

NATURAL LAW THEORY

Contemporary Essays

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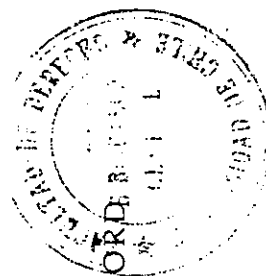
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The Irrelevance of Moral Objectivity

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1. OBJECTIVITY AND REALISM

No one should infer from the title of this chapter that objectivity in the sense of fairness, impartiality, or even-handedness is being called irrelevant or unimportant in law or anywhere else. The sense of 'objectivity' I mean is less familiar than that. It is the sense invoked when people claim that some moral judgements are objectively true, while others are objectively false.

Those who make this claim about objective truth and falsity are called 'moral realists'—or at least, that's what they are called by philosophers. I'm sure most non-philosophers find this term bewildering: I imagine 'moral realist' has Machiavellian resonances in the minds of many people, or that it connotes what we might call the ethics of Thrasymachus. Those who teach moral philosophy to law students often have to spend time explaining that 'moral realism' has very little in common with 'legal realism', and indeed that it contradicts it in several respects. The legal version is much closer to what 'realism' means to the ordinary person—namely, the sense in which 'Let's be realistic' means something like 'Let's be cynical.' At any rate, 'moral realism' is what philosophers call the thesis that there are such things as objective moral truth and objective moral falsity; and 'anti-realism' is the term for the denial of that thesis. Since moral realism is an important component of natural law jurisprudence, it is worth taking some time to explore its implications for law, legality, and adjudication.

The realist's belief in moral objectivity can be stated technically as follows:

There are facts which make some moral judgements (that is, some statements of value or principle) true and others false, facts which are independent of anyone's beliefs about the matters in question.¹

Anti-realists deny this. They deny that there is a moral reality which determines the truth or falsity of the judgements people make. They say: *there are only moral judgements and the people who make them*. Some of the judgements that are made we like, and some we don't like. Some we repudiate and some we cherish. Some we ignore, and some we ride out to kill for. But there are no objective matters of fact which justify these attitudes or which make any of the judgements correct or any of them incorrect.

Anti-realists differ in what they go on to say about the idea of truth. For some, talk of the truth or falsity of a moral judgement is as sensible as talking of the truth or falsity of an exclamation like 'Long live liberty!' or 'Down with Mrs Thatcher!' For others, the predicates 'true' and 'false' are not meaningless, so much as redundant. To say, 'It is true that abortion is wrong' is just a particularly ponderous way of aligning oneself with the judgement 'Abortion is wrong.' It adds nothing to a simple repetition of that judgement. This is what is sometimes called a 'disquotational' theory of truth: disquotational because it makes the proposition '“p” is true' mean the same as 'p' (without the double quotation marks).² Either way—whether we reject the idea of truth for moral judgements or read it disquotationally—the idea of an objective matter of fact which makes a moral judgement true or false, and which a moral judgement purports to represent or to which it purports to correspond, is rejected.

In this chapter, I want to raise questions about the relevance to legal decision-making of the debate between moral realists and their opponents. In particular, I want to raise these questions in the context of a legal system governing a society in which there are unresolved disagreements or oppositions on all or most major moral issues. In other words, I want to raise questions about the relevance of moral realism to legal decision-making in a society like our own.

2. LEGAL POSITIVISM AND MORAL JUDGEMENT

Legal positivism can be understood as a view about what legal decision-making involves, or it can be understood as a view about what legal decision-making *ought* to involve: I shall call the former 'descriptive', and the latter 'normative', positivism. Cutting across this is another distinction between positivism as a

thesis in general jurisprudence—a thesis about law as such—and positivism as a thesis in particular jurisprudence—a thesis about some particular legal system (or a particular part of some legal system).

Common to all of these is the positivist conception of law. According to that conception, law can be understood in terms of rules or standards whose authority derives from their provenance in some human source, sociologically defined, and which can be identified as law in terms of that provenance. Thus statements about what the law is—whether in describing a legal system, offering legal advice, or disposing of particular cases—can be made without exercising moral or other evaluative judgement. The judgement is simply one of social fact. That is not true, of course, of *law-making*, for legislation is almost always the exercise of moral or political judgement. But once a legal rule is laid down, no further exercise of such judgement is required for its identification or application.

Descriptive positivism maintains that this is what law is—law as such (perhaps by definition), or law in (say) the United States or in England. Now in regard to those particular legal systems, descriptive positivism is almost certainly false. This is partly because many of the rules and standards identified by the best available tests of positive law actually require those who administer them to exercise moral judgement. And it is partly because there are inevitably such gaps in positive law and such indeterminacy in the meanings of the legal rules as to make their administration in fact impossible without the exercise of moral judgement. I shall not waste time defending these claims; everyone is familiar with the evidence. Some jurists try to evade these points by definitional manoeuvre: they say that the existence of a legal rule which requires the exercise of moral judgement is incompatible only with 'positive' positivism, not with 'negative' positivism,³ and they say that the existence of gaps and indeterminate meanings in a given set of positive rules indicates only that we may run out of law in some systems and have to switch to political decision-making, not that legal decision-making itself takes on a moral or political character. As far as I can tell, the motive behind such moves is to secure a victory in the descriptive debate for a position called 'legal positivism', no matter what that position turns out to be.

As a descriptive or a definitional thesis, legal positivism is meta-ethically neutral. It takes no position on the nature of moral judgement. It is compatible with moral realism and with moral anti-realism. All it says is that legal decision-making is one thing, moral judgement another.

Normative positivism is a different matter. This is the thesis that the law *ought* to be such that legal decisions can be made without the exercise of moral judgement. Or, if we don't want to state it in the language of obligation: it is the thesis that it would be a *good thing* for the law to be as the descriptive positivist thinks it is. Normative positivism is itself a moral claim: it is a moral claim about the making of moral claims. It identifies the contamination of legal decision by moral judgement as a disadvantage; it says that we lose something of value thereby. It is by far the most interesting form of legal positivism (and indeed it is hard to imagine how a positivist definition of the concept of law could be sustained, without eventually having resort to some such normative thesis). Gerald Postema has argued convincingly that normative positivism was the legal philosophy of Thomas Hobbes, David Hume, and Jeremy Bentham.⁴

The striking thing about normative positivism is the way it views putative cases of moral decision-making in law. For the descriptive positivist, such cases are threats or counter-examples: they have to be reclassified or explained away if the descriptive thesis is to be maintained. Her normative counterpart, however, views them in a different light. They are unsatisfactory aspects of the law to be condemned and minimized. The legal system is to be reformed so that moral decision-making, by judges or officials, is eliminated as far as possible.

Why? The reasons in Hobbes's, Hume's, and Bentham's jurisprudence had to do with the desirability of certainty, security of expectation, and knowledge of what legally empowered officials were likely to require. If the decisions of an official turned on the exercise of her moral judgement, there would be no telling what she might come up with. From the point of view of the citizen trying to organize her life, the official's decisions would be arbitrary.

In modern jurisprudence, 'arbitrary' has at least three connotations, all of them bad. Sometimes it means 'unpredictable', and that, as I said, was the charge that particularly worried Bentham

and other thinkers in the mainstream of British positivism. Sometimes it means 'unreasoned', as when a decision is made on the basis of whim or reflex prejudice rather than on the basis of argument. Now these are not the same. A judicial decision can be unreasoned without being unpredictable: we may know, for example, that a judge is a 'knee-jerk' conservative on some range of issues. But it needs to be emphasized also that a legal decision can be unpredictable without being unreasoned. We may know that the judge is going to reason morally (by her own lights) but not know what her moral framework will be. Or even if we do know that she is, for example, a utilitarian, we may be unable to predict her decision because we do not know enough about her reasoning powers or about the information available to her.

A third sense of 'arbitrariness' has become particularly important with regard to American constitutional law. Some feel that even if judges are making moral decisions as reasonably and as predictably as they can, still their decisions lack *legitimacy*. It is for the people or the legislators they have elected to make that sort of decision; it is not for the judges to take the determination of social principle and social value into their own hands.⁵ In this democratic sense, 'arbitrary' means something like 'without authority or legitimacy'.

For reasons like these, normative positivists oppose and seek to minimize the amount of moral decision-making exercised by judges and other (unelected) officials in the legal system.

Those who disagree with them in this sometimes refer to themselves as proponents of the idea of *natural law*. Now in modern Anglo-American jurisprudence, 'natural law' is the term used most often for opposition to descriptive or definitional positivism. Natural lawyers deny that law consists of positive rules; they insist that the whole concept of law and the application of particular laws inevitably implicates moral principles and moral values. But if they add, 'and a good thing too', they become opponents not only of descriptive, but of normative positivism as well. These natural lawyers deny that there is anything arbitrary about judges' making moral decisions; indeed they welcome the introduction of values and principles into this area of public life.

Many, but not all, of those who oppose normative positivism, are also moral realists. One exception seems to be Ronald Dworkin.

Dworkin emphatically denies that there is anything wrong with judges incorporating moral and political views into their judgments. He thinks it is unavoidable, and he thinks it an integral part of what good adjudication requires.⁶ He insists that such judgements be reasoned, and he repudiates both the democratic charge of illegitimacy and the Benthamite worry about unpredictability. But he has indicated many times that he is not a moral realist (in the sense defined at the beginning of this chapter), or at least that he does not think the debate about moral realism worth participating in.⁷ Other opponents of normative positivism, however, *are* moral realists, and indeed the term 'natural law' is sometimes reserved for the position that conjoins moral realism with opposition to positivism in one or other of its forms.⁸ That is an understandable usage, since outside analytic jurisprudence, 'natural law' is often used to refer simply to the facts which, according to a moral realist, make judgements of value true or false.

Dworkin apart, is there anything natural or understandable about the connection between moral realism, on the one hand, and opposition to normative positivism, on the other? Is there reason to expect a normative positivist to be anti-realist? Should we expect someone who believes in moral objectivity to think that moral decision-making by judges and other legal officials is a good thing? I am going to argue for a negative answer to these questions.

The attractions of an affirmative answer are fairly obvious. According to realists, those who are sceptical about moral objectivity present moral judgements as simply the arbitrary expression of emotion. Cut loose from any independent criterion of truth or objectivity, judgements about right and wrong become purely matters of private opinion. They become as whimsical and as contingent as the feelings and commitments of those who make them. Your judgement is as good as mine, because there is no true or false of the matter. Now these sound like exactly the accusations that lead jurists in the direction of normative positivism. If an individual's moral judgement is just the idiosyncratic expression of her attitude, then it is unpredictable, unreasoned, and lacks authority; in a word, it is *arbitrary*. Those who want to eliminate arbitrariness from law, therefore, have good reason to be normative positivists if anti-realism is true. If anti-realism is

false, however, then moral judgements regain the status of truth claims, and they require all the authority, reasonableness, and predictability that that entails. With that status they can be allowed back into the law. So—the common view concludes—moral realists are likely to feel much more comfortable than anti-realists in allowing judges to make moral decisions.

That is the view I want to attack. That is the difference moral realism is supposed to make in jurisprudence which I shall argue it should not make. In the three sections that follow, I shall make some general points about realism and anti-realism in moral philosophy, before resuming my argument, in Section 6, to the effect that moral decision-making in law is likely to be as arbitrary (in all three senses) for a moral realist as for any opponent of moral objectivity.

3. QUASI-REALISM AND THE NO-DIFFERENCE THESIS

Some philosophers argue that the issue of moral objectivity is irrelevant generally, not merely with regard to the law.⁹ Ronald Dworkin toys with this view, in his response to those he calls 'external skeptics': 'We use the language of objectivity, not to give our ordinary moral . . . claims a bizarre metaphysical base, but to *repeal* them, perhaps in a more precise way, to emphasize or qualify their content.'¹⁰ Maybe we use it, he says, to indicate our seriousness, or our belief that the claim we have made has ramification for the lives of everyone, not just our own. But, he goes on,

[T]here is no important difference in philosophical category or standing between the statement that slavery is wrong and the statement that there is a right answer to the question of slavery, namely that it is wrong. I cannot intelligibly hold the first opinion as a moral opinion without also holding the second. Since external skepticism offers no reason to retract or modify the former, it offers no reason to retract or modify the latter either. They are both statements within rather than about the enterprise of morality . . . I hasten to add that recognizing the crucial point I have been making—that the 'objective' beliefs most of us have are moral, not metaphysical, beliefs, that they only repeat and qualify other moral beliefs—in no way weakens those beliefs or makes them claim something less or even different from what they might be thought to claim. For we can assign them no sense, faithful to the role they

actually play in our lives, that makes them not moral claims. If anything is made less important by that point, it is external skepticism, not our convictions.¹¹

Notice that this is distinct from the disquotational conception of truth referred to earlier. Someone might hold a disquotational theory of truth in moral contexts, but still think that the question of moral objectivity was a robust and important philosophical issue. Dworkin, however, seems to suggest in this passage that it is a non-issue (though elsewhere on the pages from which I have quoted he indicates that it might be an interesting debating topic 'for a calm philosophical moment, away from the moral or interpretive wars').¹²

The view that there is no significant difference at all between realism and anti-realism (about morality, or anything) seems difficult to sustain, without a general attack on metaphysics and on the whole business of discussing the meanings of words and the sorts of things that exist. Realists claim that there are real properties corresponding to the predicates 'good' and 'right', and that no one understands the meaning of these terms unless they grasp that. Anti-realists say that the use of evaluative predicates can be understood without invoking any ideas along those lines at all. If that does not count as a philosophical disagreement, nothing does.

A more modest version of the no-difference position is Simon Blackburn's thesis of 'quasi-realism'.¹³ Though Blackburn insists that there is a live philosophical issue between realists and their opponents, he denies that anti-realism does any violence to the way we ordinarily think about ethics and morality. Quasi-realism, he says, is the enterprise of 'trying to earn our right to talk of moral truth, while recognizing fully the subjective sources of our judgements, inside our own attitudes, needs, desires, and natures'.¹⁴ In carrying through this programme, Blackburn has contributed enormously to the debate about moral objectivity by answering some of the cruder criticisms and disarming some of the sillier caricatures of emotivism and other anti-realist positions. But I think it is a mistake to promise that one can produce an anti-realist counterpart for *everything* ordinary moralists want to say. For even if ordinary moral discourse is not systematically infected with a false metaphysics, it has been so influenced in the minds

of many of its practitioners by a belief in moral objectivity, particularly the objectivity of Divine Command, that it is unlikely to have remained entirely free of metaphysical distortion. It may be wiser for the anti-realist to remain neutral on the question of whether ordinary ways of talking about morality make sense. (One disadvantage of Blackburn's term 'quasi-realism' is that it indicates a willingness to let the realists dictate the terms of the discussion, so that the anti-realist struggles along, showing that she too can keep up with realist idioms.)

A couple of other considerations reinforce this point. First, it is simply no longer true that ordinary moral discourse is characterized unambiguously by realist-sounding talk of truth and falsity, logic and argument, reasonable and unreasonable positions. Some is and some isn't. For every stern preacher who talks about the reality of obligation, there is a gum-chewing sophomore who says that all moral views are just matters of opinion and there's no ultimate standard. The ordinary talk one hears is infected as much with relativist idioms as with truth-claims.¹⁵ Moral realists often say that their meta-ethic gives a better account of what people ordinarily think about morality. But that's because they are not listening to what actually gets said in our culture, or they are filtering or discounting some of it already on the basis of the very theory they take themselves to be supporting with this evidence. Their theory may offer a better account of their own moralizing and that of their chums. But ordinary moral discourse, as I hear it, is a meta-ethical Babel. It is the job of a philosopher to try and sort that out, not to promise in advance to accommodate as much of it as she can.

Second, we should remember that 'realism' and 'anti-realism' are terms that pick out *types* of meta-ethical view, not particular theories. There are several different anti-realist theories (Humean projectivism, emotivism, prescriptivism, conventionalism, existentialism, etc.). Though a given anti-realist might feel some common cause with all such views ('It's us against the realists'), in fact she will reject all but one of them.¹⁶ Similarly, there are many different versions of moral realism (ranging from naturalism through moral rationalism to some version of God and hell-fire); and, again, one presumes that a given realist will reject all but one of these. Many modern realists do not want to associate themselves, for example, with any view that defines 'right' and

'wrong' in terms of the will of God. But it seems likely that if any realism has shaped the way we talk about morals in ordinary discourse, it is this one. Since even their philosophical opponents reject that, it seems crazy for an anti-realist to promise that her theory can cope with and explain the legacy of Divine Command conceptions in our moral feelings and our moral vocabulary.

4. THE PANIC ABOUT EMOTIVISM

All the same, it is worth reiterating here the points that Blackburn and others have made in answer to some criticisms of anti-realism, particularly emotivist versions of anti-realism.¹⁷ Their points do not fulfil the quasi-realist promise that emotivism can accommodate all realist idioms in ordinary discourse. But they are a useful antidote for a certain panic that realists seem to feel about the consequences of adopting an emotivist approach. Since emotivism remains the most interesting sceptical view, it is worth dealing with that panic before we look at the implications that moral realism and anti-realism have for the law.

Emotivists are often accused by their opponents of not taking morals seriously, of making morality merely a matter of whim, of suggesting that our moral judgements are as capricious and as arbitrary as our feelings about the people, situations, and actions being judged. The implication is that realists are able to take their moral commitments more seriously than emotivists because they regard them as a response to some matter of objective fact rather than a product of contingent feeling.

But the idea of taking one's moral judgements seriously needs a little scrutiny. Taking one's judgements seriously might mean (a) being ready to act on them, being moved by them, having them play an important role in practical life and action, and actually doing what one judges to be right (even when tempted not to). Or it might mean (b) being unwilling to budge—in debate and argument—from the moral claims one makes, sticking with one's judgements, refusing to countenance the possibility of changing one's view, and so on.

Now I take it that what the realists have in mind when they talk about being serious about one's moral judgements is something like *b* as opposed to *a*. If a moral judgement is an accurate report of a matter of fact, then one who regards herself as a reliable

observer should stick with her report—sternly, strictly, sonorously, or whatever—and refuse to be tempted to adopt a more seductive-sounding but factually less accurate position. But actually, nobody is particularly interested in this form of moral steadfastness, or at least in this form taken alone. What attracts us to the idea of taking morals seriously is not someone sticking to a particular view (a moral description, a moral characterization) in the face of temptation away from it. What attracts us is someone being prepared to *act* on a moral judgement. We are attracted by a person's being practically and not just theoretically steadfast. The moral person we admire has the ability to be *moved* by the good, not just the ability accurately to detect and report its presence.

Now, it is a well-known feature of moral judgements that their sincere adoption indicates a commitment to action. Emotivists have a ready explanation of this: since moral judgements are expressions of emotion, and since (by definition) emotions move us (albeit in complicated ways), then obviously one who makes a moral judgement that *x* is good is moved to act in favour of *x*, since that disposition is precisely what her judgement evinces. Realists, on the other hand, have a notoriously difficult time with this feature of moral language. Since moral properties are just factual properties on their account, it is hard to see why their recognition should indicate any willingness to act in any particular way.

This difficulty is often used as the basis of an independent argument against realism—one aspect of Mackie's so-called 'argument from queerness'.¹⁸ I do not want to use it, in this chapter, as a line of argument in its own right, for I believe the realist has an answer. She simply denies the assumption that knowledge of the good is necessarily motivating.¹⁹ But it is worth seeing how it affects the present issue—of whether realists take their moral views more seriously than emotivists do.

We have seen that the realist is embarrassed by having her moral seriousness characterized in terms of *b* rather than *a*, above. Now the more she tries to escape from this embarrassment, the more she runs into the difficulty posed by the argument from queerness. To move from *b* to *a*, it has to be the case that accurate perception of moral facts disposes one to act morally. But for that to be the case, moral facts do have to be presented as

something queer—and not 'queer' in the sense of unusual or odd (like giraffes or neutrinos), but 'queer' in the sense that it looks as though the metaphysical account of them has been cobbled together in an *ad hoc* way purely to meet this difficulty. It looks, then, as though we should turn to emotivism if we want a meta-ethic that shows how people take their morals seriously—at least in a sense of 'seriously' that is of some practical interest.

Underlying the attack on emotivism, there is a constant insinuation by the realist that people's emotions are flighty and contingent—too much under their control and too subject to self-serving manipulation to be an appropriate foundation for morality.²⁰ But even the realist has to concede that *something* in our moral practice is as fickle and manipulable as emotion. If it is not our moral judgements, then it is our motivation to act on those judgements. Since in the end it is how people act that really concerns us, the realist cannot claim any advantage here.

There are also things to be said about the implied account of emotions in this discussion. Realists seem to crave a foundation for our moral commitments in something more stable than what Thomas Nagel has referred to as 'fortuitous or escapable inclinations'.²¹ But in fact that is not a sensible way to characterize many deep emotions, which are strong, steady, and remarkably resistant both to deliberate change and the vicissitudes of circumstance. Think, for example, of parental love and concern. Why should the feelings that find expression in moral judgement not be more like that, than like a whimsical taste for cookies, a whoop for a football team, or an afternoon's inclination to take a nap? Realists become awfully prone to caricature when they hear the term 'emotion' in a meta-ethical theory. They say things about human feelings—their alleged crudity, simplicity, fickleness, and inarticulacy ('boo!' and 'hooray!')—in order to lampoon the opposing position which they would (one hopes) never dream of opposing about them in any other context where feelings were being discussed. (Does anybody think that one's emotional attachment to one's child is best captured by 'Hooray for Sam!'? If not, why should anyone think that an idea as crude as that must be the emotivists' best candidate for what is expressed in a moral commitment?)

We should remember also what is being compared with what. The realist is of course tempted to say that we are comparing the

fickleness of an individual's feelings, on the one hand, with the solidity of hard moral fact, on the other. But that is a mistake. What is being compared with the alleged fickleness of emotion is not the solidity of moral facts themselves, assuming there are such things, but the solidity or fickleness (whichever it is) of people's *beliefs* about moral facts. Even if there are such objective facts, there is certainly no privileged, easy, or uncontroversial access to them; there is certainly no mode of belief which is straightforwardly and indubitably reflective of the facts' solidity. We know that there are psychological phenomena like self-deception, wilful blindness, deceit, capricious and unpredictable misapprehension, and illusion with regard to other matters of fact. People can mislead themselves and others, and change their minds deliberately or arbitrarily back and forth as easily when they are surveying the world of tangible middle-sized objects, as when they are taking on or sustaining an emotional commitment. Evidently the realist is not entitled to assume that our beliefs about moral facts are any steadier in regard to these vicissitudes than our factual beliefs generally. But once that is conceded, the contrast with the fickleness and unreliability of 'mere' emotions evaporates.

Perhaps, in the end, what worries the realist is the *contingency* of judgement and feeling on the emotivist account. Not contingency in the sense of fickleness; we have already dealt with that caricature. But contingency in the sense that emotivism makes moral judgements *depend* on the wrong sort of thing. The emotivist seems to think that everyone must be prepared to say the following about her own moral sensibility:

I only make the moral judgements I do (at whatever level) because of how I feel. If I felt differently I would make different moral judgements.

But that characterization can be misleading, for the 'because', and the counterfactual that go with it, are ambiguous.

If the 'because' is supposed to connote simple causality (i.e. 'Among the causal antecedents of some moral judgement I make are some feelings of mine'), then the emotivist is indeed committed to it: that indeed is what it is for a judgement to be expressive of a feeling. (As a matter of fact, the realist could accept that as well, since on her account the attitudinal genesis of a judgement does

not detract at all from its status as a descriptive bearer of truth-value.) But the 'because' of causality is not the 'because' of justification or reason-giving. The emotivist is emphatically *not* committed to saying that her own feelings *justify* the judgements that she makes. When I condemn an action, I usually do so in virtue of some feature *F* that it has (the action's cruelty, for example, or its hurtfulness), and I may express that relation in the counterfactual: 'If the act had not been *F*, it would not have been wrong.' Critics sometimes accuse the emotivist of thinking that the feature of arousing a negative emotion in the speaker is the paradigm value for *F*. But, as Simon Blackburn argues, emotivists are not committed to that at all:

The counterfactual 'If we had different attitudes it would not be wrong to kick dogs' expresses the moral view that the feature which makes it wrong to kick dogs is our reaction. But this is an absurd moral view, and not one to which [an emotivist] has the least inclination. Like anyone else he thinks that what makes it wrong to kick dogs is that it causes them pain. To put it another way: he approves of a moral disposition which given this belief [about the dogs' pain] as an input, yields the reaction of disapproval as an output; he does not approve of one which needs belief about our attitudes as an input in order to yield the same output, and this is all that gets expression in the counterfactual.²²

5. MORAL DISAGREEMENT

The impulse to anti-realism in ethics has many sources. For some, it is simply that emotivism or prescriptivism provides what appears to be the best account available of what is going on when moral judgements are made and thought about and followed. They do not come into meta-ethics with any particular sceptical axe to grind. They just start from the position (which everyone acknowledges) that moral judgement has *something* to do with attitude, feeling, and the determination and guidance of action, and they build up their account from that. Having developed their analysis, they then discover that there is simply no room for any notion of moral truth and moral objectivity, and they put those ideas quietly aside.²³

Others are led to anti-realism more directly, from their reflections on the intractability of moral disagreement. There seem to be disagreements or oppositions about almost everything in

ethics—about values, principles, virtues, deserts, God, the nature of the good life, our obligations to one another, the appropriate way to deal with conflict, politics, democracy, rights, the respect due to humanity in all its forms, our relations to the animals, and on and on—and there is no consensus at all about how such disagreements may be resolved.²⁴ Of course the existence of disagreement does not imply the truth of anti-realism. But it is not entirely crazy to explore the anti-realist option in the face of disagreements as apparently irresolvable as these.

It may be worth expanding on this last point. The differences that exist in people's moral, ethical, and political views were taken famously by J.L. Mackie to be the basis of one of two main arguments supporting moral scepticism: 'radical differences between first order moral judgements make it difficult to treat those judgements as apprehensions of objective truths.'²⁵ Certainly they make it difficult to treat *all* the different views as apprehensions of objective truths, but I take it Mackie's point is that they make it difficult to treat *any* moral views in that way. Given what morality is and what it is for (given the sort of fact it must be, if it is a matter of fact), how could there be objective truths and falsity certified by the way the world is, and yet so much disagreement?

Realists' reactions to this argument differ. Nicholas Sturgeon writes that it is 'one argument for moral scepticism that I respect even though I remain unconvinced',²⁶ while Michael Moore insists that it is

subject to the crushing rejoinder that the mere fact of disagreement among the judgments of people hardly shows there is no fact of the matter to be agreed upon. People within a culture, and people in different cultures, may disagree about all sorts of things, such as whether the winds are influenced by the earth's rotation, or whether the moon is made of rock. The simple fact of disagreement for certain sorts of belief cannot itself show that there is no fact of the matter being argued about. To think otherwise is to confuse intersubjective agreement with objectivity.²⁷

Now Moore is correct about the logical gap between disagreement and there being no objective fact of the matter. But he writes as though *this is all that needs to be said* about moral disagreement in order to avoid embarrassment for the realist.

And it isn't: moral disagreement remains a continuing difficulty for realism, even if it doesn't entail its falsity, so long as the realist fails to establish connections between the idea of objective truth and the existence of procedures for resolving disagreement.

If we disagree about whether the moon is made of rock or cheese, both of us will say that the matter could be settled if someone actually went there and tasted it. If we disagree (to use Moore's less trivial example) about the impact on wind of the earth's rotation, we look to meteorology and physics for complicated suggestions for sorting this out. Now moral realists have pointed out, quite properly, that scientific methodology is enormously complicated and subtle: the simple positivist image of indubitable observation-statements that either refute or confirm a disputed hypothesis is naïve and uninteresting, and it does not count at all against moral realism that there is nothing similar available in ethics. Still, our conception of reality in science is associated with the whole complex apparatus of methodology, heuristic, observation, and experimentation. We know how to proceed in the face of disagreement. The point is that there is nothing equivalent in morals, nothing that even begins to connect the idea of there being a fact of the matter with the idea of there being some way to proceed when people disagree.

The point has to be stated carefully. I am not saying that there is no procedure or methodology in ethics that commands *universal* assent; there is no such procedure in science either. Astronomers say one thing, astrologers another.²⁸ But at least in mainstream science, there is a broad conception of method acknowledged by a large group of practitioners, all of whom regard that acknowledgement as something independent of the scientific disagreements they have with one another. No doubt the conception is loosely defined and controversial in places. No doubt also, the group excludes some of those who purport to practise science. Still it is understood by its members, at any rate, and by a substantial consensus in the culture at large, to include the protagonists in a large number of important disagreements. In other words, a single (albeit loosely defined) conception of method for settling disagreements is shared by a significant group of people who regard themselves as engaged in serious disagreement. And what is more, disagreements do get settled

by this method, and when they do not, we can often refer to the terms of the method to explain why.

Among moralists, there is nothing remotely comparable. What tends to happen is that each main view comes along trailing its own theory of what counts as a justification: utilitarians have one, Kantians another, Christian fundamentalists yet another, and so on. Aristotelians, Nietzscheans, Marxists, traditional conservatives like Burke, liberals like Rawls, feminists like Gilligan—all acknowledge that the disagreements between them are important (if any are). Yet unlike their counterparts in the scientific community, they share virtually nothing in the way of an epistemology or a method with which these disagreements might in principle be approached.

If two utilitarians disagree about social policy, they can refer that disagreement to the complex apparatus of modern consequentialism: different levels of moral thought, different models of inter-personal comparability, strategic and game-theoretical models, sophisticated points about moral mathematics, and so on. But all of this counts for nothing if the moral disagreement is between a utilitarian and a deontologist, or between Bentham and Nietzsche. Perhaps a utilitarian who is also a moral realist will maintain that the basic propositions of her theory are true and those of her deontological opponent false. She will claim that the development of utilitarian ethics beginning in the late eighteenth century is progress towards the truth, and that it represents an improvement in our moral sensibility over the systems that preceded it. She will say, too, that the Nietzschean is making some sort of appalling mistake. *But there is nothing she can say to support these claims*—indeed, nothing she can say about how a statement of this kind could be found to be true, how people might be mistakenly convinced that it was false, and so on.

Modern moral realists are simply disingenuous about this lacuna. Mark Platts, for example, writes that (on the realist view he espouses) 'moral judgments are viewed as factually cognitive, as presenting claims about the world which can be assessed (like any other factual belief) as true or false', and whose truth or falsity are as much possible objects of human knowledge as any other factual claims about the world.²⁹ But how exactly are we to assess the truth or falsity of a moral judgement? What does the assessment involve? What procedures? What methodology? We are

never told. For a proposition to be a possible object of knowledge, it is not sufficient for it to be capable of being true and being believed to be true: there must also be some gesture in the direction of justification for the true belief in question, and in particular a non-trivial sense of justification that would have some connection and sensitivity to the distinction between the genesis of true belief and the genesis of false belief.

Platts says that '[w]e detect moral aspects of the world in the same way we detect (nearly all) other aspects: by looking and seeing'.³⁰ But in non-moral cases, where two people disagree about something (say, the colour or size of an object) and each of them claims to have based her belief on visual detection, we can supplement the simple epistemology of 'looking and seeing' with a whole apparatus which we agree on and which explains mistake, illusion, and perspective—a whole paraphernalia which connects the epistemology to complicated procedures for distinguishing truth from falsity, accuracy from error, and which is rooted eventually in a physiological and psychological account of perception.³¹ There is nothing comparable in ethics.

Platts also writes: 'By a process of careful attention to the world, we can improve our moral beliefs about the world, make them more approximately true.'³² He adds that this process of improvement has no end-point, nothing that counts as final certainty. But he fails to say anything about what 'care' is or involves in this context. Again, in straightforward cases of 'looking and seeing', an account can be given: 'Look at an object from several angles before you pronounce on its shape, because angle of vision affects shape perception in the following way . . .'. We give an account of what it is to be careful which has an agreed and independent basis in our theory of perception. Nothing similar is agreed on in ethics, and nothing at all along these lines is offered by Platts.

By their own lights, moral realists ought to be very concerned that they have nothing to offer in the way of a method for approaching moral disputes. Consider what Michael Moore has written about what he thinks of as the sad predicament of the moral sceptic:

A skeptic will regard his own values with embarrassment, for they hold out a promise on which he thinks he cannot deliver. His value

judgments, that is, purport to be descriptive in form. For example, he may say such things as, 'killing is wrong,' a statement that seems capable of being true or false. Moreover, others expect that when he says these things, he has reasons with which he can demonstrate the truth of such propositions, reasons that others will find persuasive. Yet his skepticism tells him that none of this is true. He is merely playing a peculiar form of language game when he makes his value judgments. Accordingly, when he wishes to engage in honest debate and not merely to issue propaganda, he will qualify his value judgements with 'I think,' or 'of course, it's only my opinion.' He will try to cancel the promissory note as he issues it, because he believes he cannot otherwise pay it.³³

As a matter of fact, many anti-realists deny that their (or anyone else's) moral judgments hold out such a promise. 'Error Theorists' (such as Mackie) believe they do, but non-cognitivists (such as R.M. Hare) do not.³⁴ Be that as it may, certainly *realists* believe this about *their own* moral judgements. But since they are quite unable to 'demonstrate the truth' of their judgements or show how they correspond to moral reality, they should be the ones in all honesty to qualify them with 'Of course, it's only my opinion' and so on. For though they insist that there is some fact of the matter, they offer us nothing which would help distinguish a mere arbitrary opinion from a well-grounded belief.

6. MORAL JUDGEMENT AND ADJUDICATION

Let us turn now finally to the law, and to the desirability of moral decision-making by judges and other officials in legal contexts.

We know there is moral disagreement in society and that even those who believe that there are right answers in these controversies are unable to agree about how we might arrive at them. In the face of all this disagreement, how should a judge or other official behave? How should she respond to the fact that many of the people whose lives are affected by her decisions, and many of the other officials in whose company she must make her decisions, hold views on issues of social and political morality that are radically at odds with her own?

In particular, given everything that has been said so far, what difference would the truth of moral realism make to her dilemma? The main misgiving, we recall, is about the *arbitrariness* of moral decision-making by judges: arbitrariness in the sense of unpre-

dictability, irrationality, and democratic illegitimacy. This is what normative positivists fear about judicial moralizing. Are their fears likely to be allayed at all by a belief in moral objectivity? Is it an apprehension that arises only on account of the emotivist theory of ethics?

Michael Moore, for one, seems to believe that the answer to these last two questions is 'Yes.' Judges have to believe in objectivity, he claims, in order to dispel the suggestion of arbitrariness in their moral judgements. They cannot afford to be sceptics:

Judges are subject to [the] debilitating psychological consequences of skepticism no less than the rest of us. The institutional role may even intensify these effects, for judges must not only make value judgments, but also impose them upon other people. If one's daily task is to impose values on others, to think that these are only one's own personal values doubtlessly makes the job hard to perform at all. To foist personal values onto hapless litigants is not for many temperaments a satisfying role.³⁵

But in the light of what we have said, this now seems completely wrong-headed. Even if scepticism is rejected, even if there *are* moral facts which make true judgements true and false judgements false, still the best a judge can do is to impose her *opinion* about such facts on the 'hapless litigants' who come before her. They will have beliefs and opinions of their own on the matter, and even if they too become card-carrying moral realists, they will no doubt continue to ask why the judge's view of the facts should prevail over theirs. For, obviously, the truth of moral realism (if it is true) does not validate any particular person's or any particular judge's moral beliefs. At best, it alters our understanding of the character of a moral disagreement without moving us any closer to an understanding of who is right and who is wrong.

We saw earlier that Moore thought an anti-realist, if she is honest, ought always to 'qualify [her] value judgments with "I think," or "of course, it's only my opinion"', and he seems to think this will embarrass the judge because, in the same breath, she will be imposing the views she is qualifying in this way on people who disagree with her. In fact, it is quite unclear why Moore thinks this retiring posture is either appropriate for or distinctive of the anti-realist position. For one thing, if an anti-

realist is going to be coy about her value-judgements in a way that is meta-ethically transparent, she ought to be saying, not 'I think', but 'I feel'. She ought to characterize her judgement not as a personal opinion (for her opponent will ask: 'Opinion about what?') but as some sort of complicated affect. Talk of opinion is appropriate when there is some *matter of fact* about which people disagree. It is not necessarily appropriate in cases of contrary emotions.

But then the next point is obvious. Since, on any account, there is moral disagreement, and since we do not agree even in principle on any way of settling such disagreements, a judge who is assigned the task of making moral judgements ought to be saying, 'I think', and 'Of course, it's only my opinion', *even if realism is true*. If she pays any attention to the fact that she is not the only person in society with an opinion on the issue she is addressing, she will certainly be conscious of some arbitrariness in her opinion's prevailing, whether she is a realist or not.

Consider the three aspects of arbitrariness we mentioned earlier: worries about the unpredictability, the irrationality, and the democratic illegitimacy of judicial moralism.

6.1. Unpredictability

Does moral realism make any difference to the predictability of those judicial decisions that involve a moral element? If some version of emotivism is true, there will be a modicum of empirical predictability. We know, for example, that Rehnquist is a conservative and Thurgood Marshall something of a liberal, and political scientists use this as a basis for fairly reliable predictions about the attitudes they will express and the positions they will take, without assuming anything in the way of moral objectivity. What would moral objectivity add to this?

Without an epistemology, the answer I think is 'nothing'. The only basis for predicting what a judge's beliefs will be about the moral facts today is the record of her beliefs about them in the past, and as we have seen, something similar to this form of predictability is already available even if realism is false. Maybe if realists came up with a psychology of moral perception, predictability could be improved. We know that in the presence of a red patch, most observers who are not blind will detect

redness (and we can explain why), and we know that if an elephant wanders into the courtroom, the judge along with everyone else is likely to report, 'There goes an elephant.' If responses to the presence of moral value were as predictable as this, then maybe realism would have something to offer in the way of dispelling arbitrariness. But no modern realist wants to associate herself with such an epistemology. Very few regard perceptions of value as on a par with colour discriminations or the discrimination of large visible objects. And any who did would find herself having to denigrate her moral (as opposed to her meta-ethical) opponents as colour-blind, on such a wide front as to deprive the analogy with sense-perception of any usefulness at all in dealing with inter-personal disputes.³⁶

6.2. Irrationality

It might seem as though the worry about irrationality is the one where realism clearly has the advantage over moral anti-realism. After all, realists say that moral judgements are reasoned reports of the presence of moral properties, while anti-realists explicitly deny this.

But the worry about the irrationality of judicial moralizing is not about what judges say, but about what they do. It is a concern about whether they are prepared to argue or assemble reasons for their views, or whether they simply announce them flatly, saying that though they cannot argue about virtue or vice, they know it when they see it. And here it seems that anti-realist and realist accounts of moral judgement are simply on a par.

Some realists do take the flat 'I know it when I see it' approach to the detection of moral value. They will say it is a perception (and in principle correctable etc.), but that has no impact on the way they argue. The counterpart of this position is the emotivist who *simply* expresses or gives vent to what she takes to be her attitude on some issue. She too may draw attention to the mutability of her disposition, and even express a favourable attitude towards that. But again, it does not affect how she argues. Often—and I suppose this is some evidence for quasi-realism—it will be impossible to distinguish such a realist judge from such an anti-realist on the bench.

On the other hand, some emotivist may articulate her moral

judgement on a particular issue in terms of the ramification of some more general attitude that she has. She may indicate for example that she cares about human starvation in all its forms, and so in this particular case she is going to act to protect some plaintiff from the possibility of starvation. In this case, she has something that looks quite like what a realist would call *a reason* to offer in support of her particular verdict. The verdict is not simply there starkly staring at us, as an arbitrary moral reflex. Once again, if the question about arbitrariness is, 'Is the moral judgement simply posited, or does it derive from more general considerations?', then such an emotivist is no worse off than the realist in terms of the way she regards her moral dispositions.

6.3. *Democratic Illegitimacy*

Particularly in American constitutional adjudication, a judge has sometimes to assert her view of what is right over the view taken by a legislature or electorate. There are considerable difficulties in explaining the democratic legitimacy of this.

The theory that moral and political views are merely matters of attitude is often associated with an uneasiness about permitting judges to strike down legislation in spite of its democratic credentials. Those who have been persuaded of some anti-realist view such as emotivism have often presented this as though it allowed the simple preferences of nine judges to prevail over the preferences of the mass of voting citizens or their elected representatives. If it is simply preferences versus preferences, or attitudes versus attitudes—if there is nothing objective about any of them—then surely the only thing to do (the argument goes) is to let the numbers count. Emotivism, therefore, is often taken as a reason for opposing constitutional review.

Now there are good reasons for opposing the judicial review of legislation, but they are not these.¹⁷ To see this, consider again how little difference the recasting of the judges', legislators', and voters' moral views in *realist* terms would make. If realism is true then what the judge is imposing on her fellow citizens is not something which is merely a subjective preference of hers, but something which is a belief of hers about the moral facts. That looks reassuring until we remember that what the judge's view is opposed to is, equally, not the subjective preferences of legislators

and voters, but *their* beliefs about the moral facts. As before, in the absence of any account of how one could tell which of two conflicting beliefs about the moral facts is more accurate, the imposition of one person's or a few people's beliefs over those of the population at large still seems arbitrary and undemocratic.

The issue comes down to comparing like with like. If moral realism is true, then judges' beliefs clash with legislators' beliefs in moral matters. If realism is false, judges' attitudes clash with legislators' attitudes. What we must not allow the realist defender of constitutional review to say is that it is a case of judge's beliefs clashing with legislators' attitudes. She is not entitled to be realist only about those whom she favours as decision-makers.

The sense one often gets from discussions that attempt to legitimize constitutional review is that the judge is an elevated moral deliberator holding views of principle while the demos and its representatives are stuck at the level of articulating their sordid interests and their shabby prejudices. There may be points to be made about the extent to which the political decisions of different agents are governed by their own narrow self-interest; maybe judges work in an institutional setting that leaves them less concerned with self-interest in their decision-making than directly elected politicians have to be.³⁸ But even if this is true, it has nothing to do with realism or anti-realism about morality. If the institutional setting is such as to taint a legislator's moral position with narrow self-interest, then the very same constraints are likely to influence the *beliefs* that she holds about (moral and other) matters of fact. Once again, we must remember that attitudes are not the only things that can be affected by interest. We are all familiar with wilful blindness, self-deception, and so on in uncontroversially factual areas, and of course there is no reason to expect that this will be diminished (indeed—depending how you approach the connection between moral judgement and motivation—every reason to expect it to be enhanced) in the area of moral fact. Some defenders of judicial review may argue that judges have greater expertise in moral matters than ordinary citizens, so that their beliefs and their reasoning are more likely to be reliable. But we have already noticed that moral realists can produce no epistemology to match their ontological commitments. Without an epistemology—and an epistemology which is, at least to some extent, less

controversial than the knowledge claims it covers—there cannot be a theory of expertise. Thus the epistemic inadequacy of moral realism is far-reaching: in practical matters, it deprives realists of almost everything that they might want to say or argue for in the name of objectivity.

I have argued that the moral realist is no better off than the emotivist in supporting the legitimacy of judicial review. The converse holds also: the emotivist is no worse off than the realist in this regard. The case for judicial review must be won or lost on the moral merits of the matter, on the basis of moral arguments about fairness, justice, and democracy. And that is likely to be an area where there is no less disagreement (again, disagreement that can be analysed in either of these ways) than on the merits of the decision itself.

To sum up, then. If realism is false, then what clash in the courtroom and in the political forum are people's differing attitudes and feelings, and there will seem something arbitrary about any one of them prevailing over any of the others, when none can be 'certified', so to speak, on any credentials other than the fact that some people find it congenial. If realism is true, then what clash in the courtroom and in the political forum are people's differing beliefs (hunches, hypotheses, speculations, prejudices) about moral matters of fact. But that these are beliefs about matters of fact does not detract in any way from what will still seem to be a certain arbitrariness in one prevailing over any of the others. Since the realist abjures the sort of foundationalist epistemology that might make some such beliefs self-certifying and since she is unable to secure support for any other epistemology that might serve as a basis for a theory of error, a theory of review, or a theory of expertise, all we have is a set of different persons' conflicting beliefs. Exactly as in the case of attitudes, none of these can be 'certified' as superior or naturally prevalent on any credentials other than the fact that some people find it congenial. Either we have the arbitrariness of just taking one attitude over others equally eligible, or we have the arbitrariness of just taking one belief over others equally eligible. But arbitrariness is there, on either meta-ethical account.

7. CONCLUSION

Why did natural lawyers ever imagine the contrary? I can only think that they were seduced by the idea that facts themselves might operate as constraints on the arbitrariness of judicial decision. Liberals and conservatives alike are concerned that judges should not think of themselves as free agents when they make their decisions, at liberty to determine the fate of the litigants as they please. They should think of themselves as constrained rather than unconstrained decision-makers.³⁹ But if a judge's decision contains an essential moral element, and if moral realism is false, then the sense of constraint disappears. Outcomes are determined by the judge's subjective preference, and to the extent that her attitudes are under her control, she can make any decision she likes. (And the question of why she, rather than anyone else, should be the one who is allowed to do what she likes in this area, is invited.) If, on the other hand, moral realism is true, then there is a right answer to whatever questions of principle the judge puts to herself. We are apt to think of this as some sort of comfort: the right answer is there, so the judge is constrained after all.

But the existence of a right answer, if there is one, is so far a mere matter of ontology: there is some fact of the matter that makes one answer the judge might give true, and another that she might offer false. But making true and making false are not things that facts do to judges. The facts don't reach out and grab the decision-maker, preventing her from deciding capriciously, or dictating themselves to her in any unavoidable way. Making true and making false are semantic relations, and for all that any realist has told us they have nothing whatever to do with the social, psychological, or political determinants of the judge's decision-making. Facts don't constrain us in the sense of constraint in which we are interested in politics. That there is a right answer 'out there' (or wherever) certainly means that a judge is not making a fool of herself when she goes out ponderously in search of it. But its existence doesn't drive her to pursue it, let alone determine that she will reach it. Different judges will reach different results even when they all take themselves to be pursuing the right answer, and nothing about the ontology of the right

answer gives any of them a reason for thinking her own view is any more correct than any other.

In the end it is moral disagreement, not moral subjectivity, that gives rise to our worries about judicial moralizing. And since realists have almost nothing of interest to say about the resolution of moral disagreement, they have nothing to offer to allay these concerns. Their thesis adds nothing to the natural law case against normative positivism.

NOTES

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1. Some realists insist that the facts referred to in this formulation must be 'external' or 'mind-independent'; but this is too strong, since many realists do not want to deny that there would be no moral facts if conscious agents like ourselves did not exist, nor do they need to deny that reference to beliefs is sometimes included in the truth-conditions of moral propositions (e.g. 'It is wrong to offend someone's deeply held beliefs'). The formulation I have used in the text is suggested in Ralph Walker, *The Coherence Theory of Truth* (London: Routledge, 1989), 3.
2. Of course, this works only for those languages in which a proposition can be referred to using a term formed by putting quotation marks before and after the terms normally used to express that proposition. Notice also that, for a realist, the proposition "'p" is true' is equivalent to 'p' (the former is true in all and only the cases in which the latter is true). What distinguishes the disquotationalist is that she thinks the two propositions are not only equivalent but *identical in meaning*.
3. See Jules Coleman, 'Negative and Positive Positivism', in his collection, *Markets, Morals and the Law* (Cambridge: Cambridge University Press, 1988).
4. Gerald J. Postema, *Bentham and the Common Law* (Oxford: Clarendon Press, 1986). Jules Coleman has objected that normative positivism infuses morality into the concept of law, and thus commits 'the very mistake positivism is so intent on drawing attention to and rectifying' (Coleman, 'Negative and Positive Positivism', 11). Postema exposes the confusion of this objection clearly: Postema, *Bentham*, 328–36.

5. In recent American variation on this theme, it is (or was) for the Founding Fathers of the Republic, not the current judges, to make fundamental judgements of moral and political value.
6. There has been some confusion in the past as to whether the moral element in Dworkin's ideal of adjudication involves reference to the conventional morality of the community or judgement in moral matters by the judge herself in *propria persona*. His most recent discussion, however, makes it clear that although the judge should pay some attention to the former as a consideration of political fairness, her judgements about justice should be her own best estimation of what that value requires. See Ronald Dworkin, *Law's Empire* (London: Duckworth, 1986).
7. *Ibid.* 82–3. See also the beginning of Sect. 3 below.
8. See Michael Moore, 'Moral Reality', *Wisconsin Law Review* (1982), 1061.
9. For a discussion, see Nicholas Sturgeon, 'What Difference Does it Make Whether Moral Realism is True?', *Southern Journal of Philosophy*, 24 (1986), 115.
10. Ronald Dworkin, *Law's Empire*, 81.
11. *Ibid.*, 82–3.
12. *Ibid.* 82. See also p. 80: 'There is an ancient and flourishing philosophical debate about whether external skepticism, particularly external skepticism directed to morality, is a significant theory and, if it is, whether it is right.'
13. The most general statement of quasi-realism is found in Simon Blackburn, *Spreading the Word: Groundings in the Philosophy of Language* (Oxford: Clarendon Press, 1984). Its application to ethics is indicated clearly in his essays, 'Rule-Following and Moral Realism', in S. Holtzman and C. Leich, eds., *Wittgenstein: To Follow a Rule* (London: Routledge, 1981), esp. 174 ff., and 'Errors and the Phenomenology of Value', in Ted Honderich, ed., *Morality and Objectivity: a Tribute to J.L. Mackie* (London: Routledge, 1985).
14. Blackburn, *Spreading the Word*, 197.
15. Hence the widespread panic—inflamed by Alan Bloom and others—that a whole generation has grown up in American colleges talking and thinking nothing but relativist thoughts about morality.
16. For example, the most sensible and powerful criticisms of emotivism came from R.M. Hare, who was an anti-realist of a different stripe, not from any realist opponent. See esp. R.M. Hare, *The Language of Morals* (Oxford: Clarendon Press, 1952), ch. 1.
17. Emotivism is the theory that moral terms like 'good', 'right', and 'wrong' contribute nothing in the way of descriptive meaning to the statements in which they occur. They are linguistic devices for the

expression of attitude, and for the evocation of similar attitudes in their audience. The most provocative statement of emotivism is still the one found in A.J. Ayer, *Language, Truth and Logic* (Harmondsworth: Penguin Books, 1971), ch. 6. There are, however, philosophically more sophisticated accounts in David Hume, *A Treatise of Human Nature* (Oxford: Oxford University Press, 1888), bk. iii, pt. 1, and Charles Stevenson, *Ethics and Language* (New Haven, Conn.: Yale University Press, 1944).

18. J.L. Mackie, *Ethics: Inventing Right and Wrong* (Harmondsworth: Penguin Books, 1977), 40: 'An objective good would be sought by anyone who was acquainted with it, not because of any contingent fact that this person, or every person, is so constituted that he desires this end, but just because the end has to-be-pursuedness somehow built into it. Similarly, if there were objective principles of right and wrong, any wrong (possible) course of action would have not-to-be-doneness somehow built into it.'
19. See e.g. Moore, 'Moral Reality', 1122-3. See also David O. Brink, *Moral Realism and the Foundations of Ethics* (Cambridge: Cambridge University Press, 1989), 37-50. Brink calls this position 'externalism' — i.e. the link between moral judgement and action depends on some independent or external motivation. For an 'internalist' response by the realist ('Why should it not just be a brute fact about moral facts that ... their clear perception does provide sufficient grounding for action?'), see Mark Platts, 'Moral Reality', in Geoffrey Sayre-McCord, ed., *Essays on Moral Realism* (Ithaca, NY: Cornell University Press, 1988), 295.
20. See the interesting discussion in Sabina Lovibond, *Realism and Imagination* (Minneapolis: University of Minnesota Press, 1983), 1-9.
21. Thomas Nagel, *The Possibility of Altruism* (Princeton, NJ: Princeton University Press, 1970), 6, quoted in this connection by Lovibond, *Realism and Imagination*, 4.
22. Blackburn, 'Rule-Following', 179.
23. I suspect this is how R.M. Hare was led to an anti-realist position; certainly that is how it appears from *The Language of Morals*.
24. Realists sometimes suggest that to acknowledge the existence of disagreement is to concede that moral judgements make truth-claims. But that is unimportant. What matters is that the adherents of various moral positions regard one another as opponents, and each may regard herself as an opponent of the others. Someone who has an independent reason for saying that moral judgements make truth-claims will describe these oppositions as 'disagreements about the (moral) facts'. Others may describe it as 'disagreement' in a

looser sense (as when you and I 'disagree' about which restaurant to visit). Still others may eschew the language of disagreement altogether and just talk of opposition. Nothing hangs on this.

25. Mackie, *Ethics*, 36. The second argument is 'the argument from queerness', to which I alluded in the previous section.
26. Nicholas Sturgeon, 'Moral Explanations', in Sayre-McCord, *Essays on Moral Realism*, 229.
27. Moore, 'Moral Reality', 1089-90.
28. See Alan Gewirth, 'Positive Ethics and Normative Science', *Philosophical Review*, 69 (1960), 311.
29. Platts, 'Moral Reality', 282.
30. *Ibid.* 285.
31. Partly what this means is that we can give an account of (the subjectivity of) perception that is 'objective' in the sense discussed by Nagel in *The View from Nowhere* (New York: Oxford University Press, 1986), 5.
32. 'Moral Reality', 285.
33. Moore, 'Moral Reality', 1063.
34. Compare Mackie, *Ethics*, 35, with R.M. Hare, *Moral Thinking: Its Levels, Method and Point* (Oxford: Clarendon Press, 1981), 80.
35. Moore, 'Moral Reality', 1064.
36. This, by the way, is the appropriate way to deal with John McDowell's analogy between moral predicates and the terms for secondary qualities: John McDowell, 'Values and Secondary Qualities', in Honderich, *Morality and Objectivity*, 110.
37. See Jeremy Waldron, 'Rights and Majorities', in John W. Chapman and Alan Wertheimer, eds., *NOMOS XXXII: Majorities and Minorities* (New York: New York University Press, 1990), 44.
38. Again, I doubt this. To the extent it is true in America, I suspect it is a matter of self-fulfilling prophecy with regard to legislatures ('Let's leave the issues of principle for the courts to decide').
39. There is a useful discussion of this concern, as well as an explosion of the pretensions of moral philosophy in this regard, by Mark Tushnet in *Red, White and Blue: A Critical Analysis of Constitutional Law* (Cambridge, Mass.: Harvard University Press, 1988).