists also conceive of all genuine moral judgements as false because there are no objective moral facts or properties in the world to which our moral judgements correspond. J. L. Mackie, for example, has argued that although moral judgements are truth evaluable, they are true by virtue of the fact that they correspond to some objective moral facts in the natural world.¹⁴ Moral judgements are false as there are no such kinds of moral facts. As a result, even if cognitivism is true, Dworkin's objectivity thesis may not be conceivable unless he shows how the absence of objective moral properties can still provide good reasons for believing that moral judgements can be true.

Other cognitivists also hold that although moral judgements are truth-apt, their truth can only be determined relative to the person making that judgement (subjectivism), a culture or society (ethical cultural relativism).¹⁵ On this view, moral judgements are true by virtue of an individual's beliefs, culture, or society. There are no objectively correct moral facts that our moral judgements correspond to. So, no person can determine the truth of moral judgements unless such judgements are sourced from him.

Non-cognitivists, on the other hand, reject cognitivism. While non-cognitivists agree that expressions such as (1) are not truth-apt, they differ in varying kinds about what type of statements they could be. For instance, some non-cognitivists claim that moral judgements express emotions or sentiments of approval or disapproval.¹⁶ Others claim that moral judgements such as (1) express commands, directives, and universal imperatives.¹⁷

¹⁴ See J. L. Mackie's *Inventing Right and Wrong* (1977, p. 38)

¹⁵ See R. B. Perry's *General Theory of Value* (1926, p. 57), P. Taylor's *Ethical relativism. Moral philosophy*, 146-160 and J. Feinberg's Psychological egoism. *Ethical theory: An anthology*, 13, (2007, p.167-177).

¹⁶ See A. J. Ayer's *A Critique of Ethics* (1936, p. 111).

¹⁷ See R. M. Hare's *A Moral Argument*. In James Rachels (ed.), *Ethical Theory: The Question of Objectivity*. Oxford University Press. (1998, p. 390)

Hence, moral judgements cannot be truth evaluable. According to this view, however, if moral judgements are truth-apt, they are instead statements of psychological or sociological fact. Genuine moral judgements are non-factual.

According to these non-cognitivists, although it may be true that I desire to cheer thieves, this does not imply that my desires are themselves true or false. Desires and emotions are not themselves truth-apt. Analogously, although the expression ‘John commands us that we ought not to steal from anyone’ is truth-apt such that we can confirm its truth or falsity by observing whether John really commands us, the directive, ‘You ought not to steal from anyone!’ does not assert anything true or false about the world.

In summary, what distinguishes cognitivists from non-cognitivists is a matter of the function of truth and falsity. Cognitivists argue that moral judgements can be true or false. Non-cognitivists contend that genuine moral judgements are dissimilar to factual statements in that genuine moral judgements cannot assert anything about the world that can be true or false. Finally, even if cognitivism is true, Dworkin’s thesis about the objectivity of law may not be true unless he demonstrates how the absence of objective moral facts can still provide good reasons for believing that moral judgements can be true.

Realism vs irrealism

The contention between realists and irrealists lies in the existence of moral properties. While moral realists chiefly argue that there are moral properties (and relations), moral irrealists rejects this view. Like the property of *squareness*, moral realists believe that moral properties such as *wrongness* and *rightness* may exist independently of our psychological states, beliefs, or desires about them.

However, moral realists considerably disagree about the nature of moral properties; whereas some believe that moral properties can be understood in purely natural terms, others claim that moral properties are non-natural.¹⁸ Plato's account of the property of *goodness* is non-naturalist as it holds that the real nature of *goodness* resides in a metaphysical realm; this world of Forms cannot be identified with the natural world.

The realist's general claim has several implications. Firstly, since moral properties exist, 'rightness' and 'wrongness' have the same metaphysical status as 'squareness'. Secondly, whereas natural properties are instantiated by physical objects, i.e., 'The table is square-shaped', physical objects instantiate moral properties such as 'this action is right'. Lastly, since expressions such as 'My shirt is red' express beliefs about the world, moral statements that entail moral properties and relations can express truth-evaluable beliefs.

Irrealists reject this picture of morality. Some of these theorists argue that natural properties are the only properties that exist. Recall that J. L. Mackie argues for a cognitivist position according to which there are no moral facts; hence, moral statements are false. Mackie further holds that all existing moral properties must be essentially normative. Since such normative properties do not exist, all moral claims are false. Mackie's theory implies that moral beliefs have the status of superstitious beliefs, such as beliefs in centaurs.

The moral irrealist's general claim also has several implications. First, insofar as he claims moral properties do not exist, then unlike *squareness*, *rightness* and *wrongness* do not have a metaphysical status. Second, given that expressions such as 'the table is square-shaped' express a belief about the world, moral statements that entail moral

¹⁸ See Nicholas Sturgeon's *Ethical Naturalism* in *The Oxford Handbook of Ethical Theory*. (2006, p. 91) and Jonathan Dancy's *Nonnaturalism* in *The Oxford Handbook of Ethical Theory*. (2006, p. 122).

properties and relations cannot express genuine beliefs. As a result, moral statements may not be truth-apt.

Objectivism vs non-objectivism

As discussed by meta-ethicists, a critical difference between moral objectivism and moral non-objectivism is that while objectivists accept a conception of ‘mind-independence’ and/or ‘rational convergence’ of moral values, non-objectivists reject these notions. The ‘mind-independence’ thesis generally states that moral statements can be valid independently of all psychological states, such as beliefs or desires.

Moral non-objectivists, on the other hand, contend that moral statements need not be valid independently of all our psychological states. Moral relativists, for instance, argue that moral statements are valid relative to the beliefs of one’s culture or society. Note here that I used the term ‘validity’ rather than ‘truth’ for no arbitrary reasons.

Moral objectivists are concerned about the bindingness and/or genuineness of moral statements rather than whether such statements are merely truth-evaluable or not. To the extent that objectivists are concerned about genuine moral statements, objective moral statements are binding independently of any psychological or irrational desires. Non-objectivists derive moral validity relative to mind-dependent sources such as individual and/or group psychological states, beliefs, or desires.

Besides, not all moral cognitivists are objectivists. Some cognitivists reject moral objectivism. Recall that ethical relativists claim that genuine moral judgements are true by virtue of an individual’s beliefs, culture, or society. Yet, we noted that ethical relativists

reject the ‘mind-dependence’ thesis. It must be observed, nonetheless, that although some cognitivists are not objectivists, the inverse does not necessarily hold true.

To be precise, it is unclear how some non-cognitivists can argue that moral statements are objectively valid. It is tempting to think of R. M. Hare as an objectivist. While he argues that genuine moral statements may not be truth-apt, he claims they can be universally valid. It is crucial here, however, to distinguish between universalism and objectivism. Slavery in the 1800s was universally valid; however, it is unclear how that was objectively valid.

Objectivists who may not hold the ‘mind-independence’ thesis in high admiration argue that genuine moral judgements may be objective in other ways. They contend that through competent moral deliberation or practical reasoning, rational persons may converge on certain moral beliefs that are universally acceptable.¹⁹ This thesis is often referred to as the ‘rational convergence’ thesis. One might naturally protest that the absence of convergence is deadly to this form of objectivism. Yet, if it can be explained that people fail to apply the relevant principles of rationality, then the absence of convergence cannot render this thesis implausible.

However, a more forceful attack against this conception of objectivity dwells in McDowell’s criticisms. McDowell considers that convergence may entail “a mere coincidence of subjectivities rather than agreement on a range of truths – the sort of view

¹⁹ See K. Baier’s *The Moral Point of View* (Ithaca, N.Y.: Cornell University Press, 1958); S. Toulmin’s *The Place of Reason in Ethics* (Cambridge: Cambridge University Press, 1961); and G. H. von Wright’s *The Varieties of Goodness* (London: Routledge and Kegan Paul, 1963).

that would be natural if everyone came to prefer one flavour of ice cream to any other”.²⁰ McDowell supposes that rational persons can converge about their subjective desires. If McDowell is accurate, we can only rely on the ‘mind-independence’ thesis to explain the objective validity of all our moral judgements.

Granted that we can understand objectivity as solely implying a rational convergence, can we still claim that some non-cognitivists are objectivists? Recall our example from Hare, who argues that genuine moral statements are universally valid. Hare also notes that convergence would occur if everybody applied his principle of universalisability.²¹

The problem with Hare’s view, however, is that the reason why persons converge or share similar moral judgements is not that they have exercised competent moral reasoning. It is merely because they have a pro-attitude of acceptance towards such moral beliefs. This psychological state of desire may hinder the role of rationality. So, it is unclear how some non-cognitivists could be objectivists in this sense.

Non-objectivists, who reject the ‘rational convergence’ thesis, argue that even if rational beings can competently deliberate on moral issues, such deliberations may generate varied amounts of genuine moral statements. Given that individuals hold varying moral beliefs, their moral judgements may vary. This is because their varied moral beliefs determine the content of their moral judgements. As a result, since there is no objective

²⁰ See McDowell’s *Projection and Truth in Ethics*. (Hereafter PTE) in Lindley Lecture, Department of Philosophy, University of Kansas (1988, p. 8)

²¹ See R.M. Hare’s *Sorting Out Ethics*. Oxford: Clarendon Press (1997, p. 134).

moral standard to determine which judgement is superior to the other, there is no way to reach a rational agreement among individuals with diverse moral perspectives.

In summary, objectivists contend that moral judgements are objectively valid independently of any psychological belief or desire and that at least through competent moral deliberation, rational persons can access these genuine moral judgements. Non-objectivists, on the other hand, commonly contend that moral judgements can be valid only if an individual's psychological state can determine them.

Ethical naturalism vs non-naturalism

Ethical naturalism and non-naturalism seem to be a distinction within cognitivism. In particular, ethical naturalists and non-naturalists also justify the truth-aptness of moral statements. However, this relationship between naturalism and cognitivism seems implausible, for one could imagine a non-cognitivist who is a naturalist about our moral judgements. For example, A. J. Ayer claims that although genuine moral judgements are not an upshot of truth-aptness, they are sentiments of approval and disapproval.

Due to this oddity, I discuss the distinction between ethical naturalism and non-naturalism separately and not as a subset of cognitivism. For the naturalist, a moral judgement is rendered true or false by a natural state of affairs, and through this natural state of affairs, we may intelligibly access true moral judgements.²² A natural state of affairs is simply a state of affairs that consists of an instance of a natural property. Natural

²² See G. E. M. Anscombe, *On Brute Facts*, *Analysis* 18 (1958): 69-72, and *Modern Moral Philosophy*, *Philosophy* 33 (1958): 1-19 and Philippa Foot's *Moral Arguments*, *Mind* 67 (1958): 502-13, and *Moral Beliefs*, *Proceedings of the Aristotelian Society* 59 (1958-59): 83-104

properties constitute and figure in the natural world—for example, the natural property of being conducive to happiness.

An ethical naturalist might either be a cognitivist or a non-cognitivist. A naturalistic cognitivist may generally claim that genuine moral statements can be true or false only if we can identify them with natural properties in the world. For example, an ethical naturalist, perhaps a cognitivist, may argue that a good action is an action that produces the greatest amount of pleasure. As mentioned, a non-cognitivist such as A. J. Ayer identifies moral judgements with natural properties. Thus, some non-cognitivists are ethical naturalists.

Ethical non-naturalists, however, reject the naturalists' attempt to identify moral properties, namely the property of goodness, with natural properties such as happiness or welfare. G. E. Moore's ethical non-naturalism, which he fully develops in his *Principia Ethica*, contends that the property of moral goodness is non-natural, simple, and unanalysable.²³ As moral properties are simple and unanalysable, Moore believes that any attempt to identify moral properties with natural properties is to commit the naturalistic fallacy: the fallacy of defining *good* in either naturalistic or metaphysical terms.

Some contemporary versions of non-naturalism have sought to (1) limit the influence of natural science on morality and (2) understand non-naturalism as a form of accounting for moral objectivity. A naturalistic conception of moral objectivity demands that moral facts be objective precisely, like how the natural sciences study physical objects.

²³ See G. E. Moore & T. Baldwin's *Principia Ethica*. Cambridge University Press (1993, p. 61).

When moral facts are objective, they are mind-independent and causally efficacious. Scientific objectivity suffices for understanding moral objectivity.

McDowell thinks that objectivity in morality is specific to its domain. His notion suggests that objectivity in ethics is a matter of moral views being susceptible to reasons. That “truth in ethics [is] earned from within ethical thinking” is the only intelligible account of objectivity.²⁴ Moral statements are objectively valid if and only if another moral statement justifies it. No naturalistic fact about the world can provide good reasons to make a moral statement true. The debate between naturalists and non-naturalists concerning moral objectivity will feature significantly in Dworkin’s defence of moral objectivity.

To sum up our distinctions, naturalists identify natural properties with moral properties. Non-naturalists, however, reject this identity thesis. Some naturalists are objectivists about morality; they believe objectivity in natural sciences suffices to understand objectivity in morality. Non-naturalistic objectivists believe objectivity in morality is specific to its domain.

Scepticism About Moral Objectivity Revisited

What implications can we draw about Dworkin’s account of legal objectivity based on these distinctions? Dworkin claims moral arguments play a significant role in legal reasoning by providing the basis for a judge’s correct decision in a legal case. This is because judges rely on legal principles to guide their reasoning when legal rules do not offer clear guidance in specific legal cases. However, some meta-ethicists have expressed

²⁴ PTE, p. 10

scepticism about the possibility of moral objectivity. If Dworkin does not address this scepticism, then *a fortiori* Dworkin cannot defend his account of legal objectivity.

We previously mentioned that some non-cognitivists agree that moral statements are not truth-apt to the extent that they express remorse, approval, disapproval, and accepted imperatives. If this position is correct, it appears that Dworkin injects an amount of subjectivity into legal interpretation. However, suppose that non-cognitivism is false; we noted that it does not guarantee that morality is objective. Some cognitivists argue that genuine moral judgements are necessarily false as there are no objective moral facts that these judgements correspond to.

Furthermore, if morality is non-objective, it means we cannot have an objective standard to evaluate all moral judgements, making legal objectivity, as proposed by Dworkin, unattainable. However, if morality is objective, it is crucial to discover whether Dworkin subscribes to the 'mind-independence' or 'rational convergence' thesis. Dworkin will have to defend at least one of these views and demonstrate why moral judgements of this kind are objectively true.

Likewise, recall the distinction between realism and irrealism. Dworkin concurs with Mackie that moral properties, even if they exist, cannot cause moral opinions. However, Dworkin rejects Mackie's conclusion that all moral claims are false. Instead, Dworkin contends that there are correct answers to controversial moral questions. Since moral properties cannot cause moral opinions, Dworkin must show how moral statements of this kind can be true.

To summarise this chapter, the moral sceptic considers genuine moral judgements as not truth-apt. Even if they may be truth-apt, they cannot be objectively valid; therefore, Dworkin injects some amount of subjectivity into his theory of legal interpretation. So, it is not the case that there is only one correct answer to what the law requires in any legal case, which is discoverable by judges competent in legal reasoning. Inasmuch as Dworkin argues that (i) a judge's legal reasons include moral considerations and (ii) there are correct answers to legal questions, Dworkin must explain how judges generate such answers in light of the moral sceptic's challenge.

CHAPTER TWO

As mentioned in Chapter 1, some philosophers have raised scepticism about the possibility of moral objectivity; therefore, I distinguished at least four meta-ethical debates that have often motivated and contributed to the moral sceptic's challenge. In this chapter, I shall clarify Dworkin's response to these distinctions and his views about moral scepticism. I will begin with Dworkin's broad attack and then show how this attack challenges the moral sceptic's views.

Ronald Dworkin and the Moral Sceptic

Some moral philosophers have criticised Dworkin's theory of legal interpretation, arguing that he injects subjectivity into it by supposing that there are correct answers to legal questions and that a judge's legal reasons include moral considerations. According to these moral sceptics, genuine moral judgements are not truth-apt or, even if they are, cannot be objectively valid. As a result, there is no one correct answer to what the law requires in any legal case, which judges competent in legal reasoning can objectively discover.

Dworkin argues that the moral sceptic's challenge rests on a misconceived assumption: that objectivity and truth in moral theory is equivalent to the conception of objectivity and truth found in the natural sciences. That objectivity is specific to its domain is sufficient for thinking about objectivity in moral theory. It, therefore, requires judges to view moral truth as internal to moral reasoning. As Dworkin acknowledges, "the only evidence I could have for a moral view...is some substantive moral argument of a kind".²⁵

²⁵ See Ronald Dworkin's *Law's Empire* (hereafter LE) Oxford University Press. (1986, p. 81).

Only moral arguments exhaust our capacity to be objective about morality. As a result, no metaphysical commitment to naturalism is necessary to preserve moral values.

Does Dworkin's response effectively refute the moral sceptic's challenge? Initially, it seems that Dworkin's rejoinder is misdirected and less decisive than the arguments presented by moral sceptics. However, upon closer examination, it becomes clear that Dworkin's response pertains to the debate between naturalistic and non-naturalistic objectivists. Like McDowell, Dworkin asserts that any coherent account of moral objectivity must depend solely on moral argumentation. Still, this stance does not necessarily refute the views of non-cognitivists and irrealists; it simply identifies Dworkin as a non-naturalist in terms of accounts of moral objectivity.

It is also unclear which thesis Dworkin aligns himself with, despite his presupposition that moral objectivity is achievable. It is unclear whether he subscribes to a 'mind-independence' thesis or a 'rational convergence' thesis. When he emphasises that 'objectivity in moral theory is not equivalent to the conception of objectivity found in the natural sciences', it is unclear whether Dworkin suggests that these theses are exclusive to the natural sciences. So, Dworkin's position on the nature of objectivity in morality remains unclear.

Dworkin's response, nonetheless, has not been insensitive to my observations. To appreciate his domain-specific account of moral objectivity, Dworkin distinguishes between internal and external scepticism, a distinction also made by some philosophers who use the terms "first-order" or "substantive" questions and "second-order" or "meta"

questions. In the following discussions, I will explain Dworkin's distinction in detail and outline the extent to which it challenges the moral sceptic's attack.

Before I begin with Dworkin's account of internal scepticism, I would like to distinguish two often conflated concepts: scepticism and uncertainty. Dworkin claims that scepticism is distinct from uncertainty in some ways. For instance, a person may be uncertain about whether abortion is morally wrong as the arguments in favour of and against abortion are both persuasive and readily credible. It is, thus, *uncertain* which of such arguments is more robust. Thus, Dworkin asserts that "uncertainty is a default position: if I have no firm conviction either way, then I am uncertain".²⁶ However, according to Dworkin, uncertainty is dissimilar to scepticism.

Scepticism is not a default position; instead, one must have arguments to support a sceptical conclusion. For instance, to support the sceptical thesis that morality has nothing to do with homosexuality, one must provide an argument. According to Dworkin, the sceptic's conclusion about the amorality of homosexuality demands justification, which amounts solely to moral claims. Therefore, one cannot be sceptical and uncertain about a given thesis simultaneously.

Internal Scepticism

Having distinguished scepticism from uncertainty, Dworkin distinguishes between internal and external attacks on morality. Given that no moral sceptic can be logically sceptical all the way down, i.e., a moral sceptic cannot be sceptical about his sceptical view, internal moral sceptics rely on a general moral claim in order to call to question other moral

²⁶ See Ronald Dworkin's *Justice for Hedgehogs* (hereafter JH) (2011, p. 32)

claims. An argument is internally sceptical about any given domain when it “relies on the soundness of a general interpretive attitude to call into question all possible interpretations”.²⁷ Since the internal sceptic relies on a moral claim, his moral scepticism has direct implications for our moral actions.

Dworkin posits two claims. First, internal sceptics rely on a substantive (moral) position to challenge the truth of other moral claims. For example, someone who is sceptical about the moral belief that “torturing a terrorist is morally right” may rely on a general moral belief about “what we owe to people in this world regardless of their actions”. This moral position is a positive moral judgement of the form “X is good act/person” or “X is bad act/person”. However, a negative moral judgement is expressed in the form of “X is not a good act/person” or “X is not a bad act/person”.

Second, Dworkin maintains that every positive moral judgement or substantive moral position that underlies an internal sceptic’s view has direct implications for our actions. For instance, some people are internal sceptics about conventional sexual morality. They deny that any sexual act is inherently good or bad, holding instead that only suffering is inherently good or bad. This substantive moral position, which challenges conventional sexual morality, directly affects what we ought to do.²⁸

If sexual acts are not inherently good or bad, individuals are free to engage in them, regardless of their orientation. As a result, heterosexual, pansexual, homosexual, and bisexual acts would all be morally permissible. What may be morally blameworthy or

²⁷ LE, p. 79

²⁸ I use concept of ‘moral ought’ here to loosely represent what is morally obligatory, blameworthy and permissible.

obligatory will involve actions that cause suffering to others. Thus, every internal sceptic's position has direct implications for our actions inasmuch as it rests on value judgements that may be either moral or non-moral.

Based on these considerations, namely that (i) internal moral scepticism entails a positive moral judgement and (ii) this positive moral judgement has direct implications on our moral actions, a violation of the latter also constitutes a violation of the former. If the internal sceptic's view does not directly influence our actions, it is unclear how such a viewpoint can be considered moral. However, a breach of (i) may not necessarily entail a breach of (ii), as (i) may involve making a negative or counterfactual moral judgement. Unless (i) is non-evaluative, a breach of (i) may not necessarily violate (ii).

Dworkin identifies global internal scepticism as the greatest threat to any plausible account of moral objectivity. This scepticism is global since it does not investigate the morality of particular convictions but all our moral judgements. For instance, if an individual is sceptical about the existence of morality on the basis of the non-existence of a supernatural being, then she presupposes a counterfactual moral judgement that "morality exists only if God exists", and this moral judgement directly affects all our moral acts such that no one can censure another for doing something morally wrong.

To sum up our views about internal scepticism, the internal sceptic cannot deny that some moral conviction is true without further justification unless his position rests on a positive moral judgement that directly affects our moral actions. Thus, internal sceptics cannot simply call to question the truth of moral claims by extricating themselves from substantive moral debate; the internal sceptic cannot be sceptical all the way down.

External Scepticism

External moral scepticism is a metaphysical theory. This form of scepticism is *austere* as the external moral sceptic relies on metaphysical claims to undermine the objectivity of moral claims. Furthermore, since the external moral sceptic challenges the status (i.e., objectivity) of moral propositions rather than the content of particular moral claims, the external moral sceptic is *neutral* about what we morally ought to do. Thus, external moral scepticism does not take sides about any given substantive moral position. Such scepticism leaves our (abstract and concrete) moral convictions unaffected.

External scepticism is characterised by a withdrawal from a particular system of ideas in order to reflect on it as a whole. For such reflections to occur, sceptics must rely on authoritative materials external to the system of ideas they wish to examine. This is necessary to avoid bias or arbitrary conclusions. It is for this reason that external sceptics are often considered *austere*. Meta-ethicists who make claims about the possibility of morality view themselves as taking an external, reflective outlook on morality.

In previous discussions, we distinguished between cognitivism and non-cognitivism, with some cognitivists arguing that all genuine moral statements are false because they do not correspond to any objective moral fact. Dworkin considers arguments like these to be *austere* as they imply that if no moral truth can cause moral opinion, people cannot have reliable grounds for those opinions. Unlike naturalistic facts, which are independent of people's beliefs, some external sceptics believe that there are no objective moral facts or truths, which means that people who make moral claims do so without reliable justification, rendering all moral facts false.

In some subsequent paragraphs, Dworkin will establish why no forceful argument of this kind can threaten the possibility of moral objectivity. Yet, it should be clear why this argument is *austere*. It is *austere* because it relies on premises and conclusions that are exclusively non-moral in order to call to question the truth or objectivity of moral claims. The premise that “if no moral truth causes moral opinion, people cannot have reliable grounds for those moral opinions” is a non-moral conditional statement that supports a non-moral conclusion that “no one has credible reasons for holding a moral position”.

Dworkin, however, adds that external sceptics are also *neutral* about the substantive moral claims in that their external outlook does not modify the content of morality. They leave our considered moral judgements untouched such that their *austere* arguments have no implications on the content of the system of ideas they intend to examine or investigate. For example, consider the distinction between realism and irrealism. As we previously mentioned, some irrealists claim that all genuine moral statements have no truth value given that they are no moral properties.

Irrealists, such as A.J. Ayer, may agree that genocide is wrong in the sense that one disapproves of it. However, Ayer denies that such statements are part of the fabric of reality. In other words, the statement “genocide is morally wrong” is not objectively true. Ayer’s scepticism is not about our moral convictions but rather about the face value of our convictions, specifically, the objective truthfulness of our moral convictions.

It may be objected that although the external sceptic does not rely on moral arguments to call to question the truths surrounding the moral discourse, his scepticism is morally engaged. The external sceptic also engages with questions such as “whether any

moral claims are true, and whether it is rational to commit oneself to act morally”.²⁹ As the external sceptic cannot answer these questions without making moral judgements or ‘taking a position on the correctness or cogency of people’s moral convictions’, he cannot be neutral about what we morally ought to do. Hence, external sceptics cannot remain neutral.

We will come across a similar objection from Leiter in Chapter 3. The objection claims that an external sceptic must not be neutral in order to engage in second-order discussions about morality. To be precise, according to Copp, external scepticism does not necessarily require neutrality. The only intelligible requirement for external scepticism is the austerity requirement. I believe, however, that this criticism misses Dworkin’s point. Dworkin is not suggesting that external sceptics must be neutral in order to reject external claims about morality as a system of ideas. Instead, Dworkin reports what external sceptics claim they are doing.

Some passages from R. M. Hare’s work establishes that Dworkin only appears to be reporting the claims made by at least some external sceptics. Indeed, Dworkin considers Hare as an external (status) sceptic as Hare believes that all genuine moral judgements have no truth value. If any genuine moral judgement is truth apt, according to Hare, that judgement is simply a sociological or psychological fact about the world.

In *A Moral Argument*, Hare further compares the nature of rules in games to the nature of meta-ethical thinking in normative ethics to show how meta-ethical reasoning can be neutral. Just as the rules of a game are impartial between the players and do not

²⁹ See David Copp’s *Introduction: Metaethics and Normative Ethics* in *The Oxford Handbook of Ethical Theory*. Oxford University Press. (2006, p. 6)

determine which player will win, meta-ethical theory determines the meaning and function of moral words and, thus, the “rules of the moral game”.³⁰ As a result, metaethics is neutral among different moral opinions.

Note that Hare accepts that metaethics is significant to ethics. He instead rejects the view that “metaethics cannot be relevant to moral decisions without ceasing to be neutral”.³¹ So, metaethics can be relevant to ethics and yet be neutral about what we ought to do. I interpret Dworkin as reporting such kinds of characteristics. Rather than claiming that external sceptics must be neutral to be intelligibly sceptical about morality, Dworkin outlines the characteristics that external sceptics attribute to themselves when claiming to be doing metaethics. As a result, Copp’s objection should not be directed towards Dworkin but rather towards these sceptics.

To return to our characteristics, thus, a breach of the austerity requirement results in a breach of the neutrality requirement. If the external sceptic’s argument solely relies on moral arguments, they will only make moral statements, which means their scepticism may be morally engaged. So, the external sceptic must maintain austerity to prove that his scepticism is non-moral. Yet, the breach of neutrality does not guarantee a breach of austerity.

In particular, Dworkin notes that “though these two dimensions of externality work together, they are logically independent of one another. An Archimedean critique can purport to be austere without being neutral”.³² Thus, Dworkin finds these characteristics

³⁰ See R. M. Hare’s *A Moral Argument*. (hereafter AMA) In James Rachels (ed.), *Ethical Theory: The Question of Objectivity*. Oxford University Press. (1998, p. 388)

³¹ AMA, p. 388

³² See Dworkin’s *Objectivity and Truth: You’d better believe it* (hereafter OT) (1996, p. 94)

conceptually distinct. Thus, the relationship between these characteristics is asymmetric in that only a violation of the austerity requirement constitutes a violation of the neutrality requirement.

In summary, external moral scepticism is a metaphysical theory. This form of scepticism is austere or non-moral, as the external moral sceptic relies on metaphysical claims to undermine the objectivity of moral claims. Besides, since the external moral sceptic challenges the status (i.e., objectivity) of moral propositions rather than the content of particular moral claims, the external moral sceptic is neutral about what we morally ought to do. Thus, external moral scepticism leaves our (abstract and concrete) moral convictions unaffected.

Dworkin's Negative Thesis

Dworkin characterises external scepticism as Archimedean: purporting to stand outside the practice of moral argumentation and appealing to metaphysical arguments to refute claims about moral objectivity. This attempt, according to Dworkin, is “silly and wasteful”.³³ No moral realist claims that moral properties are part of the “fabric of the universe”, and even if they do, it is merely a metaphysical jargon that emphasises our carefully considered moral judgements.³⁴ Any forceful externally sceptical argument is no more than a disguised internal attack on morality.

The external sceptic believes that “we say that [morality] is like physics or that moral values are “out there or can be proved”. However, according to Dworkin, this belief

³³ LE, p. 86

³⁴ OT, p. 89

is false. Moral realists do not believe that moral values are out there. No decisive realist argument entails that moral properties are part of the “fabric of the universe”. Moreover, even if it does, it is simply a jargon of metaphysics that emphasises our ordinary beliefs. Thus, the external sceptic “attacks our ordinary beliefs” and “attributes to us absurd claims we do not make”.³⁵

In *Justice for Hedgehogs* (hereafter JH), Dworkin takes this claim further by asserting that any moral realist who asserts that moral properties are out there overlooks a thesis he may be attributing to himself; he assumes a causal impact thesis. However, no moral realist can consistently bear the consequences of its problems. More precisely, the causal impact thesis is absurd since it proposes that moral facts cause moral opinions to the extent that the universe is housed with morally charged particles that “interact with human nervous systems to make people aware of the morality or immorality of actions”.³⁶

Some external sceptics argue that this casual impact argument is absurd for various reasons. This absurdity has led external sceptics to reject the possibility of moral objectivity. Mackie, for instance, asserts that moral properties do not exist, and we cannot access them even if they exist. Suppose we could access them; it implies that such moral properties cause us to act rightly or wrongly. However, this causal claim challenges the view that we are moral agents who act freely. It further challenges the idea that we may be morally responsible.

Similarly, Dworkin seems to find the moral realist’s claim – the causal impact thesis – absurd. According to Dworkin, moral realists who say “slavery is *really* wrong” should

³⁵ LE, p. 83

³⁶ OT, p. 104

not imagine they have suggested an argument for why it is objectively wrong as no moral quaverings or noumenal entities can provide any argument for the truth of our moral convictions. The only kind of evidence one could have for the view that “slavery is *really* wrong”, is some substantive moral argument of a kind the “objective claims do not even purport to supply”.³⁷

In summary, Dworkin describes external scepticism as “Archimedean”, meaning that these sceptics purport to stand outside the domain of morality while relying on metaphysical arguments to challenge claims about moral objectivity. Dworkin considers this approach irrelevant. No moral realist claims that moral properties constitute part of the universe. Those who do so are simply stressing on their moral convictions. Any decisive external sceptical argument is just a disguised internal attack on morality.

At this point, I do not aim to outline every objection Dworkin raises against every external sceptic. I will limit my paper to the views of Dworkin that Brian Leiter finds empty and counterintuitive. In the succeeding paragraphs, thus, I consider two crucial external moral sceptical views that Dworkin interprets as internal to morality: the claim that (i) ‘some moral proposition p is not objectively true’ and (ii) ‘some natural properties are moral properties’. I will also elucidate another external sceptical position that Dworkin conceives as genuinely external to morality. According to Dworkin, however, such a position is unintelligible when applied to morality.

³⁷ LE, p. 80

Neutrality

Recall that Dworkin characterises external scepticism as austere and neutral.³⁸ External moral scepticism is austere only if it relies solely on metaphysical or non-moral arguments to call to question the objectivity of moral claims. However, external scepticism is neutral only when it does not take sides about what we morally ought to do. In other words, external sceptics must leave our moral convictions untouched. In order to interpret external scepticism as internal, Dworkin must either reject the view that external scepticism relies on metaphysical arguments or reject the view that external sceptics are neutral.

Dworkin attacks the neutrality requirement by considering the expression “‘Abortion is morally wrong’ is not objectively true” as a metaphysical claim about the status of the morality of abortion; he then attempts to interpret it as a substantive moral position. On its natural reading, Dworkin believes the expression “‘Abortion is morally wrong’ is not objectively true” is simply a repetition or emphasis of “‘Abortion is not morally wrong’”. The adverb *objectively* is only used to distinguish (i) genuine moral claims from mere reports of taste and (ii) claims meant to hold only for persons with particular beliefs and those meant to hold impersonally for everyone.

When metaphysicians and scientists use the word *objectivity*, they often postulate a relationship between the proposition that predicates objectivity (such as ‘mathematical laws *are objectively true*’) and a state of affairs that should exist independent of the speaker (such as a Platonic world of Forms). The proposition is true by virtue of its ability to

³⁸An external moral sceptic need not rely on both characteristics to be externally sceptical about morality. However, the external sceptic should exhibit at least one characteristic in order to be externally sceptical. (OT, p. 94).

represent or assert something about that state of affairs or fact. Since that state of affairs is believed to exist independently of the speaker, true claims about that particular state of affairs are true independent of the speaker's convictions about them.

Some external sceptics reason along these lines: they assert that a state of affairs about moral values should exist independent of our thoughts about them in order for persons to make objectively correct statements about morality. When we make objective moral claims, we assert propositions which are true by virtue of their ability to represent a *moral* state of affairs. These arguments rest on a relationship between the mind and a moral state of affairs.

It must be observed here that Dworkin does not involve this 'mind-independence' thesis in his discussion of moral truth and objectivity. Dworkin seems to suggest here that the mind-independence thesis only applies to the physical sciences to the extent that they postulate the existence of noumenal entities: these entities exist independent of what natural scientists believe or think about them.

Dworkin, however, claims that even if moral philosophers use the locution "objectivity", one may only understand it as merely metaphorical. A natural reading of the expression "'Abortion is morally wrong' is not objectively true" is an emphasis or a qualification of saying "Abortion is morally wrong, and those who disagree are mistaken". The term 'objectively' only qualifies and emphasises the speaker's position. It expresses the speaker's impersonal stance on abortion.

Another meta-ethical position that Dworkin translates as simply ethical is the expression "moral properties are identical to natural properties". Meta-ethicists have

generally understood and referred to this statement as a metaphysical expression. For instance, some ethical naturalists have commonly argued that “moral properties are identical to natural properties”. On their interpretation of this claim, since the essential property of water is H₂O, the essential property of morally right actions is conducive to overall happiness.

Nicholas Sturgeon, for instance, holds that moral properties are common properties analogous to a variety of natural properties, such as the property of being square-shaped.³⁹ He contends that we have no decisive reason to suppose that moral properties are more problematic or confusing than natural properties. Just as no one is expected to describe the biology of a natural organism in non-biological terms, moral properties ought to be solely described in natural terms. Since the identity thesis consists of two entities that are discoverable in the natural world, the thesis makes a metaphysical claim about the nature of moral properties.

Reflecting on Sturgeon’s analysis, Dworkin notes that although the identity claim that “water is essentially H₂O” is an outcome of scientific discovery, the attempt to identify morally right actions with happiness is ultimately a utilitarian moral thesis. So, the identity thesis is ultimately an “abstract moral conviction” expressed in metaphysical verbiage. Dworkin believes that the expression “moral properties are identical with natural properties” is a metaphorical way of characterising the utilitarian moral thesis – that an action is right if and only if (and because) amongst all other actions available to the agent that act produces the greatest pleasure (or some other natural property).

³⁹ See Nicholas Sturgeon’s *Ethical Naturalism* in *The Oxford Handbook of Ethical Theory*. Oxford University Press. (2006, p. 92)

To what extent does Dworkin's interpretation of these so-called meta-ethical statements challenge external moral scepticism? As previously mentioned, Dworkin maintains that external sceptics claim to be neutral about our moral convictions, i.e., external sceptics do not take sides about what we morally ought to do. However, inasmuch as the external sceptic relies on meta-ethical statements that are ultimately ethical, according to Dworkin, external moral sceptics are not neutral. If external sceptics are not neutral, then external scepticism is rather internal.

Austerity

Recall J. L. Mackie's argument against moral realism: according to Mackie, there are no objective moral facts, and as a result, all moral statements are false. He takes a cognitivist position, arguing that all existing moral properties would be essentially normative, but since such normative properties do not exist, all moral claims are false. Mackie believes that if normative properties exist, they can cause our moral opinions. Inasmuch as moral properties do not exist, Mackie's theory implies that moral beliefs have the same status as superstitious beliefs, such as beliefs in centaurs and unicorns.

To this argument, Dworkin agrees with Mackie's premise: moral properties cannot cause moral opinion.⁴⁰ However, Dworkin rejects Mackie's conclusion that all moral claims are false. Dworkin thinks that Mackie's conclusion – the view that moral statements are false – also rests on an implausible assumption that if moral truth does not cause moral

⁴⁰ Both Mackie and Dworkin reject the causal impact thesis. However, Mackie moves forward to support the causal dependence thesis. However, Dworkin finds this thesis as absurd as moral truth can only be determined by moral arguments.

opinion, then people can have no reliable or responsible grounds for those moral opinions.⁴¹ As previously stated, Dworkin believes the only evidence one may have for a moral claim is another moral claim.

According to Mackie, however, since moral properties cannot cause moral opinion, all moral statements are false, given that people can have no reliable or responsible grounds for those opinions. Mackie assumes that people can only have reliable opinions when physical properties available to them in the natural world can cause their opinion. He, along with other irrealists, further assumes a correspondence theory of truth, which states that a proposition is true if it matches or corresponds with reality.

Dworkin believes that the correspondence theory of truth is the primary motivation behind most external sceptical attitudes towards morality. In rejecting the external sceptic's *austerity* condition, he considers a genuinely external sceptical position, namely, the argument from Archimedean epistemology. This argument holds that if no moral truth causes moral opinion, people cannot have reliable grounds for those moral opinions. Dworkin believes this causal thesis is unintelligible for two reasons.

First, this argument from Archimedean epistemology is insensitive to the content of particular intellectual domains. In particular, Archimedean epistemology may be suitable for beliefs about the physical world, religion, and wizardry since these intellectual domains make causal claims. This epistemology also applies to religion and wizardry since they make causal claims about the nature of the physical world. However, moral facts do

⁴¹ Dworkin refers to this thesis as the causal dependence thesis (JH, p. 70). This causal dependence thesis is deeply rooted in a causal theory of knowledge (hereafter CTK). According to Rawls (1993), CTK theorists often think a judgment is objective just in case the content of our judgment is partly the outcome of an appropriate kind of causal process affecting our sense experience, say, on which the judgment is based.

not make causal claims; therefore, the demand that moral facts find a place within this epistemology is unjustified.

Second, Dworkin believes there is no good reason to subject morality to this causal theory because objectivity, as determined by this causal theory, is circular and question-begging. Recall that Dworkin believes that the only evidence we can have for a moral view is another moral view. Dworkin supposes that this form of justification presents itself within the Archimedean epistemology such that a scientific fact is objectively true only because another scientific fact justifies it. Thus, any attempt to reject moral objectivity meant the rejection of scientific objectivity since both intellectual domains rely particularly on circular reasoning.

To summarise Dworkin's views about external moral scepticism, Dworkin maintains that some so-called externally sceptical positions can be strictly understood as a kind of internal moral scepticism. Still, Dworkin adds that even if there are genuine external sceptical arguments, such arguments are unintelligible when applied to morality. External scepticism cannot show that no moral claim is correct or that one moral claim cannot be better than another since it fails to consider significant differences between morality and other intellectual domains.

Dworkin's Positive Thesis

We have observed that Dworkin's thesis about the objectivity of law may be true even if no objective moral fact constitutes a fabric of reality. Given that Dworkin asserts that the only plausible way in which we can account for moral truth or objectivity is by providing moral reasons for holding that particular moral judgement: a moral judgement is

objectively true only if another moral judgement justifies it. In this section, I want to summarise a crucial implication of Dworkin's conception of moral objectivity.

Domain specificity

To the question – what makes a moral judgement objectively true? – external sceptics, according to Dworkin, demand answers that move outside morality: a nonmoral account of moral truth and objectivity. For instance, some external sceptics suggest that unless moral properties cause moral opinion, people can have no reliable or responsible grounds for those moral opinions. Some moral realists have even accepted this challenge and have tried to meet it by recommending that there are objective normative properties or facts in the universe.

Dworkin finds this suggestion intelligible only if the expression 'there are moral properties' suggests that 'some actions are just, and others unjust'. According to Dworkin, these so-called meta-ethical statements are ultimately moral. Nonetheless, if we conceive the expression as purely meta-ethical, we are led to an absurd moral field thesis. To be precise, when moral realists suggest that there are moral properties, they are often required to claim further that these objective moral facts cause moral opinion. However, this reasoning is fallacious and absurd.

According to Dworkin, this moral field thesis does not guarantee (1) that moral statements will always be false or (2) that there is no truth in morality but only subjective expressions of emotions and imperatives. Truth and objectivity in morality are sought differently: only through an adequate moral argument. A moral argument is adequate only if another moral argument justifies it. Moral truth is circular and question-begging.

Other moral realists have also identified moral properties with natural properties in order to meet up challenges from the external sceptic. For example, some ethical naturalists have commonly argued that ‘moral properties are identical to natural properties’. Since the essential property of water is H₂O, the essential property of morally right actions is conducive to overall happiness.

If this moral realist’s position is accurate, it assumes that morality is similar to physics, such that moral values are out there or part of the fabric of reality. According to Dworkin, however, morality and physics are independent intellectual domains; hence, objectivity and truth in morality is distinct from objectivity and truth as understood in the physical and natural sciences. Only moral arguments exhaust our capacity for being objective about morality.

In response to the ethical naturalist, therefore, Dworkin suggests that although the identity claim that ‘water is essentially H₂O’ is an outcome of scientific discovery, the attempt to identify morally right actions with happiness is ultimately a utilitarian moral thesis. Ethical naturalism is ultimately an ethical theory and not a meta-ethical doctrine. Unless we conceive of the ethical naturalist’s position as purely an ethical theory, Dworkin believes that any sceptical attitude towards it is non-relevant to morality.

Thus, for Dworkin, moral judgements are made objectively true when they are true by an adequate moral argument for their truth. Unsurprisingly, Osofcroft (2005) reveals that Dworkin’s view “has frequently been attacked along the following lines for its apparent simplicity and circularity”.⁴² Yet, moral truth is no more circular than scientific truth.

⁴² See Jennifer Osofcroft’s *Objectivity in Morality A Defence*. UCL Jurisprudence Review, 12, (2005, p. 278)

CHAPTER THREE

Having set out Dworkin's views about moral scepticism and objectivity, I consider Leiter's objection to Dworkin's domain-specific account of moral objectivity and the extent to which it hinders Dworkin's account of legal objectivity. In this chapter, I will outline some crucial features of Leiter's objection to Dworkin and demonstrate how Leiter's position challenges Dworkin's account. I will defend Leiter against objections other philosophers have raised against him.

In the discussions that follow, I shall first briefly explain Leiter's response to the moral sceptic and then elucidate Leiter's general position about Dworkin's account. Moreover, while describing three crucial objections Leiter raises against Dworkin's account of moral objectivity, I will elucidate three objections often raised against Leiter's challenge to Dworkin and show why these counter-objections are unfounded.

Leiter and the Moral Sceptic

Recall in Chapter 1 that some meta-ethical thinkers developed scepticism towards the possibility of moral objectivity by arguing that although moral facts exist, they are only expressions of remorse, guilt, approval, disapproval, and accepted imperatives. Likewise, recall that J. L. Mackie, for instance, argues that moral judgements are subjective and not objectively true. Although moral judgements are truth-apt, Mackie asserts that they are true by virtue of corresponding to some objective moral facts in the natural world.

According to Mackie, moral judgements are necessarily false since no such kinds of facts exist. Furthermore, Mackie believes that if moral properties exist, they would be able to cause our moral opinions. However, since it is absurd to think that moral properties

can cause moral opinion, it is strange to believe such properties exist. Thus, according to Mackie, moral properties do not exist; if they did, we would not be able to access them.

Similarly, Leiter rejects the causal field thesis: that moral facts cause moral opinions insofar as the universe is housed with morally charged particles that interact with human nervous systems to make people aware of the morality or immorality of actions. Nevertheless, Leiter argues that an ethical naturalist must prove that ‘moral properties are identical to natural properties’ in order to overcome this challenge.⁴³ To reinforce this burden of proof, Leiter concludes that “if no naturalistic moral realist’s response to the [moral] sceptic succeeds, then Mackie’s charge some twenty years ago stands”.⁴⁴

In particular, Leiter believes that every statement, including moral claims, can be objectively true if it is formulated in naturalistic terms and caused by mind-independent, naturalistic facts. To make an objective moral claim, he argues that our moral judgements must correspond to ‘mind-independent’ and ‘causally efficacious’ moral facts. This view of objectivity differs significantly from Dworkin’s account of moral objectivity, which requires a moral statement to be objectively true only if another moral statement adequately justifies it. Leiter’s point is, however, clear: no moral statement can be objectively true unless it corresponds to some objective naturalistic fact.

To summarise Leiter’s views on moral scepticism, Leiter believes that moral scepticism is justified only if we cannot give a naturalistic account of moral objectivity. Mackie and other moral sceptics may only be correct if we cannot show how moral

⁴³ See Brian Leiter’s *Objectivity, Morality, and Adjudication* (hereafter OMA) in B. Leiter (ed.), *Objectivity in Law and Morals*, Cambridge University Press (2001, p. 76).

⁴⁴ OMA, p. 92.

properties are identical to natural properties. So, the burden of proof lies on ethical naturalists to show how moral properties can be identified with natural properties.

Leiter's General Attack on Dworkin

As mentioned in Chapter 2, Dworkin contends that objectivity in moral theory is specific to its domain. It requires judges to view moral truth as internal to moral reasoning. As the only evidence any moral philosopher could have for a moral view is another substantive moral argument of a kind, only moral arguments exhaust our capacity to be objective about morality. No metaphysical or naturalistic commitments are necessary to preserve the existence of objective moral values.

On the other hand, Leiter proposes that every moral statement that is objectively true is objectively true by virtue of the fact that it can be formulated in naturalistic terms as caused by mind-independent, naturalistic facts. Dworkin's main claim, according to Leiter, misconstrues our ordinary understanding of objectivity. Leiter interprets Dworkin's view as suggesting that there are no objective moral facts that exist independently of persons and to which our moral judgements correspond. Leiter believes this view is "empty" and leads to "counterintuitive conclusions".⁴⁵

Furthermore, Leiter supposes that since (a) external sceptical arguments are not internal to morality (i.e., they are non-moral and austere) and (b) the Archimedean epistemological demand is warranted and justified, the only intelligible argument in favour of moral objectivity wholly consists of premises that constitute mind-independent and

⁴⁵ See Brian Leiter's *Naturalizing Jurisprudence: Essays on American Legal Realism and Naturalism in Legal Philosophy* (hereafter NJ) (2007, p. 7).

casually efficacious facts. Any argument, according to Leiter, that simply rests on the best moral argument leads to counterintuitive conclusions. In the following discussion, I will explain why Leiter believes that (a) and (b) are good reasons for rejecting Dworkin's account of moral objectivity.

In the following sections, I will highlight crucial features of Dworkin's account that Leiter finds counterintuitive and empty. First, I will summarise Dworkin's views on the neutrality condition and then provide Leiter's response to Dworkin's approach. Similarly, I will outline Dworkin's views about the austerity condition and provide Leiter's response to Dworkin's concerns about the austerity condition. I finally present some objections to Leiter's concerns and demonstrate why such concerns are misplaced.

Neutrality

As previously mentioned, Dworkin maintains that external sceptics claim to be neutral about our moral convictions, i.e., external sceptics do not take sides about what we morally ought to do. However, inasmuch as the external sceptic relies on meta-ethical statements that are ultimately ethical, according to Dworkin, external moral sceptics are not neutral. If external sceptics are not neutral, then external scepticism is rather internal.

In particular, Dworkin believes that expressions such as "moral properties are identical to natural properties", "there are moral properties", "Abortion is morally wrong is objectively true" amongst other so-called meta-ethical statements, are ultimately ethical. Dworkin suggests here that we can express our carefully considered moral judgements in purely meta-ethical terms. However, a metaphysical approach to matters about morality

does not change the content of such matters. In other words, one could couch a substantive moral view via metaphysical phraseology.

Leiter rejects Dworkin's interpretations of these meta-ethical positions by pointing to how moral realists, for instance, construe some expressions in meta-ethics. Leiter claims that ethical naturalists who argue for the identity thesis – “moral properties are identical to natural properties” – do not do so in moral terms. Instead, they present the thesis as a “semantic or (a posteriori) metaphysical thesis”.⁴⁶

More precisely, the identity thesis is true or false, depending on whether our linguistic intuitions about moral and natural properties are identical. Leiter adds that we can discover these linguistic intuitions by appealing to how the various concepts are used. The plausibility of Leiter's view disappears, according to some thinkers, when we examine how we can have shared linguistic intuitions about moral properties in light of controversial moral concepts such as justice, liberty, etc.⁴⁷

Leiter assumes that we have a shared meaning of moral concepts. Dworkin (2011) and Patterson (1996) argue that our concepts are shared, and it is because they are shared that communication is possible. Nonetheless, the meaning of some moral concepts is not shared.⁴⁸ Moral concepts such as justice and liberty can be contentious. Although these terms are shared, their meanings are not immediately apparent to everyone; thus, they are controversial.

⁴⁶ OMA, p. 74

⁴⁷ This objection assumes that the term ‘properties’ is identical, if not synonymous, to ‘concepts’.

⁴⁸ See Dennis Patterson's (1996). *Law and truth*. Oxford University Press.

So, if such concepts are unsettled, people cannot hold uniform intuitions about them. It is not surprising that various moral philosophers have proposed differing conceptions of justice. For instance, while John Rawls conceives of justice as fairness, Karl Marx recognises the meaning of justice as implying that “from each according to his ability, to each according to his needs”.⁴⁹ Nevertheless, Patterson (2001) argues that the meaning of our concepts is socially determined.

Patterson invites us to consider the concept *property*. When can we say agent X owns a property Y? When an agent claims possession over an item, we refer to that item as the agent’s property. So, the term property refers to a claim of ownership. Patterson further questions whether we could discover this description independent of our institutional beliefs about ownership. It seems the general term *property* cannot convey meaning if our social institutions deny such concept of any meaning. If our social institutions do not confer the idea of ownership of certain commodities, we cannot intelligibly say that we ‘own’ that property.

Thus, it appears that the general term *property* carries some meaning only if our social institutions do not deny it of any meaning. From Patterson’s analysis, if the term ‘property’ means ownership, our socio-economic institutions have not denied the term any meaning. Patterson’s view, however, does not tell us how social institutions discover or determine the meaning of controversial moral concepts such as *justice* and *liberty*. He only suggests that it is only when our social institutions do not deny our shared meaning that the meanings of such concepts are kept.

⁴⁹ See John Rawls (2004). *A theory of justice*. In *Ethics* (pp. 229-234). Routledge and See Karl Marx & Engels, F. (2019). *The communist manifesto*. In *Ideals and Ideologies* (pp. 243-255). Routledge

As a result, controversial moral and political concepts are meaningful only if their meaning is tied to the institutions and practices that employ them. This view differs from Leiter's idea that the meaning of moral concepts is shared. While it is true that concepts are shared, Patterson rejects the assumption that their meaning is also shared. Patterson, nonetheless, contends that it is determined only by our institutional practices.

Whereas Patterson is right that Leiter confuses 'concepts' with the 'meaning of concepts', Patterson confuses societal beliefs and the content of such beliefs. From his analysis, societal beliefs and practices often shape our usage of moral concepts and the kinds of meanings we attach to them. I, however, believe that the content of such beliefs may differ considerably from the belief itself. So, even if our societal beliefs determine the meaning of controversial moral concepts, the content of our societal beliefs may not be purely subjective, i.e., solely dependent on the psychological states of the society.

For instance, it is possible that the content of our societal beliefs may be fixed relative to some properties in the world and ought to be discovered by officials in that society. Brink (2001), for example, argues that moral and legal concepts should correspond to fixed properties in the external world.⁵⁰ According to Brink, this presupposes that legal officials should not rely solely on their psychological states about the meaning of general legal terms. Thus, even if our social institutions determine the meaning of moral and legal concepts, this does not guarantee that the psychological beliefs of such social institutions solely determine the meaning of such terms.

⁵⁰ See David Brink's *Legal Interpretation and Morality* in B. Leiter (ed.), *Objectivity in Law and Morals*, Cambridge University Press (2001, pp. 23-4). See also David Brink's *Originalism and Constructive Interpretation. The Legacy of Ronald Dworkin* (hereafter OCI) (2016, p. 276).

So, following Brink's account of the meaning of moral concepts, Leiter can argue that our linguistic intuitions about moral concepts are discoverable, like the manner in which some physical laws of nature are discovered. Returning to Leiter's idea about neutrality, the expression "moral properties are identical to natural properties" is true relative to the fact that our fixed linguistic intuitions about natural properties are identical to our fixed linguistic intuitions about moral properties. Thus, Dworkin is wrong to suggest that this identity thesis is ultimately ethical.

Recall in Chapter 2 that Copp argues that external scepticism can be morally engaged. Similarly, Leiter claims that Dworkin's neutrality constraint seems a mere "definitional trick".⁵¹ According to Leiter, what is essential to external moral scepticism is that its arguments are non-moral or austere. External sceptics should not be required to be neutral about their considered moral judgements or convictions to be externally sceptical about moral objectivity.

In summary, Leiter suggests that Dworkin's analysis of some meta-ethical statements is weak, given that meta-ethicists do not believe they rely on moral assertions. Instead, meta-ethicists exclusively express meta-ethical statements. Nonetheless, Leiter believes that even if meta-ethicists engage in some moral reasoning, external scepticism is logically conceivable as what is essential for external sceptics is that their arguments are austere.

⁵¹ OMA, p. 73

Austerity

Recall in Chapter 2 that Dworkin dismisses the external sceptic's austerity condition by considering a genuinely external sceptical position, namely, the argument from Archimedean epistemology. This argument holds that if no moral truth causes moral opinion, people cannot have reliable grounds for those moral opinions. Dworkin provides two reasons why it is unintelligible for science to impose this thesis on other intellectual domains, especially morality.

First, the causal dependence thesis is insensitive to the content of particular intellectual domains. The Archimedean epistemology may be suitable for beliefs about the physical world, religion, and wizardry to the degree that such intellectual domains make causal claims. However, moral facts do not make causal claims; therefore, the demand that moral facts find a place within this epistemology is unjustified. As a result, although the argument from Archimedean epistemology is genuinely external, it is unintelligible when applied to morality.

Second, Dworkin thinks there is no good reason to subject morality to this causal theory because objectivity and truth, as determined by this causal theory, is circular. Recall that Dworkin thinks that the only evidence we can have for a moral view is another moral view. Dworkin supposes that circular justification is present within the Archimedean epistemology such that a scientific fact is objectively true only because another scientific fact justifies it. Thus, scientific reasoning is circular and question-begging.

Leiter is rather persistent in stressing the importance of the argument from Archimedean epistemology. According to Leiter, it is for no arbitrary or circular reasons

that this causal theory of knowledge demands that moral facts find a place within it. The *a posteriori* success of science justifies the need to conform to the demands of the causal theory of knowledge: science has ‘delivered goods’ such as ‘sending planes in the sky’ and ‘eradicating certain cancerous growths’. Science achieved this success only because science has a useful guide: “the best-going indicium of the knowable and the real”.⁵²

It must be observed here what, according to Leiter, grants our Archimedean epistemology its forcefulness and plausibility. Within this causal theory of knowledge, Leiter believes that the scientific epistemological method is garnered with tools that can determine the truth and falsity of any statement (moral or otherwise). It is because this helpful tool, according to Leiter, is the best indicator for determining what can be true or untrue, that the demand that moral facts find a place within it is justified.

Given Leiter’s response, we can infer that Leiter believes Dworkin’s reasons are unreliable. To the extent that science possesses the best tools for evaluating truth and objectivity, Leiter believes it is intelligible for science to demand that all other intellectual domains subject their claims to this Archimedean epistemology. Similarly, even if scientific reasoning is circular, it is the best tool for distinguishing the real from the unreal. As a result, Dworkin’s claim that it is unintelligible for science to impose the causal thesis upon morality is tenuous. For Dworkin to escape from this epistemological demand, Leiter supposes that Dworkin must show why such a demand does not apply to morality.

It may be immediately objected that Leiter’s position is guilty of dogmatic scientism. Scientism is the notion that science and its methods are the best or only way to

⁵² OMA, p. 77

determine the truth and falsity of any statement. Leiter holds this view. Is his position, however, dogmatic? In Leiter's exposition of this Archimedean epistemology, he appeals to a Quinean epistemological view of the world. He believes this Archimedean epistemology is grounded in Quine's epistemological attitude toward understanding the world.

According to Leiter, Quine claims that "we cannot climb outside our best picture of the world and rebuild it from scratch".⁵³ To determine the truth or falsity of any statement, Leiter interprets Quine as suggesting that "we necessarily stand firm on certain planks within this picture of the world – various empirical claims, theoretical hypotheses, and epistemic norms – while evaluating other claims".⁵⁴ Do we arbitrarily choose such planks? Why should we stand on scientific truths to evaluate statements in another intellectual domain?

According to Leiter, Quine supposes that the question of truth and objectivity is settled within science. Hence, we can rely on our scientific planks to evaluate truth and objectivity in other domains. Thus, "in my naturalistic stance," as Quine suggests, "I see the question of truth as one to be settled within science, there being no higher tribunal".⁵⁵ That truth and objectivity is settled within science is evident in the fact that science, for Quine, is simply on a continuum with common sense. As a result, science and its methods are the highest tribunals for distinguishing what is real from what seems to be real.

⁵³ OMA, p. 71

⁵⁴ OMA, p. 71

⁵⁵ OMA, p. 71

Suppose Leiter's interpretation of Quine is accurate; what does it mean for statements that science cannot evaluate? Are we to discard our current scientific method or scientific picture of the world? According to Leiter, it would only go by the board if other methods for deciding truth and falsity are superior to our current scientific image of the world. So, our immediate objection that Leiter is dogmatic about scientism is problematic.

Another problem, however, arises. What if we do not find a superior epistemological framework to justify our beliefs and assertions? Will Leiter conclude, using Samuel Alexander's phrase, that moral claims are "to be accepted with the natural piety of the investigator," admitting no explanation? Leiter seems to interpret Quine as biting the bullet in these situations, as we must reject propositions that science cannot evaluate. Leiter sometimes proposes that anyone who thinks science is not justified in rejecting such statements must provide an argument in support of it.

Leiter's response, however, represents the challenge our initial objection discloses. Leiter has no good reason for rejecting statements that cannot stand the test of our current scientific methods and simply relies on his overly confident belief in scientific methodology. Inasmuch as there is no superior method for evaluating non-scientific claims, we may be justified in, as Hume asserts, "committing them to flames" since they are no more than sophistry or illusion. Still, some philosophers have found Leiter's interpretation of Quine misleading.

Forster (2009), for instance, claims that "the problem for Leiter is that a Quinean picture of the world does not clearly exclude the possibility of evaluative moral truths".⁵⁶

⁵⁶ See Michael Ishi Forster (2009). Scepticism about Scepticism: Defense of Legal Objectivity. UCL Jurisprudence Review, 15, 1-20.

Foster seems to suggest that Leiter's reliance on a Quinean picture of the world is puzzling, for Quine does not discard moral claims. So, according to Forster, Leiter's reliance on Quine's epistemological framework as an alternative to Dworkin's domain-specific account is misplaced.

Forster claims that prior to Quine's monumental attack on logical positivism, truth was primarily understood as analytic or synthetic.⁵⁷ While Quine rejected this supposed distinction, according to Forster, Quine articulated another epistemological framework known as a web of beliefs. All statements, according to Quine, face the tribunal of truth only as a corporate body and not individually.⁵⁸ Thus, a given statement is true only in conjunction with other statements.

Besides, according to Forster, Quine asserts that statements about sensory experience are located on the web's periphery, while the web's core comprises truths about mathematics and logic. Forster infers from this Quinean exposition that the location of a statement on the web informs us of the evidence that will be most important to ascertain its truth or falsity: any given proposition is true or false relative to its context.

In particular, since some mathematical and logical truths are true by virtue of the meaning of their symbols, they lie at the core of our web of beliefs. Given that empirical truths are true by virtue of how they represent the world, they lie at the periphery. Forster interprets this picture of knowledge as illuminating a domain-specific account of truth and

⁵⁷ Logical positivists commonly argued that knowledge was primarily understood through analytic and synthetic truths. Analytic truths are propositions that are true or contradictory by virtue of the meaning of words. Synthetic truths, on the other hand, are truths that are true to the extent that they could be either confirmed or falsifiable by observation. Quine rejected this supposed dichotomy by doubting that there was any clear understanding of analytic truths.

⁵⁸ See William V Quine's *Two dogmas of empiricism* (1951) *Philosophical Review* 60.

meaning. As a result, Forster shares with Dworkin similar intuitions about the nature of truth and objectivity.

Suppose that Forster's account of Quine is accurate, we can infer that (1) Leiter fails to interpret Quine's views accurately, and (2) Quine also supports the claim that even if we do not come to find a new epistemological framework that may justify all our beliefs, we must still hold onto them inasmuch as truth is context sensitive. Such beliefs may, nevertheless, lie within our web of beliefs because sensory experience cannot readily verify them. Thus, the dispute between Leiter and Forster is apparent: both scholars disagree considerably about Quine's stance on what to do with beliefs that sensory experience cannot readily verify.

To be precise, Leiter thinks that, according to Quine, if we cannot find another epistemological framework to justify all our beliefs (including non-empirical beliefs), we may have to dismiss them or "commit them to flames". Contrary to Leiter, Forster interprets Quine as suggesting that our beliefs are justified holistically. However, the location of a statement on the web informs us of the proof required to ascertain its truth or falsity. As a result, truth and objectivity is context sensitive.

I do not think Leiter has not been insensitive to this interpretation of Quine. In Leiter's analysis of Quine, he mentions two other seminal papers that philosophers do not often discuss.⁵⁹ In all these three papers, Leiter believes that Quine attacks the idea that there is a real distinction between analytic (true in virtue of meaning) and synthetic (true in virtue of an empirical fact) statements. Leiter claims that before Quine attacked this

⁵⁹ See Brian Leiter, *Why Quine Is Not a Postmodernist* (hereafter WQP) 50 SMU Law Review 1739 (1997). These papers include *Two Dogmas of Empiricism*, *Carnap and Logical Truth*, and *Truth by Convention*.

traditional distinction, logical positivists who maintained this distinction postulated that while analytic truths were the business of philosophy, synthetic truths were the object of enquiry for the natural sciences.

This second fact seems to be left out by Forster. Since Quine rejects the supposed distinction, Leiter infers that Quine believes that all statements are answerable to experience and that no statement (analytic or otherwise) can be analytic. Leiter interprets Quine as suggesting that analytic truths are truths that “we are least willing to give up at that particular point in the history of inquiry”.⁶⁰ Leiter adds that we may adjust our theory to accommodate those synthetic facts before we think about rejecting analytic statements.

Leiter makes a critical inference that suggests that Quine is willing to do away with anything non-scientific. Recall that Leiter claims that before Quine’s attack, logical positivists postulated that while analytic truths were the business of philosophy, synthetic truths were the object of enquiry for the natural sciences. Philosophers have nothing to engage with if Quine’s attack is plausible given that if empirical truths are the only kinds of truths, all empirical questions are scientific questions.

From Leiter’s response, it appears that Forster takes for granted Quine’s assertion that all statements are answerable to experience. Forster only focuses on the positions of statements within the web of beliefs and infers from these positions that truth is domain specific. Nonetheless, given that Quine thinks all our statements are answerable to experience, moral truths have to be answerable to experience in order for them to be truth-

⁶⁰ WQP, p. 1746

apt. Quine, therefore, can do away with moral and logical truths if they do not meet the demand of science.

If Leiter's response is accurate, does his attitude towards dismissing morality seem dogmatic? First, Leiter is open to the idea that there may be methods other than our current scientific understanding of the natural world for determining truth and falsity. Also, even if science cannot evaluate non-scientific beliefs, Leiter can argue there are no compelling reasons for holding such beliefs. As we shall see in the next section, Leiter imagines that moral reasons are neither necessary nor sufficient for establishing moral truth. So, if there are no good reasons for holding moral beliefs, Leiter may not be dogmatic regarding science's influence on other domains.

To sum up Leiter's views about Dworkin's austerity condition, we have observed that Leiter's attempt to make intelligible the argument from Archimedean epistemology is defensible. Since science possesses the best tools for evaluating truth and objectivity, it is intelligible for science to demand that all other intellectual domains subject their claims to this conception of truth and objectivity. Thus, Dworkin's claim that it is unintelligible for science to impose the causal thesis upon morality is unfounded. In our next section, I will quickly highlight another objection Leiter makes against Dworkin.

Domain-specificity

Recall that Dworkin claims that moral judgements are made objectively true when they are true by an adequate moral argument for their truth. That objectivity is specific to its domain is the only condition for thinking about objectivity in moral theory. It, therefore, requires judges and moral philosophers to view moral truth as internal to moral reasoning

as the only evidence one could have for a moral view, according to Dworkin, is some substantive moral argument.

According to Leiter, this domain-specific conception of objectivity contradicts our ordinary understanding of 'objectivity'. It is counterintuitive to suppose that we only provide reasons in favour of moral claims to be objective about them. Leiter suggests that our moral judgements must correspond to "mind-independent" and "causally efficacious" moral facts to be objective about them. Any conception of truth and objectivity that rest on the best argument only leads to counterintuitive conclusions.

In particular, Leiter maintains that Dworkin's account of objectivity is counter-intuitive and, thus, unnecessary. If moral reasons were necessary, any other claim about the world is true only if we subject that claim to persuasive and unarguable reasons. However, this is counter-intuitive, given that every statement will be true only if we provide reasons in favour of them. For Leiter, the claim 'chocolate is better than excrement' is true only if we refer to our intuitions that taste is a subjective property. Thus, relying on reasons is unnecessary.

Similarly, Leiter also argues that Dworkin's account of objectivity is empty and, thus, insufficient. If moral reasons were sufficient, some claim about the world can be true provided we subject that claim to persuasive and unarguable reasons. For instance, once we can provide indisputable reasons why chocolate is better than vanilla, we can sufficiently say it is an objective fact that chocolate is better. Yet, this seems inadequate as we may rely on our intuitions about taste before making objective claims.

Some philosophers have challenged Leiter's rejection of this domain specific account. Smith (2006) claims that "there are sufficient doubts about Leiter's responses that it is worth considering an alternative response to that thesis".⁶¹ Recall that Leiter suggests that every statement (moral and otherwise), if it is objectively true, can be formulated in naturalistic terms as caused by mind-independent, naturalistic facts. Smith takes on this position and argues that Leiter only focuses on the mind-independence thesis and not the rational convergence thesis.

Smith contends that whereas Leiter offers reasons for subjecting morality to objective naturalist facts, Leiter's "focus only on that dispute overlooks the debate about the rational convergence thesis".⁶² From Smith's account, Leiter does not explain why we cannot subject morality to a rational convergence thesis. Recall in Chapter 1 that we distinguished two conceptions of objectivity: the mind-independence and the rational convergence thesis.

The 'mind-independence' thesis generally states that moral statements can be valid independently of all psychological states, such as beliefs or desires. Conversely, the rational convergence thesis generally contends that through competent moral deliberation or practical reasoning, rational persons may converge on certain moral beliefs that are universally acceptable. The force and plausibility of Smith's argument are apparent here. Leiter claims that we cannot be objective about morality unless our moral claims

⁶¹ See Smith's *Ronald Dworkin and the External Sceptic*. *Canadian Journal of Law & Jurisprudence*, 19(2), 433-457.

⁶² Smith (2006, p. 450)

correspond to objective moral facts. Leiter adds that these moral facts must be ‘mind-independent’ and ‘causally efficacious’.

Despite this, does Leiter’s account overlook the rational convergence thesis? It is important here to distinguish two ideas. First, the mind-independence thesis may rely on rational tools and processes to discover mind-independent moral facts. This should not suggest that the rational convergence thesis is entailed in the mind-independence thesis. So, the rejoinder that Leiter does not overlook the rational convergence thesis inasmuch as the rational convergence thesis is entailed in the mind-independent thesis is indefensible.

Second, although rational persons may converge on certain valid moral principles through competent moral deliberation, we cannot assume these principles are inherently mind-independent or causally efficacious. These valid moral principles may not even exist without the existence of rational individuals. Thus, the mind-independence thesis is not entailed within the rational convergence thesis. As a result, the rejoinder that Leiter does not overlook the rational convergence thesis, since the mind-independence thesis is entailed in the rational convergence thesis is also indefensible.

From these considerations, one could argue that there is no good reason to suppose that Leiter does not overlook the rational convergence thesis. However, I believe Leiter has good reasons for his stance, as implied by his rejection of Dworkin’s account. It is no surprise that Leiter titles his analogy as “a hegemonic convention of reasons”. On this analogy, Leiter invites us to imagine that there arose a practice of arguing in favour of the objective taste of chocolate as against vanilla. If we rely on rational convergence, it is an

objective fact that chocolate is better than vanilla, granted that a person can provide persuasive reasons in favour of it while no one challenges these reasons.

Given that (i) an individual can provide indisputable reasons why chocolate is better than vanilla and (ii) there are no internal sceptical attacks against these reasons, i.e., all other persons have converged to agree on such reasons, we can claim that chocolate is better than vanilla. However, according to Leiter, regardless of how compelling people produce reasons that favour chocolate over vanilla, any argument favouring chocolate is nonsensical. We can only determine whether chocolate is better than vanilla by relying on an “external conception of objectivity”: the mind-independence thesis.

Accordingly, Smith is wrong to suggest that Leiter overlooks the rational convergence thesis. Nevertheless, Smith may need to show why the rational convergence thesis also applies to morality for his attack to be forceful and compelling. Another way Smith may overcome Leiter’s challenge is to show why the mind-independence thesis does not apply to morality. In the next chapter, we shall see why, according to Dworkin, the mind-independence thesis does not apply to morality. Even if it does, Dworkin believes it is simply a figurative or emphatic talk about objectivity in morality.

In summary, Leiter believes that Dworkin’s domain specific account of objectivity brings out our deeply held intuition: that we can distinguish between what is real from what is unreal or what we merely talk about as though it were real. Only naturalistic objective facts can permit us to talk about such an intuition. Dworkin’s domain specific account of objectivity is neither sufficient nor necessary to inform us about naturalistic objective facts.

CHAPTER FOUR

The previous chapter presented Leiter's attack against Dworkin's views about moral scepticism and objectivity. I argued that Dennis Patterson, Michel Forster and Dale Smith had raised unfounded and unsound worries about Leiter's naturalist account of objectivity. In this chapter, I argue that Leiter's criticisms of Dworkin's account of moral objectivity are unsuccessful because his arguments either generate confusion about the nature of moral arguments or completely misconstrue Dworkin's position on moral objectivity.

I will begin my critique by addressing Dworkin's and Leiter's positions on moral scepticism and objectivity in the order in which they were presented in the previous chapters. First, I will summarise Leiter's views on neutrality, austerity, and domain-specificity, and then I will explain why I believe these views are inadequate in challenging Dworkin's account of moral objectivity. In doing so, I contend that a domain-specific account of moral objectivity is coherent and logically conceivable.

Neutrality

As mentioned in Chapter 3, Leiter suggests that Dworkin's analysis of some meta-ethical statements is weak, given that meta-ethicists do not believe they rely on moral assertions. Instead, meta-ethicists exclusively express meta-ethical statements when reasoning about morality from an external point of view. Yet, Leiter supposes that even if meta-ethicists engage in some moral reasoning (that is, reasoning from an internal point of view), external scepticism is still logically conceivable as what is essential for external sceptics is that their arguments are austere.

In regard to Leiter's first response, I mentioned that Leiter claims, for instance, that ethical naturalists who argue for the identity thesis – "moral properties are identical to natural properties" only present the thesis as a "semantic or (a posteriori) metaphysical thesis" by relying on our linguistic intuitions about moral and natural properties. We, however, argued that Leiter confuses 'properties' from the 'content of properties'.⁶³ Dworkin notes that the content of moral properties is controversial. Thus, the content of moral properties is solely interpretive.

More precisely, moral and political concepts are interpretive because even though we share these concepts, we seem to attach different meanings to them. To establish the meaning of any interpretive concept, we must provide "the best interpretation of the practices in which they figure". However, based on Leiter's account of truth and objectivity, he (Leiter) may not accept Dworkin's position, as what Dworkin calls the best interpretation may turn out to be empty and lead to counter-intuitive conclusions.

To Leiter's second response, we mentioned in Chapter 2 that Dworkin does not claim that external sceptics must be neutral about our considered moral judgements for them to be externally sceptical about morality. I interpreted Dworkin as instead reporting characteristics of external scepticism. As a result, rather than claiming that external sceptics must be neutral to be intelligibly sceptical about morality, Dworkin outlines the characteristics that external sceptics attribute to themselves when claiming to be taking external points of view. So, Leiter's objection should be directed towards these sceptics rather than Dworkin.

⁶³ I use term 'concept' and 'property' interchangeably.

Nevertheless, for our argument's sake, let us grant that Dworkin is claiming that external sceptics must be neutral about our moral convictions for them to be genuinely sceptical about morality from an external point of view. From Leiter's initial objection to Dworkin's analysis of meta-ethical propositions, Leiter's argument rests on an implausible assumption: that no moral claim can be formulated in metaphysical terms. A closer examination of Dworkin's understanding of some so-called metaphysical statements should disabuse us of the view that meta-ethical statements are ultimately metaphysical.

Before I examine Dworkin's view, it is crucial to distinguish Leiter's central attack on moral objectivity from his subsidiary arguments. Leiter primarily claims that every statement (moral and otherwise), if it is objective, should be formulated in naturalistic terms as caused by mind-independent, naturalistic facts. However, Leiter believes meta-ethical statements are ultimately metaphysical rather than ethical. In the following paragraphs, I argue against this subsidiary position by contending that meta-ethical claims are ultimately moral statements.

It is commonsensical to believe that the existence of metaphysical concepts in a particular language presupposes the presence of metaphysical thinking (regardless of its force) in that society. If we suppose that a particular society does not engage in metaphysical reflection, it is erroneous to claim that its language is embedded with metaphysical concepts. However, the absence of metaphysical concepts in a particular language does not rule out the presence of metaphysical thinking among native speakers of that language. Persons who engage in metaphysical reflection could express their metaphysical views in non-metaphysical terms.

For instance, Gyekye (1997) observes that “the language of a religious rite of libation reveals the entities that are considered real in Akan metaphysics”.⁶⁴ A typical prayer, according to Gyekye, references a ‘Supreme God’, ‘Earth goddesses’, and ‘ancestors’ in a hierarchical order. The prayer reveals a chain of being comprising a Supreme Being at the apex and natural objects at the base of the chain. Thus, traditional Akan people express their metaphysical beliefs through religious invocations. These incantations ultimately evoke a pluralistic chain of Being.

Analogously, the absence of moral concepts in a particular language should not rule out the presence of moral reasoning in that language. Inasmuch as persons could engage in moral reasoning by relying on a non-moral phraseology, we can couch a moral view in non-moral terminology. I interpret Dworkin as suggesting that we can express our carefully considered moral judgements in purely metaphysical terms. However, a metaphysical approach to matters about morality does not change the content of such matters. In other words, one could likely couch a substantive moral view via metaphysical phraseology.

Dworkin thinks that the transition from normative jargon to metaphysical verbiage is achieved through metaphor. It is not surprising Dworkin thinks the metaphysical expression “there are moral properties” is simply a figurative or emphatic way of saying, “some moral actions are just, and others are unjust”. It further explains why Dworkin considers the meta-ethical position “natural properties are identical to natural properties” to be a metaphoric expression of the utilitarian moral thesis – that an action is right if and

⁶⁴ See Kwame Gyekye’s *An essay on African philosophical thought: the Akan conceptual scheme*. Temple University Press (1997, p. 68).

only if (and because) amongst all other actions available to the agent that act produces the greatest pleasure.

Leiter may also accept our interpretation and further claim that metaphors cannot say anything true or false. For instance, Blackburn (1998) argues that metaphorical expressions are non-descriptive uses of language.⁶⁵ Davidson (1979) also contends that metaphors lack or have no propositional content.⁶⁶ Moreover, Rorty et al. (1987) suppose that figurative expressions do not express or assert any belief.⁶⁷ Since truth-apt statements express beliefs, metaphors cannot express anything truth-apt because, per Rorty's view, they do not express any belief.

If metaphors are not truth-apt, then this contradicts Dworkin's position that there are correct answers to questions about morality. Given that Dworkin thinks that moral statements are truth-apt and accepts that some so-called meta-ethical statements are metaphorical expressions of moral claims, Dworkin may have to show how metaphors express truth-evaluable beliefs. In other words, Dworkin must demonstrate how some so-called moral statements that express metaphorical statements are truth-apt.

The force and plausibility of Leiter's objection can be reviewed in another light. Leiter believes that meta-ethical statements such as 'moral properties are identical to natural properties' are truth-apt to the extent that our linguistic intuitions about 'moral properties' and 'natural properties' are identical. Dworkin claims that such statements are

⁶⁵ See Simon Blackburn's "Wittgenstein, Wright, Rorty and Minimalism." *Mind* 107, no. 425 (1998): 157-181.

⁶⁶ See Donald Davidson's "What metaphors mean." *Critical inquiry* 5, no. 1 (1978): 31-47.

⁶⁷ See Richard Rorty and Mary Hesse's "Unfamiliar noises." *Proceedings of the Aristotelian Society, Supplementary Volumes* 61 (1987): 283-311.

metaphorical expressions. If they are metaphors, meta-ethicists, according to Leiter, may not really be engaging with statements that can be true or false.

Nevertheless, meta-ethicists do really think that such kinds of statements have truth values and that our linguistic intuitions assist us in determining their truth or falsity. As a result, either it is the case that such meta-ethical statements are truth-apt, such that contrary to what Dworkin suggests, they are not metaphors, or that meta-ethical statements lack truth-values, given that they are metaphorical. Either way, Dworkin must demonstrate how these statements are truth-apt if they are metaphorical.

The demand that Dworkin must show how metaphors express truth-evaluable beliefs is warranted only if Dworkin claims that our metaphors are precisely what we rely on to decide the truth or falsity of any meta-ethical claim. I interpret Dworkin as proposing that our moral judgements are sufficient for determining the truth or objectivity of any moral claim. Non-moral judgements, however, are insufficient to determine the truth of other moral judgements.

Accordingly, these so-called meta-ethical statements may have to be translated into ethical statements in order for us to determine their truth or falsity. Leiter seems to assume here that we can only rely on them as metaphors in order to decide the truth or falsity of another moral claim. This may, however, be an inaccurate picture of Dworkin's understanding of meta-ethical statements. In their metaphorical state, Dworkin does not believe we can determine their truth or falsity. It is no surprise that Dworkin interprets meta-ethical statements into ethical statements. They are ultimately ethical statements phrased in meta-ethical verbiage.

To this rejoinder, Leiter may accept our interpretation of these so-called meta-ethical statements and argue that Dworkin is mistaken in proposing that only one intelligible reading of such statements exists. For instance, to claim that “‘Abortion is morally wrong’ is not objectively true” implies at least two viewpoints: this position emphasises that the morality of abortion cannot be objectively correct independent of all psychological states, such as beliefs and desires. Also, the morality of abortion cannot be objectively correct even when competent moral reasoning would lead all rational beings to agree on certain moral beliefs or desires.

Indeed, Dworkin does not say there are other genuine interpretations of such statements, particularly the claim that “‘X is wrong’ is objectively true”. Yet, I do not think Dworkin is unaware of such kinds of interpretations. He may further claim that discussions about the mind-independence thesis in ethics are only metaphorical. The burden of proof is on Leiter to show why the mind-independence thesis is not simply a figurative or emphatic way of speaking about objectivity in ethics.

In summary, we have realised that Leiter needs more than simply referring to what meta-ethicists do to show why meta-ethical statements are metaphysical rather than ethical. Nonetheless, it is essential to note that even if Dworkin is right about how non-neutral meta-ethical debates could be, this is not a decisive step in showing that objectivity in morality is domain-specific because the external sceptic only requires an argument that is genuinely austere enough to show that external moral scepticism is plausible.

Austerity

We have realised that Leiter is incorrect in suggesting that all so-called external arguments are indeed external. In Chapter 3, we noted that Leiter persistently stresses the importance of the argument from Archimedean epistemology. He justifies the need to conform to the demands of the causal thesis by citing the *a posteriori* success of science. The fact that science has achieved impressive accomplishments, such as sending planes into the sky and eradicating certain cancerous growths is significant only because it serves as the best indicium of what is knowable and real.

Thus, the demand that moral beliefs (and any other belief) conform to this epistemology is warranted. Even if Leiter's argument is plausible, is this demand a moral one? In attacking truth and objectivity in moral theory, Leiter relies on empirical evidence to support this causal theory of knowledge. Leiter claims that science has been successful, and this success is attributable to science's reliance on a causal theory of knowledge. Given that this causal theory of knowledge has been a guide to what is real, Leiter believes that this theory is the "best indicium" for determining truth. Thus, the demand that morality conforms to this causal theory is justified.

Let us suppose that Leiter's claim that "[the causal theory] is the best indicium of the knowable and the real" is a non-evaluative claim. Instead, this evidence rests on an unstated evaluative assumption – a principle that urges us to pursue what is best or good for us. So, since this causal demand presupposes this moral principle, it will be a moral attack and, consequently, an internal argument against moral objectivity. Thus, even if science is the highest tribunal for determining what is true or false, the demand that

morality conforms to the norms of a scientific epistemology is logically conceivable only if that demand is grounded on a moral principle.

It may be immediately objected that although external sceptics cannot rely on moral arguments, simply including a moral premise does not make an argument a moral argument. Just as some moral arguments rely on non-moral premises, non-moral arguments may also depend on moral premises to reach non-moral conclusions. So, the principle that urges us to pursue what is best or good for us does not alter the nature of the argument from Archimedean epistemology.

For example, the divine command theory presupposes an ontological commitment to the existence of an all-powerful Supreme Being. However, this theory is primarily a politico-moral rather than a metaphysical one. Likewise, although the argument from Archimedean epistemology is based on an abstract moral principle, this does not mean that it is a moral argument. Therefore, the assertion that the argument from Archimedean epistemology is genuinely external is justifiable. Dworkin must provide an argument against the need to conform to this epistemology.

Before we evaluate this counterargument, it is vital to notice a crucial feature of this objection. It aims to refine a characteristic feature of Dworkin's understanding of external scepticism. Recall that Dworkin claims that external scepticism is austere in that it relies solely on metaphysical or non-moral arguments to call to question the objectivity of moral claims. However, Dworkin's view does not address non-moral arguments that contain moral judgements. Although Dworkin claims that external sceptics rely solely on

non-moral arguments, he does not specify that some external arguments have or presuppose moral judgements.

So, in order to dissolve this objection, we may have to examine Dworkin's conception of internal moral scepticism. Dworkin observes that internal moral scepticism relies on a positive moral claim to call to question the truth of other moral claims. This characteristic illustrates a model of moral argumentation. So, the argument from Archimedean epistemology can only be a moral argument if it presupposes a moral judgement that calls to question the truth of other moral claims. Thus, I will quickly outline the argument from the Archimedean epistemology so that we may figure out which premise calls to question the demand that morality fits our scientific picture of the world.

Premise 1: Science has delivered goods such as sending planes into the sky and eradicating certain cancerous growths. Hence, science has been successful.

Premise 2: Science achieved this success only when science has a useful guide, which is the best-going indicium of the knowable and the real.

Premise 3: The causal theory of knowledge is the best indicium of the knowable and the real.

Conclusion 1: The demand that morality conforms to this causal theory is justified.

Which premises above give Conclusion 1 (C1) its plausibility? Premise 1 (P1) particularly informs us about the empirical successes of science. However, this information cannot strengthen our conclusion. Given that science also has its failures, simply stating its successes does not clearly demonstrate what the conclusion aims to achieve. We need to explain why these successes are relevant to our conclusion. It is unsurprising that Leiter

adds Premise 2 (P2), strengthening the argument. However, P1 and P2 make no moral judgement. Scepticism, at this point, is purely non-moral and, thus, external to the moral domain.

However, P2 seems to operate beyond its intended purpose. Although it states that science cannot be successful without this useful tool, it assumes without proof that there are no other valuable tools for accomplishing these empirical successes. With this assumption, Leiter provides Premise 3 (P3) to lend P2 more support. Leiter further claims that this causal theory of knowledge has been the best indicator of what is real and what can be known. It is this premise that raises scepticism about truth and objectivity in morality.

Leiter argues that, as the causal theory of knowledge is the best determinant of what exists and what can be known, every statement (moral or otherwise) must conform to the demands of this theory of knowledge. However, Leiter does not seem to realise that this reason is evaluative, even if it supports a non-evaluative conclusion. To claim that ‘some concept X is the best indicator’ is to make an evaluative judgement about that concept. It carries a weaker moral implication – it is a value judgement that may affect the attitude of theorists in other intellectual domains. Scepticism, at this point, is moral and, therefore, internal to the moral domain.

Leiter may nevertheless insist that the argument from Archimedean epistemology is essentially an argument by analogy. Inasmuch as the causal theory of knowledge has served the interests of science, moral philosophers ought to embrace this theory of knowledge to deeply understand moral truth and objectivity. However, Leiter’s analogy’s

plausibility emerges only when science and morality share similar objectives. It appears that science and morality are concerned with the truth and objectivity of claims about the world, including human actions. This similarity gives Leiter's argument its intuitive appeal and plausibility.

Nonetheless, the peak of this intuitive appeal materialises in Leiter's attempt to place the burden of proof on Dworkin rather than the causal theory of knowledge. Leiter imagines that if we subject moral claims to this causal theory of knowledge, we are often led to an absurd moral field thesis. This thesis proposes that moral facts cause moral opinions insofar as the universe is housed with morally charged particles that "interact with human nervous systems to make people aware of the morality or immorality of actions". Since moral properties cannot cause moral opinion, this absurdity is an attack against morality, not a burden for the causal theory of knowledge.

Leiter, however, misinterprets Dworkin's position about the intelligibility of the causal theory of knowledge. Dworkin is not claiming that the argument from scientific epistemology is unintelligible, *simpliciter*. Dworkin believes that objective moral claims seem difficult to conceive when we subject moral claims to this causal theory of knowledge. The causal theory is nonetheless forceful and intelligible when applied to domains that make causal claims. Dworkin ultimately wants to show that science and morality are independent domains.

Dworkin believes that unless we conceive of the demand to conform to this causal theory of knowledge as a moral demand, this causal theory of knowledge only applies to the scientific domain. This should not imply that science and morality are at loggerheads,

as Leiter suggests. Leiter seems to imply that truth in moral theory is equivalent to truth in natural science. However, this correspondence theory of truth – the suggestion that a scientific proposition is true if it matches or corresponds with reality – does not apply to moral theory. Leiter’s attempt to impose this theory of truth on morality only treats morality as competing with science.

Dworkin believes this competition is misconceived, for moral claims are not amenable to causal theories of knowledge. In other words, if external scepticism were sound, we could still argue that there are correct answers to moral questions. Still, external sceptical positions are motivated by an expectation, yet “that expectation is confused: it rests on a failure to grasp the independence of morality and other dimensions of value”. Leiter’s attempt to place the burden of proof on Dworkin only generates confusion and tension between morality and science rather than restoring the independence of these domains. The burden of proof on Dworkin is that he should show why these domains are independent.

To sum up my position, we have observed that Leiter’s attempt to make intelligible the argument from Archimedean epistemology fails for at least two reasons. First, his argument may be interpreted as a sceptical argument that is internal to morality. Second, if such an interpretation is unsuccessful, then his argument fails to consider the purpose of Dworkin’s project. Dworkin aims to show that morality and science are not at odds with each other insofar as these intellectual domains are independent of each other and ought to be treated as such.

Domain-specificity

From our previous sections, we have noted that Leiter requires more than simply suggesting what meta-ethicists do to show why meta-ethical statements are metaphysical rather than ethical. Besides, we mentioned that the demand that moral claims follow from the Archimedean epistemology, if it is intelligible, is justified only when it rests on an abstract moral conviction. Certainly, Leiter may not be satisfied with these responses.

However, for our argument's sake, we may suppose that Dworkin is wrong to characterise any intelligible form of external scepticism as internal. Is Dworkin's central claim sustainable? Leiter argues that any intelligible account of moral objectivity that simply rests on the best moral argument results in counter-intuitive conclusions. The only intelligible argument in favour of moral objectivity should consist of premises that imply mind-independent and causally efficacious naturalistic facts. I shall explore how Leiter's criticism attracts the attention it deserves.

Leiter believes that Dworkin's view counts against our understanding of making objective claims, for one could imagine a practice of providing reasons why, for instance, chocolate is better than vanilla. In such a practice, it is counter-intuitive to claim that solely providing persuasive and indisputable reasons why chocolate is better than vanilla will suffice to determine the truth of such a claim. Instead, we refer to the natural fact that 'tastiness is a subjective property' to determine whether chocolate is better than vanilla. Once we arrive at this fact, it is evident that the comparison dissolves, for we observe that it is purely a matter of taste and preference.

Leiter's main objection relies on a counterexample involving the objective tastiness of chocolate and vanilla. Dworkin has not been insensitive to these comparisons. Dworkin claims that "I [Dworkin] do not believe (though some people do) that flavours of ice cream have genuine aesthetic value, so I would say that I only prefer rum raisin and would not add (though some of them would) that rum raisin is 'really' or 'objectively' the best flavour".⁶⁸

Dworkin thinks that arguments surrounding culinary tastes cannot be susceptible to reasons. However, for our argument's sake, let us suppose that claims about culinary taste are susceptible to reasons or have an objective aesthetic value. Leiter believes that Dworkin cannot make objective claims about them unless "objective domains generally answer to the world at some point".⁶⁹ Leiter supplements this position by emphasising that his counterexample reveals "a difference between what is real and what we merely talk about as though it were real. Only the 'external' perspective permits us to do any justice to that intuition".⁷⁰

By 'external perspective', Leiter means objective naturalistic facts that are mind-independent and causally effective. Naturalistic facts are broadly understood as facts demonstrable, in principle, by ordinary methods of natural science. Leiter's criticism raises a fundamental problem in epistemology that we cannot avoid. Leiter thinks his 'external perspective' is the only standard that can help us distinguish non-real entities from the real.

⁶⁸ LE, p. 81. In his endnotes, Dworkin adds that anyone who believes that the superiority of rum raisin is an objective fact has a defective sensibility: that person has no understanding of the character of genuine aesthetic experience.

⁶⁹ OMA, p. 88

⁷⁰ OMA, p. 88

This external perspective does not only assist us in acquiring truth. It also helps us avoid falsehoods or errors by distinguishing between the real and what we merely refer to as real.

However, Leiter assumes that Dworkin's internal account of morality cannot differentiate between the real and what appears to be real. Leiter implicitly assumes that Dworkin's internal account of morality cannot assist us in acquiring moral truth and avoiding falsehoods or errors. However, this is false. Leiter fails to recognise a distinction that pervades Dworkin's account. Dworkin's view distinguishes between 'certitude' and 'infallibility'.⁷¹ Certitude entails a possibility of error. Infallibility, on the other hand, does not entail the possibility of error.

Dworkin's account is grounded on certitude and not infallibility. Dworkin seems to believe that the best moral arguments are the ones we are most certain of. However, he does not think we cannot be wrong about what is best. Leiter's criticism, however, suggests that Dworkin believes that once we are certain about our moral claims, we cannot be wrong about them since no one has disputed what is best. However, this assumption is mistaken. According to Dworkin, we can be incorrect about the correct answer even when it has not been challenged.

Dworkin believes we cannot claim that our answers are correct until our interpretation "fits and justifies what has gone before, so far as that is possible".⁷² However, to the extent that no one has challenged an interpretation of a particular work, Dworkin

⁷¹ See Kwasi Wiredu's *Conceptual decolonization as an imperative in contemporary African philosophy: some personal reflections.*, (2002, p. 53-64) for an analysis of these concepts. John Locke employs a similar distinction in one of his seminal works. He distinguishes between certainty of truth and certainty of knowledge.

⁷² LE, p. 239

does not still believe that that interpretation is the best. The best interpretation should have moral worth and legal fit. Thus, although our reasons must be the best, it is the best only because it possesses legal fit and moral worth. Dworkin does not suggest that even if our moral answers fit past moral decisions, they are correct. Our moral answers should have moral worth.

Leiter can equip himself to resist this objection by arguing that (a) his naturalistic account of morality provides a superior explanation of moral objectivity and (b) granted that Dworkin's account of objectivity is also accurate, Dworkin's position about truth and objectivity can be characterised as modest objectivity.⁷³ On this view, what seems correct to cognisors under appropriate or ideal conditions determines what is correct. Objectivity of this sort depends on human capacities. Nevertheless, it does not rely on human subjective judgement.

Minimal objectivism holds that the correctness of a claim is determined by what a community of cognisors deems to be correct. This determination may involve subjective judgments or a "convergence of subjective desires", as McDowell has noted. Also, whereas modest objectivity acknowledges that human capacities influence the determination of correctness, strong objectivism maintains that correctness is entirely independent of human capacities. So, on this view, what seems right to cognisors does not determine what is objectively correct.

According to Leiter, minimal and modest objectivism occupy a conceptual space between two extremes: subjectivism and strong objectivism. Subjectivism posits that truth

⁷³ NJ, p. 259

depends solely on an individual's cognitive capacity. Minimal objectivism, on the other hand, shifts the focus from the individual to the community but still allows for subjective desires to determine truth. In contrast, modest objectivism asserts that correctness is only valid under certain conditions, such as when the agent has (a) full information and evidence or (b) perfect rationality.

The difference between modest objectivism and strong objectivism lies in their views on the correctness of beliefs formed under certain conditions. Modest objectivism holds that any belief formed under a given condition cannot be wrong. Conversely, strong objectivism maintains that correctness or incorrectness cannot be determined by any human capacity under certain conditions. In other words, what is true about the world is not determined by what any person believes or has reasons to believe under specific conditions. Instead, truth and objectivity are determined independently of the cognisor's attitudes, beliefs, or epistemic state.

Leiter believes that Dworkin is modest about moral objectivity because Dworkin rejects the notion that a legal decision is correct simply because a judge says so. Dworkin recognises that judges can make mistakes regarding what the law requires. So, he cannot be a moral subjectivist. Also, Dworkin rejects Hart's conventionalism, which maintains that what is correct or meaningful about a concept is determined by what judges have agreed upon or settled. As a result, Dworkin cannot be minimalist about objectivity either. Dworkin also rejects strong objectivity.

In particular, strong objectivity suggests that what is correct is independent of what judges believe about it. This implies that what is correct is what forms part of "the fabric

of the universe”, given that this ‘fabric’ exists independently of any human capacity. Still, Dworkin contends that any intelligible notion of truth and objectivity in morality cannot be subject to this form of objectivity. This is because it leads to absurd consequences, such as the idea that moral facts cause moral opinions, as if the universe contains morally charged particles that interact with human nervous systems to make people aware of the morality or immorality of their actions.

By eliminative disjunction, therefore, it is evident that since Dworkin rejects subjectivism, minimal and strong objectivism, Dworkin can only be modest about truth and objectivity in morality if his account of objectivity is plausible. However, as Coleman notes, “our legal practice invokes concepts such ‘mistake’, ‘right answer’, and ‘normative progress’. All can be usefully illuminated by an [strong] objective conception of legal facts; whereas a deflationist conception of objectivity leaves them mysterious and unexplained”.⁷⁴

Coleman’s deflationist account posits that expressions such as (1) *S* is true and (2) *S* is objectively true are the same thing. (2) conveys no additional information beyond what (1) expresses. Deflationists further propose that (1) and (2) say no more than *S* expresses. As a result, when some person asserts that “‘Abortion is wrong’ is true”, he asserts no more than the statement ‘Abortion is wrong’. Analogously, ‘Abortion is wrong’ expresses nothing more than “‘Abortion is wrong’ is objectively true”.

Coleman’s objection suggests that modest objectivity is inadequate for fully explaining concepts such as ‘legal error or mistake’ and ‘right answer’. Even if it does

⁷⁴ See Jules I. Coleman’s *Truth and Objectivity in Law*, 1 LEG 33 (1995 p. 56).

provide some explanation, such explanations are considered mysterious. According to the modest objectivist, a correct legal answer is one that judges will reach under certain conditions, and incorrect answers will be any answer other than the correct one. However, this raises questions about what it means for these conditions to obtain. For example, when can a judge acquire complete information about a given case, or be perfectly rational and competent at legal and moral reasoning?

Coleman argues that only a strong objectivist account of objectivity can explain the concepts of 'legal error or mistake' and 'right answer', amongst many other legal concepts associated with truth and objectivity. He shares Leiter's view that objectivity in the natural sciences can help us understand objectivity in moral theory. Scientific objectivity can differentiate truth from falsehood, myths from realities, and mysteries from the overt. So, any intelligible account of moral objectivity must depend solely on mind-independent moral facts about the world.

First, I disagree with the claim that Dworkin's account of moral objectivity can be accurately characterised as modest objectivity. Leiter's interpretation of modest objectivity suggests that correct answers derived from ideal conditions cannot be wrong, and beliefs acquired under certain conditions are infallible. However, Dworkin's account does not make these claims. To be precise, Dworkin distinguishes between certainty and infallibility, which is not accounted for by Leiter's interpretation.

Second, even if Leiter's trichotomy captures Dworkin's account of moral objectivity, Leiter's distinction instead fails to consider Dworkin's explanation of universalism, objectivity and the absolute. In other words, Leiter's trichotomy simply

extends Dworkin's trichotomy.⁷⁵ Using the morality of abortion, Dworkin claims that when someone says, 'Abortion is *objectively* wrong', that person claims that abortion is wrong for everyone, no matter their circumstances, culture or religious background.⁷⁶

However, 'Abortion is *universally* wrong' suggest that it is wrong in all kinds of communities, even in communities whose religious life supports an entirely different conception of the sacredness of life. It must be observed that universalism has to do with empirical truth, in that, given that all communities do support the immorality of abortion, we can say it is universally true that 'Abortion is wrong'. This does not guarantee that it is objectively true. Objective truth in morality relies on moral argumentation.

Finally, 'Abortion is *absolutely* wrong' implies that the "wrongness of abortion is never overridden by competing consideration: that it is never true, for example, that abortion is the lesser of two evils, even when a mother's life is threatened".⁷⁷ In other words, no moral argument in favour of the morality of abortion can override the immorality of abortion if abortion is *absolutely* wrong. Dworkin may conceive of strong moral objectivity as either (a) a metaphorical expression of our considered moral judgements or (b) as an absolute account. Given that Leiter may not accept (a), Dworkin may conceive of strong moral objectivity as an absolute account of moral truth.

The absolute account of moral truth, however, is an ambitious account of truth. According to the absolutist account, if it is absolutely true that 'murder is wrong', no other moral considerations can overrule this fact about murder. Absolute facts are, on this view,

⁷⁵ Here, I leave out Leiter's conception of *subjectivism*. Hence, I refer to Leiter's trichotomy.

⁷⁶ OT, p. 97

⁷⁷ OT, p. 98

infallible. Recall that Dworkin notes his account of moral objectivity does not imply infallibility. Given that an absolute account of truth implies infallibility, Dworkin does not think his account of objectivity is not absolute. As a result, Dworkin may suppose that Leiter's idea of strong objectivity is no different from an absolute account of truth and objectivity.

In particular, Dworkin could claim that Leiter is not only proposing that truth and objectivity in morality is infallible. Leiter further assumes that the absolute is actualised in the physical sciences as Leiter suggests that objectivity in the natural sciences is sufficient for understanding objectivity in morality. Given that science is prone to error, scientific truths may not be infallible truths. Scientific truths may, in other words, be certain truths; they are not absolute.

We have realised that Dworkin is neither minimal, modest, nor strong about objectivity, as conceived by Brian Leiter and Jules Coleman. Objectivity in morality is specific to the domain of morality. It does not require moral philosophers to conceive of moral truths as part of a fabric of reality yet to be discovered. Even if moral philosophers express such views, they are only emphasised, inflated or metaphoric ways of expressing our considered moral judgements.

Up to this point, I have shown that Dworkin demonstrates that meta-ethical debates have no implications on his single correct answer thesis. However, it does not follow that there is always a single right answer in every legal case. The real challenge to Dworkin's thesis arises from the language of legal principles. A sceptical outlook towards the nature

of legal principles raises important questions about whether Dworkin's legal materials are sufficient to achieve his single right-answer thesis.

CHAPTER FIVE

In the previous chapter, I argued that Dworkin's domain account of truth and objectivity is sufficient for understanding moral truth and objectivity. Hence, Leiter is wrong to believe that we only have to rely on objective naturalistic facts in order to make objective claims about morality. In this chapter, however, I argue that although there is such a thing as (non-naturalistic) moral objectivity, there are also genuine hard cases to which legal principles do not determine their uniquely correct answers.

Dworkin Revisited: The problem of vagueness

Recall in Chapter 1 that, according to Hart, there are only single correct answers to easy cases as there are legal cases in which the correct application of existing legal rules to them is unobvious and, thus, controversial. Hart further proposed that since legal rules alone cannot dictate any particular outcome, judges exercise discretion by deciding some legal cases unconstrained by any legal material.

On the other hand, Dworkin contends that there is only one correct answer to what the law requires in any legal case, which is discoverable by judges competent in legal reasoning. Judges must identify and reason from legal principles when a particular legal case is unobvious and controversial. The only kind of proper judicial discretion is, thus, a form of *weak* discretion. Dworkin believes there is no room for *strong* discretion or discretion in the Hartian sense.

It must also be observed that Hart claims in his *Concept of Law* that he is unclear about what discretion entails and how judges can exercise it in hard cases. Nevertheless, these difficulties should not prevent anyone from exploring to what extent Hart's proposal

could be accurate. In what follows, I argue, contra Dworkin, that relying solely on legal principles may not adequately address the problem of objectivity in law. As such, legal principles do not eliminate a judge's exercise of *strong* judicial discretion when legal rules rely on open-textured concepts.

In Dworkin's *Law's Empire* (hereafter LE), Dworkin widens his view about the role of legal principles.⁷⁸ Judges, according to Dworkin, rely on legal principles that explain some significant part of the prior institutional history and provide the best account for that institutional history. This account must have legal 'fit' (that the principles are coherent with past and future legal decisions) and 'moral worth'.

Accordingly, judges are tasked with identifying and upholding a single correct answer with the aid of legal rules and principles. Despite this conclusion, judicial disagreements reveal that legal principles can conflict and compete since different principles can provide diverse reasons for adjudicating in a particular way. In such cases, judges only exercise *weak* discretion.

Considering *weak* judicial discretion, since different legal principles can compete, Dworkin identifies another form of indeterminacy that Hart does not recognise, even when Hart accommodates legal principles into his concept of legality. Hart, instead, observes that legal rules and principles may also conflict. With respect to *Riggs vs Palmer*, for example, Hart discloses that the legal principle employed conflicts with a relevant legal

⁷⁸ In Dworkin's (TRS), hard cases are those cases in which reasonable lawyers disagree about what the law requires. In (LE), the metaphor of law as *integrity* replaces law as *interpretation*. However, his views about single right answers in legal cases do not significantly change. Nevertheless, Dworkin adds that law as *integrity* requires judges to test their interpretation against a great network of political structures and communal agreements (LE, p. 225).

rule.⁷⁹ From both Dworkin and Hart's analysis, we can infer at least three sources of legal indeterminacy: (a) when the meaning of a term is in dispute, (b) when relevant principles compete amongst themselves and (c) when legal rules and principles seem to point in different directions.⁸⁰

Dworkin, however, rarely reflects on the nature of legal principles as Hart does with legal rules. Dworkin claims that judges are challenged with (b) and (c) when they reason about legal principles. However, he rarely considers (a) when reasoning about principles. Yet, legal principles consist of general terms like *person*, *property*, and *profit*. As such, legal principles can be as open-textured as legal rules may be.

Brink emphasises this point in another way by suggesting that since legal principles can be vague, "there is no reason to assume that the meaning of legal principles will always be determinate if the meaning of legal rules is not".⁸¹ So, Dworkin's argument implies that when judges reason about principles, they do so independently of *strong* discretion as principles are not susceptible to indeterminacies surrounding (a). As Leiter suggests, however, "moral principles that are supposed to enrich the domain of legal sources will, themselves, contain vague predicates – "just", "fair".⁸²

As a result, general terms that constitute legal principles may not be free of such vagueness as *profit*. Suppose we could attribute the murderous act to the grandson – at

⁷⁹ CL, p. 262

⁸⁰ Dworkin's distinction between rules and principles is relevant here for rules and principles are logically distinct. Principles are weighed relative to their relevance to any case. Hence, some principles are weightier than others. Legal rules, however, are either relevant or irrelevant to a case. Hence, they either apply or do not apply to a case.

⁸¹ See David Brink's *Originalism and Constructive Interpretation*. The Legacy of Ronald Dworkin (hereafter OCI) (2016, p. 276).

⁸² See Brian Leiter and J. Coleman's *Determinacy, Objectivity, and Authority* (1993, p. 365).

which point could one claim that he *profits* from his actions? Indeed, individuals rarely inherit debts from deceased relatives. However, mortgage debts are unavoidable. Hence, if a child inherits a house formerly owned by his father, the child inherits its mortgage. Thus, inheritance has a negative benefit since he (the grandson) could inherit his grandfather's debts just as he could inherit his grandfather's wealth. Nonetheless, whether this could also constitute the meaning of *profiting* is unclear.

It is unclear whether the grandson truly profits from the murder of his grandfather, as it is indeterminate whether some negative benefits fall under the general term *profit*. The general term *profit* is thus vague. Like legal rules, principles are, thus, open-textured. Dworkin may have to explain how judges can incorporate vague legal principles in light of his single-correct-answer thesis. Indeed, Dworkin has not been insensitive to this concern. However, I argue that Dworkin's responses do not adequately address the issue of *strong* judicial discretion.

Dworkin argues that "interpretation is holistic: for a moral philosopher aims at holding together concrete moral opinions and abstract justifying principles, reinterpreting each of these as necessary to achieve that integration".⁸³ Thus, Dworkin could acknowledge that to disambiguate vague general terms in particular relevant principles when applied in particular cases, judges may consult other principles. Inasmuch as a principle may not be applied individually when that particular principle is open-textured, judges apply principles holistically to determine the relevant meaning of any particular principle in any particular case.

⁸³ See Dworkin's LE (p. 225-57) and *Justice for Hedgehogs* (hereafter JH) (2011, p. 134-35).

Certainly, principles are broad, general, or unspecific, so that several distinct rules can be expressed as a token or instantiation of a particular principle.⁸⁴ Principles, according to Dworkin, are weighed relative to their relevance to any case. Hence, in terms of weight or importance, when applying principles to a particular case, judges arrange them in order of importance from the most relevant principle to the least relevant relative to the case. However, if principles are sometimes vague, how could judges clarify and remove the vagueness of a principle relevant to that case without presupposing an intuitive understanding of other principles?

One could argue that although legal principles may sometimes be vague, they strongly incline towards a particular meaning they have in common when judges place many of them together. Thus, no single principle is determinate with respect to the meaning of a general term. Rather, a judge exercises reasonable judgement by selecting relevant principles that share similar general terms to determine the meaning of that general term, for there is only one meaning compatible with all of them. This argument assumes that a general term's meaning is fixed across several legal principles.

Dworkin's analysis of general legal and moral terms subsumes this assumption.⁸⁵ He distinguishes general terms associated with natural sciences from value theory by emphasising that the former are physical while the latter are normative. Yet, natural and value-laden terms have a "deep structure". For instance, a tiger's DNA is one of its essential

⁸⁴ CL, p. 260

⁸⁵ Dworkin analysis of general legal, political and moral terms is deeply influenced by the Kripkean and Putnam causal theory of meaning. The causal theory of meaning articulates the idea that singular and general terms consist of a rigid referential quality that serves as the meaning-body to the term. See Dworkin's *Hart's Postscript and the Character of Political Philosophy* (2004, pp. 12-3).

properties. Also, both terms are real: they do not comprise of facts dependent on the discoverer's beliefs about them. Thus, deep structures are objective as they exist independently of the discoverer's beliefs about them.

Dworkin's distinction implies that disagreements about the meaning of general terms occur partly insofar as the judge fails to discover the deep structure of any moral or legal concept that constitutes any legal principle. As a result, disagreements between judges may arise because at least a particular judge's beliefs about the general term contribute to her usage of the term. So, a judge discovers a general term's meaning and interpretation only if she relies on a term's deep structure rather than her beliefs about them.

Dworkin's analysis, however, engenders an assumption about the meaning of general legal terms. Invoking concepts such as 'deep structure' and 'essence' presupposes a commitment to the idea of metaphysical objectivity. A metaphysical idea of objectivity considers a world comprising of facts that exist independently of what anyone thinks about them. These facts are often considered to be mind-independent and causally efficacious. However, this commitment seems to contradict Dworkin's view about the nature of moral and legal propositions and concepts.

Dworkin admits that "the only evidence one could have for a moral [or legal] view is some substantive moral argument of a kind".⁸⁶ Only substantive legal arguments exhaust our capacity to be objective about legal propositions. There are no metaphysical categories of objectivity and meaning in value theory. To consider 'deep structure' and 'essence' as metaphorical concepts does not deny them of any metaphysical weight and importance.

⁸⁶ LE, p. 81

Dworkin must reconcile such metaphysical concepts with the idea that value theory has no connection with metaphysics.⁸⁷

It may yet be objected that my sole focus on the meaning of general terms weakens and fails to advance my argument. For it overlooks the policy considerations in the judge's verdict, how she applies these principles and the relative weight and importance these relevant legal principles give to the case at hand. However, the main difficulty with this objection is that it fails to recognise the problem of vagueness in legal interpretation. Policies are also broad and generic. As a result, policies may contain vague general terms that require extra-legal material to interpret them if legal rules and principles are vague.

Dworkin further insists that vagueness cannot impede a judge's attempt to reach a single correct answer in every hard case. Given that legal principles could sometimes be vague, Dworkin implies that neither vague legal rules, principles, nor policies could justify a rejection of (5), for lawyers could rely on some canons of statutory interpretation to resolve the statute's impact on the law.⁸⁸

Lawyers appeal to these canons "by asking which interpretation, of the different interpretations admitted by the abstract meaning of the term, best advances the set of principles and policies".⁸⁹ Hence, we could decide on hard cases with open-textured terms by appealing to the general term's meaning that advances some legal principle and policy.

⁸⁷ Thus, Brink (2016) is incorrect to argue that Dworkin "needs [a causal theory of meaning] in order to resist Hart's semantic argument for the indeterminacy of hard cases" (OCI, p. 281). This suggestion conflicts with Dworkin's view that metaphysical categories of objectivity and truth play no significant role in legality.

⁸⁸ See Dworkin's *No right answer?* (hereafter NRA) In P. S. Hacker et al's *Law, Morality and Society* (1977, p. 68).

⁸⁹ NRA, p. 68

Suppose that this argument is plausible; we can at least infer that those hard cases surrounding vague legal rules could be resolved when judges discover and clearly understand the legal principles associated with interpretations of such vague rules. How could judges discover a general term's meaning that advances some vague legal principle? Granted that legal principles and rules contain vague general terms, whose meaning and interpretation are wide-ranging, Dworkin may add that judges could also discover an interpretation of a general term in "cases in which at least a majority of those who voted for the statute had in mind".⁹⁰

Even if Dworkin provides a concrete account of how judges can discover these legislative agreements about the meaning of general terms, this hermeneutic approach should also outline how to resolve disagreements about which semantic interpretation best satisfies the intended interpretation of a relevant principle of that case. I am not suggesting that Dworkin must provide a mechanical approach to discovering and applying a vague term's meaning to a particular legal case. Instead, his approach must propose a framework that reduces a judge's discretion to an exercise of reasonable judgement amidst disagreements about which semantic interpretation best satisfies the intended interpretation of a principle of that case.

Stephen Guest, for instance, contends that judges are creative in these situations.⁹¹ Since this creativity is constrained, judges only exercise *weak* discretion. Just as

⁹⁰ NRA, p. 68. It is important here to distinguish general terms from the statute as a whole. Dworkin maintains that the correct interpretation of a *statute* does not depend on the mental states of the legislators who enacted it. (JH, p. 128). The view that I interpret Dworkin as suggesting here is the notion that there are intentions that concern the use of particular words with particular meanings. This is often referred to as semantic intention. See Mark Greenberg's "Legal Interpretation" The Stanford Encyclopedia of Philosophy (2021)

⁹¹ See Stephen Guest's *Ronald Dworkin* (hereafter RD) (2012, p. 35)

musicologists exercise constrained creativity to complete an unfinished musical piece, Guest believes judges exercise constrained creativity to determine what the law requires in controversial cases. As this creativity is authoritative and constrained, it is a *weak* form of discretion. Hence, Guest thinks that “[*weak* discretion] is employed...in declaring a skateboard to be a vehicle”.⁹²

Nonetheless, Guest’s suggestion is misleading. Creativity implies that judges have some legislative powers regardless of its weighty constraints. It is false that some vague legal rule or principle governs such constraints. Thus, Dworkin may not accept that judges exercise such legislative powers. Besides, unlike competing legal principles, the varied interpretations of vague general terms have equal weight and importance. Thus, judges may not exercise *weak* discretion. So, how ‘constrained creativity’ could help us resolve such semantic disagreements is unclear.

Following Dworkin’s *interpretivism*, thus, judges may rely on an interpretive theory of meaning that elucidates any vague general term. We can only resolve genuine legislative disagreements about the meaning of vague general terms by distinguishing among the types of concepts that we use, namely, criterial, natural-kinds and interpretive concepts.⁹³ Moral and political concepts constitute interpretive concepts because although we share these concept-words, we appear to attach diverse meanings to these concepts. To clarify any interpretive concept’s meaning is to provide “the best interpretation of the practices in which they figure in”.⁹⁴

⁹² RD, p. 33

⁹³ JH, pp. 158-60

⁹⁴ JH, p. 160

On the other hand, criterial and natural kind concepts do have a shared decision procedure for determining their meaning. In particular, Dworkin believes that we share criterial concepts if and only if we use the same criteria in identifying instances. For example, since we share the same criteria about what a square is, the concept of squareness is criterial. Similarly, natural-kind concepts have fixed properties in nature; we share a natural-kind concept when we use that concept to refer to the same natural kind.⁹⁵ Without a shared decision procedure, any disagreement about the meaning of any natural-kind or criterial concept is illusory.

The key assumption here is that we can determine the meaning of vague moral predicates, such as justice and fairness, by accepting the best interpretation of how judges apply them when they decide on legal cases. The problem, however, with this theory of meaning in light of Dworkin's right answer thesis is that it confuses "what is best" with "what is right". Dworkin ultimately aims to discover single right answers in legal cases. However, relying on the best interpretation may not guarantee that we have discovered what is right in that legal case. In other words, the best decision in any legal case may not always capture what is right in the legal case.

Ultimately, we could save Dworkin's theory by proposing other reasons why vagueness cannot impede a judge's attempt to reach a single correct answer in every hard case. Silk (2019), for instance, argues that vagueness has no far-reaching effects on legal interpretation as the lawmaker's rationale may "be among the facts determining the term's extension and hence the content of the ordinance".⁹⁶ Silk believes that when we discover

⁹⁵ JH, p. 159

⁹⁶ See Alex Silk's *Theories of vagueness and theories of law*. *Legal Theory*, 25(2), (2019, p. 139)

the lawmaker's semantic intentions, judges can determine the meaning of that vague term employed in the legal rule. The key assumption is that since a legislator's rationale is always available to judges when deciding hard cases, judges may not rely on *strong* judicial discretion.

Similarly, Himma argues that "there is nothing in positivism's core tenets that implies a commitment to the discretion thesis" since [*strong*] discretion implies that judges have some "quasi-legislative power".⁹⁷ However, Himma reveals that there is no reason to dismiss the idea that judges cannot refer matters in which the meaning of general terms is in dispute to the legislature. Hence, Dworkin could argue that judges should defer to the legislature matters in which principles are fraught with (a). This view maintains Dworkin's *weak* discretion about (a) and strengthens (3) since *strong* discretion is beyond a judge's legal power or authority.

Silk's position seems attractive. Given that legislators have rationales when making law, Dworkin could argue that we can rely on such intentions when deciding on legal rules. However, Dworkin argues that legal principles originate from "a sense of appropriateness developed in the [legal] profession over time".⁹⁸ Thus, judges can only discover such intentions by observing how legal officials have used the vague term over time. Yet, Dworkin believes that these rationales or intentions have no place in legal adjudication because they are non-existent.⁹⁹

⁹⁷ Himma argues that the positivist account of judicial discretion is consistent with Dworkin's legal principles since legal principles are valid inasmuch as judges appeal to and declare them in hard cases. (2001, p. 56).

⁹⁸ TRS, p. 40

⁹⁹ JH, p. 130 The next section will explain further why Dworkin thinks legislative intentions are non-existent.

Moreover, it is essential to recognise Dworkin's distinction between principles and policies. Judges should broadly defer to the legislature on matters concerning policies. However, they should employ their best judgement regarding matters of legal principles. Although judges consider policies to determine a principle's weight or importance, policymaking is a proper legislative function.¹⁰⁰ Hence, judges must resolve ambiguities surrounding legal principles. Accordingly, Dworkin cannot accept Himma's premise that judges can refer matters in which the meaning of general terms is in dispute to the legislature.

In this section, I have shown that Dworkin runs into a series of complications when asked to explain the significance of legal principles in hard cases. So, assuming Hart's assumptions are accurate, judges may rely on *strong* discretion when resolving indeterminacies associated with (a). Dworkin would have to rely on *strong* discretion in hard cases or reject the view that legal principles can reduce the degree of *strong* discretion judges wield when deciding on hard cases.

Possible Alternatives

In the previous section, I argued that Dworkin's legal principles are insufficient to settle hard cases since legal principles are sometimes open-textured. Insofar as Hart integrates legal principles into his resolution of hard cases, Dworkin seems to agree with Hart about a limited form of discretion.¹⁰¹ Given that legal principles are open-textured, *contra* Dworkin, judges may be unconstrained when enquiring about what the law requires

¹⁰⁰ TRS, p. 83

¹⁰¹ See Dworkin's *Hart's Posthumous Reply* (2017, p. 2129).

in hard cases. I argue that judges can rely sufficiently on legislative intentions as legal materials to eliminate *strong* discretion.

In what follows, I shall only rely on an essential characteristic of legislative intentions to guide my analysis. I must readily grant that a legislative intention roughly aims to protect the interests of persons who fall within the ambit of that legal system. This characteristic, at first glance, is misleading as what constitutes ‘interests’ is widely open to scholarly debate. It also assumes that there are relevant similarities between interests and legislative intentions. It is likewise unclear whether these interests are identical to or distinct from the subjective feelings of those who fall under that legal system.

I use the term ‘interest’ in the same sense as R. B. Perry uses it. He defines “interests” as being *in favour* or *disfavour* of a thing.¹⁰² It describes a psychological state of being *for* or *against* something. Hence, if an intention entails the need to protect a person’s interest, that intention *favours* that person’s interest. Thus, legislative intentions are inclinations *in favour* of taking every person’s interests seriously. Nevertheless, our talk of ‘interest’ dwells within a political framework. Hence, ‘interests’ refer to rights, privileges, and duties, amongst other socio-political benefits. Thus, legislative intentions are inclinations *in favour* of taking every person’s interests seriously, as these persons are potential candidates for enjoying rights and privileges.

Some philosophers, however, have raised scepticism about the metaphysical status of this psychological account of legislative intentions. Dworkin, for example, believes that legislative intentions are irrelevant to judges when they decide on hard cases. For

¹⁰² See R. B. Perry’s *General Theory of Value* (1931, p. 155).

legislators do not understand the statutes they vote on, and those who understand are often “moved by their political motives – to please constituents, financial backers, or party leaders”.¹⁰³ Thus, no psychological theory of meaning can fully explain the content of legislative intentions, even if such intentions exist.

Similarly, Guest claims that legislators “could vote for a measure of which he knows barely anything with the intention of acting under his party’s policy”.¹⁰⁴ Guest believes that a judge could understand legislation’s purpose but vote for it simply because it will have the effect of furthering his personal or business interests. Hence, legislative intentions are preposterous and implausible, and judges cannot resort to them when the correct application of existing legal rules and principles is genuinely unobvious and, thus, controversial.

Dworkin and Guest appear to have identified what I have referred to as a characteristic of legislative intentions. However, they do not seem to treat this characteristic as a source of legislative constraint. They view our legal constraint as either (i) a non-existent psychological state or (ii), if it exists, it does so as a means to please electorates rather than protect their rights. Legislative intentions are non-existent because legislators do not understand the laws they agree upon. Since they do not even understand what they vote upon, it follows from my analysis that legislators do not *intend* to protect their constituents when they make laws.

¹⁰³ HH, p. 130

¹⁰⁴ RD, p. 56

To begin with, Dworkin assumes that all legislative intentions are psychological. However, this assumption is mistaken.¹⁰⁵ For although some legislators may not always intend to protect the interests of persons who fall under the laws legislators make, legislative intentions are often attributed to them whether or not they all intend to protect the interests of persons. Hence, a body could be attributed with intentions despite the absence of any corresponding mental state. Dworkin's argument may only generate a forceful attack on legislative intentions if we conceive all legislative intentions as psychological.

Moreover, even if all legislative intentions are psychological, Dworkin's assumption that when legislators make laws, they rarely understand or have any intentions about what they vote upon is false. A legislator's decision may not always capture their intentions, since they cannot always anticipate all facts that should be captured under any legal standard. Thus, even if it is not always obvious what such intentions are, that should not rule out the possibility that they carry intentions. Accordingly, Dworkin and Guest make no substantive attack against legislative intentions as a psychological theory of legal adjudication.

With respect to (ii), Dworkin does not believe that the act of pleasing electorates follows from some principle of justice. Dworkin appears to distinguish between pleasing electorates and being just towards them. Granted that not all pleasurable things are good for electorates, and what is just is good for electorates, Dworkin could argue that even if

¹⁰⁵ Although my account of legislative intentions is psychological, not all scholarly accounts are psychological. See Mark Greenberg's "Legal Interpretation" The Stanford Encyclopedia of Philosophy (2021)

legislators have intentions, such intentions may not be fair or just. They are, in other words, not good for the electorates who vote them into power. What, then, is the essence of being just or fair?

If Dworkin's legal principles are aimed at protecting the rights and privileges of a constituency, then our conception of legislative intentions does not fall within Dworkin's second criticism. For legislative intentions do not involve pleasing an electorate's "interests": such intentions primarily involve taking their political constituents' rights and privileges seriously. Thus, our characteristic that legislative intentions *intend* to protect the rights and privileges of persons is consistent with Dworkin's conception and purpose of legal principles.

Finally, another challenge we could face from our account of legislative intention is that our legislative intentions could be vague. Hart acknowledges that judges appropriately consider what they find to be the legislative intention behind applicable but vague legal rules. Hence, suppose that a legislative record establishes that the intention behind the legal rule that "no vehicle may be taken into the park" was to "ensure the peaceable movement of children and the aged by prohibiting the distraction of vehicles in the park". Since one could record it, such intentions may be open-textured.

However, I believe it would be uncontroversial, in principle, to refer to the legislature about matters in which a general term's meaning is in dispute, as these legislative intentions are believed to rest on the framer's beliefs or intentions. This deferment generates two implications. Firstly, although it is unobvious what the legislature may do in such instances, it may exercise *strong* discretion. Secondly, this deferment leaves

the judiciary with little or no legislative power concerning the disambiguation of legislative intentions. This further allows the legislature to clarify what they intend to illustrate in that legal standard.

One immediate challenge with this solution is that legislators could disagree about the varied meaning and interpretations of such general terms. Besides, one could be sceptical about whether legislators can share similar intentions even if they agree about the meaning of general legal terms. It is likewise unclear how common laws have legislative intentions. The first problem is not of real concern to judges since it is up to the legislators to decide which method can best clarify the meaning of any vague legislative intention.

The initial plausibility of our second concern disappears if we consider that not all intentions are conventional. If we assume that all legislative intentions are conventional, that is, all intentions arise from agreements of every member of the legislature, then it is possible to argue that legislators do not always share similar intentions even if they agree about the meaning of general legal terms. Since some intentions are attributed to the legislature, whether or not they have agreed to that intention, our second concern is unsustainable.

The third problem, however, seems to be a legitimate one. Since common laws are derived from judicial precedents rather than legislative enactments, it is unclear how we can defer vague common laws to the legislature. Inasmuch as legislatures are not the original makers of common law, it is unobvious how legislators could clarify vague general terms that constitute common law since legislative intentions are believed to rest on the framer's beliefs or intentions.

However, it is unclear how common laws could be vague in light of the view that judicial precedents do not operate like legal rules and principles. When judges reason with precedents, they do so analogously with the impending case at hand. Nonetheless, even if these precedents entail general terms, I am sceptical about how it rules out a judge's attempt to refer to the legislature about matters in which a general term's meaning is in dispute. I am open to how one could develop this objection to deepen the Hart-Dworkin debate concerning the resolution of hard legal cases.

CONCLUSION

I have elucidated the problem of objectivity in legal interpretation in light of several accounts of moral subjectivity and have further discussed crucial features of Dworkin's internal justification of morality that address this problem of moral subjectivity. Besides, I explored how Leiter's criticisms challenge Dworkin's internal account of moral objectivity and argued in my fourth section that Leiter's position generates confusion about the nature of moral statements and, therefore, fails to provide a substantive response to Dworkin's concerns about moral objectivity. Finally, I argued that while there is such a thing as (non-naturalistic) moral objectivity, there are also genuine hard cases to which legal principles do not determine their uniquely correct answers.

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