**University of Chicago Law School**
**Chicago Unbound**

Public Law and Legal Theory Working Papers

Working Papers

2009

# Moral Skepticism and Moral Disagreement in Nietzsche

Brian Leiter

Follow this and additional works at: https://chicagounbound.uchicago.edu/public_law_and_legal_theory

Part of the Law Commons

Chicago Unbound includes both works in progress and final versions of articles. Please be aware that a more recent version of this article may be available on Chicago Unbound, SSRN or elsewhere.
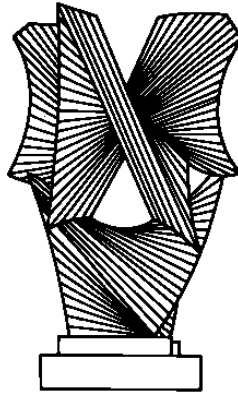
### Recommended Citation

Brian Leiter, "Moral Skepticism and Moral Disagreement in Nietzsche" (University of Chicago Public Law & Legal Theory Working Paper No. 257, 2009).

# CHICAGO

# MORAL SKEPTICISM AND MORAL DISAGREEMENT IN NIETZSCHE

*Brian Leiter*

## THE LAW SCHOOL
## THE UNIVERSITY OF CHICAGO

January 2009

# MORAL SKEPTICISM AND MORAL DISAGREEMENT IN NIETZSCHE

Brian Leiter[*]
bleiter@uchicago.edu
*Draft of December 10, 2008*
*Please only cite or quote after securing permission*
*Comments welcome!*

Almost everyone agrees that Nietzsche is a skeptic about the objectivity of morality,[1] but beyond that point, disagreement abounds as to the grounds for this skepticism, its scope, and its implications for the semantics of moral judgment. In this essay, I will set out a systematic view on the first two questions (concerning the grounds and scope of his skepticism), building on some prior work (Leiter 2000; Leiter 2002: 136-155).[2] I will assume throughout that Nietzsche's skepticism about the objectivity of morality is not simply a special instance of the skepticism that is sometimes associated with his doctrine of perspectivism—that is, I will assume that it is not simply an instance of generalized skepticism about our knowledge of the world or a global skepticism about truth. There is probably a modest consensus now among Anglophone interpreters of Nietzsche—including Maudemarie Clark (1990, 1998), Christopher Janaway (2007), Peter Poellner (2001), John Richardson (1996), and myself (1994, 2002: 268-279)—that whatever exactly "perspectivism" means, it does not and *can not* entail a general

---

[1] In Leiter (2000) I critique earlier efforts to show that Nietzsche's putative doctrine of the will to power grounds a kind of Nietzschean value realism.

[2] I will bracket here semantics, though I continue to believe (cf. Leiter 2000) that it is anarchronistic to saddle Nietzsche with a semantic view, as, for example, Hussain's important fictionalist reading does (Hussain 2007).

1

skepticism about the objectivity of knowledge or truth. I shall not argue for that position here, however, or for my growing suspicion that, in the end, Nietzsche does not have a coherent or well-motivated set of general epistemological views.[3] What I shall argue here is that we can adduce *independent* grounds for Nietzsche's skepticism about the objectivity of morality and that these grounds hold their own philosophical interest.

## I.    The Scope and Grounds of Nietzsche's Value Skepticism

Is Nietzsche a skeptic about the objectivity of all value judgments? And to the extent he is skeptical about the *objectivity* of value, what is it exactly that he is denying?

The first question must be answered in the negative—Nietzsche is *not* skeptical about the objectivity of *all* value judgments--for reasons that I have developed in more detail elsewhere (see, e.g., Leiter 2002: __-__). I will just summarize the difficulty here. Nietzsche's central objection to morality—or to what I call "morality in the pejorative sense" (hereafter MPS), to pick out that cluster of values that is the actual target of his critique—is that its cultural prevalence is inhospitable to the flourishing of the highest types of human beings, namely, creative geniuses like Goethe, Beethoven and Nietzsche himself. Nietzsche argues for this conclusion on the basis of a speculative moral psychology that shows how agents who took seriously the norms of MPS would, in fact, be unable to realize the kinds of excellence we associate with geniuses like Goethe and Beethoven. If this is Nietzsche's argument, then it also means that at the core of his critique of MPS is a judgment about *prudential* value (i.e., about what is *good* or *bad* for an agent), namely, the judgment that MPS is *bad for* certain persons because it is an

---

[3]I take that to be the real lesson to emerge from those Clark calls 'the Stanford school' (meaning Anderson and Hussain), who call attention to the influence of strands in 19th-century NeoKantianism and positivism on Nietzsche, though without drawing the conclusion that seems most warranted, namely, that Nietzsche's amateur reflections on questions of general metaphysics and epistemology probably betray more confusion than insight in the end.

2

obstacle to their flourishing.  And if that judgment is not objectively true, then Nietzsche's critique of MPS simply has no force.

Of course, Nietzsche also makes affirmative claims that suggest he thinks judgments of prudential value, judgments about what is good and bad for a person are objective.  He holds, for example, that "herd" morality is *good for* the herd, but that it is *bad for* higher men, noting, e.g., that "The ideas of the herd *should* rule in the herd--but not reach out beyond it" (WP 287; emphasis added).  Elsewhere he describes slave morality as simply "the prudence [*Klugheit*] of the lowest order" (GM I:13).[4]  When it comes to value judgments pertaining to welfare or prudential goodness--what is good or bad for particular sorts of persons--Nietzsche seems to believe (and, for his critique to have bite, *needs* to believe) that there is an objective fact of the matter.

Commitment to the objectivity of prudential value is not, however, an ambitious position.  Railton dubs it "relationalism" (1986a) and suggests that we "think of [non-moral or prudential] goodness as akin to nutritiveness."  Just as not all nutrients are good for all kinds of creatures, so too not everything is prudentially good for everyone:  to use Railton's standard example, cow's milk is prudentially good for calves, but not for human babies.  So, too, what is good for the herd, may be bad for the higher men, and vice versa.  Many of Nietzsche's favorite Greek philosophers, the Sophists, already recognized the objectivity of judgments of relational value (see Leiter 2002:  45-46), and so it should hardly be surprising that Nietzsche accepts the same view.  Indeed, as Railton notes, "realism with respect to non-moral [or what I am calling prudential] goodness…[is] a notion that perfect moral skeptics can admit" (1986b:  185).  And

---

[4]*Klugheit* is standardly rendered in translations of Nietzsche as 'cleverness,' though with a decidedly pejorative connotation, *Klugheit* being, according to 19th-century anti-semites, a typical trait of Jews.  Nietzsche, in the *Genealogy*, clearly exploits this connotation, associating it with the scheming and calculating nature of the "slaves."  Of course, Nietzsche turns the anti-semitic trope on its head, by arguing that it is precisely the *Klugheit* of the slaves and the Jews that is responsible for Christianity!  But the *Klugheit* at issue in the *Genealogy* is quite clearly a kind of calculating prudence, i.e., setting up a scheme of valuation that is actually in the interests of the slaves.

3

Nietzsche is, indeed, a 'perfect' moral skeptic, or so I shall argue, since he holds that *moral* value (valuations of what is good or bad *simpliciter* or non-relationally) is not objective. So, for example, while the judgment MPS is bad for higher human beings is objectively true, the judgment that MPS is disvaluable *simpliciter* or should be defeated *because* it is bad for higher human beings is not.

What is involved for Nietzsche in denying the "objectivity" of what is morally right and wrong, morally good and bad? I have been purposely vague so far about whether the issues are semantic, metaphysical, and/or epistemological; indeed, as I have argued elsewhere (Leiter 2000), Nietzsche has no discernible semantic view at all. Here we will concentrate on the metaphysical and epistemological issues. On the reading I will defend, Nietzsche is a moral skeptic in the sense of affirming the *metaphysical* thesis that there do not exist any objective moral properties or facts (I will refer to this hereafter as simply "skepticism about moral facts"). From this it will, of course, follow that there is also no moral knowledge, but it is the argument for the metaphysical thesis that is crucial for Nietzsche.

Now it seems obvious that *some* of Nietzsche's skepticism about moral facts is simply skepticism about a kind of *Platonism* about value. Plato, to be sure, does not think there is a *special* problem about the objectivity of value, since he thinks values are objective in the same way all Forms are.[5] A Form, says Plato, "is eternal, and neither comes into being nor perishes, neither waxes nor wanes" (*Symposium* 211a). In the *Phaedo*, he calls them "constant and invariable" (78d) while in *The Republic* he refers to them as "the very things themselves…ever remaining the same and unchanged" (479e). Forms are, in the words of *The Symposium*, "pure, clear, unmixed—not infected with human flesh and color, and a lot of other mortal nonsense" (211a).

---

[5] I here confine attention to the theory of forms of the middle books.

Many of Nietzsche's skeptical-sounding passages appear to involve denials of this kind of Platonism about value. So, for example, Zarathustra declares:

> Verily, men gave themselves all their good and evil. Verily, they did not take it, they did not find it, nor did it come to them as a voice from heaven. Only man placed values [*Werte*] *in* things to preserve himself—he alone created a meaning for things, a human meaning. Thus he calls himself 'man,' which means: the esteemer [*der Schätzende*].
>
> To esteem is to create [*Schätzen ist Schaffen*]: hear this, you creators!...Through esteeming alone is there value [*Wert*]: and without esteeming the nut of existence would be hollow…. (Z I:15)

Similarly, writing in his own voice in *The Gay Science*, Nietzsche observes that, "Whatever has *value* in our world now does not have value in itself, according to its nature—nature is always value-less, but has been *given* value at some time, as a present—and it was *we* who gave and bestowed it" (GS 301). Of course, many realists about value might be happy to acknowledge that "without esteeming, the nut of existence would be hollow"; as Railton, for example, puts it, "In a universe without subjectivity [i.e., without creatures for whom things matter], there is no value either" (1986a: 18). Yet Nietzsche goes further than this when he suggests that it is we who *give* things their value, though even on this score there are arguably some 'realist' views, such as the sensibility theories of McDowell and Wiggins, compatible with this projectivist rhetoric. In any case, if Nietzsche's only target were the metaphysics of Platonism about value, Nietzsche's skepticism might not worry a lot of contemporary philosophers—though it is perhaps worth emphasizing that a kind of Platonism about value remains central to most cultural and religious traditions, so his skepticism on this score is hardly trivial.

Of course, genuine skepticism about Platonism about value—since it is just skepticism about the objectivity of Forms generally—would entail a kind of skepticism about the objectivity of prudential value that, I have already suggested, is no part of

5

Nietzsche's view.   This suggests that the rhetoric of some of the Nietzschean passages just quoted can not actually suffice for understanding Nietzsche's skepticism about the objectivity of morality.

In a range of other passages, Nietzsche emphasizes that moral judgment involves a kind of projective error, and here it is especially important to note that the emphasis is not on *value* simpliciter, but on *moral* value.  So, for example, in *Daybreak*, he notes that just as we now recognize that it was "an enormous error" "when man gave all things a sex" but still believed "not that he was playing, but that he had gained a profound insight," so, too, man "has ascribed to all that exists a connection with morality [*Moral*] and laid an *ethical significance* [*ethische Bedeutung*] on the world's back," which will "one day" be viewed as meaningful as talk about "the masculinity or feminity of the sun" (3).  So, too, in *Human-All-Too-Human*, Nietzsche compares religious, moral and aesthetic judgment with astrology:

> It is probable that the objects of the religious, moral [*moralisch*] and aesthetic experiences [*Empfinden*] belong only to the surface of things, while man likes to believe that here at least he is in touch with the heart of the world [*das Herz der Welt*]; the reason he deludes himself is that these things produce in him such profound happiness and unhappiness, and thus he exhibits here the same pride as in the case of astrology.  For astrology believes the heavenly stars revolve around the fate of man; the moral man [*moralische Mensch*], however, supposes that what he has essentially at heart must also constitute the essence [*Wesen*] and heart of things.  (4)

Just as the astrologist thinks that there are astrological facts (about man's future) supervening on the astronomical facts about the stars—when, in fact, there are only the stars themselves, obeying their laws of motion--so too the "moral man" thinks his moral experiences are responsive to moral properties that are part of the essence of things, when, like the astrological facts, they are simply causal products of something else,

6

namely our feelings. As Nietzsche puts it, moral judgments are "images" and "fantasies," the mere effects of psychological and physiological attributes of the people making those judgments, attributes of which they are largely unaware (D 119).

As I argued in my book (Leiter 2002: 148-149), these kinds of remarks suggest a "best explanation" argument for anti-realism about moral value: the best explanation for our moral experiences is not that they pick out objective moral features of phenomena, but rather that they are caused by facts about our psychological make-up: for example, *ressentiment* or what Neil Sinhababu has recently dubbed "vengeful thinking" (Sinhababu 2007) to describe the mechanism by which 'slavish' types come to believe strength, nobility, and wealth constitute what is "evil." If the *best* explanation of our moral judgments appeals only to psychological facts about us, and need make no reference to objective moral facts, then we have reason to be skeptical about the existence of moral facts. Of course, this will only help salvage the possibility of objective facts about prudential value if the explanatory argument does not work against them. Railton (1986a) has developed an account of prudential, or non-moral, goodness in which the facts constitutive of non-moral goodness also figure in the 'best explanation' of our judgments about what is good or bad for an agent. This account has a startling resonance with Nietzsche's view, as I also argued in my book (2002: 106-112).

Whether or not that argument is successful—interpretively or philosophically—is an issue I propose to bracket here. It now seems to me that there is another set of considerations that underwrite Nietzsche's moral skepticism, and that these considerations are of independent philosophical interest. Nietzsche does, on this account, rely on *explanatory* considerations, but not with respect to our moral experiences *per se* but rather with regard to the phenomenon of moral disagreement. Moral disagreement has long been a data point invoked by skeptics about morality, but Nietzsche's approach

is a bit different.[6]  For what he calls attention to is not "ordinary" or "folk" moral disagreement, but rather what seems to me the single most important and embarrassing fact about the history of moral theorizing by philosophers over the last two millennia: namely, that no rational consensus has been secured on *any* substantive, foundational proposition about morality.  Is the criterion of right action the reasons for which it is performed or the consequences it brings about?  If the former, is it a matter of the reasons being universalizable, or that they arise from respect for duty, or something else?  If the latter, is it the utility it produces or the perfection it makes possible?  If the former, is utility a matter of preference-satisfaction (as the economists almost uniformly believe) or preference satisfaction under idealized circumstances—or is it, rather, unconnected to the preferences of agents, actual or idealized, but instead a matter of realizing the human essence or enjoying some 'objective' goods?  And perhaps a criterion of right action isn't even the issue, perhaps the issue is cultivating dispositions of character conductive to living a good life.  And here, of course, I have merely canvassed just *some* of the disagreements that plagues Western academic moral theory, not even touching on non-Western traditions, or radical dissenters from the mainstream of academic moral theory, such as Nietzsche himself.

This persistent disagreement on foundational questions, of course, distinguishes moral theory from inquiry in the sciences and mathematics, not, perhaps, in kind, but certainly in degree.  In the hard sciences and mathematics, intellectual discourse regularly transcends cultural and geographic boundaries and consensus emerges about at least *some* central propositions.  How to explain the failure of moral theory to achieve anything like this?  That is the question, to which Nietzsche proposes a skeptical answer—or so I shall argue.  But first let us make explicit the structure of this skeptical argument before returning to Nietzsche's texts.

---

[6] Loeb (1998) comes closest, and I have benefitted from and will reference his discussion in what follows.

## II. Arguments for Moral Skepticism from Disagreement

Standard "best explanation" arguments for moral skepticism focus on the fact of moral judgment, and claim that the best explanation of such judgments is not the objective moral features of the situation to which the moral agent putatively responds, but rather psychological and sociological factors that cause the agent to give expression to the particular moral judgment.   In the version of this argument I have defended (Leiter 2001), the central problem with explanations of our moral judgments that appeal to the existence of objective moral facts is that they fail to satisfy demands of consilience and simplicity that we expect from successful explanatory theories.  Moral explanations fail along the dimension of consilience because they posit facts—"moral" facts—that are too neatly tailored to their explanans (they are, as I shall say, explanatorily "narrow"), and that don't effect the kind of unification of disparate phenomena we look for in successful explanations.  They fail along the dimension of simplicity because they complicate our ontology without any corresponding gain in explanatory power or scope.[7]  The latter claim is, of course, crucial to the anti-realist argument.  For if it were true that *without* moral facts we would suffer some kind of explanatory loss, then moral explanations (and moral realism) would be in the same metaphysical boat as the postulates of any of the special sciences:  physics can't, after all, do the explanatory work of biology, which is why, by "best explanation" criteria, we can admit biological facts into our ontology.[8]

---

[7] Some moral realists claim that moral properties are just identical with or supervenient upon the non-moral natural properties that figure in the alternative explanations of moral judgments.  But a claim of identity or supervenience can not--in isolation--save moral realism against the explanatory argument, for we must earn our right to such claims by both (a) vindicating the identity/supervenience thesis on non-explanatory grounds; and (b) vindicating the added theoretical complexity involved in these theses by demonstrating that they produce a gain in consilience or some cognate epistemic virtue (e.g., explanatory unification).  I have argued (Leiter 2001) that they do not.

[8] More precisely, non-reductive moral realists want to defend moral explanations in a way akin to Jerry Fodor's defense of the autonomy of the special sciences: they want to claim that there are distinctive "groupings" and generalizations in moral explanations that can not be captured by a more "basic" explanatory scheme or science. Just as nothing in physics captures the distinctive categories and generalizations of economics and psychology, so too biology and psychology are supposed to miss the distinctive generalizations of moral theory.

Needless to say, no *a priori* considerations can demonstrate that there will never be an explanatory loss from eliminating moral facts from our best account of the world. Two sorts of considerations, however, may make us skeptical of the realist's claim. First, if we go outside the contemporary philosophical debate and look to scholars in other disciplines actually concerned with explanatory questions, we will not find anyone trying to do serious explanatory work with moral facts. Outside of informal ways of speaking and "folk explanations," moral facts appear to play no role in explanatory theories, certainly in no developed explanations of interesting historical phenomena. Philosophers would perhaps do well not to forget that while, for example, there are Marxist historians using broadly "economic" facts to explain historical events, there is no school of "Moral Historians" using moral facts to do any interesting or complex explanatory work. A second ground for skepticism about moral explanations is more specific: namely, that the actual candidates proffered in the literature are, by and large, not very promising. Some moral explanations are just patently vacuous—think of Sturgeon's well-known claim that if asked to *explain* Hitler's behavior, we might appeal to his moral depravity, which sounds to me more like a repetition of the question than an explanation—but even more ambitious moral explanations (like those put forward by David Brink, Joshua Cohen, and Geoffrey Sayre-McCord, for example) do not withstand scrutiny, as I have argued in detail elsewhere (see Leiter 2001: __-__).

Now the skeptical argument that concerns us will differ along three key dimensions from the more familiar kinds of "best explanation" arguments for moral skepticism just noted. First, what is at issue is not what we might call "raw" moral judgments, as in Harman's famous flaming pussycat case, where someone witnesses young hoodlums dousing a cat and setting it on fire and reacts by judging the act morally wrong or reprehensible. Instead, our data points consist of philosophical theories about morality that purport to license particular judgments by answering foundational questions. A philosophical theory, for purposes here, is a discursive and systematic

10

account of correct moral judgment and action based on reasons and evidence that purports to be acceptable to rational agents. Second, the explanatory question concerns not any particular philosophical theory, but rather the fact that there exist incompatible philosophical theories purporting to answer foundational questions. And they are not just *incompatible* philosophical theories: the disagreements of moral philosophers are amazingly intractable. Nowhere do we find lifelong Kantians suddenly (or even gradually) converting to Benthamite utilitarianism, or vice versa. So the 'best explanation' argument asks: what is the best explanation for the fact that philosophical theories, in the sense just noted, reach different and quite intractable conclusions about foundational questions? Nietzsche's skeptical answer will be that the best explanation is the absence of any objective fact of the matter about foundational moral questions conjoined with (according to Nietzsche) the psychological needs of philosophers which lead them to find compelling dialectical justifications for very different basic moral propositions. We'll return to Nietzsche's views on this score shortly. Third, consilience and simplicity are again theoretical desiderata to be weighed in comparing explanations, but their interaction with moral realism is different: the claim at issue will be that skepticism about morality is part of a more consilient and simpler explanation for the existence of incompatible philosophical theories of morality than is the assumption that there are objective facts about fundamental moral propositions, but that competing philosophical theories of morality fail to converge upon them.

In short, what makes Nietzsche's argument from moral disagreement especially interesting is that, unlike most familiar varieties, it does not purport to exploit anthropological reports about the moral views of exotic cultures, or even garden-variety conflicting moral intuitions about concrete cases (such as abortion or the death penalty). Instead, Nietzsche locates disagreement at the heart of the most sophisticated moral philosophies of the West, among philosophers who very often share lots of beliefs and practices and who, especially, in the last century, often share the same judgments about

11

concrete cases.  Yet what we find is that these philosophers remain locked in apparently

intractable disagreement about the most important, foundational issues about morality.[9]

---

[9]It may be useful to distinguish the argument at issue here from some related skeptical-sounding arguments based on the phenomenon of disagreement.  One is "the so-called pessimistic induction on the history of science," as Philip Kitcher calls it (1993:  136) or the skeptical meta-induction as Putnam earlier dubbed the same phenomenon.  Here is Kitcher's statement of the skeptical position:

> Here one surveys the discarded theories of the past; points out that these were once accepted on the basis of the same kind of evidence that we now employ to support our own accepted theories, notes that those theories are, nevertheless, now regarded as false; and concludes that our own accepted theories are very probably false. (1993:  136)

Now this basic argumentative strategy might, indeed, seem to have some force against theories of morality.  After all--so the argument would go--many earlier claims about morality were based on the same kinds of evidence about what is "intuitively obvious" that underlie contemporary Kantian and utilitarian theories.  Yet we now regard intuitions about, for example, the obvious moral inferiority of certain classes of people as social or cultural or economic artifacts, not data on which we might base a moral theory.  Is it not possible—especially with the often surprising results about diversity of intuitions being adduced by experimental philosophers?—that the intuitions undergirding our current moral theories will also turn out to seem equally unreliable, and so our moral theories false?

      This strategy of skeptical argument is easily rebutted, however.  To start, many of the racist and sexist claims of earlier moral theories were based *not* on intuitions, but on putatively empirical claims Aristotle's views about "natural" slaves, for whom slavery was supposed to be in their non-moral interest, or Kant's disparaging remarks about Africans depended on armchair psychological and sociological hypotheses that are not factually accurate.  Indeed, the kind of response to the skeptical induction that Kitcher develops on behalf of the scientific realist would seem to help the moral realist as well.  For Kitcher says that, in fact, "more and more of the posits of theoretical science endure within contemporary science" (1993:  136), and, indeed, that our earlier mistakes (which we now recognize as such) fall into a recognizable pattern, so that we can see where and why we are likely to have gone wrong in the past, and thus be more confident that we are not replicating those mistakes in our current theories.

      So, too, the moral realist might claim that the mistakes made by earlier moral theorists also fall into a discernible pattern, typically consisting in failing to include within the moral community—the community of persons with moral standing—people who belonged there because of false assumptions about those persons that admit of straightforward historical, sociological and economic explanations.  Thus, on this story, what we learn from the history of failures in past moral theories is precisely that we should be especially skeptical about excluding some persons (or, not to prejudge the issue, some sentient creatures!) from the category of beings with moral standing.  Of course, as everyone knows, the criteria of moral standing remain hotly contested, a fact to be exploited by the skeptical argument I will attribute to Nietzsche.

      Now in the context of scientific realism, Kitcher wants to draw a stronger conclusion against the skeptic, namely, that we are actually entitled to a kind of "optimistic induction" from the fact that since every successor theory "appears closer to the truth than" the theory it displaced "from the perspective of our current theory," to the conclusion that "our theories will appear to our successors to be closer to the truth than our predecessors" (1993:  137).  But the moral theorist can not avail himself of a similar "optimistic induction," and for a reason that will be important to the skeptical argument here:  namely, that it is *not* the case that, for example, later *deontological* theories view earlier *utilitarian* theories as getting closer to the moral truth than their utilitarian ancestors, and vice versa.

      More recently, there has been a lively debate among philosophers about the epistemological implications of disagreement among what are usually called "epistemic peers."  What is standardly at issue in this literature is whether or not the fact of such disagreement should lead us to adjust the degree of credence an agent assigns to his own beliefs (see, e.g., Christensen [2007] and Kelly [2005] for contrasting views).  By contrast, the skeptical argument at issue here aims for a *metaphysical* conclusion via an

Let us now look at the evidence that Nietzsche advances this argument, before considering some of the possible objections to it.

### III. Nietzsche's Version of the Skeptical Argument

There are a set of remarks about moral philosophy and moral philosophers in Nietzsche about which scholars rarely comment, but which bear directly on the argument for moral skepticism at issue here. This passage is representative:

> It is a very remarkable moment: the Sophists verge upon the first *critique of morality* [*Moral*], the first *insight* into morality:--they juxtapose the multiplicity (the geographical relativity) of the moral value judgments [*Moralischen Werthurtheile*];--they let it be known that every morality [*Moral*] can be dialectically justified; i.e., they divine that all attempts to give reasons for morality [*Moral*] are necessarily *sophistical*—a proposition later proved on the grand scale by the ancient philosophers, from Plato onwards (down to Kant);-- they postulate the first truth that a "morality-in-itself" [*eine Moral an sich*], a "good-in-itself" do not exist, that it is a swindle to talk of "truth" in this field. (WP:428; KSA 13:14[116]).

This is a *Nachlass* passage, but it has many relatives in the corpus and fits with a general picture Nietzsche has of the discursive pretensions of philosophers. Consider his derisive comment in *Beyond Good and Evil* about Kant's moral philosophy, which he describes as "[t]he…stiff and decorous Tartuffery of the old Kant, as he lures on the dialectical bypaths that lead to his 'categorical imperative'—really lead astray and seduce" (BGE: 5). Kant's "Tartuffery" and Spinoza's "hocus-pocus of mathematical form" in his *Ethics* are simply, Nietzsche says, "the subtle tricks [*feinen Tücken*] of old moralists and preachers of morals [*Moralisten und Moralprediger*]." As Nietzsche explains it:

---

abductive inference: namely, that the fact of disagreement about X is *best explained* by there not being any objective fact of the matter about X. As I read it, the disagreement literature to date does not weigh the epistemic import of a successful abductive inference to skepticism.

> They all pose as if they had discovered and reached their real opinions through
> the self-development of a cold, pure, divinely unconcerned dialectic…while at
> bottom it is an assumption, a hunch, a kind of "inspiration"—most often a desire
> of the heart that has been filtered and made abstract—that they defend with
> reasons sought after the fact.  They are all advocates who don't want to be called
> by that name, and for the most part even wily spokesman for their prejudices
> which they baptize "truths."  (BGE 5)

Later in the same book, Nietzsche notes that moral philosophers "make one laugh" with their idea of "morality as science," their pursuit of "a rational foundation for morality," which "seen clearly in the light of day" is really only a "scholarly form of good *faith* in the dominant morality, a new way of *expressing* it."  Pointing at Schopenhauer's attempt to supply a rational foundation for morality, Nietzsche says "we can draw our conclusions as to how scientific a 'science' could be when its ultimate masters still talk like children" (BGE 186).  The real significance of the claims of moral philosophers is "what they tell us about those who make them" for they are "a sign-language of the affects" (BGE 187), betraying things about the psychological needs and condition of those who make them.[10]

How do these considerations, elliptical as some of them are, support a skeptical conclusion about the objective existence of moral facts or properties?  Recall the passage with which we began:  Nietzsche claims that the key insight of the Sophists into morality was that "every morality [*Moral*] can be dialectically justified; i.e., they divine that all attempts to give reasons for morality [*Moral*] are necessarily *sophistical*—a proposition later proved on the grand scale by the ancient philosophers, from Plato onwards (down to Kant)" (WP 428).  The Sophists, on this account, advance two related claims:  (1) that

---

[10] In fact, Nietzsche thinks this last point applies quite generally, not only to moral philosophers. He frequently describes (see, e.g., D Book I or GS 335) moral judgments as caused by certain *feelings*, learned through a combination of customary practices and parental influence, while the moral concepts and reasons people offer for these judgments are merely *post-hoc* (cf. D 34).

14

"every morality can be dialectically justified" and; (2) that "all attempts to give reasons for morality are necessarily *sophistical*," where "sophistical" is obviously meant to have the pejorative connotation that the *apparent* dialectical justification does not, in fact, secure the truth of the moral propositions so justified. The purported dialectical justification can fail in this way if either it is not a valid argument or some of the premises are false.[11] But, then, what is the force of the claim that "every morality can be dialectically justified"? It must obviously be that every morality can have the *appearance* of being dialectically justified, either because its logical invalidity is not apparent or, more likely in this instance, because its premises, while apparently acceptable, are not true.

Yet Nietzsche goes further when he asserts that the second claim—namely, that "all attempts to give reasons for morality are necessarily *sophistical*"—is established ("proved" [*bewiesen*] he says) by the work of the philosophers from Plato through to Kant (though he would presumably add, as the other passages make clear, Schopenhauer to the list of evidence). But in what sense do the moral philosophies of Plato, Aristotle, the Stoics, Hutcheson, Mill, Kant, and Schopenhauer et al. establish or "prove" that "all attempts to give reasons for morality are necessarily sophistical"? Nietzsche's thought must be that all these philosophers appear to provide "dialectical justifications" for moral propositions, but that all these justifications actually fail. But that still does not answer the question of how the *fact* of there being all these different moral philosophies *proves* that they are sophistical, i.e., that they do not, in fact, justify certain fundamental moral propositions?

The best explanation argument sketched earlier would supply Nietzsche an answer. The *existence* of incompatible moral philosophies providing dialectical

---

[11] Whether or not Nietzsche is thinking of this issue in Aristotelian terms is not clear, though it might seem the natural candidate point of reference for a classicist like Nietzsche, but I have found, in any case, the discussion in Smith (2007) helpful in framing the possibilities at issue.

15

justifications for moral propositions is best explained by the facts that (1) there are no objective facts about fundamental moral propositions, such that (2) it is possible to construct apparent dialectical justifications for moral propositions, even though (3) the best explanation for these theories is not that their dialectical justifications are sound but that they answer to the psychological needs of philosophers.   The reason it is possible to construct "apparent" dialectical justification for differing moral propositions is because, given the diversity of psychological needs of persons (including philosophers), it is always possible to find people for whom the premises of these dialectical justifications are acceptable.

The alternative, "moral realist" explanation for the data—namely, incompatible philosophical theories about morality—is both less simple and less consilient.  First, of course, it posits the existence of moral facts which, according to the more familiar best-explanation argument noted earlier (Leiter 2001), are not part of the best explanation of other phenomena.  Second, the moral realist must suppose that this class of explanatorily narrow *moral facts* are undetected by large number of philosophers who are otherwise deemed to be rational and epistemically informed.  Third, the moral realist must explain why there is a failure of convergence under what appear (and purport) to be epistemically ideal conditions of sustained philosophical inquiry and reflective contemplation across millennia.   We can agree with Railton that we lack "canons of induction so powerful that experience would, in the limit, produce convergence on matters of fact among all epistemic agents, no matter what their starting points" (1986a:  6), and still note that there exists a remarkable cross-cultural consensus among theorists about fundamental physical laws, principles of chemistry, and biological explanations, as well as mathematical truths, while moral philosophers, to this very day, find no common ground on foundational principles even within the West, let alone cross-culturally.  How can a moral realist explain this?   Let us consider, now, some possibilities.

16

**IV. Objections to the Skeptical Argument from Moral Disagreement**

Moral realists—who, for purposes here, will just mean those who deny skepticism about moral facts—have developed a variety of "defusing explanations" (Doris & Plakias 2008: 311, 320-321; cf. Loeb 1998 for a useful survey and rebuttal of various strategies) to block the abductive inference from apparently intractable moral disagreement to skepticism about moral facts. Moral disagreement is, after all, an epistemic phenomenon, from which we propose to draw a metaphysical conclusion. The 'defusing' explanations of moral disagreement propose to exploit that fact, by suggesting alternate epistemic explanations for the disagreement. We may summarize the 'defusing' objections to the skeptical argument as follows: (1) moral disagreements about concrete cases are not really intractable, they merely reflect factual disagreements or ignorance, and thus belie agreement on basic moral principles; (2) moral disagreements *are* about basic moral principles, but they are not really *intractable*, they are resolvable in principle; (3) real and intractable moral disagreements about foundational moral principles are best explained by cognitive defects or the fact that they occur under conditions that are not epistemically ideal: e.g., conditions of informational ignorance, irrationality or partiality; and (4) real and intractable moral disagreements about foundational moral principles are best explained in terms of differences in "background theory." Let us consider these in turn.

*1. Moral disagreements about concrete cases are not really intractable, they merely reflect factual disagreements or ignorance, and thus belie agreement on basic moral principles*. Although this was an important worry in, for example, the response of Boyd (1988) to Mackie's original version (1977) of the argument from moral disagreement, it is obviously irrelevant to Nietzsche's version of the argument for moral skepticism, which appeals precisely to disagreement about basic moral principles, as exemplified, for example, by the dispute between Kantians and utilitarians, among many others.

17

*2. Moral disagreements are about basic moral principles, but they are not really intractable, they are resolvable in principle.* This has been the standard optimistic refrain from philosophers ever since "moral realism" was revived as a serious philosophical position in Anglophone philosophy in the 1980s. With respect to very particularized moral disagreements—e.g., about questions of economic or social policy—which often trade on obvious factual ignorance or disagreement about complicated empirical questions, this seems a plausible retort. But for over two hundred years, Kantians and utilitarians have been developing increasingly systematic versions of their respective positions. The Aristotelian tradition in moral philosophy has an even longer history. Utilitarians have become particularly adept at explaining how they can accommodate Kantian and Aristotelian intuitions about particular cases and issues, though in ways that are usually found to be systematically unpersuasive to the competing traditions and which, in any case, do nothing to dissolve the disagreement about the underlying moral criteria and categories. Philosophers in each tradition increasingly talk only to each other, without even trying to convince those in the other traditions. And while there may well be 'progress' within traditions—e.g., most utilitarians regard Mill as an improvement on Bentham—there does not appear to be any progress in moral theory, in the sense of a consensus that particular fundamental theories of right action and the good life are deemed better than their predecessors. What we find now are simply the competing traditions—Kantian, Humean, Millian, Aristotelian, Thomist, perhaps now even Nietzschean--who often view their competitors as unintelligible or morally obtuse, but don't have any actual arguments against the foundational principles of their competitors. There is, in short, no sign—I can think of *none*—that we are heading

towards any epistemic *rapprochement* between these competing moral traditions. So why exactly are we supposed to be optimistic? The next argument purports to offer a reason.

*3. Real and intractable moral disagreements about foundational moral principles are best explained by cognitive defects or the fact that they occur under conditions that are not epistemically ideal: e.g., conditions of informational ignorance, irrationality or partiality.* This is, again, a familiar move in the metaethical literature responding to the argument from moral disagreement, but one must appreciate how strange it is in response to the Nietzschean argument appealing to disagreement among moral philosophers across millennia. Are we really to believe that hyper-rational and reflective moral philosophers, whose lives, in most cases, are devoted to systematic reflection on philosophical questions, many of whom (historically) were independently wealthy (or indifferent to material success) and so immune to crass considerations of livelihood and material self-interest, and most of whom, in the modern era, spend professional careers refining their positions, and have been doing so as a professional class in university settings for well over a century—are we really supposed to believe that they have reached no substantial agreement on any foundational moral principle because of ignorance, irrationality, or partiality?

Ignorance seems especially easy to dismiss as a relevant consideration. As Don Loeb puts the point: "It seems very unlikely that the continued existence of [the] debate [between Kantians and utilitarians] hinges upon disagreement over the non-moral facts" (1998: 290). What non-moral facts exactly bear on the question, for example, whether respect for the dignity of persons or maximization of utility is the criterion of rightness?

Take a stark, and very *au courant*, example:  Louis Kaplow and Steven Shavell (2002), leading law and economics scholars at Harvard Law School, published several years ago a massive tome arguing against the relevance of 'fairness' considerations in social policy.  Their argument—I do not believe this is an over-simplification—is, in essence, that since doing what is 'fair' is not always pareto optimal, it is irrational to make policy based on considerations of fairness.  Kaplow and Shavell are not stupid; they are not ignorant; they are not obviously irrational.  But they do believe that if doing what is 'fair' is not pareto optimal, it is, itself, obviously *irrational*.  Have Kaplow and Shavell made a factual error?  A rational error?  They may, indeed, be dogmatic, but are they any less dogmatic than Kantian moral philosophers, who rarely spend time with their hyper-utilitarian colleagues in the economics department?

Nietzsche, in fact, presents a fine armchair test case for any thesis about moral disagreement, since he so clearly repudiates "the egalitarian premise of all contemporary moral and political theory—the premise, in one form or another, of the equal worth and dignity of each person" (Leiter 2002:  290).   For Nietzsche is not only quite prepared, like any consequentialist, to sacrifice the well-being of some for others; he often seems ready to sacrifice the well-being of *the majority* for the sake of the flourishing of his favored examples of human excellence like Goethe (Leiter 2002:  113-136)--a view, that is, I presume, uncongenial to the vast majority of academic moral theorists!  Here, then, is a stark philosophical challenge for moral realists:  "defuse" Nietzsche's disagreement by reference to a cognitive defect of some kind:  e.g., a failure to appreciate non-moral

facts or norms of rationality.[12]  This is, of course, just a version of Hume's famous

challenge to explain the offense to reason in preferring the destruction of the world to a

thumb prick, though in Nietzsche's case the options are more troubling because of the

greater resonance they are likely to have to cosmopolitan moral philosophers:  after all, if

it were really true, as Nietzsche believes, that a culture suffused with moral norms of

equality really would prevent the developments of Goethes and Beethovens, how exactly

is it irrational to prefer an inegalitarian culture that makes human excellence possible?

Yet surely it is possible that some heretofore unrecognized cognitive deficiencies

of academic moral philosophy of the past 250 years explain the failure of even a

modicum of consensus on foundational moral principles to emerge.  Indeed, perhaps the

lack of progress in moral philosophy is proof precisely of the epistemically defective

condition of the discourse to date!  Nothing in the argument so far rules out that

possibility, but why in the world suppose this is the correct explanation for the state of

affairs we find?  Certainly no moral philosophers of the past two centuries would want to

admit to such cognitive frailties, nor is it the case that we have any non-question-begging

account of what exactly those deficiencies might have been.  As between the two

explanatory hypotheses—one based on skepticism about moral facts and one based on its

denial—there is surely an enormous burden of proof for the proponent of the latter to

explain the nature and character of the epistemic failings that have blocked access to the

moral facts.

---

[12] I realize, of course, that "Kantians" from Kant to Gewirth to Korsgaard purport to have arguments showing such positions to be irrational, but the voluminous literature attacking their positions, perhaps, encourages the skeptical thought that something has gone awry.

*4. Real and intractable moral disagreements about foundational moral principles are best explained in terms of differences in "background theory."* This 'defusing explanation' was developed originally against arguments from moral disagreement appealing to very particular moral judgments. Against the familiar fact that people's moral intuitions about particular problems are often quite different, it is easy to reply, as Loeb puts it, that since "*all* observation is theory laden…theoretical considerations will play a role in moral observations, just as they do in any others," and thus "differences of belief among moral reasoners should be expected because the same information will be observed differently depending on what background theories are present" (1998: 288). The skeptical argument from moral disagreement among systematic moral philosophies, as Loeb himself discusses, presents two discreet challenges to this defusing explanation. First, it is quite possible for Kantians and utilitarians to agree about the right action in particular cases, while disagreeing about the reasons the action is right, reflecting their disagreement about fundamental moral propositions. In these cases, the disagreement we are trying to explain is *precisely* the disagreement in the "background theory," and it is the surprising resilience of such disagreements, so the skeptic argues, that calls out for skepticism about moral facts. Second, where the disagreement about particular cases stems from differing background theories that hardly defuses an argument from skepticism appealing to intractable differences about background theories. As Doris and Plakias remark, in considering a more extreme case: "if our disagreement with the Nazis about the merits of genocide is a function of a disagreement about the plausibility of constructing our world in terms of pan-Aryan destiny, does it look more superficial for that?" (2008: 321). Of course, in the Nazi case, we might think the Nazi background theory vulnerable on other grounds (e.g., of factual error or partiality), but, as we have already noted, it is not at all obvious how a disagreement informed by differing moral theories—say, Kantian and utilitarian—is in any way defused by noting that the

disputants disagree not only about the particular case, but about the foundational moral propositions which bear on the evaluation of the case.

## V.  Has the Argument Proved Too much?

I want to conclude the objections to the skeptical argument from disagreement by considering three final worries:  one *interpretive*--about saddling Nietzsche with the kind of moral skepticism at issue here—and two *philosophical*, pertaining to whether the argument sketched above has proved too much and, relatedly, whether it is self-referentially defeating.

On the interpretive question, it seems to me that nothing has misled readers more often about Nietzsche's metaethical view than the volume of his rhetoric:  he writes *as if* (so the argument goes) there really is a fact of the matter about his judgments about the value of human greatness and the disvalue of Christianity and the herd and the rabble.  In fact, however, Nietzsche's notorious rhetorical excessses make, I think, at least as much (perhaps even more) sense on the anti-realist picture.  For if Nietzsche is a moral anti-realist committed to the polemical project of disabusing certain readers of their 'false consciousness' about morality—their false belief that it is good *for them*—then he has every reason to use all available rhetorical devices—both rational and non-rational--to achieve that end.  Indeed, recognizing that ours is a world without any objective moral truths, Nietzsche has a special reason to write most of the time *as if* his own (subjective) judgments of value were something other than matters of evaluative taste:  for if they can claim a kind of epistemic and practical authority to which they aren't really entitled, then they are more likely to influence belief and action, at least among readers who view truth as practically important (as Nietzsche supposes his readers will).   Yet Nietzsche himself sometimes does admit the "terrible truth" about the subjective character of his evaluative judgments—as when he says that, "What is now decisive against Christianity is our taste [*Geschmack*], no longer our reasons" (*The Gay Science,* sec. 132) and when he describes the "revaluation of Christian values" as an "attempt, undertaken with every means" to

23

bring "the *counter*-values [*die Gegen-Werte*]…to victory" (*The Antichrist*, sec. 61)—not the "true" values or the "objectively correct" ones, but simply the *opposite* ones, the ones that appeal to a very different taste.

That brings us to the final philosophical objections to the line of skeptical argument explored here. The first is an objection that, no doubt, has already occurred to every reader of this paper. For is not the apparently intractable disagreement among moral philosophers regarding foundational questions mirrored in many other parts of our discipline? Are not metaphysicians and epistemologists also not locked in intractable disagreements of their own? Think of debates between internalists and externalists in epistemology, or between presentism and four-dimensionalism in the philosophy of time. If disagreement among moral philosophers supports an abductive inference to denying the existence of moral facts, what, if anything, blocks that inference in all these other cases?

Some recent writers (such as Bloomfield [2004] and Shafer-Landau [2005]) think this kind of "companions in guilt" consideration counts in favor of moral realism, notwithstanding the disagreement among moral philosophers. It is not entirely clear why they rule out, however, the other natural conclusion. Nietzsche, as far as I can see, has no reason to resist it, since he believes that, as an explanatory matter, the moral commitments of the philosopher are primary when it comes to his metaphysics and epistemology. Nietzsche writes:

> I have gradually come to realize what every great philosophy so far has been: namely the personal confession of its author and a kind of involuntary and unconscious memoir; in short, that the moral (or immoral) intentions in every philosophy constitute the true living seed from which the whole plant has always grown. In fact, to explain how the strangest metaphysical claims of a philosopher really come about, it is always good (and wise) to begin by asking: at what morality does it (does *he*--) aim? (BGE 6)

24

Since, for Nietzsche, the "morality" at which the philosopher aims is to be explained in terms of his psychological needs and drives, and since these differ among philosophers, it will be unsurprising that there are a diversity of moral views, and philosophical systems purportedly justifying them—and it will be equally unsurprising that this same diversity, and intractability, spills over into metaphysical and epistemological systems, since they are just parasitic on the moral aims of the philosophers! Nietzsche, at least, then has good reason to bite the skeptical bullet about much philosophical disagreement.

Of course, we would need to think carefully about individual cases of philosophical disagreement, since not all of them, in all branches of philosophy, are as intractable or as foundational as they are in moral philosophy. Some philosophical disagreements can, in fact, be defused fairly easily. Thus, to take an example from one of my other fields, the debate in legal philosophy between natural law theorists and legal positivists about the nature of law has both an element of tractability (natural law theorists like Finnis have, in fact, conceded most of the claims that actually matter to legal positivism as a theory of law[13]) and admits, in the intractable parts, of defusing by reference to the transparent and dogmatic religious commitments of the natural law theorists on the remaining issues they refuse to cede. In sum, the skeptical argument from disagreement among philosophers may have implications beyond moral philosophy, but what precisely they are will have to be decided on a case-by-case basis.

That still leaves a slightly different version of the worry that the argument "proves too much." For surely most philosophers will *not* conclude from the fact of disagreement among moral philosophers about the fundamental criteria of moral

---

[13] See, e.g., Leiter (2007): 162-164, including n. 42.

rightness and goodness that there is no *fact* of the matter about these questions, as I claim

Nietzsche does. But why not think that this meta-disagreement itself does not warrant a

skeptical inference, i.e., there is no fact about whether we should infer moral skepticism

from the fact of disagreement about fundamental principles among moral philosophers,

since philosophers have intractable disagreements about what inferences the fact of

disagreement supports?

Again, however, we need to be careful about the data points and the abductive

inferences they warrant. The question is always what is the *best explanation* for the

disagreement in question, given its character and scope. The "meta-disagreement"—

about whether disagreement in foundational moral theory really warrants skepticism

about moral facts—is, itself, of extremely recent vintage, barely discussed in the

literature. Even if this paper and the challenge in Loeb (1998), for example, succeed in

making the issue a topic of debate, and even if, after some critical discussion, the meta-

disagreement continues to persist, that still would not support the meta-skeptical

conclusion that there is no fact of the matter about whether or not disagreement in

foundational moral theory supports skepticism about moral facts. For before we are

entitled to that conclusion, we would have to ask what the best explanation for the meta-

disagreement really is? Surely one possibility—dare I say the most likely possibility?—

is that those who are professionally invested in normative moral theory as a serious,

cognitive discipline—rather than seeing it, as Marxists or Nietzscheans might, as a series

of elaborate post-hoc rationalizations for the emotional attachments and psychological

needs of certain types of people (bourgeois academics, 'slavish' types of psyches)—will

resist, with any dialectical tricks at their disposal, the possibility that their entire

26

livelihood is predicated on the existence of ethnographically bounded sociological and psychological artifacts. Nothing in the argument here establishes that conclusion, but nor is there any reason to think it would not be the correct one in the face of meta-disagreement about the import of fundamental disagreement in moral philosophy.

**Conclusion**

If disagreement in science were as profound and rampant as it is in moral philosophy, we would expect proponents of "Intelligent Design" creationism to be lined up against evolutionary theorists in biology departments and defenders of teleological explanation to be doing battle with the believers in mechanical causation in physics. We would expect discourse in physics and mathematics and chemistry to be circumscribed by geographic and cultural boundaries, such that Japanese mathematicians and Chinese physicists were engaged in a largely separate world of intellectual discourse from their American and German counterparts, just like their colleagues in moral philosophy are. But everyone outside philosophy, and at least some within it, knows that profound and intractable disagreement about foundational moral questions is the basic fact about the field. The fact of such disagreement—apparent to the Sophists in antiquity, and revived as an important skeptical consideration by Nietzsche in the 19th-century—should be a live issue for us today. As philosophers, we should forget about 'folk' disagreement, and instead confront the far more problematic phenomenon: namely, 'expert' disagreement among those who devote their professional lives to systematic and rational reflection on moral questions, and who often share, notwithstanding this disagreement, lots of the same moral convictions about concrete cases, as well as often sharing similar lifestyles and cultural experiences. If Nietzsche is right, the best explanation for what we find is that, when it comes to moral theorizing, it really is a "swindle" to talk of truth in this field.

**References**

Anderson, R. Lanier. 1998. "Truth and Objectivity in Perspectivism," *Synthese* 115:

    1-32.

Bloomfield, Paul. 2004. *Moral Reality* (New York: Oxford University Press).

Boyd, Richard. 1988. "How to be a Moral Realist," in G. Sayre-McCord (ed.),

    *Essays on Moral Realism* (Ithaca: Cornell University Press).

Christensen, David. 2007. "The Epistemology of Disagreement: the Good News,"

    *Philosophical Review* 116: 187-217.

Clark, Maudemarie. 1990. *Nietzsche on Truth and Philosophy* (Cambridge: Cambridge

    University Press).

-----. 1998. "On Knowledge, Truth and Value," in C. Janaway (ed.), *Willingness and*

    *Nothingness: Schopenhauer as Nietzsche's Educator* (Oxford: Oxford

    University Press).

Doris, John M. & Alexandra Plakias. 2008. "How to Argue about Disagreement:

    Evaluative Diversity and Moral Realism," in W. Sinnott-Armstrong (ed.),

    *Moral Psychology, Volume 2: The Cognitive Science of Morality: Intuition*

    *and Diversity* (Cambridge, Mass.: MIT Press).

Hussain, Nadeem. 2004. "Nietzsche's Positivism," *European Journal of Philosophy* 12:

    326-368.

-----. 2007. "Honest Illusion: Valuing for Nietzsche's Free Spirits," in

    Leiter & Sinhababu (2007).

Janaway, Christopher. 2007. *Beyond Selflessness: Reading Nietzsche's* Genealogy

    (Oxford: Oxford University Press).

Kaplow, Louis and Steven Shavell.  2002.  *Fairness versus Welfare* (Cambridge, Mass.:
Harvard University Press).

Kelly, Thomas.  2005.  "The Epistemic Significance of Disagreement," in J.
Hawthorne & T.G. Szabo (eds.), *Oxford Studies in Epistemology*, *Volume
1* (Oxford:  Oxford University Press).

Kitcher, Philip.  1993.  *The Advancement of Science* (New York:  Oxford University
Press).

Leiter, Brian.  1994.  "Perspectivism in Nietzsche's *Genealogy of Morals*," in R. Schacht
(ed.), *Nietzsche, Genealogy, Morality* (Berkeley:  University of California Press).

-----.  2000.  "Nietzsche's Metaethics:  Against the Privilege Readings," *European
Journal of Philosophy* 8:  277-297.

-----.  2001.  "Moral Facts and Best Explanations," *Social Philosophy & Policy* 18:  79-
101.  Reprinted in Leiter (2007) (page citations are to the reprinted version).

-----.  2002.  *Nietzsche on Morality* (London:  Routledge).

-----.  2007.  *Naturalizing Jurisprudence:  Essays on American Legal Realism and
Naturalism in Legal Philosophy* (Oxford:  Oxford University Press).

Leiter, Brian and Neil Sinhababu (eds.).  2007.  *Nietzsche and Morality* (Oxford:
Oxford University Press).

Loeb, Don.  1998.  "Moral Realism and the Argument from Disagreement,"
*Philosophical Studies* 90:  281-303.

Mackie, John.  1977.  *Ethics:  Inventing Right and Wrong* (London:  Penguin).

Poellner, Peter.  2001.  "Perspectival Truth," in J. Richardson & B. Leiter (eds.),
*Nietzsche* (Oxford:  Oxford University Press).

Railton, Peter.  1986a. "Facts and Values," *Philosophical Topics* 14:  5-31.

-----.  1986b. "Moral Realism," *Philosophical Review* 95:  163-207.

Richardson, John.  1996.  *Nietzsche's System* (Oxford:  Oxford University Press).

Shafer-Landau, Russ.  2005.  *Moral Realism:  A Defence* (Oxford:  Oxford University
    Press).

Sinhababu, Neil.  2007.  "Vengeful Thinking and Moral Epistemology," in Leiter &
    Sinhababu (2007).

Smith, Robin.  2007.  "Aristotle's Logic," *Stanford Encyclopedia of Philosophy*
    (Dec. 14, 2007):  http://plato.stanford.edu/entries/aristotle-logic/

30

Readers with comments may address them to:

Professor Brian Leiter
University of Chicago Law School
1111 East 60th Street
Chicago, IL 60637
        bleiter@uchicago.edu

# The University of Chicago Law School
# Public Law and Legal Theory Working Paper Series

For a listing of papers 1–99 please go to http://www.law.uchicago.edu/academics/publiclaw/1–199.html

200. Susan Bandes, The Heart Has Its Reasons: Examining the Strange Persistence of the American Death Penalty (January 2008)
201. Susan Bandes, After Innocence: Framing Wrongful Convictions (January 2008)
202. Ariel Porat, Expanding Restitution: Liability for Unrequested Benefits (January 2008)
203. Adam B. Cox, Deference, Delegation and Immigration Law (February 2008)
204. Ariel Porat and Alon Harel, Aggregating Probabilities across Offences in Criminal Law (March 2008)
205. Jonathan S. Masur, Process as Purpose: Administrative Procedures, Costly Screens, and Examination at the Patent Office (March 2008, revised July 2008)
206. Eric A. Posner and Cass R. Sunstein, Should Green house Gas Permits Be Allocated on a Per Capita Basis? (March 2008)
207. Eric A. Posner, Human Welfare, Not Human Rights (March 2008)
208. Susan Bandes, Victims, "Closure," and the Sociology of Emotion (March 2008)
209. Cass R. Sunstein, Is OSHA Unconstitutional? (March 2008)
210. Shyamkrishna Balganesh, Foreseeability and Copyright Incentives
211. Lee Fennell, Slices and Lumps (March 2008)
212. M. Todd Henderson, Citing Fiction (March 2008)
213. Jacob E. Gersen and Eric A. Posner, Soft Law (March 2008)
214. Christopher R. Berry and Jacob E. Gersen, The Unbundled Executive (March 2008)
215. Cass R. Sunstein and Reid Hastie, Four Failures of Deliberating Groups (April 2008)
216. Adam M. Samaha, Judicial Transparency in an Age of Prediction (April 2008)
217. Stephen J. Choi, Mitu Gulati, & Eric A. Posner, Which States Have the Best (and Worst) High Courts? (May 2008)
218. Cass R. Sunstein, Two Conceptions of Irreversible Environmental Harm (May 2008)
219. Jonathan R. Nash, The Uneasy Case for Transjurisdictional Adjudication (June 2008)
220. Adam B. Cox and Thomas J. Miles, Documenting Discrimination? (June 2008)
221. Susan Bandes, Emotions, Values and the Construction of Risk (June 2008)
222. Jonathan R. Nash, Taxes and the Success of Non-Tax Market-Based Environmental Regulatory Regimes (July 2008)
223. Thomas J. Miles and Cass R. Sunstein, Depoliticizing Administrative Law (June 2008)
224. Eric A Posner, Erga Omnes Norms, Institutionalization, and Constitutionalism in International Law (July 2008)
225. Thomas J. Miles and Eric A. Posner, Which States Enter into Treaties, and Why? (July 2008)
226. Cass R. Sunstein, Trimming (August 2008)
227. Jonathan R. Nash, The Majority That Wasn't: Stare Decisis, Majority Rule, and the Mischief of Quorum Requirements (August 2008)
228. Eric A. Posner, Boumediene and the Uncertain March of Judicial Cosmopolitanism (August 2008)
229. Cass R. Sunstein, Second Amendment Minimalism: Heller as Griswold (August 2008)
230. John Bronsteen, Christopher Buccafusco, and Jonathan Masur, Happiness and Punishment (September 2008)
231. Adam B. Cox and Thomas J. Miles, Judicial Ideology and the Transformation of Voting Rights Jurisprudence (September 2008)
232. Daniel Abebe and Jonathan S. Masur, A Nation Divided: Eastern China, Western China and the Problem of Global Warming (September 2008)

233. Irina D. Manta, Privatizing Trademarks (abstract only) (September 2008)
234. Paul J. Heald, Testing the Over- and Under-Exploitation Hypothesis: Bestselling Musical Compositions (1913–32) and Their Use in Cinema (1968–2007) (September 2008)
235. Brian Leiter, Nietzsche's Naturalism Reconsidered (September 2008)
236. Paul Heald, Optimal Remedies for Patent Infringement: A Transactional Model (September 2008)
237. Cass R. Sunstein, Beyond Judicial Minimalism (September 2008)
238. Bernard E. Harcourt, Neoliberal Penality: The Birth of Natural Order, the Illusion of Free Markets (September 2008)
239. Bernard E. Harcourt, Abolition in the U.S.A. by 2050: On Political Capital and Ordinary Acts of Resistance (September 2008)
240. Bernard E. Harcourt, *Supposons que la discipline et la sécurité n'esistent pas ~ Rereading Foucault's Collége de France Lectures* (with Paul Veyne) (September 2008)
241. Richard H. McAdams, Beyond the Prisoner's Dilemma: Coordination, Game Theory and the Law (October 2008)
242. Dhammika Dharamapala, Nuno Garoupa, and Richard H. McAdams, Belief in a Just World, Blaming the Victim, and Hate Crime Statutes (October 2008)
243. Richard H. McAdams, The Political Economy of Criminal Law and Procedure: The Pessimists' View (October 2008)
244. Richard H. McAdams and Thomas S. Ulen, Behavioral Criminal Law and Economics (November 2008)
245. Cass R. Sunstein, Judging National Security Post-9/11: An Empirical Investigation (November 2008)
246. Brian Leiter, Naturalizing Jurisprudence: Three Approaches (November 2008)
247. Adam M. Samaha, Originalism's Expiration Date (November 2008)
248. Eric A. Posner and Adrian Vermeule, Crisis Governance in the Administrative State: 9/11 and the Financial Meltdown of 2008 (November 2008)
249. Lee Anne Fennell, Adjusting Alienability (November 2008)
250. Nuno Garoupa and Tom Ginsburg, Guarding the Guardians: Judicial Councils and Judicial Independence (November 2008)
251. Tom Ginsburg, The Clash of Commitments at the International Criminal Court (November 2008)
252. Tom Ginsburg, Constitutional Afterlife: The Continuing Impact of Thailand's Post-Political Constitution (November 2008)
253. Cass R. Sunstein and Richard Zechkauser, Overreaction to Fearsome Risks (December 2008)
254. Gilbert Metcalf and David Weisbach, The Design of a Carbon Tax (January 2009)
255. David Weisbach, Responsibility for Climate Change, by the Numbers (January 2009)
256. Daniel Abebe, Great Power Politics and the Structure of Foreign Relations Law (January 2009)
257. Brian Leiter, Moral Skepticizm and Moral Disagreement in Nietzsche (January 2009)