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Moral Reality Revisited

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MORAL REALITY REVISITED

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INTRODUCTION: NATURAL LAW

The immediate impetus to this symposium has been a revived interest in natural law theory. Although the scholarly interest in natural law has been on the upswing for some time, popular interest in the theory has been sparked most recently by the Clarence Thomas confirmation hearings. Clarence Thomas had declared allegiance to natural law theory, leading many lawyers and laypersons to inquire as to the content of natural law theory.

Many usages of the phrase *natural law* are perfectly idiomatic within legal or philosophical discourse. Nonetheless, I shall pick one of these and treat the phrase as referring to a position about law that has two essential theses: (1) there are objective moral truths; and (2) the truth of any legal proposition necessarily depends, at least in part, on the truth of some corresponding moral proposition(s). For ease of reference, let us label the first *the moral realist thesis* and the second *the relational thesis.*

The phrase *natural law* has often been used to refer to one or the other of these theses alone. In legal literature, for example, it is common for *natural law* to denote only the moral realist thesis, so that an adherent to "natural law" is an objectivist about moral values who need not connect such objective moral truths to law. In this sense of the phrase, a legal positivist like John Austin could be called a *natural lawyer,* since he believed in the objective rightness of a utilitarian morality even though his legal positivism separated law from such objective rightness.[1]

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1. 1 JOHN AUSTIN, LECTURES ON JURISPRUDENCE (London, Murray 5th ed. 1885); *see* H.L.A. Hart, *Positivism and the Separation of Law and Morals,* 71 HARV. L. REV. 593, 601-02 & n.25, 625-29 (1958) (separating the law/morals relational claim of both natural lawyers and legal positivists from any metaethical stance).

Analogously, the phrase is sometimes used to refer to any theory that asserts the relational thesis about the connection of law to morality, even if the morality to which law is said to be connected does not consist of objective moral truths. Ronald Dworkin is often construed to be this sort of "natural lawyer," given his linkage of the truth of legal propositions to idealized constructions of moral conventions.[2] Jeremy Waldron is another example of this kind of "natural lawyer," since he sees a connection between law and morality while denying that morality is any more than our own individual projections.[3]

In addition to these partial "natural law" views, people often use the phrase to refer to one of two species of moral realism. *Natural law* is often taken to refer to that kind of objectivism about values that regards moral truths as being truths about human nature. This is the "wired in" view of natural law, maintaining the existence of a universal and discrete human nature, a nature which determines the content of what is morally right. This human nature may be teleological, cast as the natural function of humankind,[4] or it may be a more contemporary anthropology, using only nonteleological descriptions of universal human traits. In addition, human nature may be thought to possess epistemic power within each human being, providing each with natural access to moral truth; or it may be thought to possess motivational power within each human being, so that each can not only see the good, but has some natural inclination to pursue it.[5] We might call

2. Dworkin has flirted throughout his career with conventionalism about the morality to which law is related. *See* RONALD M. DWORKIN, LAW'S EMPIRE 73 (1986); RONALD M. DWORKIN, TAKING RIGHTS SERIOUSLY 95, 125-26, 129, 134-35, 159-66 (1978); Ronald M. Dworkin, *Philosophy, Morality, and Law — Observations Prompted by Professor Fuller's Novel Claim,* 113 U. PA. L. REV. 668, 688-90 (1965). I and many others have noted this conventionalism. *See* Larry Alexander, *Striking Back at the Empire: A Brief Survey of Problems in Dworkin's Theory of Law,* 6 LAW & PHIL. 419 (1987); John Finnis, *On Reason and Authority in* Law's Empire, 6 LAW & PHIL. 357 (1987); Michael S. Moore, *A Natural Law Theory of Interpretation,* 58 S. CAL. L. REV. 277, 298-300 (1985) [hereinafter Moore, *Interpretation*]; Heidi M. Hurd, Note, *Relativistic Jurisprudence: Skepticism Founded on Confusion,* 61 S. CAL. L. REV. 1417, 1458-59 (1988); Michael S. Moore, *Metaphysics, Epistemology and Legal Theory,* 60 S. CAL. L. REV. 453 (1987) (reviewing RONALD M. DWORKIN, A MATTER OF PRINCIPLE (1985)) [hereinafter Moore, *Metaphysics*]. To the extent Dworkin is a conventionalist about the morality to which law is related, he is not a natural lawyer in my sense, despite occasionally labeling himself in these terms. *See* Ronald M. Dworkin, *"Natural" Law Revisited,* 34 U. FLA. L. REV. 165 (1982). For another example of law's being linked to conventionalist morality in this manner and also being called a "natural law" view, see generally THEODORE M. BENDITT, LAW AS RULE AND PRINCIPLE (1978).

3. *See* Jeremy Waldron, *The Irrelevance of Moral Objectivity, in* NATURAL LAW THEORY 158, 176-78 (Robert P. George ed., 1992).

4. *See* ARISTOTLE, *Ethica Nicomachea (Nicomachean Ethics), in* BASIC WORKS OF ARISTOTLE 928 (Richard McKeon ed., 1941); I-II THOMAS AQUINAS, SUMMA THEOLOGICA (Fathers of English Dominican Province trans., 1952).

5. On the motivating versus epistemic aspect of human nature as it relates to following the natural law, see JOHN FINNIS, NATURAL LAW AND NATURAL RIGHTS 23-50 (1980).

any and all of these variations *human nature naturalism.*

An alternative usage of *natural law* refers to that species of objectivism about morality associated with many religious traditions.[6] On this view, the nature of a moral quality like goodness is given by its having been commanded by God.

Despite the widespread acceptance of these usages of *natural law* both within and without the legal academy, my own usage is one that commits the natural lawyer to both the moral realist and the relational theses. Such usage, moreover, commits the natural lawyer to the moral realist thesis generically; a natural lawyer in my sense need not believe in either human nature naturalism or religious-based objectivism in ethics, although he may.

Both the moral realist and the relational theses need clarification and motivation as much as they need defense. Because I have recently focused on the relational thesis,[7] in this article I shall focus on the moral realist thesis. I shall ask three questions about the thesis. First, what does the thesis assert? This is a matter of clarifying what one means when one either asserts or denies that moral values are objective. Second, why should we care whether the moral realist thesis is true or false? I shall examine this question both in terms of the impact the truth or falsity of the thesis may have on our personal lives and in terms of its impact on how we should design and administer legal institutions. Third, what reason do we have to believe that the moral realist thesis is true? Over a decade ago I canvassed the reasons many have advanced for thinking the moral realist thesis to be false.[8] Now I wish to make explicit the positive case for moral realism that was largely implicit in the earlier article.

I. DEFINING THE MORAL REALIST THESIS OF NATURAL LAW

A. *The Criteria for a Good Definition of Moral Realism*

Although I have separated my first question about moral realism from my second, in fact one must have some idea of the answer to the second before one can answer the first. For the main guidepost to follow in seeking a good definition of moral realism is the preservation of a debate (between moral realists and moral antirealists) that matters to us, both personally and institutionally. Moral realists and their op-

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6. *See, e.g.,* Kai Nielsen, *The Myth of Natural Law, in* LAW AND PHILOSOPHY 122, 129 (Sidney Hook ed., 1964) ("If there is no God . . . [then] the classical natural law theory is absurd. . . .").

7. *See* Michael S. Moore, *Law as a Functional Kind, in* NATURAL LAW THEORY, *supra* note 3, at 188.

8. *See* Michael S. Moore, *Moral Reality,* 1982 WIS. L. REV. 1061.

ponents, in other words, should be characterized in a way that maintains the relevance of their disagreement both to our personal lives and to questions of institutional design. Otherwise we end up with a debate that is *academic* in the pejorative sense of that word.

Three subsidiary considerations should also guide any definition of moral realism.[9] One is to end the parochialism that generally has characterized ethics within philosophy over the past century. As an example of this parochialism, consider the longevity of G.E. Moore's "open-question" argument against all forms of naturalist moral realism.[10] Moore argued that it was always an open question whether goodness was pleasure, happiness, or anything else — in a way that the question, *is a bachelor an unmarried man?*, was not open. From his observation that analytic truths never foreclosed such questions about goodness, Moore derived the conclusion that no form of ethical naturalism could be right. *Goodness* could not mean "pleasurable," "happiness-producing," or anything other than "goodness."

This argument has had a surprisingly long period of respectability in light of movements in the philosophy of language and of mind that outflanked it a generation or more ago.[11] The Quinean attack on analyticity,[12] Wittgenstein's apparent development of a "criteriological" theory of meaning,[13] Geach's (and Quine's) discovery of attributive (Quine's "syncategorematic") adjectives,[14] the new-found respectability of nonanalytic type-identity relations,[15] the separation of meaning from the linguistic competence of individual native speakers,[16] the separation of the meaning of an expression from that expression's illocu-

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9. For suggestions in this regard, see Geoffrey Sayre-McCord, *Introduction: The Many Moral Realisms*, in ESSAYS ON MORAL REALISM 1, 5 (Geoffrey Sayre-McCord ed., 1988).

10. *See* GEORGE E. MOORE, PRINCIPIA ETHICA 1-37 (1903).

11. *See* William G. Lycan, *Moral Facts and Moral Knowledge*, 24 S.J. PHIL. 79, 80 (Supp. 1986) ("My real complaint about the Open Question Argument is that it presumes that identification of properties must be motivated *a priori*, by the established synonymy of the predicates expressing those properties. And this presumption has been known to be false at least since the 1950's . . . ."); *see also* WILLIAM G. LYCAN, JUDGEMENT AND JUSTIFICATION 200 (1988).

12. *See* Willard V. Quine, *Two Dogmas of Empiricism*, 60 PHIL. REV. 20 (1951).

13. *See* LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS (G.E.M. Anscombe trans., 1953). For explication of criteriological theories, see Michael S. Moore, *The Semantics of Judging*, 54 S. CAL. L. REV. 151, 218-21 (1981).

14. *See* Peter T. Geach, *Good and Evil*, 17 ANALYSIS 33 (1956); *see also* WILLARD V.O. QUINE, WORD AND OBJECT 103, 126, 132, 138, 175 (1960).

15. *See* DAVID M. ARMSTRONG, A MATERIALIST THEORY OF THE MIND (1968); Herbert Feigl, *The "Mental" and the "Physical," in* 2 MINN. STUD. PHIL. SCI. 370 (Herbert Feigl et al. eds., 1958); U.T. Place, *Is Consciousness a Brain Process?*, 47 BRIT. J. PSYCHOL. 44 (1956); J.J.C. Smart, *Sensations and Brain Processes*, 68 PHIL. REV. 141 (1959).

16. *See* HILARY PUTNAM, *The Meaning of "Meaning," in* MIND, LANGUAGE, AND REALITY 215 (1975).

tionary act-potential,[17] and the Kripke-Putnam defense of a causal theory of reference[18] all combined to make Moore's "open question" a useless technique for demonstrating the "fallacy" of inferring moral conclusions from factual premises. That Moore's arguments survived — at least as standard staples to be taught in ethics courses — evidences the unfortunate parochialism within philosophy under which ethics long suffered.

A way to avoid such parochialism is by forcing the debate between moral realists and their opponents (generically, *moral antirealists*) into the mold of the debates between metaphysical realists and antirealists about other sorts of things. "Realists" debate "instrumentalists," for example, about the reality of theoretical entities posited by successful scientific theories.[19] Similarly, "realists" debate "phenomenalists" about the reality of ordinary observables like tables and chairs.[20] Likewise, "realists" about common sense psychology debate "eliminative materialists" about the reality of mental states of intention or belief,[21] and "realists in mathematics" debate "intuitionists" about the ontological status of numbers, sets, and classes.[22] Though notoriously difficult to pin down, a sense exists that realists and antirealists in all fields share a common form of debate. Moral realism should be so defined that asserting or denying it frames a debate that is an instance of this general form.

A second, supplementary consideration guiding the definition of moral realism more openly accommodates the traditional discussions within ethics (as opposed to philosophy more generally). It is to define moral realism in a way that fruitfully displays the various metaethical positions that philosophers of ethics have actually adopted. In charting the history of Anglo-American ethical philosophy in this century, we must accommodate four main metaethical niches. First, we must accommodate the kind of ethical naturalism against which G.E. Moore took himself to be arguing. To use Moore's own example, such

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17. The locus classicus is J.L. Austin's 1955 William James Lectures at Harvard, *printed in* J.L. AUSTIN, HOW TO DO THINGS WITH WORDS 94-107 (1962).

18. *See* SAUL H. KRIPKE, NAMING AND NECESSITY (1980); HILARY PUTNAM, *Explanation and Reference, in* MIND, LANGUAGE, AND REALITY, *supra* note 16, at 196.

19. *See, e.g.,* LARRY LAUDEN, SCIENCE AND RELATIVISM 136-38 (1990); BAS C. VAN FRAASSEN, THE SCIENTIFIC IMAGE 204-15 (1980).

20. *See, e.g.,* GILBERT HARMAN, THOUGHT 8-9 (1973).

21. *See, e.g.,* PAUL M. CHURCHLAND, SCIENTIFIC REALISM AND THE PLASTICITY OF MIND (1979); DANIEL C. DENNETT, THE INTENTIONAL STANCE (1987); STEVEN P. STICH, FROM FOLK PSYCHOLOGY TO COGNITIVE SCIENCE: THE CASE AGAINST BELIEF (1983); Daniel C. Dennett, *Beyond Belief, in* THOUGHT AND OBJECT (Andrew Woodfield ed., 1982).

22. *See, e.g.,* HARTRY H. FIELD, REALISM, MATHEMATICS, AND MODALITY (1989); HARTRY H. FIELD, SCIENCE WITHOUT NUMBERS (1980).

ethical naturalism would include utilitarianism (when the utilitarian principle is taken to be an analytic truth about the meaning of *good*). Second, we must accommodate Moore's own metaethical position, which became known as *nonnaturalism* or *intuitionism*. On this view, words like *good,* when used to make moral evaluations, referred to a simple property, goodness. Such a simple property was not definable at all, certainly not in terms of natural properties. It was a nonnatural property, and it had to be discovered accordingly: not by observation, using the five senses, but by using the special faculty of moral intuition.[23]

Third, we must find a niche for the noncognitivist reaction to Moore's intuitionism. The emotivists like A.J. Ayer[24] and C.L. Stevenson[25] agreed with Moore that moral expressions using words like *good* did not refer to natural properties. Unlike Moore, however, they also denied that such expressions referred to nonnatural properties. Rather, expressions like *you are bad* had no descriptive use, and thus the words within such expressions did not refer to any property, natural or nonnatural. Rather, the emotivists believed, such statements express our emotional reaction to the subject named (much as typical uses of *ouch* express painful sensations but do not describe such sensations or anything else). "Prescriptivists" following R.M. Hare subsequently joined this noncognitivist reaction to Moore,[26] diverging in two respects from their emotivist predecessors. First, they allowed that moral expressions had some "descriptive meaning" (namely, such expressions presupposed universalizability). Second, they chose as the nondescriptive speech act performed in ethical discourse the prescription to others to act in certain ways, as opposed to the emotivists' expression of attitudes.

Finally, the taxonomy of metaethical stances created by a definition of moral realism must accommodate the cacophony of voices in the metaethics of the past two decades. Such voices include a strong resurgence of ethical naturalism,[27] the continued assertion of various

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23. *See* MOORE, *supra* note 10. Other prominent intuitionist works have included HAROLD A. PRICHARD, MORAL OBLIGATION (1949); W. DAVID ROSS, THE RIGHT AND THE GOOD (1930).

24. *See* ALFRED J. AYER, LANGUAGE, TRUTH, AND LOGIC 102-20 (Dover Publications 1952) (2d ed. 1946).

25. *See* CHARLES L. STEVENSON, ETHICS AND LANGUAGE (1944).

26. *See* RICHARD M. HARE, FREEDOM AND REASON (1963); RICHARD M. HARE, THE LANGUAGE OF MORALS (1952).

27. *See, e.g.,* Moore, *supra* note 8. In that article, published in 1982, I refused to choose between *naturalism* and *nonnaturalism* as the label for the version of moral realism there defended. Nonetheless, as I then recognized, my realism was (and remains) naturalistic in the same sense that functionalism about mental states is physicalistic in the philosophy of mind. Since

forms of intuitionism,[28] the revival of noncognitivism,[29] and the revival of a kind of conventionalist or relativistic metaethics that has always been well received in anthropology.[30]

The third subsidiary consideration guiding a fruitful definition of moral realism is to preserve a line between metaethics and ethics, a line traditionally conceived in the following manner. Substantive ethics studies what is good and bad, right and wrong, at various levels of abstraction. Arguments that *this* abortion is the wrong thing to do, or that abortion in general is always wrong, or that what makes any action right or wrong is a function of the good or bad consequences of that action, all are arguments made within substantive ethics. By contrast, arguments that *wrong* does not describe a property, or that no statement using *wrong* can possess a truth value, or that no argument about abortion can have a determinate resolution, are all metaethical. Metaethics, as the name suggests, is about ethics just as ethics is about morality.

To preserve this line between substantive ethics and metaethics, we should not define moral realism so that its adoption compels the foreclosure of otherwise appealing positions within substantive ethics. More concretely, one should be able to argue for or against utilitarianism, ethical hedonism, consequentialism generally, or various deontological alternatives, no matter which metaethical position one adopts.

1982 there has been a veritable cavalcade of naturalistic moral realisms. *See generally* DAVID O. BRINK, MORAL REALISM AND THE FOUNDATIONS OF ETHICS (1989); Richard N. Boyd, *How to be a Moral Realist, in* ESSAYS ON MORAL REALISM, *supra* note 9, at 181; David O. Brink, *Externalist Moral Realism,* 24 S.J. PHIL. 23 (Supp. 1986); David O. Brink, *Moral Realism and the Skeptical Arguments from Disagreement and Queerness,* 62 AUSTRALASIAN J. PHIL. 111 (1984); Lycan, *supra* note 11; Peter Railton, *Moral Realism,* 95 PHIL. REV. 163 (1986); Peter Railton, *Naturalism and Prescriptivity, in* FOUNDATIONS OF MORAL AND POLITICAL PHILOSOPHY 151 (Ellen F. Paul et al. eds., 1990); Geoffrey Sayre-McCord, *Moral Theory and Explanatory Impotence, in* ESSAYS ON MORAL REALISM, *supra* note 9, at 256; Nicholas L. Sturgeon, *Moral Explanations, in* MORALITY, REASON, AND TRUTH 49 (David Copp & David Zimmerman eds., 1984); Richard Werner, *Ethical Realism,* 93 ETHICS 653 (1983); Richard Werner, *Ethical Realism Defended,* 95 ETHICS 292 (1985). For a summary of this decade of American moral realism, see ROBERT L. ARRINGTON, RATIONALISM, REALISM, AND RELATIVISM 182-91 (1989).

28. *See, e.g.,* FINNIS, *supra* note 5.

29. Most notably, SIMON BLACKBURN, SPREADING THE WORD (1984); *see also* Waldron, *supra* note 3.

30. Almost too many variations exist to cite. Two contemporary relativists are BERNARD WILLIAMS, ETHICS AND THE LIMITS OF PHILOSOPHY (1985), and GILBERT HARMAN, THE NATURE OF MORALITY (1977). The constructivism of Ronald Dworkin is also in this camp, *see* sources cited *supra* note 2, as is the constructivism of the 1980s John Rawls. *See* John Rawls, *Justice as Fairness: Political Not Metaphysical,* 14 PHIL. & PUB. AFF. 223 (1985) [hereinafter Rawls, *Justice*]; John Rawls, *Kantian Constructivism in Moral Theory,* 77 J. PHIL. 515 (1980) [hereinafter Rawls, *Kantian Constructivism*]. Wittgensteinians about ethics also belong here. *See, e.g.,* SABINA LOVIBOND, REALISM AND IMAGINATION IN ETHICS (1983); John McDowell, *Non-Cognitivism and Rule-Following, in* WITTGENSTEIN: TO FOLLOW A RULE (Steven Holtzman & Christopher Leich eds., 1981).

This does not mean that metaethical positions make no difference in the arguments available to sustain a given view in ethics, nor that metaethical positions make no difference to the plausibility of any ethical views. That metaethics should leave open questions of substantive ethics does not mean that metaethics has no influence on those questions.

B. *What Is Metaphysical Realism?*

To avoid the somewhat parochial isolation of ethics within philosophy, we should define moral realism as a species of metaphysical realism. We therefore must ask what a metaphysical realist generically believes before we apply those realist commitments to morality.

Metaphysical realism, as I use the phrase, consists of a related set of ontological, semantic, and epistemic theses. These theses may apply to mental states and the discourse which describes them, mathematical entities and the discourse that describes them, theoretical entities in science and the scientific discourse about them, and so forth. My nonparochial hypothesis is that the metaphysical realist position is the same irrespective of the domain of discourse. Of course, one who is a realist about some class of entities need not be a realist about all other classes. Indeed, staunch realists about the physical world are commonly antirealists about morality. Similarly, nothing requires that a realist about both the physical world and morality also be a realist about either numbers or aesthetic qualities like beauty or taste.

Defining metaphysical realism generically invites as much controversy as defining moral realism particularly. Both Hilary Putnam[31] and Michael Dummett[32] have caused many contemporary philosophers to characterize metaphysical realism as a semantic theory about the meaning of *truth.* A metaphysical realist about some class of entities, on this construction, asserts that *is true,* predicated upon some sentence, means *correspondence* truth. *Truth* for such a realist does not mean "warrantedly assertable within this language game" or "best coheres with everything else believed" or "best coheres with everything an idealized knower would believe," nor does *is true* simply redundantly allow one to reassert the sentence of which it is predicated. Rather, correspondence truth, when predicated upon some sentence, means that the sentence corresponds to some objective reality. *Corre-*

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31. *See* HILARY PUTNAM, MEANING AND THE MORAL SCIENCES 2-3 (1978); HILARY PUTNAM, REALISM AND REASON at xvi-xviii (1983).

32. *See* MICHAEL A. DUMMETT, TRUTH AND OTHER ENIGMAS 146 (1978); Michael Dummett, *Realism,* 52 SYNTHESE 55 (1982).

sponds, in turn, is unpacked in terms of some objective theory of reference that reveals how words "hook onto" the world.

Such truth-based definitions of metaphysical realism are not wrong so much as they are misleading.[33] For much of the work of describing what is distinctive about metaphysical realism is performed by the notion of objective reality to which true sentences correspond. Metaphysical realism is less misleadingly characterized when its ontological commitments are put up front. I accordingly characterize metaphysical realism primarily by its distinctive ontological commitments and only secondarily by its truth-related, semantic, and epistemic commitments.

The ontological theses of the realist are two: first, an existential thesis that asserts the existence of the entities in question, be they numbers, legal rights, mental states, or moral qualities; second, an independence thesis that asserts the mind-independence of the entities in question.[34] This second thesis asserts that, for example, electrons would exist even if we had no thoughts about them and, indeed, if we did not exist.

These ontological theses of the realist fruitfully taxonomize his opponents. The antirealist who denies the existential thesis about some class of entities I shall call a *skeptic.* A skeptic might be a noncognitivist, believing that we lose nothing when we deny the existence of the entities in question. We lose nothing, according to the noncognitivist, because careful attention to the discourse in question will reveal that the language used was nonreferential, so the question whether the entities purportedly referred to in fact exist does not arise. Alternatively, a skeptic might be a cognitivist, maintaining that the terms used purportedly refer to some existents. What makes this cognitivist a skeptic is his error thesis: while conceding the apparently referential use of certain language, he denies that the entities allegedly referred to actually exist.[35] Our common thoughts about this class of entities, in other words, are in error, and thus the name for this sort of skeptic. We can describe the difference between these two kinds of skeptics in terms of their attitude in reaction to the common denial that some class of entities exists: the cognitivist is disappointed by the nonexistence of enti-

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33. This is the principal point of Michael Devitt's book on realism. *See* MICHAEL DEVITT, REALISM AND TRUTH 3 (1984).

34. *See id.* at 12-21; *see also* Michael S. Moore, *The Interpretive Turn in Modern Theory: A Turn for the Worse?,* 41 STAN. L. REV. 871, 874-81 (1989). In the latter article, I give a somewhat more authoritative defense of the views of both metaphysics and metaphysical realism than I set forth here.

35. On these two kinds of skeptics, see Sayre-McCord, *supra* note 9, at 9-14.

ties his discourse requires; the noncognitivist is not, because we never were committed to the existence of such entities.

The antirealist who admits the existential thesis but denies the independence thesis should be termed an *idealist*. Idealists may be further subdivided between those who think that the existence of the entities in question depends on the thoughts of each individual mind, considered separately *(subjectivists)*, and those who think that the existence of the entities in question depends on those shared mental states of a group of persons we call conventions *(conventionalists)*.

We thus end up with the following taxonomy of antirealists, based on which of the realist's two ontological theses the antirealist denies and on which ground she bases the denial:

1. Skeptics
   a. Noncognitivists
   b. Error theorists
2. Idealists
   a. Subjectivists
   b. Conventionalists

Because it has become controversial whether realism is or can be committed, across the board, to the mind-independence thesis,[36] we need to enquire more precisely what is meant when the realist asserts that some class of entities is "mind-independent." This enquiry has the added benefit of clarifying why subjectivists and conventionalists are not realists.

To begin with, the metaphysical realist is not committed to denying the *causal* dependence of certain aspects of the world on our mental states or social conventions. As Elliot Sober notes:

> A realist about physical objects might be happy to grant that mental states can exert causal influence on physical things. And if it should turn out that thinking about geometry can warp the curvature of space-time, this too need pose no problem for the realist. Causal or nomic dependence are fine; but there is another kind of dependence which the realist cannot tolerate.[37]

This other type of dependence is either an analytically or metaphysically necessary dependence.[38] For a realist, it cannot be part of the

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36. *See id.* at 6; Elliot Sober, *Realism and Independence,* 16 Noûs 369, 369-70 (1982).

37. Sober, *supra* note 36, at 375.

38. Whether the necessity here is analytical or metaphysical depends on one's theory of meaning. *See infra* text accompanying notes 49-50. If the meaning of a word is given by a set of criteria, then the necessity is analytic (or conceptual). The realists' independence thesis becomes the claim that the concepts of cat, mat, on, etc., do not include in their criteria any mental properties of individuals or groups. If the meaning of a word is given by the essential nature of the thing to which the word refers, then the necessity is metaphysical: the essential properties of catness, matness, on-ness, etc., do not include any mental properties of individuals or groups.

truth conditions of the sentence *The cat is on the mat* that any individual or group has thoughts about the cat or its placement on the mat, or that any individual or group has words or concepts with which to think about, or refer to, cats and mats, or that any individual or group has minds or conventions at all. A sentence is true or false independently of such mental states of individuals or groups.

Some qualifications are needed to make this kind of conceptual/ metaphysical independence plausible. To begin with, the realist is not committed to denying a trivial conventionalism about language. That in English the symbol *cat* is used to refer to cats is a convention that easily could have been otherwise; other languages use other symbols for this purpose to equally good effect. To assert, as the realist does, that electrons would exist in the absence of our beliefs and conventions about them, need not assert any independence of the appropriateness of using the word *electrons* from the social conventions of English. Whether one label rather than another is used, or whether any label exists in a given language, is not involved in the realist's assertion that the item labeled exists independently of us.[39]

Second, the realist's mind- and convention-independence thesis does not assert the independent existence of all things from all mental states of individuals and groups. There are realist construals of the sentences of psychology and sociology, for example, and realism about the entities referred to by these sentences cannot sensibly be thought to require the independence of these items from all minds and conventions. After all, the entities to which the sentences of psychology and sociology refer are just the mental states of individuals and those shared mental states we call conventions; these entities can hardly exist independently of themselves.[40]

Two distinctions are required to construe the independence thesis around this worry. The first is between beliefs, on the one hand, and all other mental states of individuals and groups, on the other. The independence thesis should be limited to the claim that the existence of any item is independent of anyone's belief in its existence. That allows realistic construals of sentences about an individual's intentions or about a societal convention without requiring independence from the very items being talked about. At the same time, the independence criterion still denies what realists want to deny: that the existence of something depends on whether someone (or some group) believes that it exists.

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39. *See* Hilary Putnam, *The Refutation of Conventionalism, in* SEMANTICS AND PHILOSOPHY 215, 227 (Milton K. Munitz & Peter K. Unger eds., 1974).

40. *See* Sober, *supra* note 36, at 371.

Even so restricted, the independence thesis is still not narrow enough. For psychology surely must study beliefs as well as other mental states, and a realist construal of sentences about beliefs cannot be *mind*-independent even when it is construed to be limited to *belief*-independence. So we need a second distinction to make sense of a realist-antirealist debate very much alive in psychology, that between realists about beliefs versus "eliminative materialists," "pragmatists," and other antirealists about beliefs.[41]

We must distinguish between the holders of beliefs in order to narrow properly the independence criterion. To give the sentence *A believes p* a realist construal, we need not assert that *A*'s belief would exist without *A*'s belief. Rather, we need only assert that *A*'s belief would exist even if we, the observers, had no beliefs about *A*'s belief that *p*. The belief-independence characteristic of realism only refers to the beliefs of observers, not to the beliefs of the subject being observed. The independence criterion of realism, when thus construed, renders the description of realism as "the view from nowhere" apt because it is not a view relativized to anyone's beliefs.[42] Construing the independence criterion this way allows one to salvage what is intuitively realist and permits one to be a realist about psychological states and social conventions.

Subjectivism about some class of entities *x* then becomes the view that *x*'s existence depends on the belief of the observer that *x* exists; conventionalism becomes the view that *x*'s existence depends on the belief of the observer that *x* exists when that belief is shared by enough other members of the observer's society. Both of these forms of idealism can then be clearly distinguished from a type of realism that makes the existence of *x* depend on the beliefs of subjects who are not observers. For example, suppose a kind of religious realism, according to which entities *x* exist only if God thinks of them. This is a kind of realism, despite the mind-dependence of *x*'s, because the "mind" on which they depend is not the observer's, but that of some other being.

Having tidied up the ontological theses distinctive of realism, it remains to examine other theses about truth, meaning, and knowledge to which the realist should be committed. The realist is committed at a minimum to a negative thesis about truth: the realist cannot think that the phrase *is true* only means "warrantedly assertable in light of other beliefs, available evidence, or social conventions." Realism requires, for any given assertion about the world, the possibility *both*

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41. For the eliminative materialist-realist debate, see sources cited *supra* note 21.

42. This is Tom Nagel's description. *See* THOMAS NAGEL, THE VIEW FROM NOWHERE (1986).

that the assertion is warrantedly assertable (justifiably believed) *and* that it is false nonetheless.

So at a minimum a realist must divorce her theory of truth from her theories of warranted belief or assertion. Moreover, the realist who interests me divorces her theory of truth even from *idealized* justification, not merely from the actual justification historically situated individuals may possess. Such a realist asserts that the phrase *is true* does not mean "what a fully rational agent with complete information would believe or would be warranted in asserting." My realist reads Putnam's "internal" or "pragmatic" realist out of the club because she thinks it is possible that the ideally rational human knower can get it wrong.[43] Put another way: it is possible that there are truths not graspable by the human mind, even at the limit of its perfection.

Secondly, a realist may also be committed to a more positive thesis about truth. This is the correspondence theory of truth that I mentioned earlier, according to which *is true* means "corresponds with some mind-independent reality." Some proposition can correspond to how things are even if we have no grounds to believe it (and even if an epistemic idealization of us would have no grounds to believe it).[44]

A third thesis about truth follows from a coupling of the correspondence theory with a vision of reality as gapless. This is the bivalence thesis, which holds that for any proposition *p* within some discourse, *p* is either true or false. Although some observers, such as Michael Dummett, would make the bivalence thesis definitional of realism,[45] the thesis is not nearly so essential to realism as that. A fair interpretation of both Aquinas and Finnis,[46] for example, is that they hold the ontological and correspondence theses distinctive of realism about morals and yet maintain that there are some propositions of morality that are neither true nor false. Indeed, this feature of moral reality seems to leave room for one of the functions of human law for such natural law theorists, namely, to fill in where natural law is silent. Nonetheless, the realist as I shall define him is committed to the bivalence thesis as well, for it either takes peculiar views of reality — it

43. *See* HILARY PUTNAM, THE MANY FACES OF REALISM 70-71 (1987); PUTNAM, MEANING AND THE MORAL SCIENCES, *supra* note 31, at 123-38.

44. The realist who has already asserted the two ontological theses distinctive of realism *may* be able to get by with a redundancy reading of *is true* in Tarski sentences, in the sense that even a redundancy reading may divorce *is true* from any epistemic conditions. If so — and I leave the issue open — then the realist does not need a correspondence theory of truth. He would only need the negative thesis that *is true* does *not* mean "warrantedly assertable." *See* Hartry Field, *Realism and Relativism,* 79 J. PHIL. 553 (1982).

45. *See* DUMMETT, *supra* note 32, at 14.

46. *See* 2 AQUINAS, *supra* note 4, at 1044-45; FINNIS, *supra* note 5, at 284-89.

comes with gaps — or Wittgenstein-like views of meaning[47] — our words do not refer to determinate classes but to overlapping classes clustered into groups — not to embrace bivalence if one accepts the correspondence and ontological theses.

The realist should also be construed as committed to two semantic theses about meaning. The first concerns the meaning of sentences, about which the realist holds some form of truth conditional theory. The realist thus consigns to pragmatics — the study of the conditions of appropriate utterance — all forms of deviant utterance unconnected to the truth of the propositions uttered. The realist's semantics are quite austere: only the conditions that must obtain for a sentence to be true provide that sentence's meaning.[48]

The realist's adherence to the ontological and correspondence theses commits him to a truth conditions theory of meaning for sentences. His ontological theses compel him to recognize certain entities whose existence does not depend on our minds or our conventions; his correspondence thesis compels him to recognize a relation (correspondence) between sentences and the mind-independent world whenever a sentence is true. He now needs a theory about what sentences mean that allows them to stand in this correspondence relation to a mind-independent world. The truth conditions theory of meaning provides such a theory, for it strips meaning of all convention of utterance and of all psychological conditions of graspability. Neither conventions of appropriate utterance nor even the limitations of the human mind affect meaning on a truth conditions theory. Thus, sentences, being the bearers of such (mind- and convention-independent) meaning, can correspond to a mind- and convention-independent reality.

The second semantic thesis the realist requires concerns the meaning of words and phrases within sentences. Specifically, to allow for the fact that the meaning of a sentence is a function of the meaning of sentence components (words), the realist holding a truth conditions theory of meaning for *sentences* must also hold a theory of meaning for *words* that connects that meaning to the world and not to the conventions or ideas of individuals or groups. The "causal theory" of meaning for words supplies such a theory.[49] The causal theory suggests

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47. For an example of a metaphysical realist about both science and morality who nonetheless does not accept bivalence, see Boyd, *supra* note 27, at 196-99, 212-14, 217-18. Boyd urges that some of our moral and scientific predicates have an ineliminable vagueness even though they refer to something like a natural kind, namely, a cluster of properties that hang together as an explanatory entity even though the cluster has no uniform nature other than its causal role.

48. *See* MARK PLATTS, WAYS OF MEANING (1979).

49. *See generally* Moore, *Interpretation, supra* note 2, at 291-301, 322-38; Moore, *supra* note 13, at 204-26.

that the meaning of a word is not given by "what's in the head" of some linguistic community that uses the word (and certainly not by what's in the head of some individual speaker within that community). These sources are too subjective and conventional for the realist. Rather, the meaning of a word is a function of the nature of the thing to which the word refers. The referent of the word, in other words, determines its meaning, and the referent exists in the world and not in the mind.

Such a theory of meaning is "causal" in two senses. First, it accounts for the choice of a particular symbol to represent a particular thing in causal terms: *gold* names gold because early users of English so baptized the metal and by so doing caused later users to maintain the symbol. Second, it accounts for there being *any* symbol representing that thing in causal terms: existence of a natural kind that is gold caused us to invent some symbol with which to refer to that kind.

So long as the realist applies this theory of meaning to general predicates, and not just to singular terms, he commits himself to the existence of natural kinds. When he does so, his realism becomes the opponent of nominalism as much as of idealism. The realist who interests me makes such an application of his causal theory of meaning because he desires a mind- and convention-independent theory of meaning for words generally, not just for definite referring expressions.

Finally, my realist subscribes to certain epistemic theories. A realist, like anyone else, needs a theory of justification, a theory of discovery, and a theory of understanding. Such theories, respectively, concern: when a rational agent is justified in believing some proposition to be true; the best means of discovering the truth of some proposition; and what conditions must be satisfied before an agent can be said to understand that some proposition is true. A realist may hold any of a wide variety of each of such theories and still assert the · nonepistemic theses about truth distinctive of realism. He may, for example, hold some foundationalist view of justification, of either the rationalist or empiricist sort. Or he may hold a more contemporary nonfoundationalist view, one according to which realism about some class of entities may itself be part of the best explanation for why we have the experiences we do.

The only truly distinctive epistemic theses the realist must hold are the negative theses introduced earlier regarding truth. The conditions of rational belief, of discoverability, or of comprehensibility do not define *is true*. No test for truth, recipe for discovery, or requirement for understanding comprises truth itself.

Our interest in the realist theses for a given area of discourse may

depend on our belief that we can or do possess knowledge of some of the truths for that area. Thus we might add a very weak, positive epistemic thesis that a realist must hold to be interested in his realism: some true propositions in an area of discourse must be susceptible of rational justification, discoverability, and graspability by the human mind, and some of us must actually justify, discover, and grasp some such true propositions.[50] Otherwise, realism could have little interest for us, even if true about some area of thought.

C. *The Moral Realist's Metaphysical Commitments*

The *moral* realist as I shall define him holds these ontological, truth-related, semantic, and epistemic theses distinctive of *metaphysical* realism generally, and he holds them with respect to moral qualities and moral discourse. The most obvious example of a moral realist was the nonnaturalist realism we can construct out of the views of G.E. Moore himself.[51] Moore held that goodness exists as a nonnatural quality, that something like beauty would possess this quality irrespective of human perception, and that *good* referred to this mindindependent quality. We could fill out the rest of the realist theses for Moore, turning him into a modern metaphysical realist.

Nonnaturalist moral realism is the kind of moral realism most people picture when they first think about moral realism. The reason for this lies in the clarity of the nonnaturalist's ontological commitments to the existence of moral qualities. This clarity is due to two extreme features of nonnaturalist realism. First, there is the separate realm hypothesis: moral qualities exist in their own separate ("nonnaturalist") realm of being. This hypothesis makes the nonnaturalist's ontological commitment to *distinct* moral qualities very plain, whereas the naturalist realist is always open to the charge that his only ontological commitments are to those nonmoral, natural qualities on which moral qualities (for him) in some sense depend. Secondly, there is what might be called the "uniformity of reference" hypothesis: not only are

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50. *See* Brink, *Externalist Moral Realism, supra* note 27, at 24; William Tolhurst, *Supervenience, Externalism and Moral Knowledge,* 24 S.J. PHIL 43, 44 (Supp. 1986).

51. That G.E. Moore's ontological commitments were in fact not so clearly dualist is revealed in his reflections later in life about his nonnaturalism:

> I should never have thought of suggesting that goodness was "non-natural" unless I supposed it was "derivative" in the sense that, whenever a thing is good . . . its goodness . . . "depends on the presence of certain non-ethical characteristics" possessed by the thing in question: I have always supposed that it did so "depend," in the sense that, if a thing is good . . . then that it is so *follows* from the fact that it possesses certain natural intrinsic properties . . . .

G.E. Moore, *A Reply to My Critics, in* THE PHILOSOPHY OF G.E. MOORE 588 (Paul A. Schilpp ed., 1942). Depending on how one reads Moore's "derivative," "depend," and "follow," this suggestion could easily be interpreted as one of a modern supervenience-naturalist.

relatively specific terms like *cruel, courageous,* and *distributively just* taken to refer to moral qualities, but even the terms of most general commendation or condemnation, such as *good, bad, right, wrong, just,* and *unjust,* are taken to refer to such moral qualities. The nonnatural-ist takes the entire range of what is commonly regarded as moral dis-course to be referential, whereas a more cautious naturalist may be more selective about which terms are used referentially in evaluative speech acts.

Nonnaturalist moral realism is not ultimately my interest in this article, since the version of moral realism that I shall defend in Part III is a naturalist realism. Nonnaturalism presents a convenient con-trast, however, for the clarity of its ontological commitments reveals some lack of clarity in the ontological commitments of naturalist moral realism. Can my more cautious naturalist be a moral realist at all? Consider the first problem, the lack of a dramatically separate (i.e., "nonnatural") ontological commitment by the naturalist. As is well known, the naturalist in ethics is committed to the existence of some intimate relation between nonmoral qualities (such as an action's being an intentional infliction of pain on another) and moral qualities (such as the action's being wrong). The relation to which Moore took the naturalist to be committed was an analytic one: *wrong* means, in part, "intentional infliction of pain in another." A more modern natu-ralist eschews analytic relations linking *wrong* and words naming non-moral properties but might think there is a scientifically established type-identity between, say, wrongful action and an act of intentionally inflicting pain on another. In such a case, the identity is analytically contingent because established by moral and scientific theory, not ana-lytically necessary because established by the very meaning of the words. An even more modern naturalist might eschew broad type-identities as well, holding only that moral properties *supervene* on non-moral properties in the same way that mental states may plausibly be thought to *supervene* on physical states (i.e., even though not type-identical, there can be no change in one without a change in the other).

In any case, however the intimate relation between moral proper-ties and nonmoral properties is construed, one might charge the natu-ralist with commitments only to *non*moral properties. Yet a moment's reflection will show that this is not so, even for analytic and type-identity naturalists. To believe that water is type-identical to H_2O, or even that *water* means "H_2O," is not to believe that there is no such thing as water. We discover more about water when we discover

(either by science or by analytic entailments) that it possesses a certain chemical structure; we do not discover that water does not exist.

This is even more clearly true of the supervenience naturalist. Such a naturalism — the kind of moral realism I have defended — is very much like functionalism in the philosophy of mind. Such a naturalist is only a reductionist about moral qualities in a weak sense: although there are no analytic entailments between words naming nonmoral qualities and words naming moral qualities, and although there are no type-identities between moral qualities and nonmoral qualities, there are identities between a moral quality *as it is present on some occasion* and some nonmoral qualities. The wrongness of an action, for example, may on some occasion(s) simply consist in its being a piece of deliberate cruelty. Such specific identities (sometimes mistakenly called *token-identities*) are consistent with supervenience naturalism, much as such specific identities (e.g., between pain at *t* for Jones, and C-fibre stimulation in the central cortex of Jones' brain at *t*) are consistent with functionalism in the philosophy of mind.

In both cases the essence of the moral quality (or mental state) is not given by such specific identities to nonmoral qualities (or brain states). Thus, in neither case could one believe one has eliminated one's ontological commitments — to moral qualities or mental states — by adherence to naturalism or functionalism.

The second problem for picturing the naturalist in ethics as a moral realist stems from a double vagueness about metaphysical realism itself that we have hitherto ignored. There is a vagueness in specifying the borders of a "domain of discourse" or a "domain of entities" over which a realist makes his ontological commitments. What exactly counts as a mathematical entity, a mental state, or a moral quality? Numbers, beliefs, and justice all seem central in their respective domains, but what about classes, physical pains, and cruelty? Does a metaphysical realist about mathematics, minds, or morals have to commit to the existence of these latter items in order to be a mathematical, mental, or moral realist?

Even if we settle this "borders" question, there is a second vagueness in the "how much" question: must one commit to all the entities seemingly posited to exist within some domain of discourse in order to be a realist over that domain? Or can one be a more cautious moral realist, for example, committing to the existence of justice, courageousness, and culpability, but not to goodness or to rightness?

These are not very interesting questions, because any answer to them would be a matter of stipulation. Such questions demonstrate, however, the abbreviation inherent in such labels as *scientific realist*,

realist about minds, or *moral realist.* The labels *scientific realist, mental realist,* and *moral realist* are only handy tools with which vaguely to indicate the directions of one's ontological commitments. There is nothing in the label *moral realist* that requires Moore's kind of blanket commitment to even the most abstract of moral qualities. A moral realist as I comprehend the phrase might well think that *good* names no quality in the world, natural or nonnatural, and that a standard commendatory use is all that justifies having such a word in our language. The ontological commitments distinctive of moral realism may well lie in more particular qualities, such as courageousness, culpability, and the like.[52]

With these caveats, the naturalist moral realism that I defend is a species of metaphysical realism over the domain of moral discourse. Some believe that moral realism, when defined as an instance of metaphysical realism, presents an impossible position.[53] The argument is that the independence thesis of the metaphysical realist is thought to be unsatisfiable by moral entities and qualities. The worry is that morality is person-centered so that it makes little sense to think that it could exist independent of our thoughts and conventions.

Yet this is a nonworry for ethics, as it was a similar nonworry for psychology and sociology. One can be a realist in psychology, sociology, and ethics without the absurdity of suggesting that mental states, social conventions, and moral rights exist independently of persons and their minds. For all three sorts of realisms, the independence definitive of realism is not independence from all mental states of all persons. Realism requires only independence of the beliefs of the *observer(s).* The realist's independence thesis does not exclude the beliefs of *subjects* from the possible truth conditions of psychological, sociological, or moral statements.

For example, my own natural law view[54] regards legal rights and duties as depending in part on the existence of certain institutional conventions. Such conventions are part of what is observed. Yet legal rights, legal duties, and so forth, are convention-independent for the natural lawyer or "legal realist" (i.e., metaphysical realist about law)

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52. For suggestions along these lines, see PLATTS, *supra* note 48, at 246; Moore, *supra* note 8, at 1145-46; Mark Platts, *Moral Reality and the End of Desire, in* REFERENCE, TRUTH, AND REALITY 69 (Mark Platts ed., 1980).

53. *See* Sayre-McCord, *supra* note 9, at 6, 14-22.

54. *See generally* Michael S. Moore, *Do We Have an Unwritten Constitution?,* 63 S. CAL. L. REV. 107 (1989) [hereinafter Moore, *Constitution*]; Moore, *Interpretation, supra* note 2; Michael S. Moore, *Precedent, Induction, and Ethical Generalization, in* PRECEDENT IN LAW 183 (Laurence Goldstein ed., 1987) [hereinafter Moore, *Precedent*]; Michael S. Moore, *Three Concepts of Rules,* 14 HARV. J.L. & PUB. POLY. 771 (1991).

in the sense that the conventions *of the observer(s)* are not relevant to the existence of legal rights. Legal rights could exist in some society even if the observer raising the question had no conventions constituting a concept of law and, indeed, even if he did not exist.

Analogously, the moral realist as I define him is not committed to, for example, moral rights' existing independently of the person whose rights they are, nor to such rights' existing generally in the absence of people. Although a realist about possible worlds could make sense of even these positions, the moral realist as I have defined him needs nothing so extreme. The independence criterion only requires that moral qualities exist independently of the observers' minds or conventions. The existence of moral rights may depend on there being persons to possess them, and, for certain of those rights (for example, of property and contract), on there being certain conventions in place among those possessing such rights. This is not inconsistent with moral realism because such moral rights exist independently of my (or any other observer's) thoughts about them and independently of there being a convention in my (or any other observer's) society.

This interpretation of the independence criterion results in the classification of both moral subjectivism and moral conventionalism as antirealist positions. The subjectivist believes that a moral quality or entity exists only if he judges that it does.[55] While a subjectivist grants this moral sovereignty to each person when she is an observer, the subjectivist does not think that some designated individual exists (say the person whose moral right or duty it is) who can make something right by believing that it is right. The latter would be a kind of realist position, albeit a crazy one, that asserted that moral entities exist as a kind of mental state of some one designated person. The subjectivist as I would understand him does not view morality this way. Rather, moral entities exist, but only relative to the judgment of each observer, himself included, that they exist.

Thus, subjectivism is an antirealist position on a metaphysically realist definition of moral realism. Conventionalism is also most fruitfully so defined. The conventionalist about morals believes that a moral entity or quality exists relative to the judgment of some group of persons that it exists. So construed, conventionalism is an antirealist position. Were a conventionalist to hold that a moral entity existed as a kind of shared mental state of some designated group then it too would be a (crazy) kind of realism. But conventionalism (or relativ-

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55. Compare the different conceptions of subjectivism and conventionalism in Sayre-McCord, *supra* note 9, at 14-22 and in BRINK, *supra* note 27, at 21.

ism) as I understand it does not grant some one group's conventions the power to determine what is right for everyone, itself included. Rather, each group of *observers'* conventions will constitute what is right, recognizing that for other groups (as observers of the same behavior of the same subjects) other judgments will be correct. *This* is relativism, and it is antirealist in its convention-dependent existence conditions for morality.

I earlier offered four criteria for a good definition of moral realism. The second criterion was that moral realism should be defined so that it is not parochial vis-à-vis metaphysical realism in other fields. The above definition, instantiating metaphysical realism as it does, plainly satisfies this criterion. Whether the definition satisfies the first criterion — preserving a debate we have reason to care about — must await the discussion in the next section. Preliminarily, however, we can already see one intuitively desirable feature of this definition: this concept of moral realism places subjectivists and conventionalists in the same (antirealist) camp as the noncognitivists and other skeptics.[56]

The third criterion of a successful definition of moral realism is that it display in a natural way the main metaethical currents in moral philosophy. My definition of moral realism amply satisfies this criterion as well, even if it runs a bit roughshod over various self-proclaimed "moral realists" in contemporary ethical philosophy. The various naturalists against whom G.E. Moore took himself to be arguing are realists by this definition, as is Moore the nonnaturalist himself.[57] The emotivism of A.J. Ayer[58] and C.L. Stevenson,[59] together with the prescriptivism of R.M. Hare,[60] fit nicely into the noncognitivist branch of skepticism, while the more contemporary "error-theory" of John Mackie[61] is an instance of the other sort of moral skepticism.

Within contemporary ethical philosophy, many people who call themselves moral realists cannot be card-carrying members of the club but are more fruitfully taxonomized in other niches by my definition. Simon Blackburn's "quasi-realism"[62] is one of the first to go, since acceptance of his "projectivist" metaethic is clearly a skeptical

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56. Compare Sayre-McCord, *supra* note 9, whose differing definition of moral realism makes subjectivists and conventionalists kinds of realists.

57. *See* MOORE, *supra* note 10.

58. *See* AYER, *supra* note 24.

59. *See* STEVENSON, *supra* note 25.

60. *See* sources cited *supra* note 26.

61. *See* JOHN L. MACKIE, ETHICS: INVENTING RIGHT AND WRONG 35, 48-49 (1977).

62. *See* BLACKBURN, *supra* note 29.

noncognitivism, despite his label. Jeremy Waldron's very similar "quasi-skepticism" is also noncognitivist, with a somewhat more accurate label.[63] John Rawls' "constructivism," as he himself has recently construed it, is obviously conventionalist and thus antirealist.[64] Ronald Dworkin's "interpretivism" about morals is also ultimately conventionalist in its metaethics, despite its occasional realist appearances.[65] Gilbert Harman's conventionalist naturalism is also plainly antirealist, as he himself would freely admit.[66] Sabina Lovibond's Wittgensteinian construal of moral realism is also ultimately conventionalist,[67] as is John McDowell's Wittgensteinian intuitionism.[68] Bernard Williams' "objectivist" opponent in ethics[69] also fails to qualify as a metaphysical realist; to the extent such "objectivists" mean nothing more in saying that values are "objective" than that a convergence of belief and desire in persons can be expected given their nature, they eschew the ontological commitments distinctive of realism. Even Hilary Putnam's "internal" or "pragmatic" realism[70] fails to duplicate the consequences of a true metaphysical realism, given the internal realist's denial that there could be moral facts beyond the ken of an idealized human knower.

My fourth criterion for a successful definition of moral realism was that moral realism should not be conceived so that adoption of that metaethical position would foreclose otherwise plausible theories in substantive ethics. This criterion gives rise to particular concern with respect to theories, like ethical hedonism and preference-utilitarianism, that make goodness dependent on certain sorts of mental states. Yet the independence thesis of realism, as I have construed it, does not preclude a realist from holding these substantive theories. An ethical hedonist holds that human pleasure is good, whereas a preference-utilitarian holds that satisfaction of human desire is good. Despite the dependence of goodness on various mental states of pleasure or desire, a moral realist could easily hold such substantive theories, for neither makes the goodness of a state depend on any observer's belief in the goodness of such a state.

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63. *See* Waldron, *supra* note 3.

64. *See* Rawls, *Justice, supra* note 30; Rawls, *Kantian Constructivism, supra* note 30.

65. *See supra* note 2.

66. *See* HARMAN, *supra* note 30.

67. *See* LOVIBOND, *supra* note 30.

68. *See* McDowell, *supra* note 30.

69. *See* WILLIAMS, *supra* note 30, at 152-55.

70. *See* sources cited *supra* note 43.

II. WHY THE TRUTH OF MORAL REALISM MATTERS

A. *What Is the No-Difference Criticism?*

William James once complained that the reaction to pragmatism within professional philosophy went through three stages: first, it was denounced as being so obviously false as to be "absurd"; second, even while it was admitted to be true, it was patronized as a trivial theory because the question that it purported to answer was not interesting or important; and only eventually and thirdly, James noted, did anyone concede that pragmatism was both true and important.[71]

Much of the criticism of moral realism is at the first of James' three stages of criticism. This is the issue I shall examine in the last part of this article, which is whether we have good reason to believe that moral realism is true. A significant amount of the criticism of moral realism has remained fixated at the second level, finding the theses definitive of moral realism to be without interest because they make no difference in our lives or our institutions. I wish to examine this "it makes no difference so who cares?" criticism in this part of the article.

This question relates to the issue of the truth of moral realism in the following way. As we shall see in Part III, to argue for the mind-independent existence of moral qualities is to argue that such qualities' existence better explains other facts that we believe to be true than competing skeptical or idealist explanations. Put more simply, moral qualities have real world effects, and those effects provide our evidence for the existence of those moral qualities.

To this extent, the question whether moral realism is true raises the identical issue posed by the question whether moral realism makes any difference, namely, do moral qualities have any causal effects? Yet those asserting the "it makes no difference" criticism of moral realism have a narrower set of differences in mind than the range of effects that the moral realist takes to demonstrate the existence of moral qualities. Rather, this form of criticism urges that of all the alleged effects moral qualities produce, none would make any difference to how we lead our own lives or how we design social institutions. This *is* a distinct criticism, one that I propose to examine in this section.

Even thus clarified, the "no-difference" criticism is still unfortunately fraught with ambiguity. One ambiguity is the extent to which we are supposed to hold the actual beliefs, attitudes, and inferences of historical persons constant versus the extent to which we are to idealize such beliefs, attitudes, and inferences. Consider a series of exam-

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71. *See* WILLIAM JAMES, PRAGMATISM: A NEW NAME FOR SOME OLD WAYS OF THINKING 198 (1949).

Michigan Law Review

ples. As a matter of psychological fact, some people's beliefs in a skeptical metaethics are causally connected to their beliefs in: (1) the truth of utilitarianism,[72] (2) the desirability of democracy;[73] (3) the desirability of liberal tolerance of others' conceptions of the good;[74] (4) the legal positivist view that laws have value-free pedigrees;[75] and (5) the legal formalist view that judges should not resort to values in adjudicating cases.[76] I am willing to grant that the inferences in each of these cases are either outright fallacious or at least easily avoidable by the substitution of premises other than the premise of metaethical skepticism. After all, how can it follow from the premise that nothing is objectively right, fair, or good, that either the summing of equally arbitrary preferences, or the allowance of each to have an equal political voice, or the toleration of others' views, is right, fair, or good? Likewise, one can make more plausible arguments for the desirability of legal positivist theories of law and legal formalist theories of adjudication than those that depend upon a skeptical metaethics.[77]

The ambiguity of the no-difference criticism lies in how much we should idealize the beliefs, attitudes, and inferences of the people to whom the metaethical issues allegedly make no difference. If we do not idealize people's beliefs at all, then the no-difference criticism is obviously false: as a matter of historical and psychological fact, many people become utilitarians, democrats, liberals, legal positivists, and legal formalists because they believe that moral realism is false.

On the other hand, if we fully idealize the beliefs, attitudes, and inference patterns of the people to whom the truth or falsity of moral realism allegedly makes no difference, then the no-difference thesis loses all of its supposed *practical* bite. After all, no one holds only true beliefs, feels only appropriate emotions, and makes only valid inferences; so, if we fully idealize persons, the no-difference criticism only says that the truth of moral realism makes no difference to some

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72. I explore this topic in Moore, *supra* note 8, at 1067-71.

73. For an example of moral skepticism motivating a belief in democracy, see Robert H. Bork, *Neutral Principles and Some First Amendment Problems,* 47 IND. L.J. 1 (1971); *see also* Michael S. Moore, *Robert Bork: A Contradiction in Terms,* L.A. TIMES, Sept. 18, 1987, Part II, at 5.

74. *See* Michael S. Moore, *Sandelian Antiliberalism,* 77 CAL. L. REV. 539, 544 (1989).

75. Both Hans Kelsen and Oliver Wendell Holmes, for example, were motivated to their legal positivism by their metaethical skepticism. *See* Moore, *supra* note 8, at 1066-67 & nn. 10-13.

76. Both "plain-meaning" and "original-intention" approaches to value-free legal adjudication are often motivated by metaethical skepticism. Robert Bork is an example of the latter, *see supra* note 73, and former Chief Justice Warren Burger is an example of the former. *See* Moore, *supra* note 8, at 1065 n.3.

77. Both H.L.A. Hart and Jeremy Waldron have noted this possibility. *See* Hart, *supra* note 1, at 624-29; Waldron, *supra* note 3, at 159-62.

Peircean knower. Not only would this not be much of a criticism of moral realism, but it might not any longer be distinct from the criticism that moral realism is false because moral qualities have no real world effects.[78]

As another example of this ambiguity, consider the emotional dejection many people experience if they come to believe the truth of moral skepticism. If we do not idealize such emotional reactions, the no-difference criticism is obviously false: as a matter of documentable psychological fact, some persons do have this reaction.[79] The older noncognitivists like Ayer and Hare were willing to idealize the emotional reactions people *should have* when they learn the truth of noncognitivist skepticism: once people see that they never really were committed to the mind-independent existence of moral qualities (because the surface grammar of their evaluative speech acts misled them), then people should not feel dispirited.[80] Existential anguish, they might say, is a useless passion that should not be felt.

This noncognitivist refusal to give us permission to weep does not reveal the extent to which the noncognitivists were willing to idealize our emotions. May we feel disappointment only if we initially had a reasonable basis for expecting something to be true? Or should we idealize further: Is disappointment itself always a sort of crying over spilt milk? We can neither change the past, square the circle, nor make the world always conform to our wishes, and feelings of disappointment cannot change these facts. Therefore, should we always eliminate feelings of disappointment, like feelings of guilt, from our emotional life?

Again, if the noncognitivist continues very far down this path, he is in danger of asserting the no-difference criticism only about Kant's *noumenal beings,* that is, about a purely rational being with no emotions — which is none of us. Yet once one starts to idealize emotional reactions, where is the no-difference critic to stop?

If the no-difference criticism is going to be advanced with the prac-

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78. The collapse of the "no-difference" criticism into the "moral-realism-is-false" criticism would certainly occur if the antirealist were to idealize *all* of our beliefs, including our metaethical beliefs. For then moral realism could have no interest for us (idealized knowers), because it would be so obviously false. For just such a collapse, see Joel J. Kupperman, *Moral Realism and Metaphysical Anti-Realism,* 18 METAPHIL. 95, 102 (1987), where Kupperman finds moral realism (as I have defined it) of no practical interest because "hard-headed people" should regard it as "preposterous."

79. Arthur Leff, whose moral skepticism dispirited him sometimes to the point of debilitation, provided a well-known example in the legal academy. *See, e.g.,* Arthur A. Leff, *Unspeakable Ethics, Unnatural Law,* 1979 DUKE L.J. 1229.

80. For discussion of this noncognitivist tack, see JAMES R. FLYNN, HUMANISM AND IDEALOGY 1-52 (1973).

tical bite advertised, it must severely curtail the degree to which it idealizes the beliefs, attitudes, and inference patterns that people actually have. The most sensible response would be to idealize only to the extent that people could realistically be expected to change their beliefs, attitudes, or inferences upon realizing their fallaciousness, irrationality, or inappropriateness. This is a vague line, but at least it does not threaten complete collapse of the no-difference criticism. Even so construed, the no-difference criticism depends on the completion of a successful educational program by those with the inferior feelings or inferences for the criticism to be true in the real world.

A second ambiguity in the no-difference criticism inheres in what it is that the moral realist believes and in what it is that his opponents believe. There are different species of moral realism, as we have seen, and there are several different antirealisms as well. What practical difference it makes whether moral realism is true depends on what opposition one has in mind. For example, the moral realism that takes moral qualities to give each rational agent subjective reasons for action[81] will have a different implication for our practical reasonings than will the moral realism that assumes moral qualities do not necessarily motivate actors to pursue them.[82] Likewise, if the alternative to moral realism is some form of noncognitivism, the falsity of moral realism will have quite different implications than it will if the alternative is some form of conventionalism.

The moral realism that interests me is the moral realism that I defined in the previous part of this article and that I have defended as true.[83] I shall accordingly examine the no-difference criticism with that supervenience-naturalist, nonfoundationalist, externalist, bivalent, antinominalist as well as antiidealist moral realism in mind. I shall further assume that the most plausible and widely held antirealisms are noncognitivism and conventionalism. I shall accordingly examine the no-difference criticism primarily with respect to these two antirealisms, noting the differences between them when it matters; I shall secondarily treat subjectivism and error-theory skepticism when it seems appropriate.

There is a version of the no-difference criticism that rejects all of these metaethical positions, antirealist as well as realist. I refer to

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81. Mark Platts is one such moral realist. *See generally* PLATTS, *supra* note 48.

82. My own version of moral realism holds that neither the existence of a moral quality nor an actor's belief in the existence of a moral quality need subjectively motivate that actor to act in accordance with that moral quality. *See* Moore, *supra* note 8, at 1122-23. David Brink has come to call this position "externalist moral realism." BRINK, *supra* note 27, at 37-50.

83. *See* Moore, *supra* note 8; *see also infra* Part III.

those who deny sense to the metaethical debate between the realist and his various antirealist opponents — and a debate that lacks sense also lacks significance to the practical concerns of rational persons. Richard Rorty, for example, has said that Allan Bloom and I are the only two people in America silly enough to think that the denial of moral realism matters to anything we care about.[84] Stanley Fish has likewise deployed his familiar no-theory theory to urge that my moral metaphysics can have no import for our practical affairs.[85] Perhaps most familiarly, Ronald Dworkin has throughout his career pooh-poohed all moral metaphysics as amounting to no more than redundant window-dressing, rhetorical devices for repetition and emphasis of our substantive moral claims but otherwise without impact on those claims.[86]

Rorty, Fish, and Dworkin all have rested their version of the no-difference criticism on their "interpretivist" or "pragmatist" rejection of all metaphysics, moral metaphysics included. What I sought to show in an earlier article[87] is how all of them are closet idealists; they are not outside a debate between realists and antirealists that involves no sense, but very much within that debate. Moreover, within the metaphysical debate they are not on the side of the angels, for their idealist arguments seek to establish the falsity of moral realism on their way to concluding that the truth or falsity of moral realism makes no difference.[88] I thus put aside this "interpretivist" or "prag-

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84. *See* Richard Rorty, *The Banality of Pragmatism and the Poetry of Justice,* 63 S. CAL. L. REV. 1811, 1813 (1990).

85. *See* Stanley Fish, *Dennis Martinez and the Uses of Theory,* 96 YALE L.J. 1773, 1781-85 (1987).

86. DWORKIN, LAW'S EMPIRE, *supra* note 2, at 81-82; RONALD M. DWORKIN, A MATTER OF PRINCIPLE 172 (1985).

87. Moore, *supra* note 34.

88. This is particularly clear with Ronald Dworkin's version of interpretivist pragmatism. As we have seen, *see supra* note 86, Dworkin believes that a moral realist's metaphysical statements are only redundant ways of giving emphasis to substantive moral claims. If Dworkin were right about this, so that such redundancy were all that the moral realist's metaphysics came to, then of course metaphysics could make no difference in how we think or act. Yet why should we think that the moral realist's metaphysical assumptions all reduce to redundancy devices, useful only for emphasis? On their face, the ontological, truth-related, and semantic theses definitional of moral realism do not seem to be first order, substantive moral judgments, like the judgment that slavery is unjust. On their face, such theses seem to be *about* such first order, substantive moral judgments — to mention, not to use, moral concepts like justice.

Dworkin's only stated reason for reconstruing the moral realist's metaethical claims into first order ethical claims is his skepticism about metaethical claims unless they are so reconstrued. Dworkin urges, for example, that moral realists' correspondence theory of truth is

a mysterious and highly blurred idea of "real" truth, which [moral realists] express only in metaphors, and which I doubt can be expressed in any other way. They can say that a proposition is "really" true only if it accurately describes facts that are "out there," or part of "the fabric of the universe," or "locked into" an "independent reality" or something of this sort.

A Reply by Ronald Dworkin, in RONALD DWORKIN AND CONTEMPORARY JURISPRUDENCE 277

matist" version of the no-difference criticism, since it is not separate from the criticism that moral realism is false.

I shall examine the no-difference criticism as a genuinely separate criticism of moral realism. I shall do so first with regard to the difference the truth or falsity of moral realism makes to each of us. I shall then examine what difference the truth or falsity of moral realism, or one of its four opposed antirealisms, makes to the design of legal institutions.

B. *The Debate's Importance to Personal Moral Experience*

As persons who make moral judgments, we should care about the debate about moral realism for several reasons. First, the outcome of that debate determines the "tone" given to our moral experience. If moral qualities do not "exist" but are merely "projections" of our emotional needs, or if the existence of moral qualities depends on personal or group judgment, then we do not *discover* anything when we reason morally. The psychological cost to each of us of so viewing our morals is the nausea the existentialists were so at pains to depict, a nausea out of which we must wearyingly pull ourselves in order to create value for a world that is otherwise without it.

Second, the outcome of the moral realism debate affects the question of whether one can be mistaken in his moral judgments. The moral realist defined above can easily account for our sense that we are fallible moral reasoners; antirealists of all stripes have a much more difficult time, since on their views there is nothing we (individually, or at least collectively, for conventionalists) could be wrong about.

Third, moral realism carries implications for the desirability of

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(Marshall Cohen ed., 1984). Elsewhere Dworkin urges that moral realists create "incomprehensible metaphors" whenever they press their ontological theses "that the injustice of slavery is part of the furniture of the universe that it is really 'out there' in some way." DWORKIN, A MATTER OF PRINCIPLE, *supra* note 86, at 172. For literally, Dworkin thinks, it is "absurd" for the realist to claim "that moral values are 'out there' . . . ." DWORKIN, LAW'S EMPIRE, *supra* note 2, at 83. Dworkin also reconstrues the moral realist's semantic theses, because he thinks that, taken literally, they are absurd. According to Dworkin, "moral . . . judgments have the sense and force they do just because they figure in a collective human enterprise," and this is the best construal of such judgments, because "such judgments cannot have a 'real' sense and a 'real' truth value which transcend that enterprise, and somehow take hold of the 'real' world." DWORKIN, A MATTER OF PRINCIPLE, *supra* note 86, at 174.

These quotations should make very clear that Dworkin has no "no difference" argument to advance against moral realism that stands at all independent of his arguments against the truth of moral realism. Only by flatly denying the moral realist's ontological, truth-related, and semantic theses can Dworkin justify reconstruing them into the trivial redundancy readings that he prefers. And only by trivializing the metaphysical claims of the moral realist into redundant first order moral claims can Dworkin deny significance to the debate about the truth of moral realism. I thus put aside Dworkin's no-difference argument, for, like Rorty and Fish, he advances no argument that does not presuppose the *falsity* of the very theses whose truth or falsity was not supposed to matter.

maintaining consistency in one's moral beliefs. On the realist view, consistency is desirable in moral beliefs for the same reason that it is desirable in scientific beliefs — namely, because two inconsistent beliefs cannot both be true. Why an antirealist would seek to maintain consistency in his moral beliefs is more of a puzzle. The noncognitivist might not like the "feel" of opposed emotional reactions — to love and hate the same object, for example, may be hard on one — but this dislike of emotional conflict could as easily become an acquired taste. The same is true for the subjectivist: why should she desire consistency in her moral beliefs when on her view those beliefs are not about anything but the thoughts of the person who believes them? The conventionalist should have even less concern for keeping consistent the conventions of his society that for him constitute morality; after all, given the shifting pattern of moral beliefs between persons in any society, why should the most popular beliefs not conflict?

Fourth, the moral realism debate impacts upon our experience of difficult moral dilemmas. Antirealists view moral dilemmas as conflicts of emotional responses (noncognitivism), conflicts of belief (subjectivism), or conflicts of social convention (conventionalism). On any of these views, there will be many conflicts that are not only practically insoluble (we cannot find the answer) but also theoretically insoluble (there is no answer). To the extent one can be confident that one faces a theoretically insoluble dilemma, the antirealist thus ought to quit attempting to reason his way to a solution. Since on his view of morality there is nothing to be said for one solution over another, the antirealist ought to be morally indifferent to what he chooses, and thus his decision-procedure can be as arbitrary as he pleases. The moral realist (as I have defined him to adhere to the bivalence thesis) can never justify such indifference, since moral reality never "runs out" or otherwise fails to dictate a theoretical solution to the hardest moral dilemmas.

Fifth, another practical reason to care whether moral realism is true involves our ability to disagree with a majority or even the whole of a society about some moral concern. This experience of solitary personal conviction is a fundamental aspect of our experience as moral decisionmakers. Yet if realism is false, and if conventionalism is true, this experience must be an illusion. After all, if moral judgments only make sense relative to some set of social conventions, to purport to make such judgments independently of such conventions is senseless.

These five consequences of one's metaethical stance matter to each of us personally because they touch on important facets of our moral experience. Yet the critics of moral realism who insist that metaethics

makes no difference either wish to deny that metaethical beliefs do (or should) have these consequences or to convince us that such consequences are insignificant.

1. *The Difference to the Phenomenology of Value*

Consider first the attitudinal consequence of metaethical beliefs. Jeremy Waldron seeks to deny that whether we are moral realists or antirealists matters to our attitudes about our own moral judgments.[89] Since Waldron is responding to my earlier depiction of this attitudinal difference, that depiction is worth repeating here:

> The personal difference it makes to each of us is in the attitude we adopt regarding our own values. 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 judgments 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.
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> The psychological consequence of this for the skeptic is to devalue his own values. Even those things that he most cherishes he will regard on a par with his taste, e.g., for watermelon: a purely subjective, arbitrary preferences. He will think that the difference between preferences regarding watermelons and preferences regarding concentration camps will only be one of relative strength. Ultimately, he must conclude, the only thing to be said about either watermelons or concentration camps is that some people like them and some people don't.
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> The effect of regarding one's own value system in this manner is devastating. This skeptical attitude does not mean one should cease making value judgments, such as those condemning concentration camps; in the skeptic's world, if there is nothing ultimately to be said in favor of such a value judgment, there is equally nothing to be said against it. So one may as well retain the value judgments one has made. Yet dumb inertia is not the sort of reason one wants as a justification of one's most cherished ideals. If nihilism is not the consequence of skepticism, neither is the kind of passionate commitment to one's ideals possible only if one believes that they are right.[90]

Waldron has a number of things to say in response to this attitudi-

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89. *See* Waldron, *supra* note 3, at 167-71, 175-76.

90. Moore, *supra* note 8, at 1063-64 (footnote omitted).

nal effect of metaethical belief. One is a kind of *tu quoque* response to moral realists:

> [S]ince they [moral realists] are quite unable to "demonstrate the truth" of their judgments 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.[91]

Yet this attempt to equate the attitudes of the honest realist to that of the honest skeptic presupposes that realists have no method of demonstrating their moral truths to others or even to themselves. Since this premise is crucial to Waldron's assertion of the no-difference thesis in questions of institutional design, I shall defer dealing with it until the next section.

Waldron's main response is to deny that belief in moral skepticism — at least of the noncognitivist variety — should have the attitudinal effect that I describe. Like Rorty, who accuses me of an unwarranted fear that his "pragmatist" rejection of realism "is dangerous to the moral health of our society,"[92] Waldron thinks that I and other moral realists "panic" needlessly about the attitudinal effects of adopting a noncognitivist metaethic.[93] Waldron weaves together several strands in his therapeutic effort to relieve moral realists of their "panic . . . about the consequence of adopting an emotivist approach."[94] Two of these strands I have no quarrel with. Waldron grudgingly concedes that no one, least of all a moral realist, should wish (or even find consistent with his realism) to adopt an attitude of infallibility toward one's own moral judgments. *Not* being dispirited cannot mean, for the realist, "being unwilling to budge — in debate and argument — from the moral claims one makes, sticking with one's judgments, refusing to countenance the possibility of changing one's view, and so on."[95] Moral realism, at least when coupled with a nonfoundationalist epistemology, can hardly require such a stubbornly obtuse posture.

Waldron is also correct to point out that simple ejaculations like "boo!" and "hurrah!" cannot accurately portray the emotional reactions to whose expression the emotivist-noncognitivist reduces moral judgments. One of the better things to happen in the moral psychol-

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91. Waldron, *supra* note 3, at 176.

92. Rorty, *supra* note 84, at 1813.

93. *See* Waldron, *supra* note 3, at 167-71.

94. *Id.* at 167.

95. *Id.* Waldron curiously asserts that this is "what the realists have in mind when they talk about being serious about one's moral judgments" before recognizing that "nobody is particularly interested in this form of moral steadfastness." *Id.* at 167-68.

ogy of the past twenty years has been the rediscovery of the subtlety, variety, and depth of our emotional experiences.[96] Remembering this should keep moral realists from caricaturing emotivists' metaethical views, rendering emotivism somewhat less obviously dispiriting.[97]

Yet neither of these points defuses the dispiriting attitudinal effect of adopting either skepticism or idealism as one's metaethical view. That effect remains because the antirealists' metaethical belief remains even after a more respectful portrayal of our emotions: our values are only the expression of our emotions (emotivist noncognitivism), or they are the nonexistent referents of our therefore false moral beliefs (error-theory skepticism), or they are only our beliefs (subjectivism), or they are only those beliefs that we share with others in our society (conventionalism). Change those emotions, beliefs, or conventions, and what we now think to be true would instead be false. In that sense, our value judgments are arbitrary, a clearly dispiriting revelation.

Waldron attempts to blunt this worry, at least with respect to noncognitivist skepticism, by reconstruing the counterfactual to which the emotivist is committed:

(1) I only make the moral judgments I do . . . because of how I feel. If I felt differently I would make different moral judgments.[98]

Waldron rightly does not feel at all dispirited by embracing (1). Indeed, even a moral realist could embrace (1), because (1) says only that our moral judgments are influenced by our emotions. As I have argued elsewhere in some detail,[99] our emotions are our main heuristic guide to arriving at *true* moral beliefs, and there is indeed nothing dispiriting about that insight.

The problem is that (1) does not at all capture the dispiriting aspect of emotivism. A different counterfactual better captures that aspect:

(2) If I felt differently, the judgments I now make that are now true would be false, and different judgments that are now false would be true.

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96. I discuss some of this literature in MICHAEL S. MOORE, LAW AND PSYCHIATRY: RE-THINKING THE RELATIONSHIP (1984), and in Michael S. Moore, *The Moral Worth of Retribution, in* RESPONSIBILITY, CHARACTER, AND THE EMOTIONS 179 (Ferdinand Schoeman ed., 1987).

97. On the other hand, this development in moral psychology should not make the emotivist too comfortable. After all, much of the recent work on the emotions seeks to reveal a rationality of the emotions (in terms of their intentionality, appropriateness, consistency, and the like). It is but a short step from there to the view that I defend, that the emotions are the harbingers of insight into moral truths. *See* Moore, *supra* note 8, at 1135-36; Moore, *supra* note 96, at 198-208.

98. Waldron, *supra* note 3, at 170.

99. *See* Moore, *supra* note 96, at 198-208.

As Simon Blackburn exemplifies (2), "[i]f we had different attitudes [about kicking dogs], it would not be wrong to kick dogs."[100] I do not see how one can accept (2) and not devalue his own value judgments.

Waldron and Blackburn try to finesse (2) by distinguishing causal from justificatory senses of (2). On the justificatory reading of (2) the emotivist would be "committed to saying that her own feelings *justify* the judgments that she makes."[101] Waldron and Blackburn rightly point out that the emotivist need not think that his aversion to kicking dogs is the feature of kicking dogs that makes that act wrong; the emotivist like anyone else can think that the pain imposed is what makes it wrong to kick dogs.[102] Yet seeing this does nothing to blunt the dispiriting import of (2) in a nonjustificatory (what I would call a metaphysical) sense: my moral judgments have no truth value independent of my emotional reactions.

As is well known, Blackburn tries to avoid a nonjustificatory sense to (2). His advice to his fellow noncognitivists is that "[w]e should not say or think that were our sentiments to alter or disappear, moral facts would do so as well. This would be endorsing the defective counterfactuals, i.e. endorsing the wrong kinds of sensibility, and it will be part of good moralizing not to do that."[103] As Blackburn elsewhere puts it:

> Suppose someone said "if we had different sentiments, it would be right to kick dogs" . . . . Apparently, he endorses a certain sensibility: one which lets information about what people feel dictate its attitude to kicking dogs. But nice people do not endorse such a sensibility.[104]

The sticky point for Blackburn here is why the utterer of counterfactuals like (2) must "endorse a certain sensibility." Why must (2) be meant in its justificatory sense (as a first-order moral judgment) and not in a metaphysical sense (as a second-order metaethical judgment)? Blackburn seems to regard as a kind of category mistake the conjunction of statements asserting judgments of what is morally right or wrong with statements grounding such judgments. But precisely such a conjoint statement is what makes Blackburn's "projectivism" a kind of noncognitivism. If Blackburn cannot get outside the web of his own substantive moral judgments to assert counterfactuals like (2) in their metaphysical sense, then he is no noncognitivist or

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100. Simon Blackburn, *Rule-Following and Moral Realism, in* WITTGENSTEIN: TO FOLLOW A RULE, *supra* note 30, at 179. Blackburn concludes, however, that this is an "absurd moral view." *Id.*

101. Waldron, *supra* note 3, at 171.

102. Blackburn, *supra* note 100, at 179; Waldron, *supra* note 3, at 171.

103. BLACKBURN, *supra* note 29, at 219 n.21.

104. *Id.* at 218.

"quasi-realist" — he is a moral realist. Yet the whole idea of "projectivism," even for a Blackburnian "quasi-realist," is that we *can* get outside to see that the truth or falsity of judgments like "kicking dogs is wrong" depends on how we feel about it. That is noncognitivism, and it is (and should be) dispiriting to one's moral commitments.

Blackburn has recently recognized this accusation (of willful blindness to dispiriting interpretations of counterfactuals like (2)) but sticks to his guns:

> The crucial question . . . is whether the projectivist wilfully refuses to hear the external reading [of (2)]. . . . There *would* be an external reading if realism were true. For in that case there would be a fact . . . whose rise and fall and dependency on others could be charted. But antirealism acknowledges no such state of affairs, and no such issue of dependency. . . . Talk of dependency is moral talk or nothing.[105]

In other words, since no moral judgments are really true or false on the noncognitivist account, nor are they really judgments about independently existing states of affairs, there is literally no thing that can depend on our feelings. Thus the continued denial of any "external" or metaphysical reading of (2).

It escapes me how this last maneuver prevents the dispiriting attitudinal effects of noncognitivism. We were supposing that whether there are mind-independent moral facts is a live issue between the realist and the noncognitivist. The criticism we are here considering is that this issue makes no attitudinal difference to us. What this last maneuver by Blackburn reveals (yet again) is how much the no-difference criticism depends on the metaethical issue that is supposed to make no difference: *assuming that moral realism is obviously false,* Blackburn purrs, then its falsity cannot dispirit us because we cannot make metaphysical sense of counterfactuals like (2). Yet to those of us who may be more open-minded on the metaethical issue, counterfactuals like (2) make perfectly good metaphysical sense, and they would be disquieting if they were true in that sense.

Even supposing that I am completely wrong about this last point, it is clear that noncognitivism still has a dispiriting effect. That is, suppose that the Blackburn/Waldron noncognitivist can finesse having to assert counterfactuals like (2): they succeed in their denial of any sense to (2) except the first-order, justificatory sense, and in that sense they deny (2) on the grounds that (2) is immoral. Even so, their noncognitivism commits them to exclusive *explanations* of our moral judgments in terms of our sentiments and what cause them. They are

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105. Simon Blackburn, *How To Be an Ethical Antirealist,* 12 MIDWEST STUD. PHIL. 361, 367-68 (1988).

committed in such causal explanations to more than counterfactuals like (1). They say that the only explanation of our believing that kicking dogs is wrong is that we feel negatively toward causing animals pain in general and toward kicking dogs in particular; they say that the only explanation for our negative feelings in this regard is the manner of our upbringing, and so forth. But however either of these explanations is fleshed out, the noncognitivist can admit no causal role for the wrongness of dog-kicking in our feelings or beliefs, because no such quality of wrongness exists to play a causal role.

Unlike Waldron, Blackburn admits that the omission of moral qualities in the explanation of our moral feelings and beliefs "is apt to leave a residual unease":

> People feel uncomfortable with the idea that this is the true explanation of our propensity to find and to respect values, obligations, duties, and rights. . . . This unease is located in a tension between the subjective source which projectivism gives to morality, and the objective "feel" that a properly working morality has. It is this objective feel or phenomenology which people find threatened by projectivism . . . .[106]

Having made this concession, however, Blackburn seeks to discount it by reforming this part of people's sensibilities. People *should not* feel this way, Blackburn urges, any more than they should try to smother their sense of humor were they to accept a projectivist denial of funniness as a quality causing laughter. A projectivist thus "may be perfectly rational to accept the projectivist account of morality, *and* to maintain his resolve just as forcefully as before."[107] This normative judgment about how people should feel leads Blackburn to deny that it is his projectivist metaethics that dispirits people:

> [I]t is not the explanation of the practice *per se* which has the sceptical consequence. It is only the effect of the explanation on sensibilities which have been brought up to respect only particular kinds of things. So when people fear that projectivism carries with it a loss of status to morality, their fear ought to be groundless, and will only appear if a defective sensibility leads them to respect the wrong things.[108]

Blackburn concludes that "[o]ne should not adjust one's metaphysics to pander to such defects."[109]

Blackburn, like the older noncognitivists, is obviously willing to engage in a quite extensive idealization of the feelings and beliefs people should have in order to salvage the no-difference thesis. Many

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106. Simon Blackburn, *Errors and the Phenomenology of Value, in* MORALITY AND OBJECTIVITY 1, 6 (Ted Honderich ed., 1985).

107. *Id.* at 9 (emphasis added).

108. *Id.* at 10.

109. *Id.* at 11.

people's sensibilities would not meet with Blackburn's approval, and for those quite real people, whether moral realism is true makes a lot of difference in how they feel about their own moral convictions.

2. *The Differences to the Fallibility and the Consistency of One's Moral Beliefs*

The difference our metaethical beliefs can make to how we feel about our moral convictions has importance beyond the dispiriting of our projects. I consider here two further effects. The first involves the degree to which we will be motivated to see ourselves as fallible in our own moral judgments. No matter how certain one might be about a particular moral belief, a moral realist will know that she could be wrong in such a belief; she will accordingly maintain the same sort of epistemic modesty about her moral beliefs that she does about her scientific beliefs.

The most obvious response to this alleged consequence of metaethics is that made by Simon Blackburn.[110] He notes that we often have what we might call second-order emotions — that is, emotions whose objects are other (i.e., *first-order*) emotions. We may loath our own feelings of pity, hate our hatreds, be pleased at our generous impulses, and so forth. Something like moral fallibility can be constructed, Blackburn contends, by seeing that our own moral attitudes of approval and disapproval are themselves always the *potential* objects of second-order attitudes of approval or disapproval. So we might well be "attitudinally modest" — that is, willing to withdraw some first-order disapproval — just as the realist is epistemically modest about her beliefs.

I have two doubts about this response, paralleling my two doubts about the Blackburn/Waldron response to the question of what attitudinal difference metaethics makes to the phenomenology of value. First, as before, I doubt whether Blackburn's "quasi-realist" project can keep his metaethical skepticism from giving rise to counterfactuals of the sort we earlier examined. That is, if the noncognitivist must acknowledge the truth of statements like *If I felt differently about kicking dogs, then kicking dogs would not be wrong*,[111] then what room

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110. *See* BLACKBURN, *supra* note 29, at 194; Simon Blackburn, *Moral Realism, in* MORALITY AND MORAL REASONING: FIVE ESSAYS IN ETHICS 101, 122 (John Casey ed., 1971); Blackburn, *supra* note 100, at 174-76.

111. Nick Sturgeon, while finding Blackburn's finessing of the counterfactuals to be as implausible as do I, nonetheless does not think that Blackburn should "think of values as dependent on us." Nicholas Sturgeon, *What Difference Does It Make Whether Moral Realism Is True?*, 24 S.J. PHIL. 115, 141 n.58 (Supp. 1986). Sturgeon would rather have the noncognitivist acknowledge that values are not dependent on anything since values do not exist. *See also* Blackburn,

remains for fallibility in one's *deepest* attitudes? Even though I could change any of my first-order attitudes, and even though I could regard the change as an improvement, ultimately, as Blackburn concedes, "these [second-order] evaluations of dispositions are themselves 'subjective': they are ours."[112] I could of course recognize that even these deepest, second-order attitudes might change and "improve";[113] yet mustn't I acknowledge that until these deepest attitudes do change, they cannot be wrong?

The other problem with this response of Blackburn's is its lack of motivation. Granted, one *might* adopt such a deferential stance toward one's potentially changing, second-order attitudes, but why should one? Since there is nothing to choose between one's present second-order attitudes and one's (potentially different) future second-order attitudes, why go to the trouble of change? Why not adopt Oliver Wendell Holmes' attitude toward his own moral attitudes: they are only his, having no objective validity, but since they *were* his, he would hang on to them.[114]

A moral realist has an answer here: moral beliefs are not simply attitudes, but are beliefs that might be false (in the sense of failing to correspond to how the world actually is); accordingly, epistemic modesty is essential. The moral antirealist, by contrast,

> must confine all comparisons of his actual views to other views, held by himself, other persons, or himself somehow improved. This means that, while the realist admits that, under certain circumstances, it would be quite unreasonable for him to hold on to his beliefs (if they did turn out to be false), the moral irrealist *could* always, without being unreasonable, stick to his present beliefs, declaring that he does not care about the views of others or himself improved.[115]

This last problem reveals that it is the noncognitivist who may well be "unwilling to budge . . . from the moral claims one makes, sticking with one's judgments, refusing to countenance the possibility of changing one's view" — precisely the moral stubbornness Waldron in an uncautious moment attributes to the realist.[116] Such inertia and resistance to change makes the noncognitivist a quite different moral rea-

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supra note 105. This reading also forces the noncognitivist to think that, ultimately, he is infallible, at least in the sense that his "judgments" cannot be wrong.

112. Blackburn, *supra* note 100, at 176.

113. *Cf.* Blackburn, *Moral Realism*, *supra* note 110, at 122: "I can envisage a mistake in my standards. . . . I can envisage, at least as a bare possibility, that some argument, or someone, or some event, should come along and show me that I am mistaken . . . ."

114. *See* Oliver Wendell Holmes, *Natural Law*, 32 HARV. L. REV. 40 (1918).

115. Torbjörn Tännsjö, *The Moral Significance of Moral Realism*, 26 S.J. PHIL. 247, 258 (1988).

116. *See* Waldron, *supra* note 3, at 167.

soner than the moral realist. It may even make the noncognitivist as wooden in his reasoning as the moral conventionalist, who purports always to be doing sociology in *his* moral reasonings.[117]

Metaethics also impacts on the degree to which a noncognitivist will be motivated to render his moral reasoning consistent. This consequence of metaethics for personal moral experience is not based on some caricature of 1930's style emotivism, where the emotivist is cast as the fellow who thinks that the nonsensical, nonstatements of moral discourse can have no truth values and hence, no logical relations to one another, and thus denies the human capacity to reason about morality. Noncognitivists have long conceded that statements in moral discourse can and do have at least disquotational truth values and logical relations with one another. The consequence pinpointed is motivational: the realist is motivated to keep his moral beliefs consistent on the usual, truth-seeking ground that at most one of a contradictory pair of propositions can be true. The antirealist lacks any similar motivation for logical hygiene, for his moral beliefs are not about anything. If he wishes to keep free of contradiction in the realm of morality, his motives must be found in his own aesthetic self-image, not in some principle of rationality.[118]

Again, skeptics could develop a second-order attitude disapproving of inconsistent first-order attitudes. Thus, skeptics could morally condemn inconsistency in moral beliefs to match the realist's epistemic condemnation. But the consequence of metaethics isolated previously will remain: the realist has a natural motivation, truth seeking, to condemn inconsistency in his moral beliefs, whereas the skeptic *can* create such a condemnatory attitude in himself but has no reason to do so.

3. *The Differences to Our Experiences of Moral Dilemmas and Moral Disagreements*

An examination of the last two differences moral realism can make to our personal moral experience requires a change in focus. The previous two differences contrasted realism and noncognitivist skepticism (particularly the most sophisticated kind of noncognitivism represented by Simon Blackburn and Jeremy Waldron). Now I wish to contrast moral realism with moral conventionalism. Two additional

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117. I ignore other responses by the noncognitivist to the charge that his metaethic would make people infallible in their moral reasonings. For a discussion of the older noncognitivist response — that mistakes are possible about *facts* but not about the evaluations people base on those facts — see Sturgeon, *supra* note 111, at 127-29.

118. *See* Tännsjö, *supra* note 115, at 255.

differences beyond those just explored should make the debate between the moral realist and the moral conventionalist matter to us.

The first is the way in which we regard and deal with difficult moral dilemmas. Moral dilemmas differ from inconsistency in our moral beliefs. Moral beliefs are inconsistent either when we accept both a proposition and its negation (a contradiction) or when we accept two or more propositions that conjointly imply a contradictory pair of propositions.[119]

Moral dilemmas are not cases posing choices between a pair of inconsistent moral beliefs. The latter are cases of simple uncertainty. Moral dilemmas, by contrast, are cases where two or more noncontradictory moral beliefs cannot be simultaneously satisfied. E.M. Forster provides a well-known example: I in general believe that I should not betray either my friends or my country, but sometimes I can only not betray the one by betraying the other.[120]

There are actually three sorts of moral dilemmas. The first is the most typical: we believe two or more moral principles to be true, yet we face a situation where both cannot be satisfied. A second sort of moral dilemma involves only one moral principle, but one that points in two different directions. For example, I believe that promises should be kept, yet I promise Mary to join her for dinner on Tuesday without remembering that I earlier promised John I would sup with him. A third sort of moral dilemma arises either because we hold no controlling moral belief that bears on the issue, or because the moral belief we have is too vague to be of any help. Some philosophers, for example, report that horrific choices are "beyond" their moral principles, which deal only with less awful alternatives.[121]

As with consistency, the issue here is not whether the existence of experienced moral dilemmas argues in favor or against the truth of moral realism.[122] On that issue, I have aligned myself with Kant ("a

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119. These situations, respectively, describe explicit and implicit inconsistency. *See* CHRISTOPHER CHERNIAK, MINIMAL RATIONALITY 16 (1986).

120. *See* E.M. FORSTER, *What I Believe, in* TWO CHEERS FOR DEMOCRACY 67, 68 (1951).

121. The most famous are Elizabeth Anscombe, Tom Nagel, and Bernard Williams. For citations and discussion, see Michael S. Moore, *Torture and the Balance of Evils,* 23 ISRAEL L. REV. 280, 337-38 (1989).

122. For this debate, see Philippa Foot, *Moral Realism and Moral Dilemma,* 80 J. PHIL. 379 (1983); Samuel Guttenplan, *Moral Realism and Moral Dilemma,* 80 PROC. ARISTOTELIAN SOCY. 61 (1980); Ruth B. Marcus, *Moral Dilemmas and Consistency,* 77 J. PHIL. 121 (1980); Bernard A.O. Williams, *Consistency and Realism,* 40 PROC. ARISTOTELIAN SOCY. 1 (Supp. Vol. 1966); Bernard A.O. Williams, *Ethical Consistency,* 39 PROC. ARISTOTELIAN SOCY. 103 (Supp. Vol. 1965). Again, one cannot always easily separate the issue of whether moral realism is true from the issue of whether it matters whether moral realism is true. Bernard Williams, for example, urges that at least one feature of our experience with moral dilemmas is inconsistent with moral realism (namely, the emotional "tail" that is left even when we are sure we have chosen

conflict of duties and obligations is inconceivable"),[123] so that our experience of apparent moral dilemmas is not inconsistent with moral realism.[124] The issue here is whether the truth or falsity of moral realism makes any difference in how we experience moral dilemmas.

If one adopts my version of moral realism for discussion — a version that includes bivalence for moral discourse — then a major difference with moral conventionalism should be apparent. My moral realist regards all experienced moral dilemmas as only apparent moral dilemmas; there is always an answer to such dilemmas, hard as it may be to find. In the case of dilemmas of the first kind, such answers may exist in terms of a lexical priority between our principles, as in Forster's apparent lexical ordering of friendship over patriotism. Or such answers may exist in terms of exceptions to be found in our principles so that, when carefully formulated, the demands that each makes do not conflict. In the case of dilemmas of the third kind, such answers may be found in our more particular intuitions about the nature of the moral quality referred to by the vague predicate in the principle that we believe to govern the situation.

Prima facie, the conventionalist can buy none of this about there being right answers to the hardest moral dilemmas. Morality for the conventionalist consists of a set of moral conventions, and conventions, unlike reality, inevitably run out or conflict in the face of novel situations.[125] J.L. Austin's aphorism, "fact is richer than diction,"[126] nicely captures the latter point. After all, conventions develop only in response to situations that have either recurred with sufficient frequency in the past, or are foreseeable enough to occur in the future, that they can either accrete gradually or be laid down by some conventionmaker. Unless one believes that the universe of possible moral dilemmas is so impoverished in variety that they either have all occurred or are all foreseeable, conventions must be insufficient to resolve all moral dilemmas.

Suppose a novel about a fictional character is identical to a work of

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the best of two compelling options). *Id.* at 107-08. One can equally well use this claim of inconsistency to argue that moral realism is false or to argue that whether moral realism is true or false makes no real difference to us.

123. IMMANUEL KANT, THE METAPHYSICAL ELEMENTS OF JUSTICE 25 (John Ladd trans., 1965).

124. *See* Michael S. Moore, *Authority, Law, and Razian Reasons,* 62 S. CAL. L. REV. 829, 845-48 (1989); Moore, *supra* note 8, at 1116 n.130, 1149-52.

125. I argue at some length for the impossibility of maintaining a right answer thesis while being a conventionalist in Moore, *Metaphysics, supra* note 2. To like effect, see also M.B.E. Smith, *Rights, Right Answers, and the Constructive Model of Morality,* 5 SOC. THEORY & PRAC. 409, 411-15 (1980).

126. J.L. Austin, *A Plea for Excuses,* 57 PROC. ARISTOTELIAN SOCY. 1, 21 (1956).

biography about an actual, historical person. Both texts will either be silent or have contradictory implications about a large number of matters, such as what type blood the character may have. The novel surely holds no answer to these questions, because its text is silent on them and has no real-world referents. By contrast, there is an answer to these questions in biography because there is a real historical person that the biography is about. The same is prima facie true of the conventionalist and realist approaches to morality. Although the "texts" of social convention and of the moral realist's known moral truths could be identical, only the latter has recourse to a reality whose detail outstrips the "texts."

I am familiar with only two ways for the conventionalist to avoid this implication. One is to believe that moral conventions contain certain special conventions we might call default rules. *Everything that is not clearly prohibited, is permitted* is an oft-mentioned candidate for such a moral default rule.[127] Conventional morality with such a default rule becomes very much like Anglo-American criminal law, with its principle of legality backed by its substantive presumptions in favor of liberty and its procedural concern that a would-be criminal have the opportunity to know that the action he contemplates is prohibited.

Two problems keep this response from being very plausible. One is the doubt whether the moral conventions of our (or any other) society contain such a default rule. Do we regard our moral norms like a would-be criminal who is only concerned with how close to the line (of the sufficiently clearly prohibited) he can come without stepping over? Or do we not internalize such norms at least to the extent of asking whether the act we contemplate does or does not violate them, without benefit of an artificial presumption that, if our act would not *clearly* violate the moral norm, nothing about the act is troubling?

The second problem is that, even if our moral conventions included such default rules, there still would be no right answer in some range of cases. The default rule itself is vague in its attempt to remedy vagueness: When is a prohibition unclear enough in its application to a particular action that the default rule is triggered? Just as there will be penumbral instances where a moral convention either may or may not apply, so there will be penumbral instances where the penumbra begins and the clearly prohibited ends.[128]

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127. *See* BLACKBURN, *supra* note 29, at 202, 209. For the legal analogies, see DWORKIN, A MATTER OF PRINCIPLE, *supra* note 86, at 129-30 & n.3.

128. Joseph Raz makes this point in response to Dworkin's use of default rules to argue for Dworkin's formerly held right answer thesis. *See* JOSEPH RAZ, THE AUTHORITY OF LAW 73-74 (1979).

The other conventionalist rejoinder is to imagine that new conventions can always be added to deal with cases otherwise indeterminate under existing conventions. The conventionalist taking this line might think that a new convention comes into being the moment a consensus develops about a novel situation, yielding a determinate answer. Yet this response ignores the obvious: at the time of the novel act, there was no consensus, no convention, and thus no answer to the question whether the action was right. After-arising consensus is of no help to an actor in the throes of a moral dilemma since he is struggling with the question of what is right to do *now*.

I conclude that on the conventionalist metaethical view we ought to experience moral dilemmas differently than we do. We ought not to be so anguished about our inability to be confident of our decisions in such cases. After all, if we have diligently searched for the relevant conventions, and they yield no answer, then there is no answer and we are free to do as we please. Since whatever we decide is equally good and equally bad — because equally beyond conventional morality — we might as well flip coins with a light heart.

Some conventionalists have urged that the lack of a determinate answer where conventions conflict or run out does not create this difference in how we experience moral dilemmas. A conventionalist, the argument goes, can urge the right answer thesis (that is, bivalence) as a regulative ideal even if conventions are not sufficiently complete to make the thesis true. As Simon Blackburn puts this argument:

> [L]egal and moral reasoning are sufficiently open-ended for it never to be a matter of certainty that we are at a node in the tree — that a proper decision could go either way . . . . So it seldom becomes rational to stop arguing as though there were just one right answer . . . .[129]

Yet surely this answer gains its only plausibility through an illicit fuzziness in the conventionalist's ideas about how conventions' implications for a particular case are indeterminate. Suppose conventions "run out" because their predicates are vague, so that some applications are "penumbral." We may divide such penumbral applications between those that are clearly penumbral and those that are only penumbrally penumbral. For any given predicate (e.g., *unjust*), there will thus be some cases where it is clear that the application is penumbral.· These clearly penumbral cases are where we know that the conventional meaning of the predicate at hand holds no answer. In such

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129. BLACKBURN, *supra* note 29, at 207-08; *see also* Blackburn, *supra* note 100, at 177. That Blackburn should treat his own projectivism as if it had to make this defense of a right-answer thesis is puzzling. I should have thought that if Blackburn's quasirealist project succeeded — in the sense that the quasirealist never admits that his judgments depend on his attitudes — then he could assert the right-answer thesis as a thesis of which he would morally approve.

cases where we have this knowledge, how can the conventionalist justify his regulative ideal for moral dilemmas?

Alternatively, suppose moral conventions are indeterminate in the sense that two or more of them clearly apply to a given situation but conflict in their recommended actions. Since conventions constitute morality for the conventionalist, how can the conventionalist doubt whether morality answers this dilemma? But if there can be no doubt so that the conventionalist can be certain that morality does not answer such dilemmas, how then can he justify the attitude toward hard moral dilemmas that makes them so agonizing for most of us, the attitude that what one chooses matters so much precisely because there is an answer about which one could be wrong? I conclude that the difference here between realism and conventionalism is important, coloring as it does one of the crucial aspects of how we experience moral decisionmaking.

The last difference that adoption of a conventionalist rather than a realist metaethics would make lies in our ability to make what I shall call revolutionary moral judgments. Conventionalism, to put it bluntly, prima facie requires us to toady up to the views of others in moral matters. By contrast, the moral realist can make sense of radical disagreement with all of his fellows, for the truth of what he believes is not governed by its conformity to social convention. Indeed, on this difference the realist and the noncognitivist share common cause against the conventionalist. As Simon Blackburn recognizes, "one of the essential possibilities for a moral thinker is . . . the thought that our own culture and way of life leads us to corrupted judgment." Yet on the conventionalist metaethic, "there is no room for a concept of moral truth which allows that a man who dissents from the herd may yet be right."[130]

No conventionalist I know flatly accepts this implication of her metaethics. Yet the attempts to dodge this bullet are transparent devices to garner the practical benefit of realism without having to pay its ontological price. Heidi Hurd documents six such dodges of the metaethical conventionalist.[131] Such a conventionalist can claim: (1) that she has insight into some future consensus that trumps an unfavorable present consensus; (2) that she speaks from a past consensus that should for some reason be authoritative over a present consensus that she dislikes; (3) that only the consensus of our society's "ethical

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130. Blackburn, *supra* note 100, at 171. For another noncognitivist rejection of conventionalism, see RICHARD M. HARE, ESSAYS ON PHILOSOPHICAL METHOD 122 (1971) ("Common moral opinions have in themselves no probative force whatever in moral philosophy.").

131. *See* Hurd, *supra* note 2, at 1457-59.

leaders" counts; (4) that consensus is constitutive for some sorts of values but not for others; (5) that consensus derives from what people *would* believe if fully informed, not from what they actually believe; or (6) that the consensus constitutive of morality is a deep one that must be constructed out of the more shallow judgments that people actually share.

All of these should be seen clearly for what they are: an unwillingness to stomach the obvious practical implication of a conventionalist metaethic. Consider the sixth by way of illustration. According to Rawlsian and Dworkinian constructivism, we are to seek that plateau of agreement that makes disagreement possible as we build theories of justice or of other moral qualities. In Dworkin's terms, we must interpret a socially created *concept* of justice in our reasonings about justice, which interpretations then become our contestable *conceptions* of justice. As Dworkin has most recently put it, "justice is an institution that we interpret" because "it has a history; we each join that history when we learn to take the interpretive attitude toward the demands, justifications, and excuses we find other people making in the name of justice."[132]

Now ask such a constructivist this question: what if the history of our society is such that its concept of justice marks slavery as just? Is there any interpretation of that concept that can make sense of the revolutionary judgment that slavery is unjust? If the constructivist-conventionalist answers "no," then he reveals the tendency of his deep conventionalism to toady. If he answers "yes" — as Dworkin does, for example — he must abandon his own constructivist conventionalism for a different metaphysics.

C. *The Debate's Importance to Questions of Institutional Design*

I now turn to the question whether the truth of moral realism matters to questions of institutional design. As before, I prefer to separate the debates between the moral realist and two sorts of antirealists, noncognitivists and conventionalists, because these two debates involve separate practical differences. Since I have been fortunate to attract a sophisticated critic from each of these camps recently — Jeremy Waldron, a Humean/Blackburnian noncognitivist,[133] and Brian Bix, a Wittgensteinian conventionalist[134] — I will use their ar-

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132. DWORKIN, LAW'S EMPIRE, *supra* note 2, at 73.

133. *See* Waldron, *supra* note 3.

134. *See* Brian Bix, *Michael Moore's Realist Approach to Law*, 140 U. PA. L. REV. 1293 (1992). Another of my recent Wittgensteinian critics is ANDREI MARMOR, INTERPRETATION AND LEGAL THEORY 85-102, 124-54 (1992).

guments in favor of the no-difference thesis as my points of departure.

In examining the no-difference thesis with respect to their metaethical positions, it is helpful to focus the discussion by concentrating on particular questions of institutional design. I shall accordingly focus on the theory of adjudication, leaving aside the difference moral realism may make to other institutional questions within a general theory of law or of legislation.[135] Within the theory of adjudication, we should focus the discussion further. Consider two well-worn topics within American constitutional jurisprudence: whether judicial review can be justified in an American-style democracy, and how American courts should interpret the Constitution.

1. *The Debate's Importance to the Justifiability of Judicial Review*

The perennial issue about judicial review is why judges who are not very democratically selected — and particularly U.S. Supreme Court Justices — should have the power to declare the output of more representative state legislatures and the U.S. Congress null and void because such output is contrary to the judge's interpretation of the Constitution.

My thesis has long been that the justification of the power of judicial review is more difficult for a moral antirealist than it is for a moral realist.[136] My argument has been based on the uncontroversial premise that constitutional interpretation, whatever else it includes, includes moral reasoning by judges, in part because the U.S. Constitution seems to invite such reasoning by its value-laden phrases *(due process, equal protection of the laws, free exercise of religion, cruel and unusual punishment,* and so forth). In light of this fusion of constitutional and moral reasoning, my thesis has been that what status one accords moral reasoning matters. If one is an antirealist about morality, like the late Art Leff, one will allow for only two possible statuses for moral reasoning: (1) the moral conventionalists' sort,

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135. Nick Sturgeon sees one of the implications for the theory of legislation:

Consider the view that legislators ought to frame laws using only language for the application of which there are objective standards. Noncognitivists who accept this principle seem to have to view it as condemning all laws framed in moral terms: for example, laws providing for the dismissal of officials guilty of moral turpitude . . . . Realists who accept the same principle, by contrast, will think that if there is anything wrong with these laws, it cannot be due merely to their use of moral language.

Sturgeon, *supra* note 111, at 125-26 (footnote omitted). More generally, a moral realist can urge a perfectionist theory of legislation and distinguish it from Lord Devlin's (and others) mores-based theories of legislation. *See* Moore, *supra* note 74.

136. *See* Michael S. Moore, *The Constitution as Hard Law,* 6 CONST. COMMENTARY 51, 67 (1989); Michael S. Moore, *The Exportability of the Madisonian Compromise, in* THE INFLUENCE OF THE U.S. CONSTITUTION ON PACIFIC NATIONS 99 (F.E. Cameron ed., 1988); Moore, *Interpretation, supra* note 2, at 395; Moore, *supra* note 8, at 1154-56.

where all moral reasoning is no more than teasing out the implications of established social convention; and (2) the moral skeptic's sort, where all moral reasoning is no more than the assertion of one's individual will.[137] Each of these metaethical possibilities should increase our discomfort with the idea of judges' having the power of judicial review: "[T]he first commits her [the judge] to making conventional moral judgments with which she may well disagree, and the second commits her to imposing her own personal values in a situation of great personal importance to the people before her."[138] Leff believed that, with only these sources of moral reasoning, constitutional judges "really have no choice but to be arbitrary."[139]

A moral realist will glimpse a third possibility: judges interpreting the Constitution are not merely asserting their own will, nor are they merely reflecting a societal consensus; rather, when judges decide what process is due a citizen, or what equality requires, or when a punishment is cruel, they judge a moral fact capable of being true or false. When interpreting the provisions of the Bill of Rights and the Civil War Amendments, they make judgments about the moral rights persons possess, rights that those Constitutional provisions did not *create* but only *named*.[140] The realist concedes that any particular judgments made about what rights persons possess can be in error, but such judgments are not necessarily arbitrary as they are for a Leff-like skeptic.

A common criticism of this argument for the legal and political relevance of moral metaphysics has proceeded as follows. Moral realism is a metaphysical position. It is not an epistemological theory. My own nonfoundationalist epistemology differs not at all from the nonfoundationalist epistemology of those with quite different moral metaphysics. Therefore, a moral realist judge could not present any arguments or evidence to resolve any case that are not equally available to an antirealist judge, even if the metaphysical claims for the arguments differ. Disagreements among judges inter se, and among judges, legislators, and citizens, will be as persistent and as irresolvable no matter whether we or the disputants think we are disagreeing about conventions, our own subjective attitudes, or the true nature of morality, or even if we are not really disagreeing except in the sense that we are expressing opposed attitudes or prescriptions in our moral use of language. For political issues like those surrounding judicial review, this argument concludes, the real payoffs lie in the ability of judges

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137. *See* Leff, *supra* note 79, at 1245-49.

138. Moore, *supra* note 8, at 1155.

139. Leff, *supra* note 79, at 1249.

140. Moore, *Constitution, supra* note 54.

and those who select judges to discover, justify, and convince others of the errors of their views (epistemology), not in convincing them that there is something about which they could be in error (metaphysics).

The critics who voice this criticism include Rogers Smith, who correctly observes that my moral realist metaphysics is not joined to a foundationalist epistemology (with its self-evident, foundational beliefs). Therefore: "On Moore's telling, after all, we are still to settle on moral beliefs through precisely the same reasoning processes that we would use if we viewed those beliefs as our own reasoned conclusions instead of objective entities, wholly independent of our minds."[141] From this, Smith concludes:

> [H]ow does the assumption that the results of such [nonfoundationalist] reflection correspond to moral reality help us decide *which* substantive beliefs to endorse, *which* views of liberty, of human worth, of justice? . . . [Moral realism] merely speaks to the ontological label we should pin on our substantive values. It offers no guidance whatsoever in discovering or judging what they should be.[142]

This general criticism — that epistemology, not metaphysics, is relevant to political and legal issues — can also be found in the responses of Stanley Brubaker,[143] Brian Bix,[144] Dennis Patterson,[145] Steven Burton,[146] Stanley Fish,[147] Richard Posner,[148] and even my fellow moral realist in constitutional law, Graham Walker.[149] Formulated as generically as I have summarized it, however, the criticism hits wide of the mark. A moral realist like me who is also a

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141. Rogers M. Smith, *The New Institutionalism and Normative Theory: Reply to Professor Barber*, 3 STUD. AM. POL. DEV. 74, 86 (1989).

142. *Id.*

143. *See* Stanley C. Brubaker, *Conserving the Constitution*, 1987 AM. BAR FOUND. RES. J. 261, 278-79; Stanley C. Brubaker, *Republican Government and Judicial Restraint: Response to Sotirios Barber*, 49 REV. POL. 570 (1987). On Brubaker's metaphysical realism, but epistemological skepticism, see Sotirios A. Barber, *Epistemological Skepticism, Hobbesian Natural Right and Judicial Self-Restraint*, 48 REV. POL. 374 (1986).

144. *See* Bix, *supra* note 134, at 1316 ("[T]he metaphysical entity posited ('a complex moral fact') does not guide the reasoning process, it merely decorates it.").

145. *See* Dennis Patterson, *Post-Modernism/Feminism/Law*, 77 CORNELL L. REV. 254, 275 n.90 (1992).

146. *See* STEVEN J. BURTON, JUDGING IN GOOD FAITH 149-50 (1992). Burton uses the epistemology/metaphysics distinction to urge that it is epistemic indeterminacy in law and morality that is of practical importance. He uses this conclusion to further his own agenda of substituting a procedural ideal ("good faith") for judging in lieu of my, Dworkin's, or Hart's result-oriented determinacy ideal.

147. *See* Fish, *supra* note 85.

148. *See* RICHARD A. POSNER, THE PROBLEMS OF JURISPRUDENCE 237 (1990).

149. *See* GRAHAM WALKER, MORAL FOUNDATIONS OF CONSTITUTIONAL THOUGHT 51-52, 130-31, 133 (1990). For a carefully qualified agreement with Walker's criticism of my realism, see yet another of my fellow moral realists in constitutional law, SOTIRIOS A. BARBER, THEORIES OF JUDICIAL POWER ch. 6 (forthcoming 1993).

nonfoundationalist in his epistemology can by and large agree with the criticism without for a moment conceding the no-difference-to-politics thesis. Moral realism *is* a metaphysical position, not an epistemological one. As such, it promises no new sources of evidence, no new methods of discovery, no new faculties, no new methods of argument or proof with which to convince those who disagree with us. Metaphysical beliefs are only beliefs about what it is the evidence *we all possess* evidences. Moral realists of my (nonfoundationalist) stripe believe that the various features of our moral experience — our willingness to reason about moral questions, our expectation that moral judgments are backed by reasons, our sense that moral judgments give reasons for belief as well as for actions, our search for answers in the face of indeterminate conventions, the fact that we have moral beliefs at all — are best explained by the realist thesis that a mind-independent moral reality exists. Such moral realists do not contend that they have discovered a new kind of experience that, when made known, will convince the unbelievers of the goodness of justice, the evil of intolerance, and so forth. The realists' metaphysical contention is simply that the realists' theses make better sense of the experience of us most of the time. Thus, when Ronald Dworkin too criticizes the moral realist for his inability to deliver "a thundering knock-down metaphysical demonstration no one can resist who has the wit to understand,"[150] or when he construes moral realism to be the view that there is "some special kind of evidence . . . or some justification for acting on it . . . by showing that atmospheric moral quaverings confirm my opinion, for example,"[151] he cannot be talking about nonfoundationalist moral realism, for it pretends to no such epistemological claims.

How, then, can such a metaphysical position make a difference? In just the way I earlier indicated: moral realism can make sense of some of our adjudicatory practices such as judicial review — and thereby give us a reason to continue them, or modify them, as the case may be — that moral conventionalism and moral skepticism cannot. With regard to the practice of judicial review in American constitutional law particularly, moral realism shows that the exercise of judicial power is not necessarily arbitrary just because moral reasoning is inherent in such decisionmaking.

Jeremy Waldron's recent criticism of my view advances the argument from this point. While sharing the common criticism — that

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150. DWORKIN, LAW'S EMPIRE, *supra* note 2, at 85.
151. *Id.* at 80-81.

nonfoundationalist moral realism can give no new ways of resolving moral disputes — Waldron nonetheless recognizes that the politically relevant feature of realism need not lie in some ill-conceived epistemological advantage that a sensible realism would not claim to possess. As Waldron recognizes about judicial power in general, and about judicial review in particular, "the main misgiving . . . is about the *arbitrariness* of moral decision-making by judges . . . ."[152] Waldron helpfully divides the concern about judicial arbitrariness into three concerns — unpredictability, irrationality, and democratic illegitimacy — and I shall follow the argument through his three concerns.

Consider first the *predictability* of judicial decisions.[153] Waldron urges that, when we know a judge's attitudes, we can predict her moral decisions. This is because her general attitudes, not some moral reality independent of those attitudes, cause her particular decisions.[154]

In assessing this position, we must be clear about what version of moral realism we are discussing. An "internalist" moral realist, for example, believes that the motivating power of moral qualities is built into everyone's psychology so that, if one knows some decision to be a good one, one also can predict that everyone will tend to reach it. My own moral realism is externalist, however, meaning that I deny that moral qualities *necessarily* motivate people (in the sense that such qualities *necessarily* are the objects of desires people actually possess).

Even so, as I describe in Part III, a naturalist realist should not think that moral qualities are causally inert. In particular, such a realist should believe that moral qualities cause moral beliefs. This causal relationship will exist for judges no less than for the rest of us, so that the injustice of some decision should tend to engender belief that the decision would be unjust, which should tend to motivate judicial behavior to avoid that result. This provides some basis for the claim that moral realism, if true, allows greater predictability of moral decision-making by judges.

Three very large caveats keep me from claiming any large increment of judicial predictability on moral realist suppositions. One stems from the fragility of the causal relation between moral quality and moral belief. So many other factors intervene to cause false moral beliefs by many people that the predictive advantage of one who

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152. Waldron, *supra* note 3, at 176.

153. Also worrying about judicial predictability is Tännsjö, *supra* note 115, at 251.

154. Waldron, *supra* note 3, at 178-79.

knows the moral truth about some case is bound to be small.[155] The second caveat concerns the particular route I have defended through which moral qualities cause moral beliefs. I refer to the heuristic value of our emotions as harbingers of moral insight.[156] Since moral qualities typically cause moral beliefs through emotions, there cannot be any large advantage of predictability to the realist, who recognizes the entire causal chain, quality-attitude-belief-act, over the noncognitivist, who recognizes only the last links. The only difference would be in cases where a judge did not yet have the appropriate attitude toward, say, an unjust sentence; my sort of moral realist might make a prediction that he would have such an attitude because of the injustice of the sentence.

The third caveat concerns the self-doubt the moral realist observer of judicial behavior should have about whether he knows the moral truth about some case. To have any predictive advantage, the moral realist must have confidence he has identified the moral truth of the matter, for possession of that truth supplies his basis for prediction. Although there are many occasions where one should be quite confident he knows the truth of the matter, there are certainly many other occasions where uncertainty is the only appropriate attitude.[157]

By *irrationality* (the second of Waldron's translations of the fear of judicial arbitrariness in moral reasoning), Waldron essentially means "unsupported by reasoned argument."[158] The moral realist might fear that an emotivist judge is reduced to a very short chain of argument in support of his moral decision — "because that is how I feel" — whereas a realist judge would offer reasons. But Waldron is right: this would be to parody emotivism. Any sophisticated emotivist would hardly portray a judge as reduced to introspective reports of how he feels as the only reasons that justify his decision. As we discussed before,[159] an emotivist judge can give reasons justifying why kicking dogs is bad — in terms of the animal's pain — as well as can the realist. Moreover, the admission of the nonfoundationalist — that he has no new evidence, no new ways of knowing, and so forth — means that the emotivist judge need have no *fewer* reasons than the realist judge. In short, there is no difference in arguing for or against judicial

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155. *See* Moore, *supra* note 8, at 1091; R.G. Swinburne, *The Objectivity of Morality*, 51 PHIL. 5, 11 (1976).

156. *See* Moore, *supra* note 96, at 198-208.

157. *See* Michael S. Moore, *A Theory of Criminal Law Theories*, 10 TEL AVIV STUD. LAW 115, 183 (1990).

158. Waldron, *supra* note 3, at 179-80.

159. *See supra* text accompanying notes 101-04.

review in terms of alleged judicial arbitrariness, when *arbitrariness* is translated as *unsupported by reasoned argument.*

Things are not so rosy for the conventionalist as for the noncognitivist in this regard. While the conventionalist too can deny that judges cannot give any reasons in support of their moral judgments, the sort of reasons that she can advance will differ from the sort of reasons that both realists and sophisticated noncognitivists think possible. The sort of reason the conventionalist is ultimately stuck with is that others share a certain moral belief or concept. For a conventionalist, all reasons must either be, or be inferred from, such conventional agreement. Recall the two specific differences between the realist and the conventionalist at the level of personal moral experience: the realist can, but the conventionalist cannot, countenance the possibility of there being right answers to all moral dilemmas and the possibility of there being radical disagreements of an individual with her culture. A conventionalist judge, unlike his realist counterpart, thus will both run out of moral reasons, and eschew some revolutionary ones he otherwise would have available. In such cases the conventionalist judge must judge either arationally or immorally, which is certainly a reason not to give judges powers like that of judicial review.

The main issue is joined with Waldron's third sense of judicial arbitrariness, that of *undemocratic* judicial imposition. This worry is that unrepresentative individuals (judges) can nullify the democratic outputs of a more representative body (the legislature) through judicial review. A moral realist answers this worry by stressing the objective values judicial review can protect that are sometimes of greater weight than the value of majority rule. Consider the practice of judicial review of the Bill of Rights and the Civil War Amendments. A moral realist can see those Amendments as referring to preexisting moral rights all persons possess. When a moral realist judge invalidates that expression of majority will that a statute presumptively represents, he does so in the name of something beyond his power or the power of a societal consensus to change. His warrant for going against the majority is not that *his feelings* differ from the majority's or that some supermajority's consensus differs from the consensus a statute presumptively represents. His justification for judicial review is straightforward, and so is his mode of practicing it: he will seek to discover the true nature of the rights to which the Constitution refers by building the best theory he can muster about the nature of equality, the nature of liberty, and so forth.

The skeptic and the conventionalist both must scramble if they are to find any justification for judicial review. The conventionalist judge,

if he is a contractarian about the authority of the Constitution, might say that the particulars actually present in the minds of the Framers can be used to invalidate subsequent legislation, because that was the supermajority's "deal." The Equal Protection Clause, for example, is then interpreted to prohibit anything closely resembling the Black Codes of the Reconstructionist South in 1868 but is otherwise devoid of any (nonrace-based) equality-producing meaning. If such judges are not contractarians, they must suppose some deep or hidden consensus of today's values that has eluded the legislature and that can be used to overturn the express consensus represented by the legislature's enactment of a statute. In the use of such present consensus to protect minority rights, the conventionalist is open to John Hart Ely's charge to conventionalist justifications of judicial review: "[I]t makes no sense to employ the value judgments of the majority as the vehicle for protecting minorities from the value judgments of the majority."[160]

Waldron's favored noncognitivism is also in a difficult justificatory stance about judicial review. If Waldron's emotivist judge is a contractarian about the Constitution's authority, he will be like Ely's judge who wants to follow the intent of the rulemaker but whose rulemaker, believing in ghosts, passes a rule regulating the behavior of ghosts.[161] How do you do what contractarians suppose judges to do — namely, follow the rulemakers' intended rule — when you, unlike the rulemaker, do not believe that ghosts exist? How do you make sense of even *trying* to follow the rule when you know that if the rulemaker shared your belief about ghosts he never would have passed the rule to begin with?

Waldron's noncognitivist stands on no firmer ground if he is not a contractarian about the Constitution's authority. If a noncognitivist judge believes that the Constitution has authority because it essentially coincides with his moral intuitions, then his warrant for judicial review is identical to Holmes': granted, Holmes said, these are only *my* feelings, but since no one else's (no matter how numerous) are any better, I will impose mine and not theirs.[162] In short, the justification of judicial review is a wild and unseemly scramble for any but a moral realist.

Waldron disagrees, believing that the existence of differing opinions about what rights persons possess makes judicial review as prob-

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160. JOHN HART ELY, DEMOCRACY AND DISTRUST 69 (1980). See Wojciech Sadurski, *Conventional Morality and Judicial Standards,* 73 VA. L. REV. 339 (1987), for a critical examination of Ely's argument.

161. *See* ELY, *supra* note 160, at 39.

162. *See* Holmes, *supra* note 114.

lematic for the realist as for anyone else.[163] Waldron rightly points out that legislatures, too, may operate with theories of equality and liberty when seeking to legislate in conformity with the Fourteenth Amendment. Waldron thus contends that the question of why a judge's moral beliefs should control is as pressing for the moral realist as for anyone else.

The answer lies in the moral realist's ability to say that there is something, in the nature of equality or of liberty for example, about which the judge *could be* right. That possibility provides an opening to argue that selection procedures for judges, and institutional differences between courts and legislatures, make judges better epistemic authorities about constitutionally protected rights than are legislatures. These further arguments are familiar. First, judges are better positioned for this kind of moral insight because every day they face moral thought experiments with the kind of detail and concrete personal involvement needed for moral insight. It is one thing to talk about a right to privacy in general; it is another to order a teenager to bear a child she does not want to bear. One might well think that moral insight is best generated at the level of particular cases, giving judicial beliefs greater epistemic authority than legislative beliefs on the same subject. Second, judicial reasoning is like moral reasoning in its focus on principled generality, so that judges might have an advantage even at the most abstract level. Moral rights, on such a view, are more safely left in the hands of those who can work out their content in a principled manner. Third, the institutional features of judicial office — notably job security — make judges better able to focus their deliberations on the moral aspect of any problem, putting aside the questions of political expediency with which legislators must grapple. Thus, only judges can afford to take the long view that moral insight demands. Finally, the judicial temperament may be more suited to assessing moral questions than the legislative temperament. By temperament, I mean both the actual psychology of those who become judges rather than legislators and the culture of each institution that inculcates and reinforces that psychology. Evenhandedness, freedom from bias, prejudgment, and neutrality are the distinctively judicial virtues. They are also the virtues of the "ideal observer" in moral theory, that postulate of some moralists about who can best gain insight into moral truths.

Whatever one thinks of these familiar arguments about the comparative epistemic advantages of judges over legislators with respect to

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163. *See* Waldron, *supra* note 3, at 180-82.

morality, the crucial point is that Waldron's emotivist theorist cannot
even start this argument. For the emotivist, to inquire whether a court
or a legislature is better equipped to discover what moral rights per-
sons possess is meaningless because people do not actually possess any
moral rights. Emotivists like Waldron can certainly express their own
feelings in terms of rights talk, but the last thing that could justify
judicial review would be a judicial advantage in discovering Waldron's
(or anyone's) feelings.

Waldron's sophisticated emotivism would of course reject this last
characterization on now-familiar grounds.[164] Waldron would no
doubt deny that if emotivism is true then those who design legal insti-
tutions cannot make the institutional comparisons suggested. If emo-
tivism is true, Waldron might respond, we can still evaluate positively
certain states of affairs, express that evaluation in rights talk, and then
assess how adequately judges and legislatures protect those "rights."
The problem with this response lies in the simultaneous doublethink
that it requires. On one hand, those system designing theorists who
justify judicial review see clearly that judges' "beliefs" about "moral
rights" are in reality not beliefs about anything; rather, judges merely
express their emotions in their talk of "moral rights." On the other
hand, when the beliefs in question are those of the system-designing
theorists themselves, these are cast as if they were beliefs about rights
that really exist. It is only with this bifurcation that the emotivist-
system designers can duplicate the moral realist's calculation with one
of their own: Will the feelings of judges be more likely or less likely
than the feelings of legislators to promote ... what? Not Waldron's or
other theorists' feelings, but the now objectified object of those feel-
ings, described as the moral rights of persons.

I find this doublethink both psychologically unintelligible and epi-
stemically unjustifiable. Psychologically, how can it be that we see
only too well the true metaethical status of judges' and legislators'
moral "beliefs" while not seeing the same metaethical status of our
own? Epistemically, what could justify inducing such wilful blindness
in ourselves, even if it were psychologically possible? Is the reason
that one cannot admit that our own feelings are not about indepen-
dently existing rights that with such admission would come an altera-
tion in how we feel about rights?

A second possible response (although doubtless not Waldron's)
would admit that, in making the institutional comparison, we see

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164. Namely, the ground that denies any but an internal, justificatory sense to counterfactu-
als that link substantive moral truths to the speaker's feelings. *See supra* text accompanying
notes 100-06.

clearly the metaethical status of our own "beliefs" about "moral rights" yet deny that we are in any way demotivated by that metaethical insight. Granted, these are only our feelings, but that does not make us care any less about designing institutions to maximize the number of decisions that respect our feelings. Yet this clear-sighted emotivist system designer seems to undervalue democracy. Only if, like Holmes, we are willing to have our attitudes on these matters prevail in the face of an adverse majority should we design institutions that will be more likely to produce outcomes favoring our feelings. Yet since these are only feelings, why should we have our way if a majority of our fellow citizens have different feelings? We who theorize about the design of legal institutions, like the judges whose power of judicial review we are vindicating, need moral realism to make sense of our undemocratic impositions.

Waldron's actual response to this possibility of comparative judicial expertise about moral rights is to deny my *nonfoundationalist* realism the possibility that anyone could be a moral expert. Waldron argues:

> 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 . . . there cannot be a theory of expertise.[165]

Waldron's response is in danger of presupposing that realism is false on its way to concluding that the truth or falsity of realism is irrelevant. The only reason I see for doubting that Nazis, sadists, the quick-tempered, the nonempathetic, the nonuniversalizing, and the like are worse than their opposites in reaching true moral judgments is denial that there are any true moral judgments. By my armchair inductive study, the former groups are obviously worse judges of what morality demands because they get it wrong so often. Even if Waldron were right that there is no checking procedure for moral truth as there is for scientific truth — which I also deny[166] — the ability to compare *outcomes* created by certain persons or procedures allows us

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165. Waldron, *supra* note 3, at 181-82.

166. Elsewhere in his article Waldron recognizes that moral realists must at some point come up with a "psychology of moral perception." *Id.* at 178. Yet I fear that Waldron has an unjustified conception of what such a theory should look like, inherited perhaps from G.E. Moore's version of realism. The picture presumes the existence of special properties (nonnatural ones) known in a special way (intuition). Waldron then demands that the realist produce some scientific backing for this ability to perceive moral qualities that is strictly analogous to our scientific theory of visual or auditory perception — except that it is about a "sixth sense." *See* Moore, *supra* note 8, at 1133-36. Yet the naturalist realism I defend places a much lesser demand by way of producing a theory of moral perception. Given the intimate relation between moral

to verify who or what are better harbingers of moral truth. Compare our experience with mathematical or musical prodigies, whose reliability in producing valid proofs and beautiful music we often can see without comprehending how they do it. If Waldron is to deny the possibility of making the suggested institutional comparison, he must deny that we can ever know any moral truths. What grounds has he given us to believe *that,* except his noncognitivist belief that there are no moral truths?

There is one more point to be made. The more articles that Waldron and other moral skeptics or idealists write in legal contexts, the greater the danger that judges will believe that their moral judgments are *arbitrary* — not just in Waldron's three senses, but also in the eight senses I have distinguished elsewhere.[167] The danger is that, if judges become skeptics or idealists about morality, then they will suffer the debilitating psychological consequences I described earlier. They will seek to evade their responsibility to engage in the moral reasoning that makes legal reasoning possible, because they will think that they are using the coercive power of the state to foist off either their own desires or feelings, or those of some informal consensus, onto hapless litigants. Such evasions of judicial responsibility would certainly diminish any comparative moral expertise that judges might have over the legislature or other citizens,[168] perhaps to the point when judicial review *does* become unjustifiable.

2. *The Debate's Importance to Constitutional Interpretation*

Since judicial review is entrenched in the American legal system, the more practical question facing judges on a daily basis is how that great power should be exercised. With our written Constitution, the issue devolves into the question of how our judges should interpret that written text.[169] I have laid out my own answer at some length: judges should interpret the Constitution, first, by the ordinary, English meaning of the words it contains; second, as modified by any technical legal meanings introduced by prior courts' interpretations of the provision; third, so as to serve the purpose (in the sense of function, not the Framers' intention) of the provision; and fourth, so as not to lead to absurd or unjust results.[170]

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properties and natural properties, the perception of the latter will be the perception of the former, and that demands no more than the five ordinary senses. *See infra* Part III.

167. *See* Moore, *supra* note 8, at 1071-72.

168. *See* Moore, *Interpretation, supra* note 2, at 388-96.

169. See Moore, *Constitution, supra* note 54, for this argument.

170. *See* Moore, *Interpretation, supra* note 2.

Whether moral realism is true makes two practical differences to this interpretive schema. First, the truth of moral realism allows one to *apply* this four-part interpretive schema differently than one otherwise could. Consider the first ingredient in a good legal interpretation, fidelity to the ordinary English meaning of the words of the Constitution. The truth of moral realism allows one to glimpse a possibility of what the first ingredient might be that otherwise would seem impossible. As set forth in Part I, metaphysical realism includes two semantic theories: first, a truth-conditional theory of the meaning of sentences; and second, a realist or "causal" theory of the meaning of words. The first of these theories rules out an ordinary-language-philosophy approach to meaning, according to which meaning is given by the behavioral test of "what most people would say."[171] The second of these theories displaces the other conventionalist theories of meaning — the criterial, the criteriological, and the paradigm-case theories.[172] In contrast to all four of these conventionalist theories of meaning, the realist theory enjoins an interpreter to find the meaning of a word like *gold* in the nature of the kind referred to by the word — not in conventionally accepted usage patterns of the symbol, *gold,* nor in definitions analytically connecting goldness with certain other properties, nor with paradigmatic examples of goldness accepted within some linguistic community.

Obviously, one can utilize a realist theory of meaning to interpret words only when there is a real thing to which the words could refer. To apply the realist theory of meaning to give the ordinary, English meaning of words and phrases like *liberty, freedom of expression,* and *equal protection of the laws,* things like liberty, liberties of expression, and equality must exist. The first relevance of moral realism to American constitutional interpretation is that it makes possible the utilization of the realist theory of meaning when a Constitutional interpreter

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171. This is because a truth-conditions theory of meaning consigns many of our linguistic intuitions — "what most people would say" — to the pragmatics of appropriate utterance, not to the semantics of what is uttered. *See* Moore, *Interpretation, supra* note 2, at 289-91.

172. The criterial theory asserts that the meaning of a word is given by a precise definition, or "criteria." The criteria for *bachelor,* for example, would be three conditions, each individually necessary, only jointly sufficient, for the correct application of the word: unmarried, male, person. The criteriological theory asserts that the meaning of a word is given by an imprecise definition, in that none of the conditions that constitute the criteria for the word are necessary, and no clear subset of the criteria is sufficient. Nonetheless, the properties listed as criteria give the meaning of the word, and are not mere "symptoms," because absence of *all* of such properties precludes correct application of the word and because presence of all of the properties guarantees correct application of the word. According to the paradigm case theory of meaning, the meaning of *bachelor* is not given by any definition, precise or imprecise. Rather, words are attached to certain particulars in the world, and these particulars become the paradigmatic examples for correct application to all other similar things. *See id.* at 291 n.25.

seeks to find the ordinary, English meaning of the words used in the Constitution.

Now consider the other three ingredients in my four-part interpretive schema. As I have argued in detail elsewhere, in order to formulate the holding of precedent cases so as to give words a technical, legal meaning,[173] in order to formulate the purpose of a legal provision,[174] and in order to assess whether a particular interpretation leads to an unjust or otherwise absurd result,[175] judges must make moral judgments. The truth of moral realism matters to each of these exercises because it gives judges a third option as to the source of the moral component in each of these three judgments: in addition to using social conventions or his own attitudes, a judge can believe that he is judging something independent of both him and societal convention. This makes for a difference in the evidence relied upon by a realist versus a conventionalist judge, for the realist judge will not be doing a sociology of others' moral beliefs and he will be able to make revolutionary moral judgments. This will also make an attitudinal difference for the realist judge over the skeptical or the subjectivist judge, for the realist will not see his task as simply imposing his own personal will on society through the coercive powers of his office.

The second difference made by the truth of moral realism is to the justification, not the application, of a theory of interpretation such as my four-part schema. As the enormous literature on constitutional interpretation makes abundantly clear, any metaethical position but the realist's badly warps theories of constitutional interpretation. The outright moral skepticism of Robert Bork,[176] Warren Burger,[177] Richard Posner,[178] and John Hart Ely[179] plainly motivates their alternative (intentionalist, plain-meaning, wealth maximizing or utilitarian, and representation-reinforcing) theories of interpretation. Moral skepticism's connection to these alternative theories of interpretation is not just a contingent fact about the psychology of certain theorists too obtuse to see that their skepticism is really irrelevant to their interpretive concerns.[180] Rather, they see well enough how moral skepticism

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173. *See id.* at 358-76; Moore, *Precedent, supra* note 54.

174. *See* Moore, *Interpretation, supra* note 2, at 383-86; Moore, *supra* note 13, at 277-81.

175. *See* Moore, *Interpretation, supra* note 2 at 386-88; Moore, *supra* note 13, at 278-81.

176. *See* Bork, *supra* note 73.

177. *See* TVA v. Hill, 437 U.S. 153 (1978); *see also* Moore, *supra* note 8, at 1065 n.3.

178. *See* POSNER, *supra* note 148; Richard A. Posner, *The Jurisprudence of Skepticism,* 86 MICH. L. REV. 827 (1988); Richard A. Posner, *Utilitarianism, Economics, and Legal Theory,* 8 J. LEGAL STUD. 103, 110-11 (1979).

179. *See* ELY, *supra* note 160.

180. *See supra* text accompanying notes 72-76.

undermines the justification for judicial review in a democracy[181] and draw the obvious inference that since we cannot get rid of the institution entirely it should be made as free of judicial value-imposition as possible.

Despite the prima facie relevance of the issue of moral realism to constitutional interpretation, that relevance has recently been challenged by Brian Bix[182] and others.[183] Bix focuses exclusively on the first difference of the two that I have just mentioned, and within that difference he discusses only the first ingredient of my four-part interpretive schema, the meaning of ordinary, English words.[184] Despite the narrowness of his focus, Bix's criticism has the potential to rob my theory of constitutional interpretation of much of its attractiveness, so I shall seek to show why Bix's criticisms are not well-founded.

A judge's adoption of a realist's semantics makes two differences to her judicial interpretations. These two differences stem from two differences between realist and conventionalist theories of meaning more generally. The first difference is that one runs out of "meaning" sooner on conventionalist theories (because one runs out of conventions faster than reality).[185] On realist theories, meaning is given by the nature of the thing referred to, which is rich enough to support bivalence about any area of discourse for which the realist theory is appropriate. The second difference is that conventionalist theories imply that there is a change of meaning whenever one must modify or abandon an analytically necessary property (or "concept") of the thing referred to. According to conventionalist theories, whenever we say things like *he was dreaming, even though he doesn't remember dreaming, because he experienced rapid eye movements,* we have changed the meaning of *dreaming* because we have applied it even though our old

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181. As I argued *supra* section II.C.1.

182. *See* Bix, *supra* note 134.

183. *See* BURTON, *supra* note 146, at 145-51; POSNER, *supra* note 148; FREDERICK F. SCHAUER, PLAYING BY THE RULES 215-18 (1991); WALKER, *supra* note 149; Brubaker, *Conserving the Constitution, supra* note 143; Fish, *supra* note 85; Steve R. Munzer, *Realistic Limits on Realist Interpretation,* 58 S. CAL. L. REV. 459 (1985); Frederick F. Schauer, *Rules and the Rule of Law,* 14 HARV. J.L. & PUB. POLY. 645, 687-88 (1991) [hereinafter Schauer, *Rules*]; Frederick F. Schauer, *The Rules of Jurisprudence: A Reply,* 14 HARV. J.L. & PUB. POLY. 839, 842-44 (1991) [hereinafter Schauer, *A Reply*]; *see also* Dennis M. Patterson, *Realist Semantics and Legal Theory,* 2 CAN. J.L. & JURISPRUDENCE 175 (1989); Dennis M. Patterson, *What Was Realism?: A Reply to David Brink,* 2 CAN. J.L. & JURISPRUDENCE 193 (1989) (putting forward a similar criticism of David Brink's moral realism).

184. Bix focuses on my use of a realist theory of meaning generally in legal interpretation, not on my particular use of it with respect to morality. *See* Bix, *supra* note 134, at 1299, 1310 n.70.

185. *See* Moore, *Interpretation, supra* note 2, at 293-94. This point about linguistic conventions parallels my earlier point about the indeterminacy of moral conventions. *See supra* text accompanying notes 125-30.

criterion of dreaming — waking memory — is absent.[186] Whereas according to the realist theory, there is no change of meaning when we say such things, because meaning is given by the nature of dreaming, whatever that nature turns out to be.[187] Discovery of surprising facts about that nature does not result in a change of meaning for the realist, only a greater understanding of what was meant all along.

These two differences between theories of meaning make several differences when those theories are applied to the legal interpretation of moral phrases like *due process* or *liberty*. First, on the realist view there is always a right answer to questions like what process is due a citizen or what liberty or liberties he possesses. On a conventionalist view of meaning, however, our moral and linguistic conventions either run out or conflict, creating "hard cases" requiring judges to exercise their discretion. Second, on the realist view, even a clear moral consensus — that, for example, equality *does not* forbid segregated schools — does not foreclose further inquiry into the meaning of *equal protection of the laws,* for the thing, equality itself, not social consensus, provides the meaning of that phrase. On a conventionalist view of meaning, however, *equal protection of the laws* does simply mean what most people would say, or what conventionally accepted paradigms of equality would suggest, or what definitions of equality implicit in society's use of the word would require. On the conventionalist theory, in other words, there is no room for a judge's revolutionary judgment about the nature of equality to clothe itself as the true meaning of *equality.* To make such a revolutionary judgment, a conventionalist judge must thus admit that he is changing the meaning of the word.

Bix and others seem to deny each of these two differences in various ways. The main denial to the right answer difference builds on the metaphysics-epistemology distinction of which Waldron also made so much. According to Bix:

> Metaphysical realism of this full-blooded platonist type (with meanings equated with platonic entities) is thus shown not to help — indeed, not to affect — the language user. Even if we posit the existence of these strange platonic entities, meaning and usage still come down to human judgments and human reactions, not to abstract entities. Moore may appear to avoid the force of Wittgenstein's criticisms by joining his metaphysical realist ontology with a coherence epistemology, but he can do so only at the cost of undermining the significance of his approach. Once one rejects the claim that we have some direct cognition of the

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186. For an example of this conventionalist view about meaning by one of Wittgenstein's best known students, see NORMAN MALCOLM, DREAMING 70-82 (1962).

187. *See* Moore, *Interpretation, supra* note 2, at 293-94. This point about linguistic conventions parallels my earlier point about revolutionary judgments against moral conventions. *See supra* text accompanying notes 129-32.

"real," the advantage of metaphysical realism — in explaining how we actually behave or in prescribing how we should approach problems of meaning — seems to disappear. If what we are to seek are beliefs that fit in well with our other beliefs and observations, and our sole criterion for accepting a belief is its fit with our other beliefs and observations, then the platonist notions about truth and meaning are empty concepts that serve no purpose. . . . [T]he implicit invocation of "reality" and "[metaphysical] realism" does not affect what the judge should do or think. The term "real" here is a disconnected wheel in the machinery: it spins but it does no work.[188]

With regard to the bivalence of constitutional discourse and its moral language, Bix's general observations amount to the claim that the realist's belief in the existence of metaphysically right answers has no effect if no additional evidence or way of finding those answers is available to judges. Steve Burton, starting with a metaphysical-epistemological distinction similar to Bix's, draws this inference squarely: "It serves no practical purpose to insist that legal results are metaphysically determinate if members of the legal community can readily disagree about an outcome, using all lawyerly skill in good faith, upon full adjudication of a case."[189]

The error in this charge of irrelevance lies in the assumed equivalence of data about morality being cohered by both the conventionalist and the realist. The realist bases her moral judgments on different data, and more of it, than does the conventionalist. I do not refer to moral reality as the realist's extra data here, for Bix is certainly right that without direct peeks at that reality the nonfoundationalist realist is limited to his own theory-laden beliefs about it. Rather, the different and more plentiful data to which a realist repairs are the realist's individual moral beliefs. To think that those beliefs are indeterminate wherever society's moral conventions are indeterminate is simply a mistake.[190] In America today, moral conventions may be so split as to be indeterminate with respect to a women's right to an abortion, for example; yet my own beliefs on that issue need not (and in fact do not) display any similar indeterminacy. The truth of moral realism thus makes a difference in the number of *knowable* right answers available to judges. If moral realism is true, and so long as we do not have moral lepers on the bench, then judges have the capacity to know considerably more right answers about what process is *due* than if judges

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188. Bix, *supra* note 134, at 1309-10 (footnotes omitted).

189. BURTON, *supra* note 146, at 150.

190. Graham Walker, for one, seems to think that my nonfoundationalist epistemology is committed to cohering conventions. *See* WALKER, *supra* note 149, at 132, 143. Yet a nonfoundationalist coheres her own beliefs about a subject so as to get at the truth; cohering conventions is only a sociological enterprise.

must repair only to the "canons of decency and fairness of English-speaking peoples,"[191] the "evolving standards of decency that mark the progress of a maturing society,"[192] or some other societal convention.[193]

To be sure, if conventionalists could show that they ran out of conventions no more quickly than a realist runs out of reality, they too could assert a right-answer thesis. Indeed, what I have called *deep conventionalism* attempts just such a maneuver.[194] But, as I have argued, deep conventionalism is still conventionalism; at some point it

191. Felix Frankfurter's phrase in Rochin v. California, 342 U.S. 165, 169 (1952), *overruled by*, Mapp v. Ohio, 367 U.S. 643 (1961).

192. Earl Warren's phrase in Trop v. Dulles, 356 U.S. 86, 101 (1958) (plurality opinion).

193. Even with respect to the realist/noncognitivist debate, the truth of moral realism still matters because of its implications for the existence of metaphysically right answers to hard cases of moral/constitutional interpretation. There is no evidentiary difference between the moral realist and the sophisticated noncognitivist, so there is no epistemological difference in how many *knowable* right answers there are. Both the noncognitivist and the realist work with their own beliefs, not social conventions. But there is the attitudinal difference between them that here makes a difference; namely, the only sense the noncognitivist can allow to there being right answers is that they are the most coherent extensions of his own attitudes. Thinking this about the status of "right answers" to hard constitutional cases would change how judges would think about, and thus would perform, their task as interpreters of the Constitution. If judges think that there is a correct answer to every case that comes before them, no matter how hard, they will feel differently about their job than if they see themselves as lawmaking agencies — reflectors of their own attitudes — in hard cases. One such difference will appear in their confidence that a meaningful line can be drawn demarcating their functions from those of legislators. They will not necessarily recognize when they are overstepping the line; but belief in the existence of such a line will provide an incentive not to overstep it.

Such self-restraint furthers separation-of-powers ideals, but not because abuses of judicial power can be clearly demonstrated and thus made subject to external check — rather, the desirable "checks and balances" exist within the mind of the judge. Such self-restraint also serves the democratic ideal: judges who do not see themselves as equivalent in function to legislators will tend not to act like legislators.

Furthermore, if constitutional law can hold out the promise of metaphysically right answers in all cases, then judges will work harder even in cases with unattainable answers. For if correct answers exist even when one's attitudes are indeterminate, no judge can justify halting an inquiry just because his attitudes are in conflict or are otherwise indeterminate. My hunch is that noncognitivist judges who perceive that they are only cohering their own attitudes quit earlier than do judges who believe a real answer exists.

This prolongation of the search for an answer by judges who believe it exists has two beneficial consequences. The first is increased demonstrability over time of the existence of right answers. Increased demonstrability breeds greater satisfaction with the rule of law. The law becomes more predictable, adjudication becomes more efficient, and so forth. Unknowability and undemonstrability are not all-or-nothing characteristics, equally applicable to all persons at all times. Hence, "Herculean" judges can move us beyond the limits of our present understanding. A system that motivates judges to search for determinate answers is superior because it *ultimately* advances the rule of law.

The second beneficial consequence of prolonging a judge's search for right answers is the increased equality that success engenders in that search. Searching for answers in hard cases forces judges to develop analogies across conventional legal categories. These analogies force judges to discern similarities between past and present parties. If a judge thinks that a category of cases has no answer, then he will have less of a tendency to stretch for the unconventional analogy that may generate true equality. In this way, a system holding out the promise of right answers is more likely to enhance the equality any legal system should strive to maximize.

194. *See* Moore, *Interpretation, supra* note 2, at 298-300. My example of a deep convention-

will run out of those agreements that (according to deep conventionalism) make right answers possible in the face of more shallow disagreements.[195] Bix in any event eschews this route to defending a no-difference thesis, taking the line to which I think any conventionalist is committed about the hardest of hard cases: for Bix, there is simply no answer to be gleaned from conventions.[196]

With respect to the differential abilities of a realist versus a conventionalist to oppose a clear consensus on a concept without changing the meaning of that concept, Bix appears to have two responses. The first stems from his Wittgensteinian conventionalism about meaning. This is the "criteriological" or "imprecise definition" theory of meaning, according to which a concept like justice takes its meaning from a cluster of properties, no one of which is analytically necessary for the concept to be correctly applied. This results in a variety of institutions' being called "just" with equal propriety, since each such institution possesses some justicemaking properties even if no two of them share the exact same set of such properties.[197] Bix describes the mileage he hopes to get out of this "family-resemblance" aspect of Wittgenstein's theory of meaning as follows:

> There is no sharp divide between a change of beliefs about a concept and a change of concepts. The idea of "same concept" is not itself transparent and self-evident. . . . In political and moral discourse, it is equally hard to show that the disputants are definitely talking about the same thing or that they are definitely *not* talking about the same thing when they disagree (e.g., about "justice" or "democracy"). In any attempt to analyze disagreement in these areas . . . change in beliefs and change in concepts merge.[198]

I do not see how Bix's point amounts to any more than a worry about there being a kind of vagueness to our concepts, according to Bix's conventionalist theory of meaning, and about there being an ac-

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alist was Dworkin, who attempted at one time to combine a right-answer thesis with a constructivist version of conventionalism about morals. *See* Moore, *Metaphysics, supra* note 2.

195. *See supra* text accompanying notes 119-29.

196. *See* Bix, *supra* note 134, at 1303 n.47.

197. On criteriological theories of meaning, see Moore, *Interpretation, supra* note 2, at 291 n.25; Moore, *supra* note 13, at 218-21. I recognize that some Wittgensteinians would deny that Wittgenstein had anything that could be called a theory of meaning, criteriological or otherwise. Rather, on this view, people just do "what comes naturally" in extending linguistic criteria to novel situations. Bix, *supra* note 134, at 1306. Such a view radically truncates our ability to understand disagreements between people: they are neither disagreeing about the nature of some convention-independent thing (realism) nor about the interpretation of some concept that they share (conventionalism); they just talk, and such talk sometimes seems to be opposed.

198. Bix, *supra* note 134, at 1306-07 (footnote omitted); *see also* MARMOR, *supra* note 134, at 144 (also celebrating Wittgenstein's blurriness about when a concept changes versus when only its symptoms or evidence changes).

companying vagueness in the idea of concept change.[199] I do not see how any alleged vagueness in our ideas of concept change eliminates the difference between realist and conventionalist theories, inasmuch as even vague notions of concept change will allow for clear instances where there is no concept change and clear instances where there is. On a criteriological theory of meaning, there are clear cases of the application of a concept: if *all* of the properties making up the criteria for the concept is present, then the concept indisputably applies; if *none* of the properties making up the criteria for the concept are present, then the concept indisputably does not apply. Therefore, if someone were to make a revolutionary judgment that the concept applied even though none of the criteria were present, or that the concept did not apply even though all the criteria were present, he would clearly have altered the meaning of the concept on the criteriological theory. Since such revolutionary judgments do not amount to a change of meaning on the realist theory of meaning, there remains a real difference between the theories despite the alleged vagueness in any notions of concept change.

This difference between Bix's conventionalism and my own realism matters because of the normative force attached to ordinary meanings of words in constitutional interpretation. A judge seeking to justify a revolutionary judgment about, say, "due process," as a change in the meaning of the concept undertakes a substantially greater justificatory burden than a judge offering such a judgment as the true meaning of the concept. Although the other three ingredients in constitutional interpretation can overrule a word's ordinary meaning and so justify a change of that meaning the truth of realism would permit judges to make revolutionary judgments without undertaking that justificatory burden.

Bix,[200] joined here by Steve Munzer,[201] Dennis Patterson,[202] and Fred Schauer,[203] disagrees. All of them appear to think that it does not matter whether judicial reasoning is described as divining the true meaning of a concept like equality or whether that reasoning is seen as overruling the ordinary meaning in the name of some other ingredient in interpretation such as the purpose of the rule in which the word

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199. I elsewhere call this "combination of condition" or "intensional" vagueness. *See* Moore, *supra* note 13, at 193-94.

200. *See* Bix, *supra* note 134, at 1315.

201. *See* Munzer, *supra* note 183, at 470.

202. *See* Patterson, *Realist Semantics and Legal Theory, supra* note 183, at 178-79; Patterson, *What Was Realism?, supra* note 183, at 194-95.

203. *See* SCHAUER, *supra* note 183, at 215-18.

appears. They all appear to think that judges should and will reach the same results in cases no matter how judicial reasoning is described. As Bix puts this rejoinder:

> [T]he same judicial action can be characterized so many different ways. For example, the judge's refusal to permit the removal of organs from a revivable patient on the strength of an outdated statute could be seen as: giving effect to the (metaphysically) real meaning of "death" rather than a legislative definition thereof; overriding the plain meaning of a statute to avoid an unjust or absurd result; interpreting the language of a rule in accordance with its purpose; applying the statute in a way that reflects what the rulemakers would have provided had they considered the situation at hand; or any number of similar things.[204]

Although Bix later qualifies this argument,[205] his fellow-travelers do not, so I shall respond to the unqualified version. My response stems from my conception of the role of a theory of legal interpretation. A theory of constitutional interpretation is not a bit of window-dressing that allows judges to rationalize the results they reach in particular cases. Judges should not keep ready to hand a list of different theories of interpretation, trundling out whichever one suits their purpose in a particular case.[206] A theory of interpretation should have more normative bite than that.

This means that each ingredient in an overall theory of interpretation should exert some independent normative pull on judges. I have previously charted the independent normative pull of ordinary word meanings on legal interpretations: enhanced predictability; prevention of unfair surprise; following the Framers' presumed semantic intentions; and so forth.[207] Thus, contrary to Bix's suggestion,[208] I think

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204. Bix, *supra* note 134, at 1315.

205. *See id.* at 1315 n.86.

206. One of my judge-students, a Chancellor in Equity, suggested this as what he had learned from one of my seminars in jurisprudence for judges. For the results of such an attitude, see Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed*, 3 VAND. L. REV. 395 (1950).

207. Moore, *Interpretation, supra* note 2, at 313-38. It is this normative pull on judicial behavior by each ingredient within an overall theory of legal interpretation that gives the lie to the criticism of another of my pro-Wittgenstein critics, Audrei Marmor, *No Easy Cases?, in* WITTGENSTEIN AND LEGAL THEORY 189, 200 (Dennis M. Patterson ed., 1992). According to Marmor, a theory of meaning fixes what a legal rule means, and all nonsemantic ingredients (such as a rule's purpose) only tell us whether judges are morally obligated to apply the rule to the cases before them. Such a view, severing semantic theory from judicial obligation, would indeed make my realist semantic theory (as well as all others) legally irrelevant. But Marmor offers no reason to think that the various ingredients in a theory of legal interpretation are irrelevant to judicial obligation. Indeed, there is every reason to think the reverse. Certainly, Herbert Hart never suffered under the confusion that guides Marmor here, *id.* at 201, i.e., that value-free theories of law and of interpretation must be justified in value-free (or conceptual) ways.

208. *See* Bix, *supra* note 134, at 1313, 1314-15. Compare Munzer, *supra* note 183, at 471, who sees clearly that I do not think that the realist theory of meaning should be used by judges just because it is a true semantics for natural language.

that the realist theory of meaning has independent pull within an over-
all theory of legal interpretation, not out of some naive confusion of
semantics with ethics, but because certain values justify the greater
difficulty of interpreting a constitutional provision against rather than
in harmony with its ordinary meaning. This differential justificatory
difficulty should significantly affect the right legal answer in a number
of cases. It thus does matter where we pigeonhole revolutionary judg-
ments by judges, because if we license them as being part of the search
for the meaning of constitutional language, as does the realist, judges
ought to make more of them.

Defenders of the no-difference thesis have offered a second re-
sponse to the heightened ability of realists to make revolutionary judg-
ments. Although it is not Bix's, it is popular, and it goes like this.
Granted, if moral realism were true, judges could make revolutionary
moral judgments about moral concepts like "equal protection" with-
out changing the meaning of those concepts, and conventionalists can-
not. Yet judges *should not* ever make such revolutionary judgments
even if they *could* make them. This argument rests on one of two
grounds: either judges should take my own descriptions of moral falli-
bility seriously and refrain from violating clear moral convention on
the *epistemic* ground that the convention is more likely correct than is
the judge's individual moral judgment;[209] or judges should defer to
moral convention on the *moral* grounds that the majority has the right
to be wrong[210] and that social peace is so important that we should
strive to maintain consensus whenever possible.[211]

I mention this popular response mostly to put it aside. The an-
swers I have offered before still seem adequate. With regard to the
epistemic point, my simple intuition is that judges do not come closer
to the moral truth if they always defer to conventional moral consen-
sus. Judges who defer distance themselves emotionally from the di-
lemmas that should grip them, and such distance cuts them off from
their own emotional responses, which constitute a much better heuris-

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209. *See* BURTON, *supra* note 146, at 150; Schauer, *A Reply, supra* note 183, at 842-44;
Schauer, *Rules, supra* note 183, at 687-89. I am uncertain whether David Richards' comparative
honoring of *old* conventions (or tradition) is grounded on supposed epistemic advantages or not.
See DAVID A.J. RICHARDS, TOLERATION AND THE CONSTITUTION 29-33 (1986); David A.J.
Richards, *Interpretation and Historiography,* 58 S. CAL. L. REV. 490, 499 (1985).

210. This reflects one interpretation of Ronald Dworkin's honoring of "community moral-
ity" in his theory of adjudication. *See* Waldron, *supra* note 3, at 163 n.6. Sadurski, *supra* note
160, more clearly makes the democratic argument on conventional morality's behalf.

211. This idea is included in John Rawls' justification of his constructivist version of conven-
tionalism. *See* Rawls, *Kantian Constructivism, supra* note 30, at 517; *cf.* Joseph Raz, *Facing
Diversity: The Case of Epistemic Abstinence,* 19 PHIL. & PUB. AFF. 3, 30 (1990) (noting that
Rawls argues for "overlapping consensus" to assure social peace).

tic to moral truth for many people than do social conventions.[212]

Fred Schauer urges that, while this answer might suffice as to individual judges, system designers who must select and discipline judges have a different point of view.[213] The best *rule* such system-designing theorists should impose is one that flatly bans revolutionary judgments by judges because a ban minimizes their moral mistakes. But why can't system designers simply select better judges? To be sure, a system-designing theorist who could only place dull or evil people on the bench might want to ban *them* from resorting to their untutored or evil emotions. But if judges are not so dull or so evil, or if we can think of better selection procedures to improve the bench, then realist judges will make fewer moral mistakes than Schauer's wooden-headed rule-followers. In such circumstances, a system-designer concerned with minimizing moral mistakes should wish to license revolutionary judgments by judges, and my realist theory does that better than its conventionalist competitors.

As for the moral version of this popular response, morality simply does not demand that judges suppress their own best moral insights in favor of social conventions when they seek to interpret the grand phrases of the Constitution. On the contrary, to eschew judges' insights into the rights the Constitution protects in favor of the level of protection suggested by some present social consensus renders any judicial enforcement of minority rights under the Constitution very problematic.[214]

III. THE POSITIVE CASE FOR THE TRUTH OF MORAL REALISM

It is time to leave the question whether the truth of moral realism matters to our practical concerns for the question whether moral realism is true. I will not recanvass all of the various considerations that have been advanced pro and con on this topic.[215] Rather, I shall focus on one form that the contemporary philosophical debate about moral realism has taken, a form that interests me because I share much of the general viewpoint that this way of framing the issue presupposes.

I refer to what I shall call the *explanationist* debate about moral realism. Explanationists share some general views on ontology and justification no matter where they come out on the existence of moral entities and qualities. An explanationist believes that to discover

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212. *See* Moore, *Interpretation, supra* note 2, at 388-96.

213. *See* Schauer, *Rules, supra* note 183, at 687-89.

214. *See supra* text accompanying note 160.

215. I was more ambitious ten years ago. *See* Moore, *supra* note 8.

whether some particular entity or quality exists is to determine whether that thing has a necessary place in the best explanation of some features of the natural world that we take (for these purposes) to exist. We are justified in believing, for example, that intentions, electrons, or propositions exist just in case our best explanations of human behavior, chemical structure, or linguistic behavior commit us to their existence. The explanationist question about moral entities such as rights, or moral qualities such as justice or culpability, is whether there are any natural phenomena (that we are confident exist) that the existence of these moral entities or qualities best explains.

My aim in this Part is to ask this explanationist question with respect to moral entities and qualities. The question interests me both because I accept the general epistemological stance of "inference to the best explanation" and because I too am an empiricist "one-worlder": if moral qualities exist, moral propositions are true, and moral beliefs are justified, it will be only in the sense of *exist, true,* and *justified* that science applies to the natural world. My own nonfoundationalist and empiricist epistemological leanings lead me to care about the explanationist question, even though most persons with such epistemological leanings undoubtedly deploy the explanationist approach to argue *against* moral realism.[216]

I shall proceed, first, by setting forth the views I understand an explanationist to hold about existential beliefs. Second, I shall introduce the use of the "inference to the best explanation" strategy in moral theory by describing the antirealist arguments of Gilbert Harman and John Mackie, the two contemporary philosophers who have done the most to shape the explanationist debate within metaethics.[217] Third, I shall identify the data to which the explanationist strategy should be applied in moral theory. Fourth, I shall argue that, prima facie, moral qualities play a necessary role in the best explanations of the data that I care about, our moral beliefs about particular actions, people, or institutions. Fifth, I shall consider the relation between moral properties and nonmoral properties, a relation

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216. The most prominent are Gilbert Harman and J.L. Mackie. *See* HARMAN, *supra* note 30, at 9; MACKIE, *supra* note 61; Gilbert Harman, *Is There a Single True Morality?, in* MORAL-ITY, REASON, AND TRUTH, *supra* note 27, at 45-46; Gilbert Harman, *Moral Explanations of Natural Facts — Can Moral Claims Be Tested Against Moral Reality?,* 24 S.J. PHIL. 57 (Supp. 1986) [hereinafter Harman, *Moral Explanations*]. Others who have used the explanationist stance to argue against moral realism include BLACKBURN, *supra* note 29; Warren S. Quinn, *Truth and Explanation in Ethics,* 96 ETHICS 524 (1986); Frank Snare, *The Empirical Bases of Moral Skepticism,* 21 AM. PHIL. Q. 215 (1984); David Zimmerman, *Meta-Ethics Naturalized,* 10 CAN. J. PHIL. 637 (1980); David Zimmerman, *Moral Realism and Explanatory Necessity, in* MORALITY, REASON, AND TRUTH, *supra* note 27, at 79.

217. *See supra* note 216.

often termed to be one of *supervenience.* I shall here argue that that relation is not itself "queer" and that its existence helps to sustain the contention that moral qualities best explain moral judgments. Finally, I shall close by considering a seemingly disparate set of objections that in fact raise a common question, namely, whether the existence of the supervenience relation is itself a necessary part of the best explanation of moral judgments such that it too can be justified on explanationist grounds. My conclusion (to keep the suspense to a tolerable pitch) is that we have good reason to believe that many moral qualities exist in the mind- and convention-independent way that satisfies the require-ment of metaphysical realism.

A. *Explanations and Ontological Commitment*

Ontological conclusions like "goodness exists" undoubtedly have a knock-down ring to them that suggests that there must be some unde-niably cogent evidence showing such a thing. The suggestion is that if we can have some direct experience, particularly of observable objects like stones, that is all the proof we need that they exist. Johnson in an impatient moment apparently felt this way about the experience of kicking such a thing as a refutation of Berkelean idealism.

Yet our ontological beliefs about what exists are not foundational in this way.[218] We justify these like any other of our beliefs, by appeal to everything else we believe. Our beliefs that stones exist is not suffi-ciently justified by kicking them and sensing their hard resistance to our foot; that experience of pain and resistance could be explained by an indefinitely large number of hypotheses which do not require the existence of stones. For instance, the experience could have been caused by our right foot having kicked our left, heavily booted foot, in the circumstance where our brain had previously been surgically split and the right cerebral hemisphere so wired that it caused a quick de-fensive maneuver with our left foot. Our left hemisphere, in such a case, would know nothing of the movement of the left foot but would experience the pain and the resistance of the right. To rule out such competitors as improbable requires all of our other beliefs. The move from our kicking experience to the belief that there is a stone is thus not a simple read-off of reality by our perceptual apparatus. It is an inference we make in light of all else that we believe to be true. In light of all such other beliefs, we infer that the best explanation for why we had the experience we had was that there was a stone with

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218. For my earlier rehearsal of the standard objections to both empiricist and rationalist foundationalism, see Moore, *supra* note 8, at 1106-16.

which our foot came into contact. If such explanation is truly the best, then we are justified in believing that there are such things as stones.

This familiar "coherence" or "nonfoundationalist" account of justifying our beliefs[219] importantly includes a more specific account of what is needed to justify our ontological beliefs (that is, our beliefs about what exists). That a belief in the existence of stones coheres well with one's other beliefs is not enough to justify the former ontological belief, unless those other beliefs include a belief that there is a causal connection between certain of my experiences (like a hurt toe on a moving foot) and the existence of stones. Only if I can justify these connectionist beliefs (about reliable causal connections holding between certain experiences as the effects of certain things) am I justified in my existential belief that there are such things as stones in the world. In the case of the stones and the foot, the necessary beliefs involve how our sensory apparatus is put together so that tactile sensations are reliable indicators of the macroproperties of real world objects.

How do I justify my belief in these kinds of reliable connections between my experiences and stones? By answering the same coherentist question: are these connections part of the best explanation of why I have particular tactile or other experiences? If so, then I am justified in believing in the causal connections posited. If I am justified in that belief, then I am justified in believing that stones exist —again, so long as this coheres with all my other beliefs.

This view of justification is rightly labeled both nonfoundationalist and empiricist. It is nonfoundationalist in that no belief is to be taken as a veridical starting point from which other beliefs are to be inferred. There are no self-evident first principles, analytic truths, phenomenal reports, or veridical read-offs of reality as postulated by rationalist and traditionally empiricist epistemologies. The view is nonetheless empiricist in a nontraditional sense, because it holds our ontological beliefs hostage to there being some connection, no matter how indirect, between what we think to exist and what we experience.

Such a "coherentist" epistemology is not to be confused with what

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219. The classical statements of coherentist epistemology in modern philosophy are HARMAN, *supra* note 20; WILLARD V.O. QUINE, FROM A LOGICAL POINT OF VIEW (1964); Gilbert H. Harman, *The Inference to the Best Explanation,* 74 PHIL. REV. 88 (1965). Modern continuations prominently include GILBERT HARMAN, CHANGE IN VIEW: PRINCIPLES OF REASONING (1986); LYCAN, *supra* note 11; PAUL THAGARD, CONCEPTUAL REVOLUTIONS (1992); MICHAEL WILLIAMS, GROUNDLESS BELIEF (1977); Paul R. Thagard, *The Best Explanation: Criteria for Theory Choice,* 75 J. PHIL. 76 (1978) [hereinafter Thagard, *Best Explanation*]; Paul Thagard, *Explanatory Coherence,* 12 BEHAVIORAL & BRAIN SCI. 435 (1989).

is sometimes called the *coherence theory of truth*.[220] Truth is a meta-physical notion, not an epistemological one.[221] A coherentist about truth is a metaphysical idealist who believes that a sentence is true when it coheres well with other sentences we (either individually or collectively) accept as true. A metaphysical realist, by contrast, thinks that the test for whether a proposition is true is the coherence of a belief with everything else we believe; he does not think that such a test captures the nature of truth.

This last point opens up a large debate we cannot hope to resolve here: the debate about whether a coherentist about justification can ever cross the "gap" between what he is justified in believing to be true (i.e., *coherence* with his other beliefs) and what is true (i.e., *correspondence* with a belief-independent reality). No gap exists for the idealist, for he adopts what Saul Kripke accurately calls a "sceptical solution": the idealist identifies reality as coherent belief.[222] That "solution" is unavailable to a realist; thus, the gap persists.

I cannot undertake here to defuse the detailed arguments of so-phisticated idealists like Richard Rorty[223] and Hilary Putnam.[224] Such arguments have nothing particularly to do with moral realism, but rather deal with the possibility of nonfoundationalist realism about the physical world as much as about moral qualities. What I can do here is defuse two popular versions of the "gap" worry. Both can be framed in terms of a "circularity" objection, but they differ nonetheless.

The first version is the worry that nonfoundationalists never "hook onto" reality, because each belief is justified only by its fit with other beliefs. No belief, that is, is foundational in the sense of being un-doubtable in its correspondence with the world. The picture this objection calls to mind is of a Portuguese Man-of-War, an intricately structured creature whose inner lattice-work we can admire greatly but whose tentacles never reach the ocean floor. Our beliefs are thus pictured as a floating, coherent mass that relate only to each other but

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220. *See* 2 BRAND BLANSHARD, THE NATURE OF THOUGHT (4th ed. 1964); NICHOLAS RESCHER, THE COHERENCE THEORY OF TRUTH (1973).

221. *See supra* text accompanying notes 42-44.

222. SAUL A. KRIPKE, WITTGENSTEIN ON RULES AND PRIVATE LANGUAGE 66-68 (1982). Kripke uses Hume's solution to causation as his example.

223. *See* RICHARD RORTY, PHILOSOPHY AND THE MIRROR OF NATURE (1979). For a description of the way that Rorty joins issue with what he calls the "technical realists," see Moore, *supra* note 34, at 902-03.

224. *See* PUTNAM, MEANING AND THE MORAL SCIENCES, *supra* note 31; PUTNAM, REAL-ISM AND REASON, *supra* note 31; HILARY PUTNAM, REASON, TRUTH, AND HISTORY (1981).

never touching the world. This picture portrays a coherentist in epis-
temology as necessarily an idealist in metaphysics.

The problem with this picture is that it ignores the *content* of our
beliefs. The beliefs that we justify on a coherentist basis are not about
creatures of fiction or fairy tale. We believe things like: feet hitting
stones cause us to experience pain; the fact that we have the word *pain*
is caused by human beings' in fact having such a mental sensation and
baptizing that experience with this symbol; and visual perception ac-
curately portrays the world in certain standard lighting conditions.
That none of these beliefs is *self-evidently* true is irrelevant to what it is
we believe when we believe (on whatever grounds) that they are true.
To justify holding any of these beliefs is thus to justify belief in the
mind-independent existence of stones, pains, and the visible world, for
that is what our beliefs are about. It is not merely to justify our belief
that we believe such things to be true, which would be an idealist
position.

The second version is a worry that begins by asking what a coher-
entist means by *coherence, explanation,* and *best explanation.* There is
a variety of ways to define each of these terms and then relate them;
one is to define coherence as a symmetrical relation between proposi-
tions that, at a minimum, involves freedom from contradiction be-
tween them.[225] A sufficient condition of incoherence between p and q,
in other words, is that q either is, or implies, the negation of p.[226]
Explanation was at least at one time standardly thought to involve a
deductive relation between statements describing what was explained
and the statements doing the explaining, the latter being a set of prem-
ises that logically implied the former.[227] An explanation is best, on
standard accounts, if at a minimum its statements: (a) cohere (do not
contradict) with the propositions one already believes to be true and
with the propositions implied by these; and (b) imply the proposition
describing the situation or event to be explained. Since Quine's revival
of Duhem, it is standardly thought that an infinite number of explana-
tions satisfies (a) and (b).[228] Therefore, subsidiary criteria of epistemic
virtue are usually included in what makes an explanation "best,"

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225. *See, e.g.,* WILLIAMS, *supra* note 219, at 80-81; Thagard, *Explanatory Coherence, supra*
note 219.

226. That is, p and q may contradict one another *explicitly,* where q equals *not-p,* or *implic-
itly,* where q implies *not-p. See* CHERNIAK, *supra* note 119, at 16.

227. For a history of Carl Hempel's deductivism about explanation over the last four de-
cades, see WESLEY C. SALMON, FOUR DECADES OF SCIENTIFIC EXPLANATION (1989). I use
this much criticized notion of explanation simply to allow the critic of explanationism to make
his second circularity objection.

228. *See* Quine, *supra* note 12.

namely, how simple the explanation is vis-à-vis its competitors, how directly testable it is by experiential beliefs, how broad in scope its implications, how precise its predictive implications, and the like.[229]

Although this is a rough portrait, it allows my objector to frame his second objection to any attempt to justify realist metaphysics with a coherentist epistemology. The objection is that the coherentist has no way of justifying these notions of coherence, explanation, and best explanation, except by some foundationalist claim that they are self-evident or are analytic truths about the meaning of *justified belief,* or, even worse, that these are "aesthetically satisfying" virtues of theory-construction viewed as a kind of art form.

A coherentist, of course, can make none of these moves to justify his best explanation conception of epistemic justification. His justification of some conception of coherence, explanation, and best explanation should be no different from his justification of other beliefs; how well does this (coherence) view of justification cohere with everything else he believes? More particularly, does this view of justification best explain our justificatory practices, and is it part of the best explanation for why those practices occur and have the predictive/explanatory successes that they seem to have?

It is because of this response that the second objection should ultimately be seen as a circularity objection. The charge, of course, is that the coherentist is *using* his notion of justification to justify his notion of justification as being true. And indeed he is. But whence comes the demand for linear thinking: first you must justify this idea of justification, and only then can you use this justificatory apparatus to justify any other beliefs? This demand is no more than a foundationalist postulate about how justification must proceed, which a coherentist is free to reject as begging the question. A coherentist should admit that his theory of justification might be false, either in detail or as a whole. But only incremental attacks, based on the inability of this justificatory apparatus to support us in beliefs for which we antecedently believe we have good evidence, will show it to be false. Coherentist conceptions of justification cannot be shown to be false simply by blanket demands for foundationalist justifications of what, after all, are nonfoundationalist modes of reasoning.[230]

We should leave the large questions about coherentist justification

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229. *See, e.g.,* LYCAN, *supra* note 11, at 128-56; Thagard, *Best Explanation, supra* note 219.

230. This response by the coherentist calls to mind Quine's coherentist response to the objection that he had presupposed standard truth-functional logic in his translations of his mythical islanders: "our logic . . . would beg the question of prelogicality if there were a question to beg." QUINE, *supra* note 14, at 58.

for another day. A sharpening of what an explanationist demands in order to justify an ontological belief more directly bears on our use of explanationism to defend moral realism. We have so far said that, to justify our belief that x exists, x must have a necessary place in our best explanation of something else, y, that we are more certain exists; and, further, that the items best explained by x must include our experience (observational beliefs) that x exists. This latter, empiricist criterion demands that the best explanation of why we believe (or experience, or observe) that x exists include the fact that x does exist.

Crucial to our later discussion will be two different readings of this empiricist requirement for justified ontological belief.[231] The first, causal reading requires that x cause our apparent experiences of x. Only then is x a part of the best explanation of our experiences, y. The second, explanatory reading requires that the fact that x exists explains the fact that we have certain apparent experiences of x.

The difference between these two readings is not based on some supposition that some explanations may be best even if they are not *causal* explanations. I assume for these purposes the only relevant explanations are causal explanations, so the difference between the two readings cannot lie there. The difference rather lies in the distinction between the causal relation itself and causal explanations. Descriptions of causal relations, like "x causes y," create what are called *extensional* contexts.[232] In extensional contexts, it does not matter how x and y are described, because it will remain true (or false) that x causes y. That the fire was caused by the electric spark, the presence of hydrogen, and the presence of oxygen will remain true no matter how we describe the fire, the gases, or the spark, so long as we succeed in referring to these same entities, states, and events.

By contrast, causal explanations create nonextensional contexts. The *fact* that there was a fire is distinct from the *fact* that the fire was very explosive and from the *fact* that the fire had a certain direction and force, even though the *event* that was the fire is one and the same event. Facts are propositional, and they differ from one another even though the event that they are about is one and the same event.[233]

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231. I found Geoffrey Sayre-McCord's *Moral Theory and Explanatory Impotence* particularly helpful here, although how I draw the distinction between the two readings, and the use I make of it, differs from his approach. *See* Sayre-McCord, *supra* note 27.

232. For discussion and citation on the much-discussed question of whether causal statements are extensional, see Michael S. Moore, *Foreseeing Harm Opaquely, in* ACTION AND VALUE IN CRIMINAL LAW (John Gardner et al. eds., forthcoming 1993); Michael S. Moore, *Thomson's Preliminaries About Rights and Causation,* 63 CHI.-KENT L. REV. 497, 504 n.41 (1987).

233. On the distinction between facts and events, see JONATHAN BENNETT, EVENTS AND THEIR NAMES (1988); MICHAEL S. MOORE, ACT AND CRIME ch. 4 (forthcoming 1993).

Moreover, the truth of an explanation varies depending on which fact about the fire is being explained. That there was a fire at all is in part explained by the spark, but the spark need not explain that the fire had a certain force or direction or color; these facts may be explained by the fact that the hydrogen and oxygen were mixed in a certain proportion, or by any number of other facts.[234]

The difference between the two readings of the empiricist requirement thus comes down to the distinction between things and facts about things. Usually this is a distinction that makes no difference in the application of the empiricist requirement. Usually a best explanation of our experience in either sense will suffice to justify an ontological belief. That is, if x causes our experience y, then x must exist (on the reasonable supposition that nonexistent "things" like omissions do no causing).[235] Likewise, if the fact that x exists, or the fact that x is yellow, explains the fact that we have certain apparent experiences of x, then x must exist; for although the fact that x exists or is yellow should not be confused with the thing x itself, such facts about x requires that x exist for such facts to be true.

The two different readings of the empiricist requirement matter where we are trying to justify an ontological belief about x's by a further (reductive) belief that x's are really just z's.[236] Suppose, for example, we are trying to justify to ourselves that there are molecules of two hydrogen atoms bonded to one oxygen atom. (These molecules will be our "x's.") We make the justificatory claim in the following way: we are justified in believing that water (z in this example) exists because we have certain experiences (y in this example) that unproblematically exist, and these are best explained by the existence of water *(z)*. Since we believe that water just is H_2O ($z = x$), then the existence of H_2O is also part of the best explanation of our apparent experiences of water *(y)*. So we are justified in believing that H_2O molecules exist too.

If we are sure of the truth of our reductive hypothesis ($x = z$), then this justification for belief in the existence of x's is impeccable. But what if we are as unsure of the reductive hypothesis ($x = z$) as we are of the existence of x's? Surely that reductive hypothesis is also to be justified by the empiricist requirement, and now it matters which reading of the requirement we apply. The causal reading of the requirement can do no work for us here, because it is blind to different

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234. For another example, see Quinn, *supra* note 216: "That Jones finished first in the race explains why he got the prize. But that Jones finished at some position or other in the race . . . does not explain why he got the prize." *Id.* at 536.

235. I argue for this position in MOORE, *supra* note 233, ch. 10.

236. *See* Quinn, *supra* note 216, at 527.

descriptions of x; if z (or H_2O) is just another description that picks out the very same thing as x (or *water*), then on the causal reading of the empiricist requirement the latter is satisfied; if not, not.[237] But the very question is whether the identity is true, and on this the causal reading gives us no help.

On the explanatory reading, however, how the x's are described matters to whether the empiricist requirement is satisfied. The explanatory reading, in other words, becomes a more stringent test than the causal reading.[238] For now, x's must best explain our experiences *(y)* *under their descriptions as "x's."* If such explanations are made out, then we are justified in believing that there are such things as x's. In addition, if those things we call x's overlap in enough ways with those things we call z's, then we may also be justified in identifying the two.

To flesh this out with my example of water and H_2O, suppose that some explanations of somethings *(y)* can only be made in terms of the fact that H_2O molecules exist, not in terms of the fact that water exists. E.g., let y be the fact that we experienced wetness if we were in the room (and were still alive where hydrogen gas, oxygen gas, and an electric spark were all simultaneously present). The best explanation for the fact that we feel wet will not be the fact that water was present, if we do not know that water is H_2O — for just before the flash of light and heat there was no water (and, as Julie Andrews has it, "Nothing comes from nothing. Nothing ever could").[239] Rather, the best explanation for the fact that we feel wet includes the fact that feelings of wetness are caused by H_2O molecules and that H_2O molecules are formed by explosive combinations of hydrogen and oxygen gases. Our reductive hypothesis also gains support here, for water in other circumstances causes these same feelings of wetness; parsimony in ontology should therefore incline us to identify water with H_2O.

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237. *Compare* Lycan, *supra* note 11, at 93 n.26, where Lycan considers whether what I have been calling "x's" "would have to play their causal as well as their explanatory roles" *qua* x's, that is, as things possessed of the properties described by x. Although Lycan rejects this interpretation of the causal requirement, I should have thought one should reject it on the general ground that causal contexts are extensional (so that an object or event is or is not a cause of something else *tout cour* and not *qua* one description or another). As Peter Railton notes, "because the form of the reduction of water to H_2O is that of an identification, it makes no sense to ask of a causal role assigned to water . . . whether the causal work is 'really' being done by water or by H_2O. There can be no competition here . . . ." Railton, *Naturalism and Prescriptivity, supra* note 27, at 161.

238. In another context, namely, for universals, the causal reading is a more stringent test than is the explanatory reading. Scientific laws may have a necessary place in the best explanation of particular events, but those laws do not cause those events to occur. On the explanatory reading, such universals exist, whereas on the causal reading, they do not. *See* Sayre-McCord, *supra* note 27, at 266.

239. RICHARD ROGERS AND OSCAR HAMMERSTEIN, THE SOUND OF MUSIC (1965).

All of this will eventually become critically important in making out the coherentist's argument for the existence of moral qualities, because the relation between moral and natural properties holds the key to the argument. For now, let us simply resolve the ambiguity we have uncovered in the coherentist's empiricist requirement by stipulating that an entity must pass both versions of the requirement before we are justified in believing in its existence.[240]

B.   *The Harman-Mackie Argument Against Naturalist Realism*

Both Gilbert Harman and John Mackie have had a large part in fashioning the best explanation strategy so as to defend realism about scientific and common sense entities and qualities, including in Mackie's case the causal relation itself.[241] Both, however, believe that the strategy that they have helped to fashion argues against moral realism.

Harman appears to reach his conclusion about moral qualities by relying on a finer-grained analysis than does Mackie. Harman invites us to compare particular explanations of our scientific beliefs with particular explanations of our moral beliefs, Harman's intended conclusion being that such explanations commit us only to the entities of science.[242] Mackie, by contrast, interposes a preliminary, across-the-board objection to realist explanations of moral beliefs; namely, that they would be bad explanations because they posit the existence of "queer" entities, "queer" relations, and "queer" modes of perceiving both.[243]

Harman's finer-grained analysis juxtaposes particular cases of scientific and mathematical observations, on the one hand, with moral observations on the other. Since Harman too accepts the empiricist idea that "an observation is evidence for what best explains it,"[244] he seeks the best explanation of each of these observations in order to see whether they can support existential claims about scientific, mathematical, or moral entities.

Consider three examples. A physicist sees a vapor trail in a cloud chamber. Because of his experience, he forms the belief, "there goes a

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240. That this is probably too strong a requirement is shown by the causal reading's exclusion of universals. *See supra* note 238. I shall nonetheless keep both readings before us in my consideration of the existence of moral qualities, for if moral qualities can pass both readings, their existence is that much more strongly argued for.

241. For a masterful account of causation that is realist, see J.L. MACKIE, THE CEMENT OF THE UNIVERSE (1974).

242. *See* HARMAN, *supra* note 30.

243. *See* MACKIE, *supra* note 61.

244. HARMAN, *supra* note 30, at 10.

proton." Harman thinks that the best explanation for why the physi-
cist believes that there was a proton present is because there *was* a
proton present in the cloud chamber. This realist explanation is better
than a subjectivist explanation — i.e., an explanation couched only in
terms of the physicist's psychological set — because the latter is an
implausible explanation of what the physicist believes.[245] The subjec-
tivist explanation is implausible, Harman believes, because the physi-
cist's beliefs would not have included the belief that there was a vapor
trail and that there was a proton if in fact there were no proton
present.

The best explanation argument for the existence of numbers is
somewhat different. Belief in numbers does not arise from observing
numbers, so the explanandum explained by the existence of numbers
cannot plausibly be our observational beliefs, such as "there goes a
number." Rather, numbers exist for Harman because they figure as
necessary posits in our best explanations of phenomena other than our
beliefs about numbers.[246]

Harman's example of a moral observation is the judgment we
make when we see children pouring gasoline on a cat and setting it
afire.[247] Observing the children, we come to the belief that what they
are doing is wrong. Our psychological set, Harman urges, satisfacto-
rily explains this belief: because of our socialization, we are generally
disposed to believe that deliberate cruelty, to man or beast, is wrong,
and it is this general disposition that causes us to believe that the act of
the children is wrong. Such a subjective explanation does not commit
us to the existence of a moral quality named by *wrong.* True enough,
Harman concludes, one can imagine a competing, realist explanation:
our belief that cat-burning is wrong can be explained by the moral fact
that the action *is* wrong. But such a realist explanation, Harman
rightly perceives, commits us not only to the existence of wrongness as
a quality, but also to there being a causal relation between wrongness
and our beliefs about wrongness. Harman sees no way to make sense
of such a causal connection: "there does not seem to be any way in
which the actual rightness or wrongness of a given situation can have
any effect on your perceptual apparatus."[248]

Harman is willing to concede a place for realist explanations if we
change the *explanandum.* If what we seek to explain is not, "why do
we believe that setting the cat afire is wrong?" but rather, "why is it

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245. *Id.* at 6-7.
246. *See id.* at 9-10.
247. *See id.* at 7.
248. *Id.* at 8.

wrong to set the cat afire?" the best explanation may well be the realist one: because deliberate cruelty to man or beast is always wrong. Such explanations, however, presuppose the existence of moral qualities by their selection of what needs explaining; for this reason they cannot constitute an argument for the existence of moral qualities.[249]

John Mackie has advanced two other arguments against moral realism, the argument from relativity and the argument from queerness.[250] Both of these involve inference to the best explanation, but since Mackie did not explicitly frame them as such, a bit of exegesis is required.

The argument from relativity eschews particular moral beliefs as the facts to be explained and focuses on a more general "fact of anthropology": there is a lot of disagreement on moral matters between persons in the same culture, between different cultures, and between the same persons and cultures at different periods of their histories.[251] Thus, Mackie continues, if moral beliefs are caused by a moral reality in the way that factual beliefs are caused by physical reality, one would expect a convergence of moral belief identical to that which has occurred with scientific belief. Not finding such a parallel, Mackie concludes: "the argument from relativity has some force simply because the actual variations in the moral codes are more readily explained by the hypothesis that they reflect ways of life than by the hypothesis that they express perceptions . . . of objective values."[252]

Mackie divides his argument from queerness into two branches, one metaphysical and the other epistemological.[253] Because of his unfortunate choice of the word *queer,* both versions of Mackie's argument are easily (mis)interpreted to be nothing more than shocks to empiricist sensibilities.[254] So interpreted, Mackie's queerness "argument" is akin to Justice Holmes' famous "argument" against natural law: natural law could not exist, Holmes concluded, for if it did exist it would be a "brooding omnipresence in the sky," a kind of Aurora Borealis sans lights.[255] So interpreted, Mackie's queerness argument would then be subject to Paul Grice's apt rejoinder to those who would be skeptical about mental states on "queerness" grounds:

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249. *See id.* at 8-9.

250. *See* MACKIE, *supra* note 61, at 35.

251. *See id.* at 36.

252. *Id.* at 37.

253. *See id.* at 38. I discuss Mackie's subdivisions of his queerness argument in Moore, *supra* note 8, at 1086-88, 1117-36.

254. *See, e.g.,* Platts, *supra* note 52, at 72.

255. *See* Southern Pac. Co. v. Jensen, 244 U.S. 205, 222 (1917).

I am not greatly enamoured of . . . a concern to exclude such "queer" or "mysterious" entities as souls, purely mental events, purely mental properties and so forth. My taste is for keeping open house for all sorts and conditions of entities, just so long as when they come in they help with the house-work. Provided that I see them at work [in an explanation] . . . I do not find them queer or mysterious at all. . . . To exclude honest working entities seems to me like metaphysical snobbery, a reluctance to be seen in the company of any but the best objects.[256]

Mackie's queerness arguments, however, are more than an attempt to shock empiricist sensibilities. They are in fact efforts to construct a best explanation argument against moral realism. Mackie fastens onto two alleged aspects of moral qualities. The first is the necessarily motivating power that moral qualities allegedly possess. As Mackie puts it,

something's being good both tells the person who knows this to pursue it and makes him pursue it. 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.[257]

The item about which Mackie is here seeking the best explanation is the alleged fact that moral beliefs necessarily motivate their holder to certain behavior. A realist who undertook to explain this alleged fact must do so in terms of a further fact about moral beliefs: they either are, or they are necessarily accompanied by, a desire to further that which is believed to be good or right.[258] Mackie, like Hume before him, finds this explanation to be "queer" in the sense that it does not comport with our more general beliefs about how human psychology works. Practical reasoning, we think, is governed by two distinct types of premises, the motivating (or "pro-attitude") premise and the cognitive (or means/end belief) premise. Psychology views beliefs as the slaves of the passions in the sense that beliefs cannot by themselves motivate people to act. Mackie's true "queerness" objection here is that construing moral beliefs to *be beliefs* — that is, cognitive states whose content is about a mind-independent reality — is inconsistent with our general psychological theory. Moreover, an antirealist explanation of moral "beliefs" is available that does not call into question our general psychological theory, i.e., just the explanation that Hume gave: moral beliefs are not really beliefs about anything at all; they are simply expressions of emotion and, as such, of course are nec-

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256. Paul Grice, *Method in Philosophical Psychology (From the Banal to the Bizarre)*, 48 PROC. & ADDRESSES AM. PHIL. ASSN. 23, 30-31 (1975).

257. MACKIE, *supra* note 61, at 40.

258. See, for example, Platts, *supra* note 52, for an attempt at this kind of "internalist" realist explanation.

essarily motivating because that is what emotions, as opposed to beliefs, do.

The second aspect of moral qualities that Mackie finds "queer" are the relations that would have to hold between moral qualities and natural qualities. Mackie queries:

> What is the connection between the natural fact that an action is a piece of deliberate cruelty — say, causing pain just for fun — and the moral fact that it is wrong? . . . The wrongness must somehow be "consequential" or "supervenient"; it is wrong because it is a piece of deliberate cruelty. But just what *in the world* is signified by this "because"?[259]

Mackie's point is not simply that he has inventoried his ontological commitments about relations and can find none labeled *supervenience.* Rather, the alleged queerness of the supervenience relation is important to Mackie because it obstructs the framing of adequate explanations for our moral beliefs. On the realist explanation of those beliefs that Mackie is criticizing, we must discern a "mysterious consequential link" between a natural property and a moral property so that we can infer wrongness, say, from cruelty.[260] "How much simpler and more comprehensible," Mackie urges, "if we could replace the moral quality with some sort of subjective response which could be causally related to the detection of the natural features on which the supposed quality is said to be consequential."[261]

Implicit in Mackie's discussion of queer relations is the following best-explanation argument against moral realism.[262] The fact to be explained is, again, our moral beliefs. For example, I watch children burning a cat and I believe that their act is wrong. The realist explanation for this belief is that the wrongness of the children's action causes my belief that it is wrong. The *naturalist* realist explanation of how this causation works is not the possession of a special faculty ("intuition") capable of sniffing out moral qualities; rather, we infer the cruelty of the children's action from certain behavioral clues and we infer the wrongness of the action from its cruelty.

Mackie's "queer relation" objection surfaces as an objection to there being any capacity to infer wrongness from cruelty, for how could we have such an inferential capacity when the relation is ultimately mysterious? There are no analytic relations between *wrong* and *cruel,* nor are there causal relations between cruelty and wrongness.

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259. MACKIE, *supra* note 61, at 41; *see* Moore, *supra* note 8, at 1125-33 (discussing Mackie's "queer relation" objection).

260. *See* MACKIE, *supra* note 61, at 41.

261. *Id.*

262. *See* Moore, *supra* note 8, at 1126.

We thus must not be inferring wrongness from cruelty, Mackie concludes; ultimately, the naturalist realist, no less than his nonnaturalist cousin, is relegated to the "lame answer" that humans possess a special faculty of intuition by which they directly "see" wrongness.[263] Whereas if *wrongness* does not name a mind-independent quality, but describes or expresses emotional revulsion, then one can explain that revulsion in terms of the perception that an action in the world is cruel coupled with certain subjective features of our psychology.

Mackie's "epistemological argument from queerness" is in reality no different from the metaphysical arguments from which he nominally separates it. For the explanandum is again our moral beliefs, and Mackie's queerness objection is again interposed against what Mackie takes to be the only realist explanation of those beliefs in terms of a special faculty of intuition.

C. *In Search of an Explanandum: What Needs Explaining by Moral Reality?*

If we sort through these arguments by Harman and Mackie, we may usefully distinguish four types of items about which realists and antirealists must compete in their explanations. The first has been explored at some length by Bill Lycan.[264] Lycan introduces a distinction between *intuiteds* and *intuitings.* Intuiteds are *what* we believe — the objects of our beliefs, which are propositions (or sentences) about the external world. Intuitings are the mental states we more usually call *beliefs.* Intuiteds are in the world; intuitings are in our head.

Lycan draws this distinction in order to point up a disanalogy between Harman's use of the best-explanation strategy in science and morality. The debate about scientific realism, Lycan correctly points out, often involves efforts to explain intuiteds. For example, scientific realists urge that the best explanation of the macrobehavior of gases (pressure, volume, temperature, and diffusion rate through a porous membrane) is the existence of molecules possessing kinetic energy. Antirealists urge that the macrobehavior of gases is better explained by the ideal gas theory taken *instrumentally,* i.e., without ontological commitments to things like "kinetic energy." In neither case are realists or antirealists seeking to explain the fact that an observer *believes* that the volume, pressure, and temperature of gas vary in systematic ways; rather, the explanation attempts to make sense of the fact that gas *does* behave this way.

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263. MACKIE, *supra* note 61, at 39.

264. *See* Lycan, *supra* note 11, at 88-89.

Why, then, Lycan asks, should one frame a debate about moral realism in terms of moral beliefs — *intuitings* — as the items to be explained? Rather, a theory should explain moral facts like the facts that slavery is unjust and bullfighting is wrong.

Harman is surely on solid ground in rejecting Lycan's invitation to shift the explanandum from intuitings to intuiteds.[265] To do so in the context of a debate about moral realism would soundly beg the question. The best explanation strategy only does its justificatory work to those who agree that the item to be explained unproblematically exists.

The disanalogy between science and ethics to which Lycan adverts is there, but that is because neither side in one of the debates about scientific realism disputes the existence of real world objects and their primary qualities. Both those who assert the existence of theoretical entities in science, such as kinetic energy, and those who deny it ("realists" and "instrumentalists," respectively) admit the existence of gases and their macroqualities such as pressure and volume. Thus, those entities and their qualities are eligible to serve as the explanandum realists and antirealists seek to explain.

Suppose, however, the debate about scientific realism were between phenomenalists and naive realists. Since phenomenalists do not think that real world objects exist (they are mere "constructions" out of sense data), the existence of such objects cannot serve as the explananda. Rather, one now has to start with perceptual beliefs ("intuitings") and ask whether the best explanation of those items is that they are caused by real world objects (realism) or whether they are themselves only complex constructions out of more primitive mental goings-on, sense-data (phenomenalism).

The debate about moral realism is similar to the phenomenalist-realist debate in science and dissimilar to the instrumentalist-realist debate. Antirealists about morality do not concede the existence of badness or justice as qualities that apply to bullfighting, slavery, or anything else. They deny the existence of moral qualities root and branch at any level. They accordingly cannot be persuaded by best explanations of more particular moral truths *(intuiteds)*.

A second item proposed as the relevant explanandum for the realist/antirealist debate in ethics is behavior. Nicholas Sturgeon has framed his response to Harman's antirealism in part by producing morally realist explanations of behavior.[266] Sturgeon claims to have discovered "a whole range of extremely common cases . . . in which we

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265. By anticipation — *see* HARMAN, *supra* note 30, at 8.
266. Sturgeon also frames explanations of moral beliefs. Sturgeon, *supra* note 27.

Michigan Law Review [Vol. 90:2424

cite someone's moral character as part of an explanation of his or her deeds."[267] Thus, Hitler did what he did because he was depraved;[268] Midshipman Woodworth (who was in charge of rescue efforts to save the Donner party trapped in the snows of the California Sierras in the winter of 1846) failed to rescue the Donner party because he "was just no damned good."[269] Sturgeon also claims to have discovered a range of cases where the more general moral attributes of rightness and wrongness form part of the best explanation of behavior. Thus, opposition to slavery took place to a much greater extent in Britain and France (including British and French America) in the eighteenth and nineteenth Centuries than it did in Spain and Portugal (including Latin America), because slavery was much *worse* (morally) in British and French America than it was in Latin America.[270]

These accounts seek to explain something that both realists and antirealists about morality concede to exist, namely, human behavior. Such explanations (if they compete successfully against antirealist explanations) thus have greater promise, for their competitive success would constitute a good reason to believe that the entities they contemplate — good and bad character, rightness and wrongness — actually exist.

Despite this greater promise, I shall at least initially ignore behavioral examples as the most crucial explananda and rather focus on moral beliefs. It is the existence of moral beliefs that the realist must explain by inference to mind-independent moral qualities, for until he can explain them he cannot satisfy the empiricist criterion for justification. That criterion requires an account of how we gather knowledge about the world that shows our information gathering technique to be reliable. Such an account gives us reason to credit certain of our experiences — what we often call observational experiences — as constituting evidence of a deeper reality causing them. The causal theory of perceptual belief offers such an account for our observations of many ordinary (and some not so ordinary) objects in the world. If moral qualities also exist, we need some account of the origins of our moral beliefs analogous to the causal theory of perceptual belief. Otherwise, the realist cannot show our moral observations to be reliable evidence of a deeper moral reality. If the realist is at all an empiricist in his epistemology, as am I, that failure to explain why our moral observa-

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267. *Id.* at 63.

268. *See id.* at 52.

269. *Id.* at 63 (quoting BERNARD DeVOTO, THE YEAR OF DECISION: 1846, at 442 (1942)).

270. *Id.* at 64.

tions are reliable indicators of reality should by itself incline him to doubt the existence of that reality.

This is why I here eschew Sturgeon's historical examples where moral reality may enter into the best explanation of certain behaviors. If such examples succeed, they do give us reason to believe that moral qualities exist. Such existence still remains a puzzle to us, however, until we can also explain how we can come to "know it when we see it" (to paraphrase the late Justice Stewart on pornography).[271]

The third explanandum is thus the existence of moral beliefs. Within the category of moral beliefs, we may usefully distinguish general moral beliefs from particular moral beliefs.[272] The distinction lies in the objects of the belief. A general moral belief is about justice or rightness of actions in general. Particular moral beliefs, by contrast, concern the justice or injustice (goodness or badness, rightness or wrongness) of some particular act, actor, or institution. It is our particular moral beliefs that most urgently require explanation by moral reality if an explanationist defense of moral realism is to be persuasive. For, if such moral observations[273] can be shown to connect in a reliable way to moral features of the world, the rest of our moral beliefs can be justified through the familiar theory-building technique of reflective equilibrium.[274] Focusing on particular moral beliefs has the added benefit of applying the empiricist requirement to those of our moral beliefs that seem most analogous to the particular perceptual beliefs given priority by empiricists in their explanationist justifications of scientific realism.

Before we examine the competing realist and antirealist explanations of moral beliefs, a fourth set of possible explananda deserves brief mention. These are the many features of our moral experience "in the large"[275] that not only require some explanation but for which moral

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271. Jacobellis v. Ohio, 378 U.S. 184, 197 (1961) (Stewart, J., concurring).

272. *See* Quinn, *supra* note 216, at 531.

273. I call such particular moral beliefs *moral observations* because they fit all that can be asked of a definition of *observation* or *observational belief:* particular moral beliefs are often formed as a direct result of a perceptual experience. The experience of seeing two boys burning a cat can as immediately spark a judgment that the act is wrong as that the item is a black cat. What is an "observation" is strictly a question of psychology and should not be taken to beg the question of what exists to be observed. We might label such particular moral beliefs as *spontaneous, particular beliefs* or *particular intuitions,* but I prefer *observations* to keep up front the parallel to physical perception. For discussions of "observations" in this context, see Lycan, *supra* note 11, at 86; Sayre-McCord, *supra* note 27, at 259.

274. *See* JOHN RAWLS, A THEORY OF JUSTICE §§ 3, 9, 87 (1971); Norman Daniels, *Wide Reflective Equilibrium and Theory Acceptance in Ethics,* 76 J. PHIL. 256 (1979); John Rawls, *Outline of a Decision Procedure for Ethics,* 60 PHIL. REV. 177 (1951).

275. Sturgeon's distinction. *See* Sturgeon, *supra* note 27, at 49-50; Nicholas L. Sturgeon, *Harman on Moral Explanations of Natural Facts,* 24 S.J. PHIL. 69, 69-70 (Supp. 1986).

realism promises a competitive account. These include: (1) all the anthropological facts to which Mackie's "argument from relativity" directs us, including the degree of consensus on moral matters, the convergence of beliefs over time in ethics vis-à-vis science, and so forth;[276] (2) the psychological fact that we experience some moral dilemmas as insoluble yet continue to seek a reasoned solution to such dilemmas;[277] (3) the linguistic facts that Mackie lumps together as a "claim to objectivity" implicit in our ethical discourse,[278] features including the apparent ability of ethical utterances to be inconsistent, the declarative mood of such utterances, the attribution of truth values to moral assertions and of validity-invalidity to ethical argument;[279] (4) the fact that an individual may radically disagree with his culture's values at any time and may even disagree with all of his own former values over time;[280] (5) the fact adverted to by Mackie's argument from queerness, namely, that moral beliefs are often experienced as motivational and not simply as cognitive states; (6) the fact that our desires are experienced in a way that demands that there be objects that are desirable;[281] and (7) the fact most people experience their evaluations as though the values must be supported by objective reasons not of the subject's creation.[282]

To the extent that these are features of our moral experience, they require explanation. The debates on these matters are best seen as

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276. *See* Moore, *supra* note 8, at 1088-96. Contrary to Jeremy Waldron's characterization that I do not take the argument from disagreement seriously, Waldron, *supra* note 3, at 172, I have given the argument three more sophisticated interpretations in the just cited article.

277. *See* Moore, *supra* note 8, at 1101-02, 1149-52.

278. *See* MACKIE, *supra* note 61, at 30-35.

279. *See generally* Carl Wellman, *Emotivism and Ethical Objectivity*, 5 AM. PHIL. Q. 90, 92 (1968). Wellman counts at least 12 such features. Waldron discounts such features by what he takes to be the countervailing linguistic practices of "gum-chewing sophomores":

[I]t 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. . . . [O]rdinary moral discourse, as I hear it, is a meta-ethical Babel.

Waldron, *supra* note 3, at 166 (footnote omitted). The phenomenon to be explained here is not the "metaethical Babel" that Waldron's undergraduate teaching forces him to listen to. What needs explaining by a metaethical theory is the moral — not explicitly metaethical — discourse of gum-chewing sophomores as well as stern preachers, namely, that certain institutions are unjust, that there are six good arguments showing that they are unjust, and so forth. It is this moral discourse that uniformly presupposes realism.

280. *See* Werner, *Ethical Realism, supra* note 27, at 653, 659, 666.

281. *Compare* Platts, *supra* note 52, *with* David Zimmerman, *Moral Realism and Explanatory Necessity, in* MORALITY, REASON, AND TRUTH, *supra* note 27, at 79.

282. *Compare* David Wiggins, *Truth, Invention, and the Meaning of Life, in* ESSAYS ON MORAL REALISM, *supra* note 9, at 127, *with* David Zimmerman, *Moral Realism and Explanatory Necessity, in* MORALITY, REASON, AND TRUTH, *supra* note 27, at 79.

inference to the best-explanation debates. A full defense of either moral realism or moral antirealism would require the framing of competing explanations for each of these explananda too. I put such explananda aside, thus, not because they are not also relevant, but because examination of all of them leads quickly into all the major issues in metaethics. Enough for the day to focus on one such issue, which I now propose to do.

D. *Moral Reality as the Best Explanation of Our Particular Moral Beliefs*

It is helpful in seeking the best explanation for our moral beliefs to keep an example before us. Mackie and Harman both consider an example of deliberate cruelty's being wrong, which has been extensively utilized in the recent literature.[283] Two boys, seventeen years old, deliberately douse a cat with gasoline and set it afire. Their reasons are sadistic: they simply knew they would enjoy the animal's suffering. Most people would make a twofold moral judgment about such a case: (1) The act was wrong; and (2) the boys were culpable.

A realist explanation of our beliefs would be that the wrongness of the act — a property it possesses — caused our belief that the act was wrong, and the culpability of the boys — a property that they possess — caused our belief that they are culpable.[284] An antirealist explanation would be that only the nonmoral properties of the act and actors, together with our general moral beliefs, caused us to observe, experience, or spontaneously believe that the act was wrong and the boys were culpable.[285] If the realist explanation is best, wrongness and culpability are among the things we must include in our ontological inventories; if the antirealist explanation is best, only nonmoral features of the world and our subjective beliefs need be included in the inventory.

One striking feature of the antirealist's explanation merits immediate attention. The antirealist uses more general moral beliefs to explain particular beliefs. This feature may lead one to think that the antirealist explanation cannot explain moral beliefs since it posits in its explanans the existence of just what it was seeking to explain. This is a harmless objection to the antirealist, for a more complete explication of his views would include an explanation of more general moral be-

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283. *See* HARMAN, *supra* note 30, at 7-9; MACKIE, *supra* note 61, at 4; Moore, *supra* note 8, at 1125-28; Quinn, *supra* note 216, at 536-37; Sturgeon, *supra* note 27, at 52-53.

284. *See* Moore, *supra* note 8, at 1126.

285. *See* HARMAN, *supra* note 30, at 7; MACKIE, *supra* note 61, at 41; Quinn, *supra* note 216, at 529-31.

liefs *not* framed in terms of particular moral beliefs. For example, our education and upbringing, rather than moral reality, caused us to hold our more general moral beliefs. Thus, the antirealist explanation cannot be charged with inadequacy on its face (although this is not to concede the truth of the antirealist's genetic explanations of our general moral beliefs; these explanations compete with realist explanations of such beliefs, which are that such general beliefs are formed inductively from more particular moral judgments of the kind we are now examining).

In assessing the comparative power of other competing explanations of our particular moral beliefs antirealists often tout the superiority of their explanation in ways that trivialize their apparent victory. Warren Quinn, for example, acknowledges that we can and do mention moral facts in explanations of moral beliefs, but: "[I]t seems plausible to think that we never *need* to use them. An intelligent and reflective explainer can always replace them with nonmoral hypotheses about the world together with psychological hypotheses about people's moral beliefs and attitudes."[286] In contrast, both Quinn and Harman[287] think, we have no choice but to mention the proton to explain our belief, "there goes a proton"; for we could explain neither the vapor trail nor our belief in the vapor trail on the basis of our "psychological set" (our believed principles of physics) alone.

Such an easy victory for antirealist explanations of moral belief will not do at all, for it would pave the way for an equally easy (and equally empty) victory for antirealist explanations of scientific beliefs too.[288] Contrary to Harman, we do not need to mention the proton to explain the physicist's beliefs either; assuming he has been educated in standard physics, we can explain the physicist's belief solely by certain natural facts (the vapor trail) combined with his general beliefs about physics (vapor trails are caused by protons) that are themselves explained by education.

What makes it necessary to mention protons in any of this is our belief that the physicist's physics education is right on at least one point, i.e., that without protons there would be no vapor trails in cloud chambers. Assuming this, when we mention the uncontested fact that there was a vapor trail in the cloud chamber in our explanation, we have also committed ourselves to the existence of protons. But that exact move is allowable to the moral realist as well. If we assume our

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286. Quinn, *supra* note 216, at 529.

287. *See* HARMAN, *supra* note 30, at 6-7.

288. *See* Sturgeon, *supra* note 27.

moral theory is correct on at least one point, i.e., sadistically causing suffering is wrong, then when we mention the natural fact of the sadistic cruelty of the boys in our explanation we will also be committed to the existence of wrongness. In such a case we can no more avoid wrongness in explaining our moral beliefs than we can avoid protons in explaining our scientific beliefs.

We must disallow such easy "victories" for antirealist explanations, smuggling in as they do asymmetrical assumptions about how much moral as opposed to scientific theory we are entitled to presume as we ask whether we *must* mention wrongness, protons, and so forth. To create a more genuine competition between realist and antirealist explanations, the antirealist might attempt to refine his education explanation of moral principles so that it genuinely displaces the realist account. Genetic explanations of belief as such do not compete with realist explanations. Indeed, we give the thought that they do compete a special name, the *genetic fallacy.*[289] Only when the genetic explanation is of a kind that we know from past experience leads to unreliable beliefs are we entitled to infer that the realist explanation is untrue. Explanation in terms of unreliable educational techniques such as rote-learning or brainwashing come to mind.[290] But these are not what Harman, Mackie, or Quinn wish to use, for these depend on detailed showings that certain origins for belief are unreliable *in contrast* to others that are more reliable. Wanted by the antirealists here is a simpler, across-the-board, knock-down argument to the effect that realist explanations as such cannot compete successfully with antirealist explanations.

It is here that Mackie's and Harman's "queerness" objection does its work. As Harman puts it, "there does not seem to be any way in which the actual rightness or wrongness of a given situation can have any effect on your perceptual apparatus."[291] And again more recently: "it is obscure how the rightness or wrongness of an action can manifest itself in the world in a way that can affect the sense organs of people."[292] The lack of any account of moral perception, Mackie concludes, leads moral realists who are "clearheaded" to resort to the nonnaturalist's "lame answer" that we all possess a special faculty of moral intuition.[293]

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289. Moore, *supra* note 8, at 1098.

290. *See id.* at 1089-101, 1126 n.154; see also Moore, *supra* note 96, at 198-208, for exploration of various possibilities that our moral beliefs are hallucinations.

291. HARMAN, *supra* note 30, at 8.

292. Harman, *Moral Explanations, supra* note 216, at 66.

293. MACKIE, *supra* note 61, at 39.

The Harman/Mackie position thus devolves around one point: there is no causal account of moral beliefs analogous to the causal theory of perception for factual beliefs. Lacking such an account, of course, explanations not positing such "queer" connections and "queer" modes of knowing are best. Yet the naturist realist has such an account of moral perception to render his explanations "non-queer." To see this account, we should reconstruct the inferential chains of the moral observer in the Harman/Mackie example in greater detail. I do so in terms of sets of beliefs, ordered roughly by the degree of their inferential "distance" (inference-ladenness) from a possible sort of noninferential perceptual belief.[294]

Set *A* are the spontaneous or noninferential perceptual beliefs the observer is caused to have by his observation of the boys' behavior and its effect. Set *A* includes the beliefs: that there were two boys; that the two boys both doused the cat with gasoline and struck a match to ignite it; that the cat was burned to death, screaming and racing around while it lived; that the two boys stayed to watch the cat burn, and laughed at the spectacle. Such perceptual beliefs resulted in a set of inferred beliefs, set *B:* that the observed movements of the boys' bodies were willed movements on their part; that the boys' acts caused (in fact, and proximately, as the lawyers say) the cat's suffering and death; that there was no greater evil prevented by the cat's death or suffering or firing than the evil represented by these consequences; that such acts were intentional under the descriptions, *cat-burning* and *cat-suffering;* that the cat did suffer horribly; that the act was motivated by a sadistic desire on the boys' part to watch the cat suffer, and by no other motive; that the boys generally possessed the mental capacities typical of their age and were not diminished in those general capacities on this occasion by reason of alcohol, drugs, or other impairing influences; that the boys were not acting under the influence of some threat by another person, nor was there some internal analogue of such threat (such as an addictive craving or an emotional rage) other than their sadistic desire.

This set of inferred beliefs, in turn, resulted in a set *(C)* of further beliefs: (1) this act was voluntary, unjustified, and causative of a bad state of affairs; and (2) these actors performed this intentionally, with unredeeming motivation, and without excuse. These beliefs, in turn,

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294. One should not take my chosen starting point in this set of inferences as inevitable. I take it that where an observer starts in his inferences is a matter of psychology, which differs among people. Some people's immediate, spontaneous, or noninferential beliefs no doubt start with the wrongness of the boys' acts without finer factual detail. This is also true of nonmoral facts. Some people see drunken behavior where others see dilated pupils and droopy eyelids.

resulted in a set *(D)* of moral judgments: (1) this act was wrong; and (2) these actors were culpable in doing that wrong act.[295]

Such an explanation thus far makes no mention of the objective moral qualities of wrongness or culpability; but that is because we have not yet said what those qualities, as manifested in this situation, *are.* The wrongness of the boys' act lies in the facts that it was voluntary, unjustified, and causative of a bad state of affairs; that it was voluntary, unjustified, and causally relevant lies in the facts about its volitional character, its failure to cause beneficial effects, and its actual causation of harmful effects; the truth of the last of these facts lies in the fact that the cat did suffer and did die. Similarly, the culpability of the boys lies in the facts that they intentionally performed the wrongful act and did so with unredeeming motivation and without excuse, and those facts in turn are constituted by all the facts believed in set *(B),* which in turn are evidenced by the facts believed in set *(A).*

This is not to say that the wrongness of an act always lies in its production of unnecessary suffering nor even in the act's harmful effects, nor that culpability always is constituted, even in part, by intentionality. There is no type-identity between wrongness and causation of suffering, nor between culpability and intentionality, such that wrongness of an action always consists of causation of needless suffering or that culpability always consists of intentionality or sadistic motivation. What we should say is that moral qualities like wrongness and culpability *supervene* on nonmoral qualities like suffering and intentionality. Supervenience has been a much discussed relation by philosophers in this century, not only in the metaethical discussion that followed Moore but also in the philosophy of mind, the philosophy of action, the philosophy of natural kinds in the physical sciences, and in the philosophical accounting for "secondary qualities" like color. For now, let me adopt a standard view of supervenience once proposed by Simon Blackburn:

> A property M is supervenient upon properties $N_1 \ldots N_n$ if M is not identical with any of $N_1 \ldots N_n$ nor with any truth function of them, and it is logically impossible that a thing should become M, or cease to be M, or become more or less M than before, without changing in respect of some member of $N_1 \ldots N_n$.[296]

I shall in the succeeding section modify this characterization of supervenience, both in terms of its antireductionist flavor ("nor with any truth function of them") and in terms of its modality ("logically im-

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295. On the separation of wrongdoing from culpability, and particularly of the allocation of questions of justification to the former and questions of excuse to the latter, see Moore, *supra* note 157, at 140-44, 172-73.

296. Blackburn, *Moral Realism, supra* note 110, at 106.

possible"). But the characterization serves the present purpose adequately, for it introduces the presently important claim of the moral realist: moral properties depend on natural properties in the sense that the moral properties of a thing cannot change without some change in the natural properties possessed by a thing. This states at a minimum what is true of the relation between the properties of wrongness and culpability vis-à-vis the properties of causing suffering and intentionality in the cat-burning example.

Such covariance between moral and natural properties is, by itself, compatible with either naturalist or nonnaturalist moral realism. "One-worlders" like me nonetheless find moral properties unaccounted for if all one says about them is that they supervene on natural properties, for covariance tells us nothing about the ontological status of moral properties. A naturalist-realist therefore should assert an identity to exist, not between properties, but between property-instances[297] or what some call concrete universals: The wrongness of the boys' act on this occasion consisted in (was identical to) the infliction of needless suffering, and the culpability of the boys on this occasion consisted in the intentionality of their act and the sadistic motivation with which they acted. On the familiar labeling[298] that distinguishes types from instances of types ("tokens"), the identity just asserted is often called a token-identity between moral property instances and natural property instances. Such token-identity is not in any significant sense of the word reductionist, because such identity goes no distance toward licensing replacement of *wrong* or *culpable* with *suffering-producing, intentional, sadistic,* or with any combination of these or other terms labeling natural properties.

Supervenience conjoined with token-identity is a well-known position in the philosophy of mind as well as in metaethics. Donald Davidson, as one well-known example, has held that mental states like intention both supervene on certain brain states and are token-identical to those brain states.[299] Davidson calls his position *anomalous monism,* both because ontologically it is monistic — every mental state-token just is a brain state-token — and because is anomalous — there are no general connections that hold between mental state-types and brain state-types.

As we shall see, this very spare view of the relation between moral and mental properties, on the one hand, and natural and physical

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297. On the nature of property instances, see MOORE, *supra* note 233, ch. 4.

298. *See id.* at ch. 5.

299. DONALD DAVIDSON, ESSAYS ON ACTIONS AND EVENTS 214-15 (1980).

properties, on the other, is too anomalous to be adopted, and I shall strengthen the supervenience/token-identity view toward reductionism. But we can use even the spare view to give the prima facie answer to where moral properties fit in the causation and explanation of our particular moral beliefs. When we were perceiving the causation of needless suffering by the boys' act, we were perceiving that act's wrongness; when we were perceiving the intentionality and sadistic motivation of their act, we were perceiving their culpability. For on this occasion, again, the causation of needless suffering constituted the wrongness, and the intentionality and sadistic motivation constituted the culpability.

Of course, we need not have been *directly* perceiving the wrongness or the culpability. But then, we need not have been *directly* perceiving the causal relation of their act to needless suffering, or the intentionality or motivation of their acts, either. We inferred the presence of those properties (set "C") from the presence of other properties (set "B") on which they in turn supervened. And even these latter properties need not have been perceived to exist noninferentially, for they were evidenced by yet more basic properties (set "A"). So what we should say is that, when we watched the boys burn the cat and enjoy its suffering, we were watching an instance of wrongful action and of culpable actors.

If, as most antirealists admit, we have no problem in countenancing a causal theory of perceptual belief, then we should have no problem in countenancing a causal theory of moral belief as well. For the account does not differ. The nonmoral fact that the act caused needless suffering causes us to believe that it caused needless suffering; the fact that the action was intentional causes us to believe that it was intentional; and the fact that the act was wrong, and the actors culpable, causes the corresponding beliefs in us as well.

All of this is bound to disappoint the antirealist. For what he expects as a causal theory of moral belief is something like the causal theory of perception — with emotions, say, playing the role of the "sense organ" of morality except that these "sense-organs" access a special world of ghostly qualities. He wants to be shown something dramatic, such as how "the wrongness of the act affects the quality of the light reflected into Jane's eyes, causing her to react negatively,"[300] for example. Or he wants to be shown "that atmospheric moral quaverings" confirm moral opinions.[301] More, he wants something

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300. Harman, *Moral Explanations, supra* note 216, at 63.
301. DWORKIN, LAW'S EMPIRE, *supra* note 2, at 80.

distinct from, but analogous to, sensory perception, something with which

> 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 [moral] perception.[302]

Such "new data" expectations of what moral perception must be like are bound to be disappointed by an account that makes use of no sense organ except the normal five sense organs and no world except the natural world in which we live. The account just concluded allows us to perceive wrongness in the same way that we perceive the suffering of a cat and the causation of its suffering by an action: we perceive certain facts that in the circumstances that they occur constitute both a voluntary act-causing-needless suffering and an instance of wrongness. As Richard Boyd coyly puts the rejoinder of the naturalist realist here: "[Moral realism] is viable . . . only if there is a satisfactory answer to the question: 'What plays, in moral reasoning, the role played in science by observation?' . . . I propose the answer: 'Observation.' "[303]

The naturalist-realist's rejoinder hinges, of course, on making out the relations between moral properties and nonmoral properties above labeled supervenience and token identity. For it is these relations that allow the naturalist realist to conclude that wrongness and culpability cause belief wherever the nonmoral facts on which they supervene cause beliefs. The antirealist thus must attack this relationship if he is to undercut the realist explanation of how our particular moral beliefs are caused by moral qualities.

E. *The Alleged "Queerness" of Supervenience*

The naturalist realist thus rejects the demand that he point to some "sixth sense" with the capacity to detect special, nonnatural, moral properties. Since the rejection depends on there being some such relations between moral and natural properties as were just described, one well-entrenched form of antirealist response has been to reject supervenience and/or token identities out of hand. This response is not the objection taken up in the next section, which is the legitimate demand to the realist that he support his particular claims, say, of the supervenience and token-identity of the culpability of the two boys with their

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302. Waldron, *supra* note 3, at 175 (footnote omitted).

303. Boyd, *supra* note 27, at 206.

sadistic motivation. Rather, the antirealist response to be examined here is the more general one summarized by Mackie,[304] which finds these sorts of relations to be explanatorily suspect by their very nature.

There are a number of different objections that have been meant by those voicing this Mackie-like objection. Perhaps Richard Hare's older, scornful dismissal of supervenient relations[305] was aimed at what he saw as Moore's interactionist dualism about moral and natural properties. Against the "special realm" picture of Moore's non-naturalist realism, the "queer relation" objection is much like the interactionist objection to dualistic theories of mind: given the dualist's positing of two such distinct realms of being, how can there be any way to conceive of an interaction between them? But a *naturalist* moral realist can be stuck with no such picture. Wrongness may supervene on cruelty just as cruelty may supervene on sadistic desire, but in neither case would a naturalist posit properties in different realms. His ontological commitments require only that there be different properties, not different realms.

A second way to take the queer relation objection is as an objection to the modal status claimed for the supervenience relation. Mackie's worry sometimes seems to be that there is no sense of "necessity" available to make sense of the idea that cruel behavior, on occasion at least, is *necessarily* wrong behavior. Simon Blackburn's earlier definition of supervenience, as we have seen, suggests that the necessity claimed by the realist is a logical or semantic necessity, for Blackburn would commit the realist to believing that it would be logically impossible that the boys act could be cruel on this occasion and not be wrong.[306] Yet, Mackie rightly suggests, such necessity "cannot be an entailment, a logical or semantic necessity,"[307] for Mackie, like most post-Moorean philosophers, rejects analytic naturalism. Nor is there any necessity in the mere fact that "the two features occur together" in our world.[308] Nor are supervening properties happily thought of as the effects of which the properties supervened upon are the causes — cruelty doesn't cause wrongness — so the necessity characterizing the causal relation is unavailable.[309]

Yet the sense of necessity involved in supervenience claims is not a

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304. MACKIE, *supra* note 61, at 41.

305. *See* HARE, THE LANGUAGE OF MORALS, *supra* note 26, at 80.

306. *See* Blackburn, *Moral Realism, supra* note 110, at 105-07.

307. *See supra* note 259 and accompanying text.

308. *Id.*

309. Jaegwon Kim, *Causality, Identity, and Supervenience in the Mind-Body Problem,* 4 MID. STUD. IN PHIL. 31, 42-43 (Peter French et al. eds., 1979).

puzzle for the moral realist (although it reveals a puzzle, as we shall see). A naturalist realist should construe supervenience as a metaphysical necessity. In the analysis that Saul Kripke has made familiar,[310] to say that, necessarily, water is H_2O is to say that this identity holds in all metaphysically possible worlds (that is, all worlds that obey the metaphysical truths of this world), for in light of those truths something could not be water if it were not H_2O. *Water* designates water "rigidly," that is, by the essential nature that water must possess in order to be water, which our best theory currently identifies as H_2O. Analogously, an action necessarily cannot become wrong, cease being wrong, or change from wrong to right, without causation of unnecessary animal suffering, or any number of other natural properties, also becoming present, or cease being present, or changing.

Simon Blackburn, who has done his own revisiting of moral reality recently,[311] reexamines the modal status of the moral realist's supervenience claim, and he too concludes that metaphysical necessity makes the claim nonqueer. Nonetheless, Blackburn seeks to generate anomaly for the claim by holding that we should also be committed to supervenience of moral properties onto natural ones as a matter of conceptual or analytic necessity. As Blackburn says:

> It seems to be a conceptual matter that moral claims supervene upon natural ones. Anyone failing to realise this . . . would indeed lack something constitutive of competence in the moral practice. And there is good reason for this: it would betray the whole purpose for which we moralise, which is to choose, commend, rank, approve, forbid things on the basis of their natural properties.[312]

Yet I see nothing here that commits the realist to an analytical version of his supervenience claim. The competence that Blackburn's hypothetical intuitionist (i.e., someone who made moral judgments without regard to natural properties) lacks would be a metaphysical incompetence: he fundamentally does not understand the nature of wrongfulness, goodness, and so forth. Since the meaning of *wrong* and other moral words is given by the essential nature(s) of such things (just as the meaning of *water* is given by H_2O), we can describe the intuitionist's incompetence as a matter of "not knowing the meaning" of moral terms. This sort of realist semantics does not at all commit one to analytic or conceptual truths connecting *wrong* or any other moral term to natural properties. Metaphysically necessary supervenience is

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310. *See* KRIPKE, *supra* note 18.

311. *See* Simon Blackburn, *Supervenience Revisited, in* ESSAYS ON MORAL REALISM, *supra* note 9, at 59.

312. *Id.* at 66.

the only modality the realist need use in fleshing out a nonqueer supervenience claim.

So construing the modality of the realist's supervenience claim reveals a much better "queerness" objection than either of the two we have just examined. The objection is this: if there is a necessary covariance between changes in moral properties and changes in nonmoral properties — which is what supervenience asserts — then there must be some other relation between the properties that explains this covariance. This is not a worry with water and H₂O, for these are one and the same substances, so of course "water-ness" and "H₂O-ness" will covary. But wrongness is not type-identical to causative-of-unnecessary-animal-suffering. So this explanation of covariance seems unavailable in the moral case. The same worry exists for functionalist accounts of mental states. A functionalist holds that mental states supervene upon physical states although they are not type-identical to them. Functionalists thus also need to explain why mental states and physical states covary as they do.

I used to believe that supplementing the supervenience claim with a token-identity claim was sufficient to answer this challenge in both ethics and the philosophy of mind,[313] but now I do not think so. To begin with, I no longer understand what a *purely* token-identity would be. Insofar as Davidson urges that such token identities can be established without there being *any* psychophysical laws connecting *any* types of mental states with *any* types of brain states, than his "anomalous monism" is too anomalous for me. Unless we could specify some type identities — Jones' foot pain in old age *with* C-fibre stimulation of a certain type would do, we don't need identities as large as, pain-in-humans *with* C-fibre stimulation — I don't see how we can even find a "token-identity." More strongly: what would it mean to say that this pain-token is identical to this physical state-token without being committed to there being an identity between *some* types of which these tokens are instances?

So a pure token-token identity cannot explain the supervenience of one set of properties onto another for this identity is itself too much of a mystery to explain anything. There thus must be some type identities, such as: pain for Jones is physical state P, or wrong as applied to cat-burnings is deliberate cruelty causing unnecessary suffering, and so forth. Such limited type identities do not commit one to what pain for Smith is, nor to what wrong as applied to the telling of a lie might be;

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313. *See* Moore, *supra* note 8, at 1130-31 n.160.

there may well be other type identities for pains and wrongs on these other types of occasions.

Saying this, unfortunately, does not get the naturalist realist out of the woods here. For the small type-identities (between moral properties and natural ones) thus far countenanced still allow for the following possibility. It remains possible that, although the wrongness of the cat-burning act of the two boys consisted in its causing of unnecessary animal suffering, wrongness of actions in general may consist of an infinitely large number of other natural properties. Wrongness, in other words, even when restricted to actions (rather than, say, institutions), is open-ended about the possible natural properties with which it may be type-identical. Although many natural properties are doubtlessly never the base properties on which wrongness supervenes — because such natural properties are always morally irrelevant — nonetheless the disjunction of properties on which wrongness does supervene is infinite.

This open-endedness of possible base properties on which moral properties supervene leaves the covariance of the two sets of properties a mystery. Why must there be some change in such an open-ended set of natural properties whenever there is a change of a moral property? Presumably because each moral property in some suitably narrow context is type-identical to some natural properties $N_1 \ldots N_n$. Yet we lose our grip on what type-identities mean if wrongness can be any of an infinite number of base properties. This is "alternative realizability" run rampant. It is like thinking that pain could be realized in different creatures in an infinite number of ways, not just a large number of different physical configurations.

We should accordingly explain supervenience with a stronger sort of reductionist hypothesis.[314] Not only are moral properties token-identical to natural properties (and, accordingly, not only is each subtype of a moral property on each sort of situation type-identical to some natural properties), but the moral property as such must be type-identical to a finite disjunction of natural properties. Then it is not at all mysterious why there must be a variation in the physical world if there is a change in moral status, for moral properties just are one or other of a set of physical properties.

Just how reductionist this explanation of supervenience is is revealed by a fourth construal of the queerness objection to supervenience. This is Simon Blackburn's old objection to supervenience,

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314. *See* Jaegwon Kim, *Supervenience and Supervenient Causation,* 22 S.J. PHIL. 45 (Supp. 1984).

which he himself has largely defanged.[315] The objection was that the naturalist realist seemed to be committed to two propositions whose joint assertion seems very mysterious. The first is a natural extension of the supervenience claim: (1) that necessarily, if something had a moral property M because it also had natural properties $N_1 \ldots N_n$, then anything that had $N_1 \ldots N_n$ must also have moral property M. (1) is plausible for supervenience-naturalists because of the universalizability of moral judgments. If $N_1 \ldots N_n$ are the relevant natural properties making x be M then surely those same properties must make y be M as well. Even traditional noncognitivists would grant moral predicates this much "descriptive meaning."[316]

Yet the antireductionist flavor of many supervenience theorists inclines them also to accept: (2) It is possible that something could have properties $N_1 \ldots N_n$ and not be M. And Blackburn is right that the joint assertion of (1) and (2) would be a puzzle.

The way out of the puzzle is to recognize just how reductionist the supervenience claim must be. We have already seen that a supervenience theorist should explain supervenience by a type-identity of moral properties with some finite disjunction of natural properties. That makes the disjunction of natural properties *necessary* for the presence of the moral property. Now we should also say that each disjunct is *sufficient* for the presence of the moral property. That is, we should deny (2): if we have the correct theory about the nature of wrongness, culpability, and so forth, captured by $N_1 \ldots N_n$, then it is not metaphysically possible to have the presence of those properties without the presence of moral property M.

Surely the only temptation of (2) for supervenience theorists stems from an epistemic worry, which is that there may be some other natural property N_{n+1}, that we do not now know about but if it were copresent with $N_1 \ldots N_n$ would relieve these properties of their normal sufficiency for M being present. In H.L.A. Hart's long familiar terminology,[317] N_{n+1} would be a *defeating* property, making the cluster of properties $N_1 \ldots N_n$ *defeasible.* Yet if there is such a defeating property, that just means that our set of properties $N_1 \ldots N_n$ was *not* one of the disjuncts of natural properties with which M can be type identical. Rather, the set was *($N_1 \ldots N_m$ and not N_{n+1}).* This possibility, while epistemically worrisome, does nothing to touch the reductionist expla-

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315. *Compare* Blackburn, *Moral Realism, supra* note 110, *with* Blackburn, *supra* note 311.

316. *E.g.*, HARE, FREEDOM AND REASON, *supra* note 26.

317. *See* H.L.A. Hart, *The Ascription of Responsibility and Rights,* 49 PROC. ARISTOTELIAN SOCY. 171 (1949). Simon Blackburn calls such defeating conditions "releasing fact[s]." Blackburn, *supra* note 311, at 66.

nation of supervenience: that each moral property is type identical to a complex disjunction of natural properties the entire disjunction of which is necessary and each disjunct of which is sufficient, for the existence of the moral property.

My fifth and sixth construals of the "queerness" objection to supervenience are founded not so much on an objection to supervenience as to the reductionist relations that would identify natural properties with *moral* ones. The fifth objection arises from the familiar query about naturalist-realism, which is how the reason-giving nature of moral qualities can survive a reduction of those qualities to natural properties. The charge is that, however much reductionism may be necessary to make sense of supervenience, that same reductionism makes nonsense of the normative nature of moral qualities, the idea that such qualities give actors reasons to act in certain ways. The charge is based on the intuition that *wrong* prescribes in a way that *inflicts needless suffering* does not, so that any identity between the properties referred to by the expressions must be false.

Yet this is not much of an objection for an externalist realist, who denies that there is any subjectively motivating nature to moral qualities and who denies that the prescriptive or commendatory *force* of moral terms has anything to do with the *meaning* of those terms. This is a worry only for those moral realists who think that their realism has to account for these extra features of moral reality and our discourse about it.[318]

The sixth construal of the "queerness" objection to supervenience stems not from the alleged normative nature of moral qualities but from their alleged nonobservability. The argument is that nonanalytic reductions are possible (or maybe even meaningful) only when we have an independent evidentiary base for each side of a proposed reduction. To use Warren Quinn's example, suppose we were to model the reduction of moral properties into natural properties on the supervenience of ordinary properties like heat onto scientific properties like molecular energy. Quinn argues that we need to be able to locate the ordinary feature (heat) independently of our knowing the properties with which it is type-identical (molecular energy):

> We locate the presence of heat by the way it feels to us, a manner of identification that does not reveal anything of heat's fundamental structure. The parallel claim for moral badness would be that we recognize its presence by the way it feels or appears to us, its fundamental nature

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318. This worry about the "normativity" or "prescriptivity" of moral qualities motivates both Railton and Sayre-McCord to seek to give supplementary, *non*-explanationist justifications of moral realism. *See* Railton, *Naturalism and Prescriptivity, supra* note 27; Sayre-McCord, *supra* note 27, at 278-81.

lying elsewhere. But what could these phenomenal features of moral badness be?[319]

On this view of nonanalytic reductions, we must have an epistemic handle with which we can grab on to goodness, rightness, and so forth, *before* we can be in a position to search out the more recherché properties with which it is identical. I don't see why this is true. Imagine three different ways in which Martians, who in their environment have had no way of knowing about pain, might have stumbled onto the existence of pain: (1) they cut up some human brains at the right time and see some of the thousand and one ways in which pain is realized in the human brain; (2) they observe human behavior, and notice an input/output regularity best explained by there being some common internal state that intervenes as effect of the inputs and cause of the outputs; or (3) they leave their pain-free Martian environment and come to Earth, where they feel pain for the first time. I see no necessity to their discovering pain in the way we happen to have discovered it, namely by its phenomenal feel. Any way of stumbling across such natural kinds may suffice to discover the true nature of the kind.

The same is true for moral properties. Nothing requires that we first discover their existence by some distinctive emotional experience (compassion for distributive justice, guilt and resentment for retributive justice, and so forth). We might discover them this way, or we might discover them via their causal roles, or we might discover them via one or more of the nonmoral properties on which they supervene. Whatever our discovery route might be, what we discover (if we get it right) will be the same: a moral property whose essential nature is given by the widely various natural properties with which it is identical, which natural properties are accompanied often (but not always — there are what used to be called psychopaths) by a characteristic set of emotional responses and tendencies to certain behaviors.

I conclude that a properly constructed supervenience claim is in no sense "queer" or anomalous, either across the board or as asserted to exist with respect to moral qualities. Mackie's type of blunt objection to naturalist-realism on this general ground cannot be sustained. Saying this, however, does not sustain the realist's assertion that moral properties are supervenient and type identical to natural properties. Even if such relations are not per se weird, it is not therefore obvious that such relations hold between moral properties and natural ones.

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319. Quinn, *supra* note 216, at 535-36. Quinn's argument resembles Peter Strawson's older argument that natural properties cannot be evidence for the existence of moral properties without there being an independent means to verify the presence of moral properties. *See* Peter F. Strawson, *Ethical Intuitionism,* 24 PHIL. 23 (1949).

2526 Michigan Law Review [Vol. 90:2424

What I shall next examine are the reasons we have for supposing such relations to hold between moral and natural properties.

F. *Can Supervenient Moral Properties Better Explain Our Moral Beliefs Than Can the Natural Properties Supervened Upon?*

Although I shall examine but a single answer to a single question here, that same answer is called for, and that same question arises, from a number of distinct concerns. I shall accordingly describe several different routes to raising the question before tackling it on its merits.

One such route is via a worry raised by Warren Quinn, Geoffrey Sayre-McCord, and Peter Railton in recent papers on the explanationist defense of moral realism.[320] The common worry is the apparent triviality of explanationist defenses of moral realism if use is made of undefended reductionist hypotheses. For example, Railton imagines a "puckish naturalist" who stipulates an identity between moral goodness and cholesterol-ladenness, and then finds an explanatory role for goodness in causing, for example, heart disease. This kind of explanatory role for goodness provides no argument for the existence of goodness, given the obvious arbitrariness of the stipulated identity of goodness with cholesterol-ladenness.[321]

A second route is David Zimmerman's.[322] Zimmerman recognizes the force of the analogy between supervenience-naturalism in metaethics and functionalism in the philosophy of mind. Still, Zimmerman urges the analogy fails because the functionalist can specify the (functional) essence of a mental state without relying on physical properties. It is this independent functional specification of what a pain or a belief is that allows the functionalist then to talk of multiple physical realizations of *pain* or of *belief.* What, Zimmerman asks, is the analogous unity of wrongness that allows us to talk of multiple realization *of it* in nonmoral properties? If one answers that goodness

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320. *See* Quinn, *supra* note 216, at 535-36; Railton, *Naturalism and Prescriptivity, supra* note 27, at 162; Sayre-McCord, *supra* note 27, at 277-81.

321. *See* Railton, *Naturalism and Prescriptivity, supra* note 27, at 162. Railton's own way around this difficulty is not the substitution of the explanatory criterion for the causal criterion, as is mine. Rather, Railton appears to seek justification for reducing moral properties to certain natural properties in terms of linguistic fit (usage similarity between the moral term and the natural property terms) and in terms of motivational fit (do the base properties capture the interest we feel in the moral property?).

322. *See* David Zimmerman, *Moral Realism and Explanatory Necessity, supra* note 216, at 86; *see also* GREGORY BASSHAM, ORIGINAL INTENT AND THE CONSTITUTION (1992). Bassham worries whether either Brink's or my realist semantics can be applied to moral terms because "normative language is often applied to objects that have little or nothing of significance in common." *Id.* at 79 n.88.

is necessarily reason giving in a certain way, that both forces the realist to the otherwise unpalatable internalist moral realism and gives the realist the unenviable task of describing the unique sort of motivating force attaching to each moral property. If one answers, alternatively, just that all realizations of wrongness share no nature save that of wrongness itself, then one seems thrust toward some kind of non-naturalist account of the unity of general moral qualities.

If we hark back to functional specifications of pain, belief, and so forth, we may find the beginnings of an answer about the unity of goodness, rightness, and those other most general moral properties that seem to have many alternative physical realizations. A functionalist analysis of pain locates the essence in the causal roles pain plays: it is the effect of various kinds of damage to the human body, and it is the cause of certain withdrawal and favoring behavior.[323] What unifies all of the physical states that may realize pain in various creatures at various times, and makes them all instances of *pain,* is that any of such physical states can play such causal roles.

Prima facie, the same causal role specification may be given for goodness, rightness, and so forth. One causal role such properties play is that they tend to cause (not, *necessarily cause*) moral beliefs and hence, tend to give subjective reasons for action to many people. This cannot of course be their only causal role specification, else we become subject to Moliere's famous ridicule of the doctor who diagnosed the cause of his patient's lack of sleep to be due to *dortimus dormitiva* — which translates as *the cause of lack of sleep.* One needs causal role specifications of pain other than its tendency to cause beliefs that one is in pain in order to use pain significantly as the explanation of why one believes that one is in pain. The same is true for goodness, justness, and so forth.

Here is where Sturgeon's and Railton's moral explanations of *behavior* (rather than belief) may do some work for us. That slavery was *worse* in North America than South America explains why opposition to it grew more rapidly in France and England than in Spain; that Hitler was *wicked* explains why so many Jews were killed in 1939-1945.[324] That societies are *unjustly* organized tends to explain why, even when people in such societies believe them to be just, nonetheless there is a tendency toward discontent and unrest and there is a tendency toward certain religious or ideological doctrines, or toward cer-

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323. Pain also plays other causal roles, in learning for example, but I shall ignore more complicated specifications.

324. Sturgeon, *supra* note 27.

tain sorts of repressive apparatus.[325]

It is at this point that Zimmerman's true objection comes into the foreground. Since on the supervenience/reductionist account the differential badness of North American versus South American slavery reduces to some finite set of natural differences between the two institutions, these same causal roles are occupied by these base, natural properties supervened upon as well as by the moral properties of badness or injustice that do the supervening. The same of course is true of Hitler's more particular, natural properties that constituted his wickedness and of the more particular properties different societies may have that makes them as unjust as they are. Moreover, since there are many other natural properties that can constitute badness, wickedness, or injustice of other institutions or characters, and since in each of these alternative realizations the base properties will play the same causal roles as the supervening properties, how can such functional specification of moral properties in terms of causal roles add any unity — beyond the obvious *disunity* of the very different base properties that occupy identical causal roles? The question thus recurs: what, if anything, gives goodness, wrongness, and so forth their unity as properties beyond simply a common symbol and a common commendatory or condemnatory force?

The third route to the same problem is Gilbert Harman's, although he calls it the epiphenomena problem for the naturalist realist. Harman's charge is that on the supervenient-naturalist account moral properties themselves do no causing — they are causally inert, mere epiphenomena.[326] Harman puts his epiphenomenalist point in what he regards as only "a slightly different way": "Features of acts that make the acts wrong" may explain our beliefs, but that does not mean that "[t]he fact that certain features make acts wrong" explains our beliefs. "The issue is not whether . . . wrong-making features have observable manifestations. It is whether the wrongness of acts having those features has observable manifestations."[327]

Take Harman's charge as he himself mainly frames it, as a charge of epiphenomenalism. True epiphenomena are causally inert, effects that do no causing. On the realist account herein developed of moral properties supervening on a complex disjunction of natural properties, the supervenience in turn explained because of an identity between the two sets of properties, it is simply not true that moral properties are

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325. Railton, *Moral Realism, supra* note 27, at 191-94.

326. *See* Harman, *Moral Explanations, supra* note 216, at 63.

327. *Id.* at 63-64; *see also* Harman, *Is There a Single True Morality?, supra* note 216, at 33-34.

causally inert. Because the voluntary causation of needless suffering by the boys of this particular occasion *was* the wrongness, then the causation of our belief that the act was wrong by its being an act inflicting needless suffering is also the causation of that same belief by the wrongness of their act.

True enough, the causing of our beliefs by the wrongness is not independent of the causing by the cruelty. There is no *independent* causal relation for moral properties over and above the causal relation of the nonmoral properties on which they supervene. But that does not mean that the moral properties are causally inert. They are as much the cause of particular beliefs on particular occasions as are the properties on which they supervene.[328]

The problem with this response to Harman's charge of moral epiphenomenalism is that it is so easy that it has to miss his real point. Harman's true objection cannot be epiphenomenalism, for it is too easy to show how wrongness of an act can cause belief when that wrongness is identical to a natural property that causes belief. Recall that Harman put his supposed epiphenomenalist point "in a slightly different way": this was to deny that "[t]he fact that certain features make acts wrong sometimes explains things" like our moral beliefs.[329] This is not the epiphenomenalist objection, however much Harman may have thought that it was. Rather, it is an objection that can concede that moral qualities like wrongness *cause* our moral beliefs on particular occasions but denies that wrongness *explains* those beliefs anyway. This denial is to there being any *explanatory* role to wrongness, the denial being based on a denial that there are accurate causal *generalizations* about wrongness; the more perspicuous generalizations, this line of thought would continue, lie with the nonmoral properties upon which wrongness supervenes. What thus best explains our belief that the boys act was wrong is not the fact that their act was wrong but the nonmoral facts that their act was voluntary, causative of animal suffering, and not causative of some offsetting benefit.

This gets us to our central question. No matter whether the issue is put in terms of a need for explanationist arguments that *justify* the reduction of moral properties to natural ones (and do not just *use* a stipulated reduction), or in terms of a need for some unitary specification of what makes goodness be *a* single property, or in terms of alleged epiphenomenal status of moral properties, the real question is

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328. For a similar response to the charge of epiphenomenalism about the mental, see Kim, *supra* note 314, at 54-55.

329. Harman, *Moral Explanations, supra* note 216, at 63.

what explanatory work is done by moral facts that cannot be done equally well or better by the nonmoral facts on which moral facts supervene.

If that is the question, the answer lies in the fact that our causal generalizations often are more perspicuous when framed over descriptions of supervening properties than when framed over descriptions of the properties supervened upon. It is this fact that gives us a functional specification of the unity of each mental state and that helps to justify reductive hypotheses about mental to brain states. Take a mental state such as thinking of Vienna.[330] Imagine all the contexts in which a person can possess the mental state of thinking of Vienna — he can be looking up from his reading of Wittgenstein, remembering his last summer's romance there, planning next year's vacation, and so forth. There must be innumerable ways in which that type of mental state can be realized in the brain of different persons at different times. Now imagine a travel brochure describing the lure of Vienna: "to think of Vienna is to take the first step towards going there." There is some truth to the causal generalization implicit in such travel chatter, namely, that people who think of Vienna a lot tend to go there more often than the base rate for the population. What similar generalization can one imagine connecting discrete physical realizations of thinking of Vienna to the behavior of going there? If the answer is "none," then the best explanation of why someone went to Vienna is in terms of the fact that they were constantly thinking of Vienna, even if the physical realizations of those thinkings were causes of their going as much as were the thinkings themselves.

Similarly with wrongness and culpability: there are many different realizations of each on different occasions, but the nonmoral properties that realize them on those occasions are not the subject of the most perspicuous causal generalizations.[331] Consider the explanation of our moral belief that the cat-burning act of the two boys was wrong. The realist explanation of our belief is in terms of the fact that the act was wrong. This explanation is best because no other fact is, in general, as perspicuous in explaining such beliefs. In particular, the facts about the base properties on which wrongness here supervenes do not adequately explain our belief. Those base properties might be thought to be: (1) that the boys' act was voluntary; (2) that the basic acts they

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330. Jaegwon Kim's example. *See* Jaegwon Kim, *Supervenience and Nomological Incommensurables,* 15 AM. PHIL. Q. 149, 150 (1978). For a similar point about mind versus neurophysiological generalizations' explaining behavior, see BRINK, *supra* note 27, at 194.

331. For examples other than that given in the text, see BRINK, *supra* note 27, at 194-97 and Sayre-McCord, *supra* note 27, at 276.

did caused a cat to suffer; and (3) that those basic acts did not cause human life to be saved or more cats to suffer, or any other offsetting benefit whose production could justify causing a cat to suffer. The enormously various alternatives of both (2) and (3) prevent these natural facts from adequately explaining our moral beliefs; for we would have believed the boys' acts wrong even if many other consequences were substituted for the suffering of the cat, and we would have believed their acts not wrong had they produced any of a large number of beneficial consequences. In short, the fact that the act was wrong best explains our belief, even though the wrongness supervenes on these three base properties.

To the Zimmerman-like objection[332] — that wrongness is not part of the best explanation precisely because the generality of its causal influence is purchased only by the disjunctive disunity of its base properties — the reply is twofold. First, as Jaegwon Kim shows, the fact that the base properties are disjunctive *need* not impugn the unity of the property that supervenes upon them. Kim's example: the property of being less than one meter long can be thought of as an infinite disjunction (of, for example, all properties of the form, being less than $n/n + 1$ meters long, for every natural number) without becoming suspect as one property.[333] Second, the case for thinking that wrongness *is* one property is bolstered by the explanatory superiority of wrongness over voluntariness and the other base properties. That the base properties on each occasion also cause this phenomena, and that these base properties differ from occasion to occasion, does not detract from the explanatory power of the moral facts. Rather, the clustering of such base properties to act together as *the* cause of moral beliefs and other phenomena makes the moral explanation the more powerful one. The most powerful explanation for why we believe the boys' act was wrong is thus not that this act was causative of animal suffering; rather, it is that the act possessed that variously instantiated cluster of natural properties that constitute the moral property of wrongness.[334]

This clustering of various natural properties by virtue of their playing a common causal role also justifies our belief that wrongness supervenes on these properties. Such supervenience claims are not, in other words, the ad hoc posits of the realist, desperately running before the

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332. David Zimmerman, *Moral Realism and Explanatory Necessity, in* MORALITY, REASON, AND TRUTH, *supra* note 27, at 86; *see supra* text accompanying note 322.

333. Jaegwon Kim, *Concepts of Supervenience,* 45 PHIL. & PHENOMENOLOGICAL RES. 153, 172 (1984).

334. *See* Boyd, *supra* note 27, at 196-99. One can accept Boyd's cluster notion as accounting for the explanatory power of moral facts without subscribing to his idea that such clusters produce ineliminable vagueness.

epistemic objections to nonnaturalism. The recurrent clustering of such natural properties by virtue of their common causal role suggests the existence of a property playing such a causal role, and *wrongness* is as good a label as any for such a property.[335]

By contrast, the antirealist's explanation of our belief must rely on our possession of a *concept* of wrongness such that we (rather than nature) are the alchemists that unify under the symbol *wrongness* disparate natural properties that variously appear on different occasions. On the antirealist account, the presence of the base natural properties plus the presence of our concept of wrongness must explain our more particular moral beliefs. Yet the antirealist account does not explain the creativity of our particular moral judgments. It does not explain why we make judgments of wrongness in novel situations or in novel ways in familiar situations, judgments whose novelty prevents them from being antecedently covered by our existing concept of wrongness. Such judgments constitute a familiar part of our use of moral concepts like "wrongness," particularly with that fluid aspect of such judgments we call *justification.*[336] J.L. Austin's old admonition that "fact is richer than diction"[337] applies with equal force to moral fact vis-à-vis our moral diction.

The realist explanation is not only broader but deeper than the antirealist account of how unitary judgments of wrongness arise out of judgments of quite diverse natural properties. For the realist can easily explain why we have *a* concept of wrongness in terms of there being *a* property of wrongness playing *a* causal role. Why should people have a concept of wrongness if there were no property of wrongness, that is, if there were no natural clustering of base properties with common causal powers? The realist explanation of the presence of the concept is in terms of such natural grouping; the antirealist must scramble about for some nondescriptive language game that people find useful to play with moral concepts like "wrong."

The explanationist defense of moral realism thus does not depend on undefended reductive hypotheses, an illusory unity to moral qualities, or "epiphenomenal" moral qualities. The best explanation of our particular moral beliefs is that they are caused by moral qualities, and

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335. This also is to answer Harman's mislabeled "epiphenomenalist" charge, which reduces to the charge of an undefended reductionist hypothesis.

336. I view (nonepistemic) justification as part and parcel of wrongness. To say that an act was justified is to say that an act that in most circumstances is wrong is, in these circumstances, not wrong. See MOORE, *supra* note 233, ch. 7, for a defense of this view of justification. I explore the difficult question of how a deontological view of morality can include the apparently open-ended notion of justification in Moore, *supra* note 121, at 327-32.

337. J.L. Austin, *A Plea for Excuses,* 57 PROC. ARISTOTELIAN SOCY. 1, 21 (1956).

this fact gives us good reason to believe in the existence of such qualities.

CONCLUSION

Much criticism of moral realism stems from an inflation of what a moral realist need claim. If the label *moral realist* conjures up the image of a nonnaturalist metaphysics coupled with a foundationalist epistemology, then the resultant problems *should* scare most reasonable people off. Special realms known only through special faculties of uncontrovertible intuition give rise to the two objections I have considered in this article: that the picture is so extravagant that it must be false and that it is in any event so removed from the empirical world in which we each live that it must be irrelevant.

Yet moral realism need be saddled with no such pretensions. Modern naturalist-realism posits no world but the one in which we all live, no mode of knowing that world but our observations and the inferences we draw from them. Its nonfoundationalist epistemology makes no claims of delivering to us new evidence or modes of proof, unknown to the skeptics and the idealists.

In the context of designing legal institutions, moral realist metaphysics thus makes no claim that it alone can answer all the questions that any complete theory of legislation, of adjudication, or of law must answer. Making moral-realist ("natural-law") theories of adjudication competitors of democratic theory or of theories emphasizing the rule-of-law virtues is as much a category mistake as making "legal-moralist" or natural-law theories of legislation competitors of liberal theories of legislation. A moral realist might well think that democracy, the rule of law, tolerance, autonomy, and pluralism are real values too, so that his metaphysical realism about values in no way answers how he should balance these values with others, equally real, that compete to shape theories of both adjudication and legislation.

Metaphysics is thus no *panacea* for the two perennial questions of substantive ethics: how we should live our individual lives; and how we should design our society. Our metaphysical beliefs do, however, represent what we think we are doing when we answer either question. Like all abstract reflection about our practices, how we answer the metaphysical questions colors the practices reflected upon. That is the power of thought, metaphysical thought included.