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All I can say is this: it looks as if we are all we have. . . . Only if ethics was something unspeakable by us, could law be unnatural, and therefore unchallengeable. As things now stand, everything is up for grabs.

Nevertheless:
Napalming babies is bad.
Starving the poor is wicked.
Buying and selling each other is depraved.
Those who stood up to and died resisting Hitler, Stalin, Amin, and Pol Pot—and General Custer too—have earned salvation.
Those who acquiesced deserve to be damned.
There is in the world such a thing as evil.
[All together now:] Sez who?
God help us.¹

—Arthur Leff, 1979

INTRODUCTION: MORAL SKEPTICISM AND LEGAL REASONING

An article with a title like "Moral Reality" should doubtlessly begin with that phrase. Such a phrase conjures up images of a kind of Aurora Borealis, but without the lights, and an article about such

¹. Leff, Unspeakable Ethics, Unnatural Law, 1979 Duke L.J. 1229, 1249.
a mysterious realm would be the report of an explorer who has come from there and is prepared to tell us what it is like. Yet no map is included herein. Instead, the article's focus is on a prior question: is there a moral reality and, if so, how is it known? More generally: while the assertion that “there are no such things as moral facts” is perhaps the most popular and appealing of the slogans of the moral skeptic, it is moral skepticism in all of its forms that is our target.

A moral skeptic is one who says things like, “there are no moral facts.” These statements are usually joined, however, to others to the effect that values are inherently subjective, not objective; that there are no “absolutes,” only values relative to a person or a culture; that value choices are irrational or arbitrary; that these choices are matters of emotion, attitude, or feeling and not of cognition or knowledge; that statements of the conclusions of these choices cannot by their nature be true or false; that arguments in support of these conclusions cannot be valid or invalid, correct or incorrect; that values, when all is said and done, are simply a matter of taste and “there’s no disputing taste.”

The first task of this article is to sort these disparate statements of the skeptic into a manageable taxonomy. In developing this taxonomy in Part I, a critical analysis will also be given, rebutting most of the skeptic’s claims. Certain of those claims, however, require more extended treatment. This is the task undertaken in Part II. Before doing either task, however, it may be well to mention the importance of how judges and legal scholars resolve the conflict between moral skepticism and moral realism.

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.

The psychological consequence of this for the skeptic is to de-
value his own values. Even those things that he most cherishes he will regard on a par with his taste, e.g., for watermelons: a purely subjective, arbitrary preference. 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.

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.

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

Legal theorists who write about what judges ought to do when deciding cases may also be reluctant to view the judicial role as properly including the judge’s personal values. A legal theorist who is also a moral skeptic will thus have a strong motive to fashion his theory of adjudication to exclude values wherever possible. Thus, he may urge that cases be decided on purely formalistic grounds. He may find these grounds in the linguistic conventions surrounding the words used in legal rules, as did the Supreme Court in Tennes-

2. Justice Holmes saw this quite clearly. Although believing that “deep-seated preferences cannot be argued about” and that skepticism about morals was the only defensible attitude, Holmes maintained that nonetheless “we still shall fight . . . and we may leave to the unknown the supposed final valuation of that which in any event has value to us.” Holmes, Natural Law, 32 Harv. L. Rev. 40, 44 (1918), reprinted in O.W. Holmes, Collected Legal Papers (1920). More rigorous philosophical separation of skepticism from nihilism may be found in J.R. Flynn, Humanism and Ideology 1-29 (1973), and B. Williams, Morality 27-39 (1972).
Alternatively, he may seek these grounds in the intentions of the enacting legislature—a question of psychological fact, to be sure, but nonetheless of fact and not of value.

Finding both of these common theories of interpretation untenable, a legal theorist who is also a moral skeptic may take refuge in legal process or procedure as the grounds that distinguish legal judgments in particular cases from being arbitrary value judgments. Lon Fuller’s well-known faith that “if we do things the right way, we’ll do the right things” would represent a skeptic’s resort to process if it were paraphrased: “if we do things the right way, we will not have to worry about the unanswerable question of whether we are doing the right things.” A variant of this skeptically motivated flight into process is John Hart Ely’s recent admonition that judges interpreting the Federal Constitution should eschew reliance on fundamental values; for in Ely’s view there are no such values. Accordingly, a judge should avoid issues such as abortion, the death penalty, or other questions requiring subjective value judgments. Nevertheless, according to Ely, a judge should interpret the Constitution with reference to “representation-reinforcing” values that make the democratic process work better. A judge, in other words, should use the Constitution to do no more than ensure fairness in the process by which equally arbitrary values compete.

Often skepticism also motivates those who would urge judges to resort neither to formal standards nor to process, but to conven-

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“The law, Roper, the law. I know what’s legal, not what’s right. And I’ll stick to what’s legal. . . . I’m not God. The currents and eddies of right and wrong, which you find such plain sailing, I can’t navigate, I’m no voyager. But in the thickets of the law, oh, there I’m a forester.”

417 U.S. at 195.

Presumably in part for such skeptical reasons, the Chief Justice eschewed making any “fine utilitarian calculations”, 437 U.S. at 187, or any weighing of values. He instead took refuge in that old formalistic friend, the “ordinary meaning of plain language.” 437 U.S. at 173.

4. Much of what is called “the legislature’s intention” has nothing to do with anyone’s mental state. For the separation of the formalist’s notion of legislative intent, which does refer to mental states, from these other ideas, see Moore, The Semantics of Judging, 54 S. CAL. L. REV. 151, 246-70 (1981).

5. Fuller, What The Law Schools Can Contribute to the Making of Lawyers, 1 J. LEGAL EDUC. 189, 204 (1948). Fuller was not himself a moral skeptic.

6. JOHN HART ELY, DEMOCRACY AND DISTRUST (1980). Ely presents a useful summary of various interpretive schemes that relies on fundamental values before rejecting them all. Its summary includes that scheme relying on moral realism (which Ely discusses as “Natural Law”).
tional morals, e.g., Justice Frankfurter's "accepted standards of decency of English speaking peoples." If there are no right answers to moral questions, this legal theory urges, there are at least right answers to the factual question of what people believe is right, and it is to these shared values that judges should turn in reaching their decisions. Learned Hand's approach to judging perhaps best illustrates this skeptical recourse to conventional morals. Even in the context of construing a statute that required a decision whether aliens petitioning for citizenship had "good moral character," Judge Hand's moral skepticism led him to refuse to judge the moral question himself. Instead, he referred to "the generally accepted moral conventions current at the time."

Legal theorists who have dealt with that part of a theory of adjudication having to do with the pedigreering of legal standards to be interpreted (as opposed to that part having to do with the interpretation of these standards) have also allowed their moral skepticism to influence their legal theory. Some legal positivists, notably Hans Kelsen and perhaps Oliver Wendell Holmes, adopted the value-free pedigree of laws distinctive of legal positivism in part because any reliance on value would contaminate a scientific theory of law. To quote Kelsen:

[Justice] cannot be ascertained by the Pure Theory of law. Indeed it is not ascertained by rational knowledge at all. . . . From the standpoint of rational knowledge, there are only interests and conflicts of interests, the solution of which is arrived at by an arrangement which may either satisfy the one interest at the expense of the other, or institute an equivalence or compromise between them. To determine, however, whether this or that order has an absolute value, that is, is "just," is not

8. See L. Hand, The Spirit of Liberty (1959), where Hand wrote that values "admit of no reduction below themselves; you may prefer Dante to Shakespeare, or claret to champagne, but that ends it", id. at 198; that "our choices are underived", id. at 91; and that "man, and man alone creates the universe of good and evil. . . ." Id. at 93.
10. Kelsen, The Pure Theory of Law, 50 L.Q. Rev. 474 (1934). Other legal positivists, such as H.L.A. Hart, John Austin, or Jeremy Bentham, were not moral skeptics. As the latter theorists illustrate, one can be a moral realist yet deny morality a place in one's theory of law. The point is that if one is a moral skeptic, one has an additional motive to be a legal positivist.
possible by the methods of rational knowledge. Justice is an irrational ideal.  

Many legal theorists, of course, do recognize the need for substantive value choices in their theories of adjudication. Nonetheless, moral skepticism influences their theories, although in ways different from those just mentioned. Rather than denying values a role in adjudication, as do legal positivists, legal formalists, and the like, such skeptics tend to be attracted to a particular kind of normative theory: utilitarianism. One can see this tendency in many areas of law, but this article will consider four by way of illustration: criminal law, property, torts, and constitutional law.

In order to guide day-to-day decisions in the criminal law about sentencing, interpreting the definitions of crimes and the like, judges and theorists must articulate a theory of punishment. It is common to juxtapose retributivist theories of punishment (e.g., punishment is justified because it gives offenders their just deserts) and utilitarian theories of punishment (e.g., we are justified in punishing because doing so prevents crime), and to defend either a pure utilitarian theory, a pure retributivist theory, or some combination of the two.

Moral skepticism inevitably leads legal scholars and judges toward utilitarian theories of punishment. This is often because their skepticism prevents them from conceiving of just deserts as an objective quality that could ever justify inflicting harm on criminal offenders. Because of this, skeptics usually cannot even articulate a recognizable version of a retributivist theory. Rather, what a skeptic will call “retributivism” will be one of two distinct theories. The first is the idea that punishment is justified because it maximizes the net sum of satisfied preferences of citizens. The good that punishment achieves, in other words, is not on this theory that one who deserves it gets it (true retributivism); instead, the good justifying punishment is the satisfaction of the preferences of people that offenders be punished. The second “retributivist” theory of the moral skeptic is that state-inflicted punishment is justified because without it people will take the law into their own hands and wreak private vengeance, all to society’s detriment. In either instance, the skeptic fails to articulate a truly retributivist theory of punishment.

12. Kelsen, supra note 10, at 482.
13. The author discusses this taxonomy of punishment theories in greater detail in Closet Retributivism, 1982 CrR 9. I have excluded for purposes of abbreviated discussion the third major theory of punishment, the paternalistic (also called the rehabilitative or humanitarian) theory of punishment.
The first “retributivist” theory of the skeptic is but an instance of preference-utilitarianism. The second is but an instance of another form of utilitarianism, one that conceives of good as other than the satisfaction of preferences. Substituted for the objective moral quality of desert in both cases are other qualities a skeptic can more easily believe to exist: preferences in the former instance, and harms such as public disorder in the latter.

The net result of this unnoticed substitution of utilitarian theories for retributivism is to foreclose any real choice between the theories, because the legitimacy of retributivism is never addressed. For example, when the Supreme Court in its search for a rationale for the death penalty compares utilitarian with retributive theories, it really compares different utilitarian theories. Its own skepticism about morality leads it to characterize “retributivism” in terms of satisfying feelings of vengeance, or in terms of preventing private violence. It omits any consideration of what is perhaps the most pertinent question about the death penalty: can anyone do something so evil that they deserve to die at the hands of the state? The emphasis on public desires and public good as the ends of punitive justice, and the deemphasis of what criminals morally deserve as a consequence of their acts, illustrate the skeptic’s attraction to utilitarian theory.

Skeptics will similarly skew their theories of property so as to avoid entities or qualities for which they find no room in their skeptical ontology. As in criminal law, any plausible theory of adjudication involving the formulation or interpretation of the rules of property law must rely on some normative theory. Here again, there are two main competing theories justifying legally established property


The death penalty is said to serve two principal social purposes: retribution and deterrence of capital crimes by prospective offenders. [With regard to the first] capital punishment is an expression of society’s moral outrage at particularly offensive conduct. This frustration may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs.

See also Justice Marshall's dissent in Gregg, where he assumes that he has rebutted a “retributive” justification of the death penalty if he rebuts revenge-utilitarianism:
There is no evidence whatever that utilization of imprisonment rather than death encourages private blood feuds and other disorders. It simply defies belief to suggest that the death penalty is necessary to prevent the American people from taking the law into their own hands.

Id. at 238. Absent from either side of this debate is any consideration of whether a truly retributive theory of punishment could justify the death penalty.
entitlements and their allocations: Lockean natural rights theories (often but not inevitably of a libertarian cast) and utilitarian theories.

Property theorists who are moral skeptics tend to avoid the natural rights theory. These skeptics agree with Bentham's assertion that "natural rights are simply nonsense . . . nonsense on stilts." A skeptic can make no sense of the idea that a legal right to property could be justified by there being a preexisting moral right; this makes no sense for the skeptic, because moral rights for him do not exist. A skeptic will, of course, acknowledge that there are conventions (shared beliefs) in a given society that say that people have moral rights. But what a skeptic cannot acknowledge is just what the natural rights theory of property demands; namely, that there really are rights to property that are natural and independent of convention. The result for a morally skeptical legal theorist is again to embrace some version of utilitarianism as his normative theory whenever problems of interpretation or formulation of property rules require him to have some normative theory.

Modern tort law provides a third illustration of skepticism's biasing effect on normative theories. A major debate in contemporary tort theory exists between those who urge that tort rules should be efficient (a utilitarian notion) and those who urge that tort rules should seek to correct an injustice between two parties (a "corrective justice" theory). For a skeptic, the answer is obvious: tort rules should be framed so as to maximize the efficient allocation of resources. The alternative, correcting an "injustice," makes no sense, for all corrective justice theories will presuppose that people have rights—not just legal rights, but moral rights. (It is because these rights are violated that a duty to correct the injustice via compensation arises.) Yet for a skeptic, real moral rights do not exist. People may believe they have moral rights, and be unhappy if perceived violations go unredressed. But these dissatisfactions form just another "externality" to be taken into account in determining the most efficient allocation of resources. A skeptic will believe he has said all there is to be said about such rights when he has taken into his utilitarian balance people's preferences for rights. Unnoticed is that a true theory of corrective justice does not measure a right's importance by the number or intensity of the preferences for it. The result again is that utilitarianism "wins" for the skeptic by default because there is no truly competitive theory.

As a final example, consider the constitutional right of privacy. When the Supreme Court in 1967 introduced the privacy notion into fourth amendment jurisprudence," it did so as a means of protecting from unreasonable searches those areas not owned by an individual but that nonetheless should not be intruded upon by the government. In the Katz case itself, 8 this was the telephone booth in which the defendant had been speaking. The test the Court has developed for such situations is the "reasonable expectation of privacy" test, according to which we are all protected from government intrusion wherever we have a subjective expectation of privacy that "society is prepared to accept as reasonable." 9

The by now well-known problem with this test is that it does not have much to do with a moral right to privacy at all. 20 Rather, the test protects the expectations of a person whenever enough other people have those same expectations. The test, in other words, reflects a utilitarian judgment that it is both bad and unconstitutional to disappoint the expectations of a large number of people in society. Such a utilitarian judgment simply bypasses the interesting moral question the Court should have been dealing with here; namely, whether individuals have any moral rights to privacy that the fourth amendment should protect.

The Court has missed this question because of its own skepticism about values. To a skeptic it is unintelligible to speak of a right to privacy that is dependent neither upon the subjective expectations of its holder nor upon the conventions, or "shared expectations," of society. A skeptic will thus not even see a nonutilitarian manner of thinking about privacy, a manner that might proclaim privacy to be a right all persons have whether they know it or not. Utilitarianism is again favored by the skeptic because he cannot see any intelligible alternative.

One thing that is intriguing about this tendency of skeptical legal theorists to prefer utilitarian theories, is that it is only a psychological tendency, not a logical compulsion. The embracing of utilitarianism does not logically follow from moral skepticism. Nothing that could be called a normative theory follows from

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18. Id.
19. Id. at 361 (Harlan, J., concurring).
20. Of the many commentators who have noticed this problem, see, e.g., Gerstein, California's Constitutional Right to Privacy: The Development of the Protection of Private Life, 9 Hastings Const. L.Q. 385, 389 (1982).
moral skepticism. While the entities and qualities (preferences, etc.) presupposed by utilitarianism are not so "queer" as those demanded by deontological theories, the ultimate unjustifiability of all such theories is the same. The question of why happiness, crime-prevention, efficient resource allocation, expectation or preference satisfactions are good things to achieve has no more answer for a skeptic than the questions of why people deserve punishment, deserve certain property, deserve compensation, or deserve privacy. Nothing is really good for a skeptic. The only apparent advantages of utilitarianism for a skeptic appear to be: (1) an ontology less embarrassing to an empiricist cast of mind; (2) one big value leap, as opposed to the many smaller leaps required in deontological theories; and (3) the self-deception possible with a theory that allows a lot of scientific questions about costs and benefits to predominate while keeping the normative premises in the background.

The overall effect of moral skepticism on a theory of adjudication is to drive judges and legal theorists to a particular outlook that combines a legal positivist theory of law with a formalist, process-oriented, or other purportedly value-free theory of interpretation. These, in turn, will be combined with a theory of value that prefers utilitarian to nonutilitarian theories of the right or the good. There is no logical necessity that one be a skeptic to subscribe to these various theories. There are reasons for espousing each of them other than the fear that there is no moral reality. Still, a strong motive for many who historically have subscribed to these theories is to be found in such theorists' own skepticism about values.

I. THE CASE FOR SKEPTICISM

A moral skeptic thus far has been defined generally as one who would deny the existence of objective moral truth. This denial is usually phrased in terms of the alleged arbitrariness, subjectivity,
irrationality, or relativity of value judgments. In understanding skepticism, what is first needed is some more precise understanding of what the skeptic means by these words. An explication of moral skepticism should thus first be an exercise in separating the separate arguments labelled by these multivocal words. In this part I shall deal with the eight different claims I take the skeptic to be making when he denies the objectivity of value judgments. While the actual beliefs of many morally skeptical people is a combination of all or most of these claims, I shall define a moral skeptic as one who would subscribe to any of them.

A. The Argument From Logic: That Values Cannot Ultimately Be Justified

One popular reason for regarding value judgments with suspicion is the belief that they cannot be rationally justified. To justify a value judgment is to give a reason sufficient to accept it. Hence, what this form of skepticism amounts to is the assertion that there are no logically compelling reasons to value anything.

Early forms of noncognitivist theories of ethics adopted an extreme form of this skepticism. According to logical positivists such as A. J. Ayer, value judgments are not in reality judgments at all so much as they are expressions of feeling and emotion. Such expressions doubtlessly have causes but, according to Ayer, they are not the sort of thing to be supported by reasons. Only cognitive judgments can meaningfully be said to be justified by reasons. If one construes ethical judgments to be on a par with boos and hurrahs, then there can be no reasons to believe in the injustice of slavery, for example, because there is nothing to believe in.

One of the problems with such an extreme view is that it is inconsistent with our daily experience. We often seem to be giving

24. R.F. Holland has argued that moral skepticism is a matter of mere suggestions, not a thought-out position, and that "we are without... any clear idea of what moral skepticism as an intellectual position amounts to." Holland, Moral Skepticism, 61 Am. Soc'y Supp. Vol. 185, 189 (1967). Part of the author's intent in this part of the article is to explicate what moral skepticism amounts to as an intellectual position.

25. For a quite different taxonomy of the varieties of ethical skepticism, see McClintock, Basic Varieties of Ethical Skepticism, 2 Metaphilosophy 29 (1971), and McClintock, Skepticism About Basic Moral Principles, 2 Metaphilosophy 150 (1971). (McClintock would not classify several of the varieties of skepticism discussed herein as ethical skepticism, because such positions require arguments not distinctive of ethics in order to sustain them.) See Bambrough, A Proof of the Objectivity of Morals, 14 Am. J. Juris. 37, 41-50 (1969), and Harrison, Moral Skepticism, 61 Arist. Soc'y Supp. Vol. 199, 200-02 (1967), for still different taxonomies.

reasons justifying our moral judgments. Indeed, a moral judgment seems to carry with it the expectation that there are good reasons sufficient to justify it. Unlike mere matters of personal taste, our practice with respect to moral judgments is to give and demand reasons for making them.

A more moderate version of this form of skepticism is that there are no ultimate reasons that justify a value judgment. A little reflection shows how much more plausible this form of the argument is. To give reasons that justify a value judgment is to appeal to premises in a deductive argument. In logic, no less than in musical drama, “nothing comes from nothing and nothing ever can.” One will need to appeal to premises indefinitely, for there can be no conclusion that is justified except by a further premise that will then itself require justification. Ultimately, one must simply stop at some arbitrary first premise. That insight is said to have occurred to Aquinas late in life, who was much dismayed to think that he had proved nothing but what was already assumed somewhere in his premises. John Barth provides a more contemporary example:

But here, I think, . . . lies a real hogchoker: the reasons that people have for attributing value to things are always ultimately arbitrary; that is, if the question why? is asked often enough, it will be discovered that the ultimate end (which, remember, gives the whole chain its value) is rationally indefensible, logically unjustifiable. . . . The reason for which people assign value to things are always ultimately (though not necessarily immediately) arbitrary, irrational. In short, there is no ultimate reason for calling anything important or valuable; no ultimate reason for preferring one thing to another.

Ultimately, in short, of concentration camps and watermelons, there is only one thing to be said: some people like them, and some people don’t.

The two ways around this “hogchoker” traditional in ethics do not seem persuasive to most moderns. The first is to derive one’s first moral premises from factual judgments, usually about human nature. Our rationality, our social needs, our survival needs, or facts about the natural patterns of our desires, are the sort of characteristics used in such derivations. Two rejoinders to this enterprise have seemed conclusive: first, man’s nature seems sufficiently plastic that universal human characteristics potentially relevant to morals are very hard to discover; and second, it does seem to be an open question whether any such natural characteristics as may be discovered

27. See R.M. Hare, Freedom and Reason (1963).
are valuable.30 That Nietzsche's blond beast of prey may naturally stalk within us all does not prove that harming others is good.

The second avenue of escape is the Cartesian intellectual tour de force: one discovers self-evident moral truths that one can use as first premises in giving reasons for moral argument. One simply intuits such truths as the principle of utility, and one thus has the justificatory ground for making more particular moral judgments. The difficulty, of course, is how one verifies the existence of a faculty for discovering first truths and how one verifies a genuine, as opposed to a counterfeit, exercise of this faculty.31 It will not do to suppose that one can discover first principles in either the content or the form of the more particular moral judgments of a people.32 Insofar as first principles are abstracted from more particular moral judgments of people, they are only factual descriptions at a high level of generality of what people believe; that people have these beliefs is just another fact, and does not mean that what they believe is right. One needs a first principle that is simply and self-evidently right.

The skeptical conclusion is that there are no self-evident first principles of morality from which all else can be justified. One accordingly views moral systems such as Kant's or Bentham's as providing unargued-for premises defining the right or the good, premises intended to be used as stipulated boundaries for subsequent moral debate. If a number of people make the initial "leap of faith" involved in accepting such first principles, then debate about particulars is possible. For those who refuse such leaps—and there is no

30. The naturalistic fallacy is discussed infra notes 45-47 and accompanying text. The gap between fact and value is often used to block this move from factual truths to moral truths. See, e.g., Medlin, Ultimate Principles and Ethical Egoism, 35 Austl. J. Phil. 111, 111 (1957):

[I]t is now pretty generally accepted by professional philosophers that ultimate ethical principles must be arbitrary. One cannot derive conclusions about what should be merely from accounts of what is the case; one cannot decide how people ought to behave merely from one's knowledge of how they do behave. To arrive at a conclusion in ethics one must have at least one ethical premise. This premise, if it be in turn a conclusion, must be the conclusion of an argument containing at least one ethical premise. And so we can go back, indefinitely but not forever. Sooner or later, we must come to at least one ethical premise which is not deduced but boldly asserted. Here we must be arational; neither rational nor irrational for here there is no room for reason even to go wrong.

See also Alan Gewirth, Reason and Morality 15-16 (1978), for a discussion of the regress problem and the dilemma involved in appealing to nonmoral justificatory grounds.


32. Kant's "metaphysical deduction" in The Groundwork of the Metaphysics of Morals (Paton trans. 1948), and in Critique of Practical Reason (1889).
reason to make such a leap, or to make any particular such leap—there can be no debate. One can only coerce with force, but not convince with reason, those who refuse the first principles of any moral system. In that sense moral judgments are said to be, ultimately, nonrational.

B. The Argument from Meaning: That There is No Such Thing as Moral Reality Because Ethical Words Have No Descriptive Function

The argument most persuasive to Anglo-American philosophers of this century has stemmed from metaethics. The general notion was that through metaethics—particularly by exploring the meaning of words frequently used in moral discourse—one could derive certain skeptical conclusions about morality. The most plausible theory of meaning having skeptical implications has been the emotivist/prescriptivist theory. Before discussing that theory, however, two popular theories of meaning will be dealt with: subjectivism and conventionalism. Each, if accurate, would have skeptical implications for morality, and would give meaning to the idea that morality is subjective, and not objective.

1. SUBJECTIVISM

Subjectivism is the theory of meaning maintaining that ethical expressions describe an ordinary, factual reality, but also that this reality is subjective and not objective. More particularly, ethical expressions do refer to something and thus have a descriptive function, but that to which they refer is the speaker's own feelings, thoughts or attitudes. When someone utters, "the dog is wet," he ascribes a quality to an object, and both the property and the object are in the real world. When someone uses an ethical expression, however, such as "that act was unjust," subjectivism would reconstrue that utterance as not being about some particular action in the world, but rather about the speaker's state of mind. A subjectivist would maintain this sentence to mean no more than, "it is my feeling or belief that the act was unjust."

Subjectivism is a theory of meaning that can appeal only to

33. See, e.g., McGill, Scientific Ethics and Negotiation, 42 PROC. AND ADDRESSES AM. PHIL. A. 5 (1968-69) ("Emotivism is the main roadblock to cognitivism in ethics"). For a recent attempt to resuscitate emotivism in light of more contemporary developments in semantics and philosophical psychology, see Scruton, Attitudes, Beliefs and Reasons, in Morality and Moral Reasoning (J. Casey ed. 1971).
nonphilosophers. Reflection has revealed to all philosophers, even those of the most skeptical cast of mind,\(^3\) that subjectivism is subject to several overwhelming objections. First, the most popular form of subjectivism cannot even be coherently stated. The subjectivist who urges that some ethical statement “\(p\)” has no meaning beyond that contained in the statement “I believe that \(p\)” violates what we mean by “believe.” “Belief,” like most words describing mental activity requires an object. One does not simply “believe” any more than one simply “intends,” “desires,” etc. One believes something, intends something, desires something. The thing that is believed must itself be a coherent proposition. What does one believe when one believes that round squares sleep furiously? The only sensible answer is “nothing,” but this answer collapses subjectivism from a theory of meaning of ethical expressions into a theory asserting that such expressions have no meaning. While one might assert this, this is not subjectivism.

The subjectivist who analyzes moral statements in this fashion is also vulnerable to an infinite regress objection, as G.E. Moore noted long ago.\(^3\) If one asserts that the proposition “slavery is unjust” really means, “I believe that slavery is unjust,” then this latter statement by the same reasoning must mean, “I believe that I believe that slavery is unjust” and that last statement must mean, “I believe that I believe that I believe that slavery is unjust.” And so on. The short of it is that “belief” requires a propositional object that is not meaningless and does not contain another belief operator in it.

Even if subjectivism were coherently statable, it too clearly ignores salient features of our usage of ethical expressions to qualify as a theory of their meaning. To begin with, it transforms the nominal subject of an ethical expression—an action, a person, or some other thing in the physical world—into the mental state of the speaker. It is as though every expression such as, “it is raining,” were to be transformed into a statement about the speaker: “I feel rained on,” or “I believe that it is raining.” It is true that as a matter of pragmatics one who asserts, “it is raining,” and means it, is thereby committed to asserting, “I believe it is raining.” Yet this pragmatic feature is irrelevant to the semantics of the two expressions. “It is raining” and “I believe it is raining” remain two distinct

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34. Thus A.J. Ayer, *supra* note 26, at 104-14, for example, goes out of his way to reject subjectivism before elaborating his own emotivist theory.
propositions, even if sincere utterance of the former commits the speaker to sincere utterance of the latter. What the subjectivist needs is some warrant for merging the objective statement into the subjective statement when he deals with ethical predicates, but not in other contexts. Such warrant as is usually provided is that there is no moral reality, a reason that, for purposes of our inquiry, only begs the central question we wish to examine.

Finally, subjectivism has the startling consequence that disagreement over ethical matters is impossible because there can be no contradiction in ethical discourse. If saying, "slavery is wrong" is to say "I believe slavery is wrong," and if saying "slavery is not wrong" is to say "I believe that slavery is not wrong," there is no disagreement possible between two people who think they are disputing the moral merits of slavery. Neither disputant would be talking about slavery at all, but only about his own state of mind. If one wishes truly to disagree on such matters, one would have to argue that the other person is wrong about his own state of mind—which is not, of course, at all what one wishes to argue about.

The impossibility of disagreement extends also to one's self at different times. A subjectivist could not say, looking back at some past moral views he now regrets, "I was wrong in my beliefs," because he did have those beliefs at that time. If he thought slavery was just in the past, it was, even if he now thinks that it is unjust. With a theory such as this, one can give no sense to the idea of rendering consistent one's beliefs, of cohering them into an overall view. Whatever one believes about moral issues, there would be under the subjectivist view no possibility of contradiction and no problem therefore of consistency; one simply has noncomparable beliefs which, because they are beliefs, are all true.

On occasion, subjectivist rephrasings may be more plausible. Consider Felix Frankfurter's, "this is conduct that shocks the conscience."California, 342 U.S. 165, 172 (1952). Although the nominal subject is a compulsory stomach-pumping by the police, one might say that Frankfurter only meant, "I am shocked." What the subjectivist needs to show is that moral expressions are typically idiomatic in this way, that their nominal grammar is not their real grammar. The thrust of the argument is that the facts of usage are simply against the subjectivist; some forms of subjectivism could be true, but they are not.

Alternatively, suppose the subjectivist says that a moral expression p does have a sense beyond simply, "I believe p." Then (1) he has not given an analysis of what p means after all; and (2) he is committed to contradicting himself at every moral disagreement. If Jones thinks that slavery is unjust, then it is; if Smith thinks that slavery is just, then it is. Slavery is thus both just and unjust. If p has independent meaning, then [p and not-p] is a contradiction. On this last point, see Cohen, *Three Ethical Fallacies*, 86 Mind 78, 80 (1977).
2. CONVENTIONALISM

Conventionalism, like subjectivism, asserts that the meaning of an ethical expression is to be found in the states of mind of persons. Unlike subjectivism, however, the states of mind thought relevant by a conventionalist are those of a group of people rather than those of the speaker. To say that slavery is unjust is, on this theory, to say that some group of people (e.g., “most people in this society”) feel or believe that slavery is unjust.

People do have moral beliefs, and many of them are similar enough to be called “shared values.” The problem for conventionalism is not the absence of the mental states on which it relies. Rather, the problems lie in thinking that the meaning of an objective moral judgment (“slavery is unjust”) can be found in such subjective facts. The same reasons advanced against subjectivism apply with equal force to conventionalism: as a theory of meaning, conventionalism is both incoherent and unfaithful to our actual usage of ethical words. Since the latter of these two is somewhat different for conventionalism than for subjectivism, it will be given separate attention.

Aside from difficulties paralleling those for subjectivism, conventionalism would make impossible disagreement between a speaker’s values and those of most in her society. If most others think that abortion is wrong, one who asserts that abortion is not wrong will be held to have made a factual error that more careful attention to the polls would have prevented. Yet we make these assertions often, knowing full well that most in our society might disagree. We do not make some mistake about what the majority believes on these occasions. What the majority believes is irrelevant to what is meant by our ethical expressions.

Conventionalism gains what plausibility it has from what R.M. Hare has called the “inverted commas” sense of ethical expressions. Sometimes, for example, when we say “he’s such a good man,” we mean no more than, he is good by the conventional standards of goodness in our society. Often the “good” is put in scare quotes to indicate that we, the speakers, do not necessarily think

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39. See G.E. Moore, supra note 35, for an application of the antisubjectivist arguments against conventionalism. See also Lyons, Ethical Relativism and the Problem of Incoherence, 86 ETHICS 10, 119-21 (1976). Lyons discusses conventionalism because of the ties between this theory of meaning and anthropological relativism. Conventionalism is not the usual form of relativism but is, as Lyons points out, a fallback position to a relativist otherwise in danger of incoherence in his theory.

that he is good; only that he is conventionally "good." Such exceptional usage only betrays how false conventionalism is as a theory of the normal meaning of "good" or of any other moral term.

3. EMOTIVISM/PRESCRIPTIVISM

The theory of meaning here broadly categorized as emotivism/prescriptivism has the skeptical consequences of subjectivism and conventionalism, but avoids most of the difficulties of those theories. Emotivism/prescriptivism urges that we discover the meaning of an ethical expression when we discover the typical "job"\(^4\) that the expression is used to perform. More specifically, ethical expressions have as their typical jobs: (1) to express (not to describe) the speaker's emotional attitude toward some act, person, or state of affairs. Just as "ouch" does not describe a person's pain but expresses it, so "good" or "bad" are thought not to describe a speaker's attitudes of commendation or disapproval, but to express them. (2) to incite in oneself or others emotions or attitudes similar to those of the speaker. Just as "boo!" typically is said in order to incite fear in another but does not describe that fear, so "good" or "bad" are typically used to incite emotions, or attitudes of approval or disapproval. (3) to prescribe to ourselves or to others what they ought to do in similar circumstances. "Get out of my way" is not used to describe the fact that an order has been given, but rather the saying of it constitutes the order or command. Likewise, "good" and "bad" are not used to describe the speaker's prescriptions, but are themselves part of the expressions that, when said, constitute the prescription.\(^4\)

One may distinguish a positive from a negative claim in the emotivist/prescriptivist theory. The positive claim is that ethical expressions typically perform nondescriptive functions; they express or incite emotion, and they prescribe. The negative claim is that these expressions do not perform a descriptive function; they

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41. "Job" was the old Oxford ordinary language term for J.L. Austin's more precise "illocutionary force." See J.L. Austin, How to Do Things With Words (1961).

42. For a helpful taxonomy of the various jobs that early emotivists thought ethical expressions typically performed, see J.O. Urmson, The Emotive Theory of Ethics 25-27 (1968). According to tradition in contemporary philosophy, and to Hare's own oft-stated feelings, Urmson does not include prescriptivism with emotivism. I have considered the theories together because they share a faith that the illocutionary act-potential of moral words will illuminate their meaning, even if the kind of illocutionary act Hare emphasized differed from the kind the emotivists emphasized. Hare's form of prescriptivism denies the negative claim, and thus does not generate skepticism. In both The Language of Morals, supra note 40, and Freedom and Reason, supra note 27, Hare allows that moral words have a "secondary" descriptive meaning, at least as they are used in context.
are not used to say anything about the world. It is one thing to say that "ouch" is used to express pain, that "boo!" is used to incite fear in another, and that "get out of my way" is used to give an order. It is another thing to claim that these sentences are not used to describe how the world is. For the examples just given, both of these claims are true; yet they remain separate claims nonetheless.

When combined, both claims together assert that the only jobs for which ethical expressions are used are the nondescriptive jobs of expressing or inciting emotion and of prescribing. The skeptical conclusion often drawn from this theory of meaning is that there is no moral reality, no moral truth, and thus no moral knowledge. Such skepticism follows because of the negative thesis that denies a descriptive function to ethical expressions. Because they are not used to describe anything, their predicates name no properties. Thus, although the surface grammar makes it look like we ascribe a property to someone when we say "Jones is good," we do not. The emotivist/prescriptivist thesis thus divorces such expressions from those with similar surface grammar (e.g., "the dog is wet") but which we treat as ascribing a property to a thing. The result of this is that there is, quite literally, nothing to talk about as ethics. All one can do is emote and prescribe when using ethical words, no matter how strongly one thinks one is talking about some thing.

Furthermore, since ethical expressions are said to lack reference and extension, there can be no question of such expressions being true or false. Truth and falsity of an expression are functions of the reference of its singular terms, and of the extension of its general predicates. Such sentences as "the snow is white" are true just in case there is something referred to by the singular term, "the snow," and that thing is within the extension of the predicate, "is white." Ethical words, having no reference or extension, cannot be

43. The emotivist/prescriptivist has the same uphill struggle as the subjectivist: both must convince us that the appearances of our language are deceiving when we look at ethical expressions. For a detailed exposition of just what the emotivist/prescriptivist must overcome with regard to the appearance of ordinary usage, see Wellman, _Emotivism and Ethical Objectivity_, 5 Am. Phil. Q. 90, 92 (1968):

There are at least twelve features of the language of ethics which suggest that it is an objective form of discourse—ethical utterances can be incompatible with one another, we dispute about ethical issues, ethical sentences are formulated in the declarative mood, we speak of them as true or false, we ask ethical questions, the individual may wonder if his ethical conviction is mistaken, some ethical arguments are formally valid, ethical reasoning is always possible, and it is usually necessary, we distinguish between relevant and irrelevant considerations, rational methods of persuasion are to be preferred to sheer propaganda, and we apply the terms "valid" and "invalid" to ethical arguments. Together, these various features give an appearance of objectivity that seems to count heavily against emotivism.
used to construct a sentence capable of being either true or false. To do so would be like attempting to construct a sentence using “ouch!” or “get out of my way” in such a way that the sentence could be true or false. In the latter case it is clear to us that such a sentence cannot be constructed because “ouch” and “get out of my way” are not used descriptively.

Lastly, lacking truth values, ethical expressions cannot express genuine knowledge. Knowledge (with some as yet unformulated sophistications) is justified true belief. While one may have ethical beliefs, ethical knowledge requires that the beliefs be true. Lacking the capacity to be true or false, ethical propositions thus cannot be the subject of knowledge, no matter how much we may pretend that we “know” certain moral “truths.”

In order to complete the picture of this strand of skepticism, we need to augment this sketch of the argument from emotivism/prescriptivism to skepticism, with a sketch of the argument for emotivism/prescriptivism. The arguments for the emotivist/prescriptivist theory may be divided into those that in some positive way support the emotivist/prescriptivist claims and those that proceed by negative inference. Most of the literature about the theory, to the extent that it does not presuppose skepticism, "makes an argument of the latter variety. By this reasoning, all other theories of meaning for ethical words are wrong, so the remaining alternative, emotivism/prescriptivism, must be right. The theories of meaning attacked in making this argument are naturalism (including but not limited to subjectivism and conventionalism) and nonnaturalism.

Naturalism is a theory of meaning that takes certain natural properties to be the referents of moral predicates. Thus, one might hold that “good” means “desired,” or “right” means “maximizing of pleasure,” or “ought to be done” means “commanded by God.” All such theories would be naturalist theories of the meaning of ethical expressions because they reduce questions of value to questions of fact via the meaning of ethical words. A naturalist is one who believes that at least some evaluative conclusions can be derived from

44. Sometimes the argument for emotivism/prescriptivism begins with the skeptical conclusion and ends with the theory of meaning, rather than vice versa. Sometimes, that is, the argument proceeds by assuming that there is no moral reality, and then lights upon emotivism/prescriptivism as a theory of meaning that can make sense of ethical uses of language without the ontological excesses of moral entities and qualities. Because we are interested in arguments for ethical skepticism, however, this form of support for the emotivist/prescriptivist theory of meaning cannot interest us. What is needed is an argument for the theory that does not presuppose the skeptical conclusion.
purely factual premises.

a. The argument by negative inference

The analytical and historical starting point of the argument for emotivism/prescriptivism by negative inference is G.E. Moore's "open-question" argument against naturalism. Moore held that any analysis of the meaning of a moral word, such as "good," that purported to have discovered a definition in terms of natural properties involved a "naturalistic fallacy." One could show the fallacy, Moore thought, by simply taking any proposed definition of "good," and asking of the defining properties, "but are they good?" Since the question seemed always to be an open one (in the way that "Is a bachelor an unmarried man?" does not seem to), Moore held that no such analysis could be discovered. One might, for example, ask whether what most people desire is good. Because that is a significant question about which people could argue, not a tautology foreclosing such arguments, Moore asserted that even if the answer were "yes," it would not be because of the meaning of the word "good." Similarly, since one could sensibly ask whether what God commanded was good, even the most devout Christian (who believes that good is what God commands) must conclude that "good" does not mean "commanded by God."

Moore's conclusion that ethical words do not describe natural properties might be buttressed in other ways. A related argument, although not Moore's, is one focusing on the generality of ethical words like "good." That is, as a thought experiment one might think of all the things that may be called good, and attempt to abstract from them the natural properties they possess that are plausibly good-making characteristics. If one does this very much, it quickly becomes implausible to think that any natural properties are shared by good knives, good lovers, good deeds, and so forth. Indeed, we may sometimes use "good" in a way that would be contradictory if it named any limited set of natural properties, as in the country music refrain that there are four good things in life: "faster horses, younger women, older whiskey, and more money." Inconsistent natural properties can sensibly be said to be good when ascribed to different objects, from which the intended conclusion is: "good" does not name any natural property or set of properties.

45. G.E. MOORE, PRINCIPIA ETHICA (1903).
46. R.M. Hare makes an extended version of this argument in THE LANGUAGE OF MORALS, supra note 40, at 95-103.
47. Tom T. Hall, Faster Horses.
These attacks on naturalist theory have enhanced the popular sentiment that there is a sharp distinction between facts and values. One then proceeds to emotivism/prescriptivism by denying that there is some nonnatural realm of value to which ethical expressions refer. Moore's work provides the classic conception of this nonnatural realm. For him, the result of separating statements of value from statements of fact was not skepticism, but rather a kind of metaphysical dualism. Since "good" did not refer to any natural quality, it must refer to a nonnatural quality. As such, good could not be known by the senses but must be apprehended through intuition.

This dualist metaphysics and its accompanying intuitionist epistemology have been sufficient grounds on which most theorists have rejected nonnaturalism. It has seemed to many to be a totally mysterious realm of being, invented in an ad hoc manner only to preserve the objectivity of moral judgments in the face of their divorce from natural properties. Aside from this distaste for "queer entities" and intuitionist knowledge, a common argument against Moore is to turn his open question argument against his own definition of "good" as the name of the nonnatural property of goodness. A.J. Ayer, for example, urged that it was just as much an open question whether the possession of a nonnatural quality was good as it was for the possession of a natural property. In either case, Ayer concluded, "good" did not mean "the possession of any kind of property." Moore's "naturalistic fallacy" according could be renamed the "definist fallacy," because it now becomes the fallacy of giving any definition of "good," irrespective of the kind of properties used in the definition.

The upshot of all this was to leave emotivism/prescriptivism as the only possible theory of meaning. Naturalism asserted that ethical words describe natural properties (either in the world, or in someone's mind, as in subjectivism and conventionalism); nonnaturalism held that ethical words describe nonnatural properties. If one rejects both of these theories and assumes that the categories "natural" and "nonnatural" include all describable entities, one is

50. There are actually three different distinctions collapsed into the usual juxtaposition of naturalism and nonnaturalism: (1) an ontological distinction (natural properties are either identical to nonnatural properties, or they are not); (2) a semantic distinction (predicates describing natural properties either entail predicates describing nonnatural properties, or they do not); and (3) an epistemic distinction (one knows both natural properties and nonnatural properties via the five senses, or else one knows the latter through the special
left with a theory that holds that ethical words are not used to describe anything. One completes the argument by negative inference for emotivism/prescriptivism by stating what the nondescriptive use of ethical words is: most plausibly, to express (not describe) the speaker's feelings and attitudes, to incite them in others, and to prescribe to others that they act in certain ways.

b. The argument by positive claim

The alternate argument for emotivism/prescriptivism focuses on the positive claim that there is an emotive and prescriptive force to ethical expressions. This is a factual claim about the way in which we use certain words. It resembles both the Wittgensteinian thesis that we typically use first person, present tense mental expressions as signals of our mental experiences,51 and the early thesis of H.L.A. Hart that we typically use action sentences to ascribe responsibility to persons.52 All these claims are about the "illocutionary act-potential" of certain classes of expressions: we can use them to do certain sorts of things because they are recognized vehicles appropriate to that use. Compared to Wittgenstein's signal theory of meaning of mental expressions and Hart's ascriptivist theory of meaning of action sentences, emotivist/prescriptivists are relatively successful in sustaining their positive claim. Ethical expressions are matters of feeling and commendation; we typically do express our emotions of approval with "good," and prescribe to others that they ought to do whatever it is that is being said to be good.

The second step of the positive argument is to show that because ethical utterances have emotive and prescriptive functions, they cannot have descriptive ones as well. The early emotivists assumed that words could not be used to perform both functions at once, so that to show that they had a nondescriptive function was to show that they had no descriptive function.53

The short answer to this assumption is that it is manifestly

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51. L. WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS (1953).
53. See, e.g., A.J. AYER, supra note 26. A similar assumption seems to have been made by Wittgenstein and Hart in developing their "signal" and "ascriptivist" theories of mental and action sentences. See L. WITTGENSTEIN, supra note 51; Hart, supra note 52.
I may use the sentence, “there is a coin in my pocket,” to perform any number of functions, such as to express my pride (in my wealth), to recommend to others that they keep change in their pocket for emergencies, and so forth. That the sentence may be used in any of a number of ways does not prevent the sentence from being used in each case to describe a fact. Indeed, in order to serve many of the nondescriptive functions, the sentence must also be used descriptively. Accordingly, emotivism/prescriptivism cannot simply assume that because some recurring, nondescriptive functions of ethical expressions are discovered, there can be no descriptive functions as well.

Contemporary emotivists/prescriptivists recognize the need for an argument showing the exclusivity of the expressive and prescriptive functions of ethical expressions. One such argument focuses on the fact that words such as “good” are the most general words of commendation, prescription and the like. These words may be used to express emotions of approval about, or to prescribe to others to achieve, just about anything. The conclusion that one might draw from this fact is that words such as “good” cannot be tied to particular properties, as they would be if they were used descriptively. Rather, the argument is that these words must be free to be applied to all possible actions, persons, characters, institutions, etc., even if some of those things do not possess the properties commonly associated with a good thing of that kind. If moral words could not freely be applied in this way, we would be unable to use these words to commend anything, for we would misuse the words whenever we violated the supposed descriptive meaning rules. In brief, to have the conventional force of commendation, etc., “good”

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55. See J.O. Urmson, supra note 42, at 19-23, for the history of some of the parts of this argument. For a somewhat related argument—that one can commend something with “good” only if “good” does not mean certain characteristics—see R.M. Hare, supra note 40, at 83-91. Hare’s argument was essentially that one could not commend as “good” some action by virtue of its possessing some characteristic C, if “good” simply meant “possessed of characteristic C.” This is because to say, “that action was good because it was C” would be to say, “that action was C because it was C,” a tautology that has lost the conventional commendatory force of the original. Moore first suggested this argument. See G.E. Moore, supra note 45, at 12. This argument by Hare seems weaker than that explored in the text, and so we shall not consider it further. In Sumner, Hare’s Arguments Against Ethical Naturalism, 64 J. PHILOS. 779 (1967), Sumner nicely unpacks Hare’s argument and persuasively demolishes it.

Another significant argument by positive assertion for emotivism is that emotions are involved in making moral judgments, and that therefore moral judgments cannot be matters of cognition (see McGill, supra note 33, at 7). This is best understood as a direct argument for skepticism, having emotivism as an incidental consequence. Accordingly, this argument is dealt with in the discussion of intuitions. See infra text at notes 165-70.
could not have any descriptive meaning.

If these arguments justify emotivism/prescriptivism, certain skeptical conclusions follow: there is no moral reality; there are no moral truths; and there is no such thing as moral knowledge. The merits of these arguments are discussed in the second part of this article.  

C. The Argument from Ontology: That There Are No Such Things As Moral Entities or Qualities

The ontological question in ethics, stated simply, is: do values exist? The skeptic's answer is a flat "no." There are, for the skeptic, no such things as moral entities, qualities, or relations. These skeptics are usually good, tough-minded empiricists. They readily admit tables and chair into their ontology. Somewhat begrudgingly, abstract entities may be admitted: states, properties, traits, relations, classes, theoretical entities in science. For some, even mental entities may be admitted (provided some identity to physical things or events is readily at hand to cash out the commitment to hard, physical coin). But moral things are a different matter completely. The goodness of a person, or the obligatory nature of an action, are not qualities that inhere in the objects or events evaluated. There are only personal judgments about that object or event, judgments that depend entirely upon one's personal preferences. This is one of the meanings of the idea that value judgments are subjective.

J.L. Mackie has divided this argument—what he calls "the argument from queerness"—into three components. First, there is simply the empiricist's reluctance to admit "queer entities or qualities," such as rights or goodness. If one's idea of reality is of an empiricist cast, it is indeed difficult to picture what a right is, or what kind of quality justice or goodness might be:

Plato's Forms give a dramatic picture of what objective values would have to be. The Form of the good is such that knowledge of it provides the knower with both a direction and an overriding motive; 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. Similarly, if there were objective principles of right and wrong, any wrong (possible) causes of action would have not-to-be doneness somehow built into it.  

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56. The arguments from logic, from meaning, from ontology, and from vagueness are all discussed in Part II of this article.

Empiricists thus reject a moral reality on the general principle that one does not invent “queer” entities or qualities if one does not need to. One can make do with subjective mental facts, and the principle of parsimony just stated eliminates objective, moral facts.

Second, Mackie asks, if there were such odd entities or qualities, what would be their relation to the natural objects and properties of the sensible world?

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? It cannot be an entailment, a logical or semantic necessity. Yet it is not merely that the two features occur together. 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?

Mackie’s concern is that positing moral entities or qualities leads to a multiplicity of “queer” things, because in order to make sense of these entities, one must further posit “queer” relations between natural facts and moral facts. Mackie’s concern is a perfectly general one, about what (else) must be said the moment one admits radical cleavages in one’s ontology. If one takes Descartes’ view that minds exist in a realm distinct from that in which brains exist, for example, one immediately faces the task of positing a relation between minds and brains that is neither logical nor causal. The only alternative is some kind of noninteractionist dualism, which is as radically counterintuitive for moral facts and natural facts as it is for mental facts and physical facts. Mackie’s general moral is: avoid positing those separate realms of existence that require such odd relations.

Mackie’s third point is not metaphysical but epistemological: to posit a nonsensible realm requires some nonsensory way of knowing it. Because statements about moral entities or qualities or relations are not verifiable by the senses, some distinctive source of moral knowledge must be posited, such as intuition. Yet to Mackie, “intuition” is no answer at all to the question of how one knows something:

When we ask the awkward question, how we can be aware of this authoritative prescriptivity, or the truth of these distinctively ethical premises or the cogency of this distinctively ethical pattern of reasoning, none of our ordinary accounts of sensory perception or introspection or the framing and confirming of explanatory hypotheses or infer-

58. Id. at 40.
59. Id. For an example of a nonnaturalist who posits just the kind of unique relations to which Mackie rightly objects, see Lucas, Ethical Intuitionism II, 46 Phil. 1 (1971).
ences or logical construction or conceptual analysis, or any combination of these, will provide a satisfactory answer; "a special sort of intuition" is a lame answer, but it is the one to which the clear-headed objectivist is compelled to resort.  

Disliking such large ripples in one's theory of knowledge no less than in one's metaphysics, Mackie rejects moral reality as requiring a theory of knowledge that is incompatible with the way in which we generally know something.

For each of these three reasons—"queer" entities and qualities, "queer" relations, and "queer" epistemology—Mackie rejects there being something called moral reality. These arguments, of course, have no force against a moral reality hypothesized to be identical to the sensible world (naturalism). As against a separate, nonsensible reality of moral fact (nonnaturalism), however, they present systematically what many believe: that this reality is the kind of "brooding omnipresence in the sky" that Holmes parodied, a kind of Aurora Borealis without the lights. A response to Mackie's argument is offered in the second part of this article.

D. The Argument from Anthropology: That There Is No Agreement About Matters of Morals

The anthropological skeptic asserts that judgments of value vary widely between cultures and that it is a naive provincialism to attempt to judge another culture's values by one's own. These skeptics believe that there can be no resolution where value systems conflict, for the moral paradigms that underlie the differing systems of thought are incommensurable. The argument from anthropology may be extended to individuals within a given culture. We agree on the colors of tables and curtains, the wetness of the street, etc.; we disagree about the rightness of abortion, the justice of segregation and the rightness of punishment. Again, the fact of disagreement is thought to show that values are personal and subjective, and incapable of rational demonstration.


61. Southern Pac. Ry. v. Jensen, 244 U.S. 205, 222 (1916). The specific "brooding omnipresence" about which Holmes was speaking was the common law, not moral reality. Still, Holmes was arguing against a natural law view of the common law on the grounds that it would become, like natural law itself, a "brooding omnipresence." Holmes's ultimate conclusion about the common law was the legal positivist one, that the common law must be "the articulate voice of some sovereign . . . that can be identified." Id.

62. I call this the argument from anthropology because it is anthropologists who most publicly succumb to this version of ethical skepticism. See, e.g., Herskovitz, Cultural Relativism and Cultural Values, in ETHICAL RELATIVISM (J. Ladd ed. 1973).
There are two versions of this relativist position that need to be put aside at the start. Sometimes relativism is no more than a plea for tolerance or pluralism among cultures: one ought not to eliminate diverse cultures, particularly if this involves forcing one's own values on others. So construed, relativism is perfectly consistent with realism about morals. One might well be tolerant and pluralistic, knowing full well that others' values are wrong. Indeed, "relativism" of this sort presupposes realism, for tolerance and pluralism are paraded as objective virtues, applicable to all cultures. Alternatively, sometimes relativism is merely a plea for making one's own system of moral beliefs less parochial by recognizing that different conditions in different societies may require unthought-of exceptions to or alterations of one's moral principles. One might, for example, have thought that polygamy was everywhere and always immoral. Experience in radically different conditions may convince one that, in those conditions, it is not. Yet this is only to make a cross-cultural judgment using one's own principles. Even if one is making an objective moral judgment less parochially and with more complex principles, one is still making an objective moral judgment. Nothing in this version of relativism gives any support to ethical skepticism.

The truly skeptical versions of anthropological relativism all conclude that there is no such thing as "really right" or "really good"; one can only meaningfully say, "right (or good) relative to this culture," recognizing that the very same act, institution, person, or whatever, could be wrong relative to another culture. This is skepticism. The question is how a relativist can use the fact of disagreement to get to it. There are four possibilities here.

The first and crudest version of the argument takes the fact of widespread disagreement as itself showing that there is no moral reality, moral truth, or moral knowledge. In this version, relativism is subject to the crushing rejoinder that the mere fact of disagreement rejoiner that the mere fact of disagree-

63. See id. at 9, where Ladd denies that relativism has any skeptical implications: "Both the principle of universal nonvalidity and the principle of equal validity are inherently absurd, if not meaningless. It is also obvious that they fail to capture the true meaning of 'relativism.'" Rather inconsistently, Ladd goes on to interpret relativism in a skeptical way himself:

What [relativists] are trying to say is that moral principles (and moral codes) have a limited validity—that is, their validity has a limited range in that they are binding only on those within a particular group. For that reason, they maintain, no one has the right to pass judgment on another society's ethics or to impose his own ethics on another society.

Id.

64. For further examples and analysis of this nonskeptical version of relativism, see Bambrough, supra note 25, at 42-43.
ment among the judgments of people hardly shows there is no fact of the matter to be agreed upon. People within a culture, and people in different cultures, may disagree about all sorts of things, such as whether the winds are influenced by the earth's rotation, or whether the moon is made of rock. The simple fact of disagreement for certain sorts of beliefs cannot itself show that there is no fact of the matter being argued about. To think otherwise is to confuse intersubjective agreement with objectivity.55

A less crude version of relativism treats the fact of disagreement as the basis for an inference that there are no moral truths to be discovered.66 One begins by focusing not just on the fact of popular disagreement on matters of morals but also on the historical fact that people have always disagreed on matters of morals. With disagreements about matters of fact, by contrast, there has been a convergence of belief: we have more consensus now than we had centuries ago on matters of scientific fact.67 One explanation for the convergence of factual beliefs is that a factual reality is progressively revealed and that the reality forces more and more agreement. Where there is no convergence, the further inference is drawn that there is less likely to be some underlying reality. Continued disagreement may plausibly be explained by there being no fact of the matter to settle such disputes. Similarly, the fact of disagreement on matters of morals may plausibly be thought to suggest the lack of any moral reality.

This alleged asymmetry in convergence is far from being the basis of a conclusive argument because there are other ways to account for the convergence of scientific beliefs than the existence of an underlying reality (e.g., the acceptance of a uniform, Western

65. For an explication of this distinction in the context of the present concerns, see Wellman, Ethical Disagreement and Objective Truth, 12 AM. PHIL. Q. 211 (1975). Despite Wellman's conclusion "that no kind of ethical disagreement undermines the claim to an objective truth in ethics", id. at 220, Wellman admits that: "There must be some sort of logical connection between truth and agreement because to claim that a statement is true is to claim that anyone who disagrees with that statement is mistaken; it is precisely at this point that the truth is objective." Id. at 211. What Wellman has in mind is that only disagreement "among fully informed and completely rational men" would undermine any claim to objective truth. Since no one is ever fully informed or perfectly rational, no actual disagreement we encounter in ethics threatens the objectivity of moral judgments.

Wellman's "ideal agreement" criterion of objectivity is one way of framing the realist view of knowledge defended in the second part of this article: perfectly rational persons with all the data at their disposal would agree in their coherence of it into moral or scientific theories, because in so cohering it they would arrive at a description of how the world really is.

66. This argument is suggested in J.L. Mackie, supra note 57.

67. The assertions that there has always been discord in matters of morals, and increasing consensus in matters of scientific fact, are of course debatable.
scientific methodology) and because there are other ways to account for the lack of convergence of moral beliefs than the lack of any moral reality (e.g., people are too selfish to see even obvious moral truths). In addition, it is debatable how much more convergence there has been about matters of fact as opposed to matters of morals. For these reasons, this version of relativism is simply inconclusive.

A third variety of anthropological relativism focuses on the common intuition that morality is in some pejorative way a mere matter of convention. As Ladd puts it, “morality must be viewed as an institution rather than as a body of propositions.” Because of its nature as a social institution constituted by certain conventions, “ethics . . . cannot be conceived, much less be understood and justified, apart from norms, rules, practices, attitudes, goals, ideals,

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68. See Swinburne, supra note 50, at 11:
[I]n the case of moral argument, there is a good explanation of why agreement is even less likely to be found here than in other fields. This is that the temptations to irrationality and lack of perserverance are greater here than in other fields. This is because of the close connection of morality with behaviour.

69. Alan Gewirth, in his Positive "Ethics" and Normative "Science," 69 PHIL. REV. 311 (1960), argues that we exclude many competing factual beliefs of others because they are not "scientific" in a normative sense, yet we include all competing moral beliefs of others because they are "moral" in a positive (not normative) sense of the word. Only by this discriminatory treatment of moral beliefs can one say that there is much more agreement on scientific matters than on moral ones.

70. Bernard Williams has called this kind of relativism "the anthropologists heresy," characterized by Williams as "possibly the most absurd view to have been advanced even in moral philosophy." B. Williams, supra note 2, at 230. Williams's later views are set forth in Williams, The Truth in Relativism, 75 PROC. ARIST. SOC'Y. 215 (1975). The version of relativism Williams defends in the later piece is immune to the objections set forth in the text and in infra note 75, because Williams's version does not depend on the incommensurability of different systems of belief. Rather, Williams believes that "we must have a form of thought not relativized to our own existing [belief system] for thinking about other [belief systems] . . . ." Id. at 226. Still, Williams is a relativist to the extent that he believes "that there can be many [belief systems] which have insufficient relation to our concerns for our judgments to have any grip on them, while admitting that other persons' judgments could get a grip on them, namely, those for whom they were a real option." Id. at 226. The problem for Williams's more sophisticated relativism lies in its unsupported assumption that we are unable (rather than unwilling) to enter the moral debates of a radically different culture. Williams's assumption is not the "anthropologist's heresy"—that we cannot understand or compare the two systems of belief. See id. at 217-20. Rather, it is that there are sets of beliefs so foreign to our way of life that, although we can compare them to our own, they nonetheless are not "real options" for us in the sense that we cannot live by them. This supposed inability, however, is in reality only an unwillingness to enter moral debates that are dead to us; some debates are dead to us because they begin with so many obviously false premises.

71. J. Ladd, supra note 62, at 5.
and a way of life.” From this, the conclusion is drawn that where disagreement is not just over particular moral issues, but extends to those conventions that constitute a “way of life”, there can be no cross-cultural judgments because there can be no cross-cultural understanding. This conclusion has two implicit premises: first, that no convention-dependent institution like morality can be understood when wrenched from its conventional setting, and second, that moral judgments can be made only when preceded by an understanding of that which is being judged.

It should be evident that this kind of relativism is aimed not only at morals. Many aspects of society are conventional in the sense that they are bound up with the goals and norms of the participants in that society. Games, religious rituals, legal practices, and the like are obvious examples. Even the practice of natural science by any given culture must be so construed. This form of ethical relativism is thus but an instance of a much more general cultural relativism that would deny the validity of cross-cultural judgments of any sort, even those about scientific methodology. Consequently, from this version of relativism there can be no special argument showing the relativity of moral judgments. Cultural relativism might lead one to a general epistemological despair about the possibility of objective knowledge about anything, but it could not consistently generate skepticism about the objectivity of moral judgments alone. While this general cultural relativism is subject to crushing objections, the version of relativism that it generates in
any event fails to capture the popular intuition that there is something essentially convention-dependent about morality, something that renders disagreement about matters of morals fatal to their objectivity while conceding the objectivity of factual judgments in the face of similar disagreements.

This popular intuition is better captured by a fourth and final version of relativism. The central thesis of this version is that morality is convention-dependent in a manner distinct from the manner in which other social artifacts are convention-dependent. This view has been defended recently by Gilbert Harman, whose “soberly logical thesis” is that “moral judgments . . . make sense only in relation to and with reference to . . . agreement . . . ” and therefore that it makes “no sense to ask whether an action is wrong, period, apart from any relation to an agreement.” There are three steps to Harman’s argument. First, to make a moral judgment that some actor should not have done what she did, Harman argues, to presuppose that she had a reason not to perform the act in question and that the person making the judgment endorses that reason.


77. Harman, Moral Relativism Defended, supra note 76, at 4. In his article, Harman limits his relativism to what he calls “inner” moral judgments, judgments that some particular person ought not to have done some action (alternatively, that it was wrong for that person to do it). Excluded from consideration are “non-inner” moral judgments about institutions and states of affairs. In his book, Harman appears to have broadened his relativism to include the latter kinds of judgments as well. Thus, Harman appears to endorse the popular relativist view that, “if there were no social constraints at all, there would be nothing wrong with slavery. . . . In a ‘state of nature’ nothing would be right or wrong, because no rules would be socially enforced.” G. Harman, The Nature of Morality, supra note 76, at 95. Although Harman later restricts his examples to “inner” moral judgments, id. at 106-09, he concludes with the sweeping generalities of a popular relativism: “Moralties are social. They are defined by the conventions of groups.” Id. at 113. Because Harman’s sometimes observed distinction between “inner” and “non-inner” moral judgments is rather counter-intuitive as a significant line for these purposes, the text treats Harman as an expositor of the full-blown relativist’s view.
Second, Harman denies that there are any reasons other than those grounded ultimately in the agent’s own moral beliefs or intentions. There is, in other words, no objective moral order that could give the agent a reason not to do any particular action. Third, there is an agreement, at least a tacit one, between the person judging and the person being judged, if they share some of the same moral beliefs or intentions. These premises lead Harman to his “soberly logical thesis” that one can only morally judge a person in a manner relative to agreements to which she is a party. In terms of Harman’s own examples, this means: (1) the killer-for-hire of Murder, Inc., who does not share our conventions regarding killing because he was not raised that way, cannot be judged to be wrong by us;\(^7\) (2) Hitler, because he is “beyond the pale” of agreement, cannot be judged as wrong for his mass murders, whereas Stalin (on the supposition that Stalin was using bad means to good ends) can be judged as having done wrong in his purges;\(^7\) and (3) “it would be inappropriate . . . to say that it was morally wrong of the slave owners to own slaves [in any society with hereditary slavery whose agreement has no aspects that speak against slavery]. The relevant aspects of our moral understanding, which we would invoke in moral judgments about them, are not aspects of the moral understanding that exists in [such a] society.”\(^8\)

Although Harman’s argument structure may well be valid, the premises that lead to such counterintuitive conclusions are surely to be questioned. In particular, both the first and second of Harman’s premises are suspect. The second premise simply asserts the conclusion of the skeptical argument from logic discussed earlier: that there are no objectively valid reasons ultimately justifying any moral position. Assuming this, it is of course easy to conclude that the only reasons that can be given to Hitler that could motivate him to refrain from murder are reasons appealing to premises with which he himself agrees. Moreover, Harman’s first premise is false. It is true that in making moral judgments we do presuppose that there are sound reasons that back up our judgments.\(^9\) What we do not presuppose, however, is that such reasons need be motivating reasons to the agent.\(^10\) The hit-man brought up in a society of hit-men may indeed have no motive not to kill us. Still, he ought not to

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78. Harman, Moral Relativism Defended, supra note 76, at 6-7.
79. Id. at 7-8.
80. Id. at 18.
81. See R.M. Hare, supra note 27.
82. On the (necessary or contingent) motivating power of moral qualities, see infra text accompanying notes 143-50.
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kill us—he would be wrong to kill us—and there are reasons justifying these judgments, unappealing as they may be to one of his background.

Any persuasive power that Harman’s argument may possess is due to two extraneous factors: first, it may be inappropriate to utter the reasons we know will be unpersuasive to the hit-man. Why bother, since we know that any such speech will have no effect? Still, the oddness if we speak has nothing to do with whether we are entitled to pass judgment. The latter we are surely entitled to do—silently perhaps, to avoid being thought “odd,” but to do nonetheless. Secondly, there is a moral excuse for people who are brought up in circumstances that deprived them of a fair chance to learn what is just or good. A slaveowner in a society of slaveowners is surely to be excused to some extent because his opportunities for learning the moral truth about slavery were limited. Our judgment about the slaveowner may be softened, not because he cannot be judged, but because these are criteria of excuse that any correct moral judgment about him must take into account.

Before all four versions of the argument from anthropology are put aside, one might question whether the fact of disagreement in matters of morals—the factual premise common to all of them—is as unproblematic as the relativist assumes. Two characteristics of a system of moral beliefs complicate the idea of “disagreement in moral beliefs.” The first of these is the fact that a person’s moral beliefs are formulated at widely varying levels of generality.\textsuperscript{83} Disagreement between two persons at one level of generality—for example at the level of particular judgments—need not betoken disagreement at other levels. Whether two people actually disagree about the morality of abortion, for example, is not settled by their contradictory statements on that issue. They may agree about a range of more general propositions, but one of them may be better at seeing the implications of those more general beliefs for the abortion issue. In this case, one may well say that the two people do not really disagree about abortion even though they think they do.

Second, none of us is perfectly rational in cohering our moral beliefs into a consistent system. How much disagreement exists be-

\textsuperscript{83} See Wellman, supra note 65. Wellman distinguishes disagreement about particular judgments, disagreements on more general principles (“premises”), disagreements on modes of moral reasoning, and disagreement about underlying factual matters. People who disagree at one level need not disagree at others. Indeed, people could disagree about many particular moral matters or about most of their important moral principles, yet “not really disagree” because of an underlying agreement on certain factual matters and their relevance to the particular moral issue at hand. Id. at 220.
tween two persons, each of whom have imperfectly cohered systems of moral beliefs, depends on how each system is rendered consistent. If they discard the beliefs on which they disagree, the systems are in agreement; if they discard the beliefs on which they agree, the systems are not in agreement. The fact of disagreement is not as simple as it seems on its face, because the extent of it can be manipulated in this way.

E. The Argument From History: That Our Values Have Changed and Will Continue to Change

History teaches us that systems of values evolve, and there is no reason to think that the process is at an end. The skeptical conclusion is that our present system of values cannot be regarded as "right" or "objective" because we know it will change in the future. An analogous argument applies to the individual's development. In our own personal growth, our values have changed and will continue to change. This is true not only with respect to the content of our ethical judgments but, if we believe developmental psychologists such as Piaget and Kohlberg, also with respect to the basic ways in which we regard our values. In effect, we have disagreement with both our former self and with our future self. Accordingly, to the skeptic, we cannot regard our present scheme as anything but a temporary preference.

Like the argument from anthropology, the argument from history is incomplete. That one disagrees with one's past moral views, and will in the future no doubt disagree with some of one's present moral views, is irrelevant to the truth of one's present beliefs. One's factual beliefs also change over time as one becomes progressively more educated. That this learning is possible in no way proves that there is no fact of the matter behind one's beliefs, or that they are not true.

The same holds true for disagreement in beliefs extending over the history of a people. That the Greeks thought slavery was acceptable, and that we do not, does not prove that there is no fact of the matter about that issue. One may as well argue that there is no fact of the matter about the nature of whales, since we disagree with the Greeks on this issue, too. We know more than they knew about both of these things, and others in the future may know more than we.

Recognizing that our predecessors have been wrong, and that we may be wrong, should incline one towards humility. It should not incline one in the least towards skepticism. Lack of certainty that one knows the answer is quite compatible with realism, and quite distinct from certainty that there is no answer.

One can supplement the simple fact of disagreement over time with the same arguments that were used to supplement the fact of disagreement between different peoples at one particular time. One can, that is, urge that factual disagreements have lessened throughout history while moral beliefs have not, that differing systems of beliefs are incommensurable, or that no judgments can be passed on people in remote times because no reason could be given to them to behave differently. These arguments are identical to those just considered in connection with the argument from anthropology, and fail for the same reasons.

F. The Argument from Genesis: That Moral Beliefs Are Caused

The popular version of the argument from genesis asserts that our moral beliefs depend causally upon our education, particularly parental education. It is thus distinct from the last argument, which bases its skepticism upon the likelihood of continued change in our moral beliefs. The argument from genesis, by contrast, is based on the causal dependency of what we believe upon arbitrary factors. The argument notes that if one were to change our education, one would change what we believe. From this fact, the skeptic concludes that our values are arbitrary in the sense that they depend upon contingencies that could easily have been otherwise.

86. Cf. Matthews, Objectivity, Values, and History, 10 AM. PHIL. Q. 213, 220 (1973). Matthews argues that there can be moral progress in history because of ever-wider community. Matthews, however, is reluctant to characterize moral progress in terms of truth because of his unfortunate tie of objectivity to actual agreement. He thus characterizes historical progress as, "not from false to true, but from a narrower to a wider appreciation of moral truth." Id. This is surely to be unnecessarily delicate. Preferable is Philip Roth's: "'Well, what may seem like the truth to you,' said the seventeen year old busdriver and part-time philosopher, 'may not, of course, seem like the truth to the other fella, you know.' 'Then the other fellow is wrong, idiot.'" PHILIP ROTH, THE GREAT AMERICAN NOVEL 19 (1973).

87. See Matthews, supra note 86, at 220:
[D]ogmatism rests on a complete misunderstanding of what is entailed by the word 'objective'. No one thinks that, because scientific questions are matters of objective fact, we know all there is to know about the facts of nature. To say that there are scientific facts is to say that they are knowable, not that they are known.
88. Justice Holmes, for one, subscribed to this popular form of skepticism: What we most love and revere generally is determined by early associations. I love granite rocks and barberry bushes, no doubt because with them were my earliest joys that reach back through the past eternity of my life. But while one's experience thus
This popular argument from genesis is no argument at all to the conclusion that there are no objective moral truths. All of our beliefs are caused. Our beliefs are mental states of particular entities at particular times. Unlike the timeless propositions that we believe, our beliefs are states that occur in history. Like all states, they both cause other states or events and are caused by them. This is true without regard to the kinds of beliefs under consideration—moral, factual, aesthetic, or nonsensical. That all beliefs have explanations is unproblematically true; but this is irrelevant to the question of whether the propositions believed are true or false, or are capable of being true or false. We ascribe truth or falsity to our scientific beliefs even though we know that believing them depends upon our education. Hence, the simple fact that our moral beliefs are contingent upon our education, early associations, or other factors, is no argument at all that these beliefs cannot be true. To think otherwise is to commit the “genetic fallacy”.

A second, more sophisticated argument from genesis builds on the doubt we do on occasion feel about the truth of some proposition, a doubt we feel because of certain kinds of explanations as to why another believes that proposition. Suppose, for example, a respected scientist shares with us his belief about some question of fact: e.g., that multiple sclerosis is caused by a virus (let us call the propositional object of this belief “p”). Suppose further there are different explanations proposed for the belief he reports: (1) his entire medical education, including his recent investigation of the problem, has led him to conclude that some virus must be the cause of multiple sclerosis; (2) conceiving of thirty-six possible explanations of multiple sclerosis, he assigned each a number from one to thirty-six and decided that the next roll of a roulette wheel would
give the correct answer; and (3) he awoke one morning certain that a virus was the cause. Notice that none of these explanations of how the scientist came to believe \( p \) can show that \( p \) is false. To assert otherwise would be to commit the genetic fallacy, to confuse an explanation of why one holds a belief with a justification that the belief is true. Nonetheless, our willingness to consider \( p \) seriously depends upon which of these explanations is convincing. While it is possible that the roulette wheel procedure generated a true belief in the scientist, the likelihood of it is so small that we will refuse to entertain \( p \) as a serious possibility, unless we have other grounds for believing it. Only if we have some reason to think that the explanation for the scientist's believing \( p \) includes his own rational processes, conscious or unconscious, do we take the truth of \( p \) as a serious possibility.

A moral skeptic might then use these facts about the pragmatic effect that certain explanations of belief have on our willingness to consider them further, in the following way. Moral beliefs, he would say, are characteristically held for reasons that should make one suspicious. The explanation for moral beliefs as a class of beliefs is such that the supposedly rational, dispassionate, and unbiased inquiry into what is right, fair, just, or good is in reality a fraud. What really explains one's moral beliefs is: narrow selfishness, class interest, second Oedipal resolution, or one's own impotence and weakness and the resentment they generate. Each of these explanations, he might continue, could not show that moral beliefs are incapable of being true or false. Rather, these explanations should lead us to conclude that there is no warrant for taking seriously the claim of moral beliefs being true, for they are characteristically infected by the way in which they are adopted.

This second skeptical argument from genesis, ingenious as it seems, fares no better than the first. Indeed, this argument presupposes moral realism. It presupposes that there are moral truths and an ideal method of discovering them, consisting, perhaps, of something like the judicial virtues, but that the real methods by which people characteristically arrive at their moral beliefs so diverge from the ideal that their moral beliefs cannot be taken seriously. The argument can only be an argument against particular moral

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90. Nietzsche saw guilt and resentment as the twin founts from which sprang the self-denying, pitying, and rancorous morality of his society. Guilt and resentment were themselves explained in terms of the instinct of all persons to express their power in the world: guilt, by a seeking of power over self, and resentment, by not having any real power with which to respond to the wrongdoings of others. See generally Friedrich Nietzsche, On the Geneology of Morals (W. Kaufman trans. 1969).
views arrived at in particular ways, but not against all moral views. This has to be the limited force of this second skeptical argument, relying as it does on explanations of beliefs as indirect evidence of the falsity of those beliefs. Beliefs that can be false can also be true.  

A careful exegesis of those who adopt this second view would show them to be moral realists, even though they might strongly reject the bourgeois moralities of their societies. For example, Nietzsche’s explanation of that subset of moral beliefs having to do with sin and evil, in terms of the sublimated resentment these concepts harbor, was an attack on those moral beliefs. That it was not an attack on the possibility of there being any true moral beliefs is shown by Nietzsche’s own perfectionist ethics. Marx similarly based his views on an objective moral vision of justice, while attacking bourgeois morality as an expression of class domination. Even Thrasymachus could attack his contemporaries’ belief in justice as mere expressions of selfishness, only by maintaining an objectively true, egoistic ethic of his own. Similarly, while Freud was so disenchanted with the repressive morality with which he was familiar that he thought he could “demonstrate with ease that what the world calls its code of morals demands more sacrifices than it is worth, and that its behavior is neither dictated by honesty nor instituted with wisdom,” he could in the same breath exalt self-knowledge and honesty as real moral virtues: “We hold that whoever has successfully passed through an education for truthfulness toward himself will thereby be protected permanently against the danger of immorality, even if his standard of morality should somehow differ from social conventions.” It is no accident that each of these thinkers is ultimately a realist, for insofar as one relies on the second argument from genesis, one presupposes moral realism. It is possible to construe some of these thinkers—particularly Nietzsche—in such a way that no such realism is presupposed. One can construe Nietzsche as an ironist taking delight in showing inconsistencies in other people’s moral beliefs, particularly by showing how conventional virtues come from very “unnice” origins. This criticism need

91. Indeed, if there are any false moral judgments, there must also be some true ones; namely, the logical contradictories of the false ones. If it is false that slavery is wrong, it must be true that slavery is not wrong. See J. Harrison, supra note 89, at 24.

92. The *ubermensch*, the ideal of what man could and should be, is hardly compatible with skepticism. Indeed, it has often been held to be very close to another moral realist’s ideal, Aristotle’s “great-souled man,” in *The Nicomachean Ethics* (Thomson trans. 1953).


94. Id. at 441-42.
not commit one to realism. By the same token, however, it provides no argument leading to ethical skepticism either. Rather, such irony provides a limited argument against whatever particular moral beliefs turn out to be inconsistent with more deeply held moral beliefs.95

G. The Argument from Vagueness and Conflict: That Moral Standards Do Not Decide Concrete Dilemmas

The version of skepticism here considered grants that there might be objective moral truths at the level of generalizations such as Kant's third formulation of a categorical imperative "never treat another as a means but only as an end." What a skeptic of this variety denies is that these moral truths help decide actual, concrete moral dilemmas. Sartre's famous example was of one of his students who came to him with the following dilemma: should he stay with his mother, who needed him, or go off to England to join the Free French in their fight against the Nazis?96 This dilemma, Sartre concludes, could not be answered by any set of rules, or general standards, however valid. Instead, because these standards are "vague, and . . . always too broad for the concrete and specific case that we are considering, the only thing left for us is to trust our instincts."97 This is a very popular view, and particularly so among lawyers who are already quite familiar with the vagueness of legal rules. John Hart Ely, among contemporary legal scholars, has found it totally persuasive in the course of his denial of moral truth as the source of values in constitutional adjudication:

If there is such a thing as natural law, and if it can be discovered, it would be folly . . . to ignore it as a source of constitutional values. It's not nice to fool Mother Nature, and even Congress and the President shouldn't be allowed to do so. We know it won't work, though. The idea is a discredited one in our own society, and for good reason. "[A]ll theories of natural law have a singular vagueness which is both an advantage and disadvantage in the application of the theories." The advantage, one gathers, is that you can invoke natural law to support anything you want. The disadvantage is that everybody understands that.98

95. The most sophisticated kind of skepticism generated by the fact that moral beliefs are caused is one that urges: (1) that there are causal explanations for why we have the moral feelings that we do; (2) that these explanations compete with a realist's explanation of moral feelings (which is that we feel that slavery is wrong because it is wrong); and (3) that there is accordingly no "inference to the best explanation" of the realist sort. This argument is best dealt with later. See infra text accompanying notes 151-60.

96. Sartre, Existentialism is a Humanism, in EXISTENTIALISM VERSUS MARXISM 79 (G. Novak ed. 1966).

97. Id. at 80.
Ely concludes that it is “evident that the only propositions with a prayer of passing themselves off as ‘natural law’ are those so uselessly vague that no one will notice. . . .”

This vagueness of noncontroversial moral principles is usually only part of the skeptic’s argument here. The other part has to do with the familiar fact of conflict between the demands made by two or more principles, each seemingly applicable to a single situation. Sartre’s student, for example, faced a dilemma not just because Kant’s “always treat another as an end and not as a means” is vague, as Sartre points out. The dilemma arises also because more specific principles, such as those defining duties to one’s parents and those defining one’s obligations to combat evil, seem to demand contradictory actions. Absent some third principle that orders one principle over another, the skeptic concludes, the student is for this reason too left to “trust his instincts.”

This argument from vagueness and conflict might be called the “Legal Realist” version of ethical skepticism for, like the Legal Realist, a skeptic of this variety admits that there are authoritative standards but denies that there can be any authoritative decisions in particular cases. The position is skeptical because it denies the possibility of practical knowledge where it counts for practical affairs, namely, at the level of particular actions. If moral standards are as indeterminate as this version maintains, we are thrust back to groundless and, thus, arbitrary decisions. We may know what to say, in the sense of knowing what general liturgy to recite once we have chosen, but we do not know what to choose. We are thus condemned to our freedom in each real-life situation.

99. Id. at 29. Judges as well as legal scholars are often tempted by this version of skepticism. See, e.g., Jordan v. DeGeorge, 341 U.S. 223 (1949), where the Court reviewed the Immigration Act’s authorization of the deportation of any aliens convicted of a “crime involving moral turpitude” under fifth amendment void-for-vagueness standards. Because the phrase is vague, three members of the Court thought that “[i]rrationality is inherent in the task of translating the religious and ethical connotations of the phrase into legal decisions.” 341 U.S. at 239 (Jackson, J., dissenting). It is because such moral phrases are vague that such judges fear arbitrariness in particular decisions under them:

[We]t treacherous grounds we tread when we undertake to translate ethical concepts into legal ones, case by case. We usually end up by condemning all that we personally disapprove and for no better reason than that we disapprove it. In fact, what better reason is there? Uniformity and equal protection of the law can come only from a statutory definition of fairly stable and confined bounds.

Id. at 242.
H. The Argument From Psychology: That The Psychological Presuppositions of Moral Realism Are False

One might suppose that anything we would recognize as morality must have certain presuppositions about human nature. More specifically, if morality is a matter of action-guiding principles, then one would hope that those to whom they applied could apply them in deciding what to do. The presuppositions about what human beings would have to be like in order for moral principles to be action-guiding are here labeled the “psychological presuppositions of moral realism.”

A skeptic might point to two aspects of human psychology to conclude that we can make no effective use of such moral truths as may exist. In the first place, we are masters of self-deception. We may mouth the platitudes of moral right and believe that this is what we seek, when in reality we seek and achieve something else—infection of pain on others, or selfishness. Such self-deception may characteristically keep us from translating into action the moral truths that we know. In the second place, a skeptic might continue, we suffer from weakness of will. Knowledge of the good is for us not self-commanding. We can know what is good, know what goodness requires in a particular case and, without self-deception, knowingly do the bad. The skepticism generated by these considerations is but a partial skepticism, for, like the vagueness version, it does not deny that there are moral truths. It argues only that in our actions we cannot do what is required, either because we will not allow our-

100. C.J. Warnock, The Object of Morality 152-57 (1971), examines the various presuppositions of this sort that we might think morality to possess.
101. This may lead to the resignation experienced by St. Paul:

We know that the law is spiritual; but I am not: I am unspiritual, the purchased slave of sin. I do not even acknowledge my own actions as mine, for what I do is not what I want to do, but what I detest. But if what I do is against my will, it means that I agree with the law and hold it to be admirable. But as things are, it is no longer I who perform the action, but sin that lodges in me. For I know that nothing good lodges in me—in my unspiritual nature, I mean—for though the will to do good is there, the deed is not. The good which I want to do, I fail to do; but what I do is the wrong which is against my will; and if what I do is against my will, clearly it is no longer I who am the agent, but sin that has its lodging in me. I discover this principle, then: that when I want to do the right, only the wrong is within my reach. In my inmost self I delight in the law of God, but I perceive that there is in my bodily members a different law, fighting against the law that my reason approves and making me a prisoner under the law that is in my members, the law of sin. Miserable creature that I am, who is there to rescue me out of this body doomed to death? God alone, through Jesus Christ our Lord! Thanks be to God! In a word, then, I myself, subject to God’s law as a rational being, am yet, in my unspiritual nature, a slave to the law of sin.

Romans 7:14.
selves to see what is required or because we lack the strength of will to do it. Unlike the vagueness argument, however, this version can admit that something is required in particular cases.

Even as a partial skepticism, this version is hostage to the psychological hypotheses on which it relies. It assumes the unlikely possibility that we are almost always self-deceived or weak of will. Yet we are not so self-deceived that we never act on the reasons for which we think we act, moral or otherwise. Indeed, successful psychoanalytic insight increases one's freedom to act on one's real reasons. Nothing in Freud, for example, requires us to view ourselves as hopelessly cut off from our own moral beliefs. Similarly, although weakness of will may also be a pervasive feature of our psychology, it is surely false to think that our moral views never prevail when we decide what to do. Rather, our experience is of an ability to act on principles that we think are good that is exercised at least on some occasions.

I. The Argument from Tolerance: That Belief in Absolute Values Breeds Intolerance

This final version of skepticism merits only brief attention, because it is inherently self-contradictory. It is the version that points to the bad consequences that follow from belief in moral "absolutes": intolerance of others, totalitarian society, undue guilt at one's own actions, and inflexibility in making decisions. The general thrust of this argument is that there can be no moral truths, because if moral beliefs are taken to be true ("absolute") then these undesirable consequences will follow.

The first thing to do with this argument is to clarify it. "Absolute" is a label for something that has no necessary connection with moral realism. "Absolute" is usually used by skeptics to refer to the exceptionless application of moral standards, not to their cognitive status or validity. One should separate the question of whether moral standards are ever subject to unstated exceptions, from the question of whether moral standards can be true or false. Nothing requires a moral realist to conceive of morality as a kind of code,

102. It might seem that a proposition subject to amendment ("unstated exceptions") cannot be true or false, but only "approximately true" or "approximately false." These slippery locutions are unnecessary. Accepted statements of moral principle should be regarded in the same way we regard accepted statements of scientific theory, even though we realize we may discover more facts that will render the currently accepted statements false. One may, for example, think the proposition "all killings are wrong" is true. One experiences a life-threatening situation, and now thinks that self-defense is permissible. The original proposition was thus false; true is the amended proposition, "all killings, save those in self-defense,
formulated with the completeness and precision of a baseball rule book. That is the kind of legalistic morality of children and need not be accepted by one who asserts that moral knowledge is possible. Such charges as the supposed inflexibility of "absolutes" are thus irrelevant to the real issue between a skeptic and a realist.

To the other bad consequences of realism, there are several responses. First, the issue between a realist and a skeptic is one of truth. That some beliefs about whether there is a moral reality may have unhappy consequences is a matter of prudential calculation, relevant perhaps to such actions as telling others about what one believes, but irrelevant to the truth or falsity of the propositions believed. One could as well adopt the moral realist position because it is comforting if one is willing to treat truth so instrumentally. Second, in any event, relying on such bad consequences to show that belief in moral realism is bad, is of course, to presuppose a realist position while nominally denying it. To say, for example, that one should not be a realist because it makes one intolerant of others, is to make an objective value judgment. Tolerance, in such a case, is paraded as a virtue by one who claims that there are no virtues. 103

The final rejoinder to this skeptic is to deny that the alleged bad consequences in fact follow from a belief in moral realism. There is nothing in moral realism that must deny tolerance a place in the virtues, or that must exalt paternalism as good political theory. A moral realist can be as tolerant, and as respectful of individual freedom, as any skeptic. Indeed, the realist will have one large psychological advantage in maintaining this belief in the face of adversity: he will believe it is true.

II. A REALISTIC REAPPRAISAL

Only some of the skeptic's arguments have sufficient plausibility to have withstood the initial scrutiny just given them. The survivors are the arguments from logic, from meaning (but eliminating subjectivism or conventionalism from further consideration), from ontology, and from vagueness/conflict. These surviving skeptical are wrong." In this way a realist (moral and scientific) can allow the statements of ethics and science to have truth values and to be open to further amendment.

103. A skeptic might respond that in judging tolerance to be good, he makes a substantive moral judgment relative to his own society's norms, but that in his skepticism he makes a meta-ethical judgment external to any system of moral norms. Cf. Harrison, Relativism and Tolerance, 86 Ethics 122 (1976). He would thus urge that his (relative) judgment does not presuppose an objective moral order, contrary to his skepticism. While this gambit may work for the skeptic in some contexts, he surely cannot use it here, for he is holding up tolerance as a virtue in order to justify his metaethical position: skepticism.
arguments are as persuasive as they are only in light of a certain conception of what objective knowledge about anything comes to. This conception may be broadly labeled positivist or empiricist in character. The general strategy of the "realistic reappraisal" that follows will be to attack this empiricist conception of objective knowledge as being much too stringent in its requirements. Indeed, if such a conception were applied to our knowledge of nonmoral facts, we would be skeptical about this knowledge as well. Since we are not and should not be, we should not be skeptics about moral knowledge either.104

A. The Response to the Argument From Logic: That Values Can Be Justified Even If There Are No Self-evidently True First Principles of Morals

The argument from logic, that no ultimate reason can be given for any value, assumes that justification consists in deducing whatever proposition is to be justified from one that is more certain in character. It assumes that Descartes was correct in thinking that knowledge could be secure only if it could be grounded in self-evident first principles.105 Because there are no self-evident first principles of morality, the skeptic concludes that there can be no moral knowledge.

Yet if one applies this Cartesian conception of justification to our knowledge of scientific facts, this purported knowledge fares no
better than does our knowledge of value. "Why" questions have as much potential for infinite regress when pursued about factual beliefs as about moral beliefs. For example, while one may justify the belief that the tides will come in today as they did yesterday by referring to the moon's gravitational force, one must justify the belief that the moon has gravitational force. And if one has an explanation of gravitational force in terms of a yet more general set of laws, one must then justify the belief that those laws are true.

One response to these "why" questions about factual beliefs would be to say that belief in a natural phenomenon is justified not only by belief in yet more general laws but also by repeated observations of that phenomenon itself. Thus, to continue our example, the justification for believing in tidal regularities is not only to be found in Newtonian laws about gravitation but also in repeated observations about what happens to tidal bodies.

The first thing to observe about such a response is how justification has been reconceived. Justification of a belief no longer consists solely in the deduction of that belief from some more general propositions. Rather, justification of any belief—for example, about the tides—comes from particular observation as well. That is, more particular judgments that may be implied by, but do not themselves imply, the laws of tidal behavior are cited to justify belief in those laws. This use of particular judgments to justify more general judgments does not square with the Cartesian model of deductive justification. One might argue that this is a minor amendment to the Cartesian model of justification, because the move from more particular judgments to more general judgments is licensed by inductive logic if not by deductive logic. Yet nothing could be more misleading than to think that there is a kind of logic—inductive logic—whose business it is to license inferences from particular to general rather than vice versa. "Inductive logic" is simply a misleading name for the practices of science in confirming general laws by their particular instances. If one distinguishes logic from science, inductive logic is not logic at all, but rather a set of general statements about scientific practice.

The shift from deduction to induction in the definition of justification is thus a significant one. Among other things, it permits a parallel between justifications of moral and factual beliefs: both are not justified only by being implied by more general beliefs, but also by implying more particular beliefs. The justification of any single

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106. See NELSON GOODMAN, FACT, FICTION AND FORECAST (3d ed. 1977), for an explication of "inductive logic" along these lines.
belief at any level of generality is thus not a matter of deduction from first principles. It is rather a matter of fitting the belief within a system of beliefs, some more general and some more particular than the belief in question. There will be no foundational first principles in such a view and justification will not consist in finding them.

An empiricist should admit the foregoing account of the justification of factual beliefs; few persons today subscribe to any view of science that would rule out induction as a primary mode of justifying scientific laws. Such a concession can easily be made, an empiricist believes, because of a true disanalogy thought to exist between the justification of moral and factual beliefs. Although neither sort of belief is justified by discovering self-evident first principles, particular factual beliefs are true because our senses tell us they are true, whereas particular moral judgments are not veridical in this way. Thus, according to the empiricist, some factual beliefs in the system of those beliefs are “pinned down” in the sense that their truth can be guaranteed without regard to the truth of every other

107. The remainder of this section discusses the empiricist who attempts to break the analogy between science and ethics at the level of particular (moral or factual) judgments. This is the most plausible move for an empiricist. Sometimes, however, empiricists attempt to break the analogy at the level of more general, theoretical statements. See, e.g., Kerner, Passions and the Cognitive Foundations of Ethics, 31 PHIL. & PHENOM. RESEARCH 177, 189-90 (1971):

As far as my passions are concerned, the difference between the particular and the universal, between the abstract and the concrete, is in an important way eradicated. In choosing and urging choices on others, we posit ends of action. Often, in expressing a particular desire or aversion, I am setting a precedent or example. Decisions are often decisions of principle. But moral principles are not hypotheses for which my particular decisions provide cumulative evidence. One decision of principle provides as much, or as little, evidence for a general principle of conduct as a hundred such decisions would. . . .

In the realm of facts, it is the impersonal nature of theory and system which furnishes an important criterion for the objectivity of our knowledge claims. . . . In the realm of value everything seems to depend on and be at the mercy of unaided concrete passions. . . . Coherence in the passions is certainly sought after, but what is to count as coherent here is not a matter of discoverable order but of deep-lying and fundamental personal choices and passions.

Both ends of this alleged disanalogy between theories in science and theories in ethics are suspect. First, philosophers of science are no longer as comortable as Kerner in distinguishing observation statements (describing experienceable entities) from theoretical statements (conceived as merely abstract calculi allowing systematization but describing no perceptible entities). Rather, a realist view of scientific theories is to think that there really are, e.g., electrons that we may be able to perceive. Second, Kerner’s view of moral theories in any case seems oddly one-sided. A theory of justice such as Rawls’s, does seek principles that are not only intuitively plausible but also best order our particular considered judgments; such a theory does not aim at arriving at “fundamental personal choices and passions” except as these are the best theory of one’s mass of more particular judgments.
belief in the system. These “pinned down” beliefs, accordingly, can be used as a starting point from which more general factual beliefs are derived by induction. Every factual belief, then, has a justification more secure than any moral belief. For the empiricist, moral beliefs could be “justified” only in the weak sense that they may imply certain particular moral beliefs and may be implied by other, more general moral beliefs. Yet no moral beliefs can be seen to be true in the way that some factual beliefs can be verified by the senses, with the result that in morals there is no fixed point from which to begin to generalize.

This empiricist rejoinder is at the core of the common belief that factual knowledge can be justified in a way that moral knowledge cannot. Whether any beliefs can be “pinned down” in the way the empiricist believes is the subject of an old epistemological debate. Emerging from that debate are two candidates for the “pinned down” beliefs of empiricism. The first might be called the common sense position, because it corresponds to the common sense empiricism of nonphilosophers. The common sense position urges that the basic factual beliefs that can be known to be true just by looking, are propositions about observations of macroscopic objects and their sensible qualities described in ordinary, “object language.” “This thing is brown,” believed by a person staring at a particular brown table, would be such a belief. The singular term, “this thing,” “object,” and the predicate, “is brown,” attributes to that object a sensible quality. One verifies that the proposition believed is true simply by looking at the table to see whether the singular term has secured its reference, and whether the thing referred to is indeed brown. Nothing in ethics, the argument would conclude, corresponds with our ability to verify some factual beliefs directly, which then can be used to justify all more general factual beliefs.

This common sense empiricism has not fared well in modern philosophy, and for good reason. We simply do not verify some factual beliefs “directly,” that is, by a single perceptual experience. In fact we correct our perceptions all the time in light of our other beliefs. A stick looks bent in the water, but we believe it is straight.

108. Some of the classic statements of the empiricist’s faith in the “pinned down” nature of observational reports are collected in Logical Positivism (A.J. Ayer ed. 1959).
109. For the separation of naive realism from phenomenalism, and a good deal of common sense about both, see A.J. Ayer, The Problem of Knowledge 84-133 (1956).
110. Of the many coherence theorists in contemporary epistemology, perhaps W. V. Quine and Gilbert Harman have been the most influential. See Quine, Two Dogmas of Empiricism, and On What There Is, in From a Logical Point of View (1961). See also Harman, The Inference to the Best Explanation, 74 Phil. Rev. 88 (1965), and G. Harman, Thought (1973).
because of our other, more general beliefs about the properties of sticks and of wood.\textsuperscript{111} The sun looked to the ancients as if it revolved around the earth, rather than vice versa, but we correct this misperception because of other, more general beliefs we have about the solar system.\textsuperscript{112} These examples are not oddities. Much of the work in the psychology of perception of the last forty years has shown the inferential nature of perception.\textsuperscript{113} We correct perception constantly, in light of our antecedently held background beliefs about how the world is. Much of the correction is not conscious, although it can be made conscious by Ames’s rooms or other experiments that show our unconscious inference drawing at work. Such work in psychology only dramatizes what we knew anyway; namely, that no factual beliefs are just inferenceless readoffs of reality. This is as true of reports of observation as of more obviously theoretical statements. While our retinal images may be unmediated reflections of reality, our beliefs about what we see are formed not only from retinal images but also from our more general beliefs.

The epistemological conclusion that follows from the inferential nature of perception is that there are no beliefs that can be “pinned down.” The justification for believing that something is brown does not consist simply in the perception that it looks brown. Rather, the justification for believing that it is brown is that it looks brown \textit{and} there are no special lighting problems, \textit{there are no other kinds of optical illusions reflecting brown light from some other source, and so on.} One infers that it is brown because that is the best explanation for it appearing brown. It is the best explanation, however, only so long as the other beliefs necessary to justify this one are themselves true.

Empiricists have long recognized the lack of certainty one can ascribe to perceptual reports. They accordingly reconstructed their empiricism to assert a second set of beliefs as “given,” namely, beliefs in sense data. One can doubt the correctness of any perception, because one can doubt the other things that have to be believed before one can accept the perception as accurate. Still, the empiricists argue, one could not doubt that one had the perception. One

\textsuperscript{111.} For an extended discussion of this example in the context of analogizing moral reasoning to scientific reasoning, see \textit{Stephen Toulmin, The Place of Reason in Ethics} §§ 8.3-8.6, 9.1-9.2 (1950).

\textsuperscript{112.} It is questionable whether there is a pre-theoretical way that the sun “looks” in relation to the earth. Perhaps the “seeing” that the sun revolves around the earth was only possible if one had Ptolemy in mind to start with. \textit{See infra} note 127.

\textsuperscript{113.} See the helpful summary of the experiments in the psychology of perception in \textit{George Pitcher, A Theory of Perception} 131-95 (1971).
may need to rely on other beliefs to infer that something is brown from its looking brown, but surely, the empiricists urge, one need make no inferences to know that it does look brown to the perceiving subject.14

On this phenomenalistic version of empiricism, the "pinned down" beliefs become phenomenal claims about what one perceives. The beliefs could be taken as true because, harking back to Descartes, the one thing one can be certain of is one's own mind. Although this move has a certain plausibility, it fails to provide the desired foundation for empirical knowledge for several reasons.15 To begin with, few if any mental states are self-validating in the manner necessary to serve as the starting point of factual knowledge. One is certainly not incorrigible about one's own desires, beliefs, or intentions, and probably not incorrigible about one's moods, sensations, or other experiences even if the knowledge that one has of these states is noninferential.16

Second, there is something odd about the philosophical reconstruction of object language as sense-datum language. "I see a red colored plane" is a supposed phenomenal description, but it is couched in the same language that we use to describe real planes that are really red in the real world. What this shows is that the language we use to describe perception is the language that refers to real world objects and that attributes to them real world qualities. We do not in fact think or see in terms of phenomenal images but rather in terms of real objects. Third, if there were a separate language of phenomenology, any attempt to ground empirical knowledge on phenomenal claims framed in this language would founder on our inability to translate from the phenomenal language to the ordinary language of common sense.

This last point applies equally well to both empiricist attempts to provide firm foundations for factual knowledge.17 What an empiricist of either kind needs is a theory of meaning that will allow

114. For an outline, bibliography, and critique of this classic strategy to ground all knowledge in knowledge of mind, see Michael Williams, Groundless Belief (1977).

115. These familiar arguments are most lucidly developed in detail in M. Williams, supra note 114, and G. Harman, Thought, supra note 110.

116. For a detailed separation of the claim that one has privileged (because noninferential) access to one's own mind, from the claim that one is necessarily right about one's beliefs about one's own mind (incoercibility), see Moore, The Nature of Psychoanalytic Explanation, 3 Psychoanalysis & Contemp. Thought 459, 476-87 (1980), reprinted in Mind and Medicine: Explanation and Evaluation in Psychiatry and Medicine (L. Lauden ed. 1983).

117. The dependence of empiricism on meaning theory is classically treated in Quine, supra note 110. See also G. Harman, Thought, supra note 110, and M. Williams, supra note 114.
him to use his “pinned down” beliefs to generate other beliefs that, while justified less directly, are just as certain. Such an empiricist might believe that analytic truths or paradigmatic examples give words the meaning they have. In either case, his position that, for example, some thing is brown is the same: this thing must be brown, either because its looking brown is analytically sufficient to being brown, or because this thing is a paradigmatic example of a brown thing so that if it is not brown, nothing is. These recourses to meaning were once a popular route to certainty.\textsuperscript{118} Analytic truths and paradigm examples join real world perceptions and knowledge of one's own mind in the empiricist gallery of certainty-guaranteeing devices. If one faces a skeptic who doubts the existence of mental states in other persons, one answers that behavioral repertoires and dispositions are analytically sufficient conditions for such states, in which event there can be no “other minds” problem once the language is understood. Analogously, if one faces a skeptic who doubts whether any set of perceptual experiences justifies one's belief that something is brown, one answers that the meaning of “is brown” is such that some set of perceptual experiences is analytically sufficient to anything being brown. Alternatively, one gets over the difficulty by discovering that as a matter of meaning some thing is a paradigmatic example of brownness.

The problem for either kind of empiricist is that neither of these conventional theories of meaning appears to be true. There are no analytically necessary and sufficient conditions for the correct use of a word in natural languages, nor are there paradigmatic examples of the things within the extension of such words.\textsuperscript{119} The empiricist thus does not have the conclusive rejoinder to the skeptic about other minds or to the skeptic about real word objects that he thinks he has. This does not mean that the empiricist should become a skeptic about either of these things. It does mean that the empiricist should reconceive what an adequate answer to skepticism of any variety can be like. Justification of any belief in the face of a skeptical challenge cannot rely on there being any “pinned down” beliefs, nor on there being any truths by-virtue-of-meaning. Justification of factual judgments cannot thus be different in these ways from justification of moral judgments. Any belief, moral or factual, is justified only by showing that it coheres well with everything

\textsuperscript{118} The criterial theory of meaning and the paradigm case argument are discussed extensively in Moore, \textit{The Semantics of Judging}, \textit{supra} note 4, at 173-79 and 202-46 (criterial theory), and at 285-92 (paradigm case argument).

\textsuperscript{119} \textit{Id.}
else one believes. In factual matters as well as moral matters, the best one can do in the way of justification is enter into what Rawls calls "reflective equilibrium," whereby one matches one's own particular judgments with one's more general principles without presupposing that one group must necessarily have to yield where judgments and principles contradict each other.

Despite the foregoing, there may remain the stubborn intuition that particular factual judgments are "given" by observation in a way that particular moral judgments are not. Put another way, it may seem that our perceptual experiences compel factual judgments in a way that perceptual experience, or moral feelings, or some combination of these two, do not "compel" moral judgments. Of the many contemporary moral philosophers who have attempted to articulate this intuition, Stephen Toulmin states it straightforwardly:

[N]o scientific theory can modify the experiences it explains. The sun still looks red at sunset, although we know that it is not really red; physics may explain why a stick looks bent, when it is really straight, but it cannot stop the stick looking bent. . . .

The relation between a 'moral experience' and the corresponding

120. JOHN RAWLS, A THEORY OF JUSTICE (1971). In sections 4, 9, and 87, Rawls lays out his coherence theory of ethics. The frequently discussed problems of Rawls's contractarian argument do not contaminate his general theory of justification in ethics.

Although the coherence theory of ethics is commonly associated with Rawls, other expressions of its basic idea may be found in Schneewind, *Moral Knowledge and Moral Philosophy*, in ROYAL INSTITUTE OF PHILOSOPHY, KNOWLEDGE AND NECESSITY (1970); McGill, supra note 33, at 13-17; MORTON WHITE, TOWARD REUNION IN PHILOSOPHY (1956); Korner, *On the Coherence of Factual Beliefs and Practical Attitudes*, 9 Am. Phil. Q. 1 (1972).

121. This much does not prove that factual judgments and moral judgments are the same and that one can cohere both into a single system of beliefs. Whether that is true depends on how one resolves the naturalistic fallacy, see infra text accompanying notes 173-82. The only point thus far is that moral judgments are justified in the same way, and with the same claim to objectivity, as factual judgments. One can assert this without claiming that they are the very same kind of judgments. On the latter point, compare M. WHITE, supra note 120, wherein White argues that we cohere all our beliefs—moral, scientific, and logical—into one system of beliefs, with Korner, supra note 120, who argues to the contrary.

122. See, e.g., J.L. MACKIE, supra note 57, at 39; R.M. HARE, supra note 27, at 1-3; Scruton, supra note 33, at 72; Kernor, supra note 107, at 191. Even John Rawls, a leading coherence theorist in ethics, shares this view. See J. RAWLS, supra note 120, at 49:

Moral philosophy is Socratic: we may want to change our present considered judgments once their regulative principles are brought to light. And we may want to do this even though these principles are a perfect fit. A knowledge of these principles may suggest further reflections that lead us to revise our judgments. This feature is not peculiar though to moral philosophy. . . . But there is a contrast, say, with physics. To take an extreme case, if we have an accurate account of the motions of the heavenly bodies that we do not find appealing, we cannot alter these motions to conform to a more attractive theory. It is simply good fortune that the principles of celestial mechanics have their intellectual beauty.

Compare id. at 578-79 n.33.
ethical judgment is different. . . [T]he soldier, who discovers that his superior officer is using him to feather his own nest, no longer feels it is his invariable duty to obey him. An ethical argument . . . may . . . change the corresponding experiences (our feelings of satisfaction or obligation). 123

Here, Toulmin argues, is “where the parallel between ethics and science breaks down.”124 Science, one might conclude, has a more secure justificatory base than does morality because of this discrepancy between the “givenness” of perception and the shifting sands of moral experience.

This argument can be criticized either by questioning the presumption that our perceptual experiences are independent of theory, or by questioning the presumption that our moral experiences depend on theory.125 To begin with, that perception is theory-laden is commonly acknowledged. As Gilbert Harman has noted: “There are no pure observations. Observations are always ‘theory laden.’ What you perceive depends to some extent on the theory you hold, consciously or unconsciously.”126 An example is how the sun looks in relation to the earth: the sun does not appear to revolve around the earth any more than the earth appears to revolve around the sun. 127

123. S. TOULMIN, supra note 111, at 127.
124. Id. at 125.
125. Indeed, the very idea of this sort of comparison presupposes the kind of empiricism Strawson once called “careful phenomenalism”. Strawson defines a careful phenomenalist as one “who, for all his emphasis on sense-experience, neither denies that there is a table in the dining-room, nor claims to be able to assert this without using such words as ‘dining-room’ and ‘table.’” Strawson, Ethical Intuitionism, 24 Phil. 23, 33 (1949). A careful phenomenalist thus avoids at least two of the three pitfalls earlier outlined for the less careful phenomenalism of logical positivism. See supra text accompanying notes 114-15. Nonetheless, the careful phenomenalist controversially assumes that the data base of science is a set of judgments about perceptual experience, not particular judgments about real world objects and their real world qualities and relations. If one does not make this controversial assumption, then the supposed discrepancy fails straightaway because particular judgments about moral or factual entities and their qualities play exactly parallel roles in the justification of scientific or moral theories. For a description of a “direct realist” account of perception that avoids even the “most careful” phenomenalism, see G. Pitcher, supra note 113.

126. G. HARMAN, THE NATURE OF MORALITY, supra note 76, at 4. Harman continues: In one sense, what you “see” is a pattern of light on your retina, a shifting array of splotches, although even that is theory, and you could never adequately describe what you see in that sense. In another sense, you see what you do because of the theories you hold. Change those theories and you would see something else . . .

Similarly, if you hold a moral view . . . you will be able to perceive rightness or wrongness, goodness or badness, justice or injustice. There is no difference in this respect between moral propositions and other theoretical propositions. If there is a difference, it must be found elsewhere.

Id. at 5.
One must be a Ptolemaic or Copernican astronomer before it can be “seen” to be one or the other. In light of this, the most that Toulmin’s argument can show is that the discrepancy is only a matter of degree. One could only argue that perceptual experiences are somewhat less dependent upon scientific theory than moral experiences are dependent on moral theory. What one would mean by this is that it is somewhat less likely that one’s perceptual experience will change with a change of theory, than it is that one’s moral experience will change with a change of theory.

Moreover, the supposed discrepancy between perception and moral experience loses any remaining persuasive force when one examines the presumption that our moral experiences depend entirely upon the moral theory one brings to them. One first needs to clarify what the moral experience is that is said by the skeptic to be theory-dependent. For a naturalist that experience is quite literally the same as perceptual experience. The naturalist perceives moral qualities in the same way she perceives natural qualities, because in her view, moral qualities are natural qualities. Thus, the alleged discrepancy can exist only for a moral realist who is a nonnaturalist. For the nonnaturalist, there must be some analogue to perceptual experiences. Toulmin obviously has in mind emotional experiences. If our emotions were our “sense-organs” for moral reality, then Toulmin could make out his case to some degree: the soldier’s feelings of obligation may evaporate in the face of more moral knowledge, while one’s perception of a bent stick tends not to evaporate in the face of more factual knowledge. Yet no self-respecting nonnaturalist will grant that emotions are our “sense-organs” of the good or the right. To begin with, we have many emotions of no moral relevance whatsoever, a concession we would not make about our perceptual experiences. At the least, moral experience would have to be some subclass of emotional experiences. Moreover, a nonnaturalist need not concede even this. Although our emotions often accompany our moral intuitions, they are not the same as

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128. One need not go to Kant’s extreme to say this. (Kant held that only the sense of duty had moral worth, and that mere inclination or emotion to do what was right, did not. See I. Kant, GROUNDWORK OF THE METAPHYSICS OF MORALS 19 (Payton trans. 1967).) A range of feelings beyond the Kantian “reverence for the moral law” are relevant to moral insight. Yet few would urge that any emotion or feeling is a harbinger of moral insight. Compare Lord Devlin, Moral and the Criminal Law, in DEVLIN, THE ENFORCEMENT OF MORALS (1965), with Dworkin, Lord Devlin and the Enforcement of Morals, 75 Yale L.J. 986 (1972).
those intuitions. If we focus on the intuitions, e.g., of Toulmin’s soldier (rather than upon his emotions), his intuitions do not evaporate any more than would his perceptions. The facts that gave rise to the soldier’s initial intuition that he should obey his superior officer are still present after the soldier learns the disquieting facts concerning his superior’s motivations. His intuition of obedience is still present, even though he ultimately decides that he ought not to obey a particular order and even if his feeling of obligation to obey it has evaporated with his arrival at this ultimate decision.

One should conclude that in no sense are factual beliefs any more secure in their justification than are moral beliefs. Justification of any belief, factual or moral, is not the locating of undubitable particular judgments from which all else can be known by induction; no more than it is the locating of indubitable first principles from which all more particular judgments can be known by deduction. Justification of any belief is a matter of its coherence with all the other propositions that we believe to be true. In any meaningful sense of the word, moral judgments can indeed be justified.

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129. This distinction, between emotional experiences and moral intuitions, is familiar to nonnaturalists. See, e.g., Strawson, supra note 125, at 24 (“Emotion may be the gatekeeper to the moral world; but intuition is the gate.”). Strawson himself appears to reject the distinction, urging that “‘intuitional event’ is a phrase which describes nothing at all; or describes misleadingly the kind of emotional experience we both admit. There is no third possibility.” Id. at 25. The third possibility is, in fact, not so mysterious. The moral experience that is named by “the soldier’s intuition that he is obligated to obey his superior”, consists in his automatically believing, or assuming, or having an immediate impulse or inclination to believe, that he is obligated to obey his superior. Intuitions are nothing more mysterious than a belief or dispositions to believe, which are not mysterious states. If they were, perceptual states would be equally mysterious. See G. Pitcher, supra note 113, at 70:

What can the moon’s looking larger to us when it is near the horizon than when it is near the zenith consist in? What is the nature of that perceptual state? It cannot consist in the moon’s subtending a larger angle in our visual field, because it demonstrably doesn’t. The only answer that I can think of is that it consists in our automatically believing, or assuming, or having an immediate impulse or inclination to believe, as we look at the moon near the horizon, that it really is larger than it normally is. . . .

130. It is questionable whether even the feeling of obligation evaporates entirely. It is surely a common experience to feel obligated even when one’s overall, reasoned judgment is that one is not obligated. One may feel guilty and may try to make amends in these circumstances, despite the overall judgment that one did what one should. Indeed, some skeptics urge that it is just this survival of moral feelings and beliefs (even when ultimately judged incompatible with more deeply held moral beliefs) that gives rise to yet another alleged disanalogy between moral beliefs and factual beliefs. See Williams, Consistency and Realism, 40 Proc. Arist. Soc’y 1 (1966). A skeptic surely cannot have it both ways here. See Guttenplan, Moral Realism and Moral Dilemmas, 80 Proc. Arist. Soc’y 61, 77-79 (1980), who urges the parallel between factual and moral beliefs in terms of their “survivability” in situations of conflict.

131. I have deferred until the next section another discrepancy thought to exist between the justification of factual and moral judgments. This is Gilbert Harman’s argument
B. The Response to the Arguments From Meaning and Ontology: That Moral Language is Descriptive in Function and What it Purports to Describe Exists

The skeptical arguments from ontology and from meaning can be discussed simultaneously, because ultimately a moral realist must make out a single conclusion in answer to both: there is a moral reality described by moral use of language. Nonetheless, the discussion below is initially organized around the traditional distinction between naturalism and nonnaturalism, giving the nonnaturalist's response to the skeptical argument from ontology and then the naturalist's response to the skeptical argument from meaning. The discussion concludes by rejecting these labels and urging that this is only one view being defended by both sets of arguments. That view is moral realism.

1. THE ONTOLOGY OF NONNATURALISM

The argument from ontology against nonnaturalism was divided into three stages. First, nonnaturalism supposedly postulates the existence of "queer" entities and "queer" qualities. Second, nonnaturalism must posit a "queer" relation between these nonnatural entities and qualities on the one hand, and natural entities and qualities on the other. Third, since these nonnatural entities and qualities cannot be known by the senses, nonnaturalism must posit a "queer" way of apprehending such things, specifically, by intuition. These three issues about nonnaturalism are treated in turn.

a. "Queer" entities and qualities

The first thing one should ask about the argument alleging that moral entities and qualities are "queer" is "queer" in comparison with what? Skeptics such as Mackie assume a standard of normalcy that presumably is set by real world objects and their sensible quali-
ties and relations.\textsuperscript{133} Let us assume for purposes of argument that this is our standard of non-"queer" or normal things. By such a standard many of the things to whose existence we are committed end up being "queer". By this standard, the abstract entities postulated by mathematics must also look quite "queer" because they, like moral entities, cannot be perceived by the senses. Analogously, the abstract entities postulated by the theoretical terms of science, such as gravitational force and kinetic energy, must also appear "queer" to an empiricist because these entities are not perceivable by the senses either.

Mental entities and qualities would also be classified as "queer" under Mackie's standard of normalcy. About such entities and qualities a consistent skeptic would urge three arguments that parallel Mackie's three arguments about moral entities and qualities. First, the skeptic should think that states or events that exist in time but not in space are "queer" stuff; second, that if one posits the existence of such "queer" stuff, one is further committed to postulating the existence of some "queer" relations between the "queer" stuff that exists in time but not in space, and the normal physical stuff that exists in both time and space; and third, that since one's own mental states are not known by the ordinary senses, one must further posit a "queer" way of knowing minds, namely, introspection.\textsuperscript{134}

These same kinds of "queerness" arguments could also be made about human actions and about propositions.\textsuperscript{135} To avoid

\textsuperscript{133} \textit{Id.} at 40.

\textsuperscript{134} See supra text accompanying notes 59-60. The classic treatment of these problems for dualism in the philosophy of mind is GILBERT RYLE, \textit{THE CONCEPT OF MIND} (1949). The literature that has followed Ryle on these issues is enormous. For an introductory treatment of the problems for dualistic metaphysics about minds, see KEITH CAMPBELL, \textit{BODY AND MIND} (1970).

\textsuperscript{135} The metaphysics of human action is a topic almost as much pursued as the metaphysics of minds. For an introductory collection of differing viewpoints, see \textit{THE NATURE OF HUMAN ACTION} (M. Brand ed. 1970). The empiricist about "ontological normalcy" has a problem with actions because they do not seem to be identical to bodily movements. Wittgenstein's question of "what is left over if we subtract the fact that my arm goes up from the fact that I raise my arm?" is still an unanswered question in the philosophy of action, and actions must be regarded as "queer" by those whose ontology can accept only physical objects as "normal". See L. WITTGENSTEIN, \textit{PHILOSOPHICAL INVESTIGATIONS} 141 (e) (1968).

Analogously, timeless propositions (not identical to sentences or utterances of sentences) must be thought "queer" on such a restrictive ontological standard. One must say this despite the central role propositions appear to play as the bearers of truth values in logic, as the objects of mental states in psychology, and as the touchstone of meaning in semantics. Propositions must be "queer" nonetheless both because of their abstract, nonperceptible nature and because of the "queer" relations into which they must enter with different kinds of things, such as mental states. See generally Frege, \textit{The Thought: A Logical Inquiry}, in \textit{PHILOSOPHICAL LOGIC} 17-39 (P. Strawson ed. 1967), for a defense and explication of propositions.
these parallels, a skeptic might urge that mathematics, natural science, and psychology postulate no entities or qualities other than the sensible entities and qualities of the natural world. That is, he might urge that really there are not two sorts of things in each of these areas, but only one, even if we have a dual vocabulary with which to describe it. Thus, he might urge that mental states are really identical to brain states; that human actions are really identical to bodily movements; that theoretical entities in science are really identical to a complex set of observational qualities for which the theoretical term is a convenient abbreviation; that propositions are really identical to a complex set of uttered sentences; and that mathematical entities, such as classes of classes, can somehow be accommodated in the natural world. This move of the skeptic, however, is implausible in light of the considerable amount of recent work in the philosophy of mind, philosophy of action, philosophy of science, and philosophy of mathematics; all of which tend to suggest that although there is some relation between the paired entities, one cannot plausibly maintain that they are identical.

The result is that we are ontologically committed to a diverse variety of things that must be adjudged “queer” by Mackie’s standard of normalcy. What this suggests is one of two things: either we are radically misled as to what exists by our theories of mathematics, psychology, and natural science, or Mackie’s standard for what can exist is much too stringent and parochial. A skeptic who does not want his skepticism to erode his belief in mathematics, natural science and psychology should opt for the second possibility and seek to loosen up his standard of normal existence.

There is after all nothing especially compelling about the use of natural objects, their sensible qualities and relations, as one’s standard for judging the “non-queerness” of all that exists. From the point of view of a sense-datum theorist, for example, normal physi-

136. For an introductory treatment of the problems facing the identity theorist about minds and brains, see K. Campbell, supra note 134.
138. The failure of this kind of reductionism in the philosophy of science was conceded even by its early proponents. See Carnap, Elementary and Abstract Terms, in Philosophy of Science 150 (A. Danto & H. Morgenbesser eds. 1960).
139. Quine, On What There Is, supra note 110. The alternative move for the skeptic who wishes to keep his physicalist paradigm of what exists is to deny that mathematics makes any ontological commitments to abstract things like numbers. See, e.g., Hartry Field, Science Without Numbers (1982). This, however, commits the skeptic to denying as literally false all existential statements in mathematics such as, “there are prime numbers greater than nine,” since such statements presuppose the existence of prime numbers (and of numbers).
cal objects and their sensible qualities are themselves "queer" entities. From such a point of view, tables, chairs, and the like are, Quine tells us, the equivalent of the gods of Homer. If one starts with sense perceptions rather than with objects, then one can easily say that how we divide up the mass of those perceptions into objects and qualities is up to us. What necessitates, for example, that we aggregate all the stages of a river into one object, a river?

In general, if one starts with physical objects, then mental states will look like "queer" those incident to perception, then physical objects will be the "queer-looking" entities. Similarly, if one starts with the sensible world, then the theoretical entities of relativity physics look "queer" indeed, but if one starts with the theory of relativity and the entities it posits, the sensible world is the one that looks quite "queer."

The skeptic thus needs to put aside any "queerness" objections presupposing the narrow, physicalistic standard for what can exist. Moral reality may not be a kind of "brooding omnipresence in the sky," to repeat Holmes's parody, but with a more cosmopolitan ontology one is not bound so to conceive of it in order to grant it existence. To be taken seriously, the moral skeptic requires a more liberal ontological standard, such as that recently advocated by Paul Grice against would-be skeptics about mind:

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 of conditions or entities, just so long as when they come in they help with the housework. Provided that I see them 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.

The problem for a more cosmopolitan, less snobbish skeptic is to loosen his standard for what may "non-queerly" exist sufficiently to allow in abstract entities, theoretical entities and mental states, but not so wide as to admit moral entities and qualities. To do this he must fasten onto some attribute uniquely possessed by moral entities and qualities that is "queer." This is precisely Mackie's strategy when he urges that moral qualities are especially "queer" because to apprehend that they exist is to be motivated to act in

140. Quine, supra note 110, at 18.
141. Id.
How, Mackie asks, can there be things that, when we perceive them to exist, we form not only the belief that they exist but also the desire to conform our actions to them? Sensorily perceptible qualities in the world such as redness do not have such motivating powers. Neither do the abstract entities of mathematics or physics. Even using all such entities or qualities as one's standard of normalcy, moral qualities remain "queer."

There is an ambiguity in the sense in which it might be claimed that qualities are motivating if known. Consider first a case where the individual knows some act is wrong only in the sense that he knows that the conventional moral norms of his society prohibit it. Our earlier example was the hit-man raised in a society of hit-men. Such an individual has, by hypothesis, no set of desires that directly or by inference incline him to abstain from contract killing. In such a case, the knowledge that killing is wrong in no sense motivates him to abstain from killing.

Suppose now that the hit-man not only knows that the conventions of his society prohibit contract killings; he himself actually believes that the class of acts he is contemplating will, if completed, really be wrong. Here, the classical claim about the motivating power of good and evil seems much more compelling: if the hit-man knows it is wrong, it seems that he must at least be inclined not to do it. Yet the classical account of these matters is wrong, even in the second case. It is contingently true of most human beings that if they believe an act to be wrong, then they are motivated somewhat not to do it. Yet this fact of human psychology is no more "queer" than the contingent truths that those who know a bridge is weak tend not to go over it or that those who know the premises of a valid argument tend to draw the conclusion of it. A quality that was necessarily motivating if apprehended, or to use Mackie's phrase, that had "not-to-be-doneness somehow built into it", would be

143. See supra text accompanying note 58.
144. See supra note 78 and accompanying text.
145. The classical view that knowledge of the good is self-commanding is in fact stronger than the view treated in the text. The stronger, classical view is that to know the good is actually to seek to achieve it. The weaker view is that to know the good is only to have an inclination to achieve it, even if one does not actually seek to achieve it because that inclination is weaker than others. We consider the weaker view because rejection of it makes rejection of the stronger view an a fortiori case. The argument is that to no degree do moral qualities necessarily motivate.
146. J.L. Mackie, supra note 57. Most contemporary moral realists assume they have to defend the classical view, that knowledge of the good is necessarily self-commanding. See, e.g., Mark Platts, Ways of Meaning 255-63 (1979). Such defenses may very well lead realists to posit the existence of some quite "queer" entities and qualities. See, e.g., Veatch, The
“queer.” But moral qualities are not like that. The hit-man might think that contract killings were really wrong and yet not be motivated at all to abstain from committing them.

To see this possibility, imagine a parallel problem in the philosophy of mind. Post-Rylean, behaviorist analyses of “desire” urged that being disposed to act so as to achieve the object of one’s desire, was a necessary condition to the proper use of “desire.” Even to wish idly for some state of affairs, it was thought, is to be disposed in some set of circumstances to act in such a way as to bring about that state of affairs. Yet if “desire” is a term that names a state occurring in nature without human intervention—a “natural kind”—then behavioral dispositions are not necessary conditions to the proper use of the word. Just as it is only contingently true that almost all tigers have stripes, it will only be contingently true that most persons who desire a state of affairs will be inclined to act so as to bring it about. By this analysis “desire” also does not have “to-be-pursuedness” somehow built into it.

If one hypothesizes that “wrong” and other moral words name something like “natural kinds” then knowledge of wrongfulness will also not be necessarily motivating. The hypothesized hit-man may well possess the correct theory of wrongness of actions, and may realize that by that theory, contract killing is wrong. He would believe it is wrong, his belief would be true, and he would have found the belief on the right grounds—in short, he would know that it is really wrong. Yet he need not have any mental state of desire or intention motivating him to refrain from doing it. That contract killing is really wrong is settled by the correct theory of what actions are wrong; his knowing that it is wrong is settled by his knowing that

_Rational Justification of Moral Principles: Can There Be Such A Thing?_ 29 REV. METAPHYSICS 217, 238 (1975):

[T]he goodness of things is an objective feature of such things, and as such can provide an objective ground or reason for their being desired. At the same time, in being thus an objective feature of things in the real world, goodness must not be thought of for that reason as being utterly dissociated and divorced from our desires, interests, concerns, etc., and so as being quite incapable of ever being action-guiding. No, for something to be good, or to be of worth or value, simply means for it to be, not desired necessarily, but rather desirable—that is to say, for it to be really desired, or, speaking in a human context, for it to be the sort of thing we human beings really want or truly want, if only we could be made to see what was good for us.

147. G. RYLE, supra note 134, analyzed “desire” and other motivational terms to name dispositions, not episodes. Others have thought that the dispositions in question must be dispositions to behave in certain ways. See, e.g., Daveney, Wanting, 2 Phil. Q. 135 (1961).

148. On the nature of “natural kinds,” see Quine, Natural Kinds, in Ontological Relativity and Other Essays (1969); Hilary Putnam, Mind Language and Reality (1975); Naming, necessity and natural kinds (W. Goossens ed. 1979); Moore, supra note 4.

149. The argument for this position appears in infra text accompanying notes 191-96.
theory and applying it to this action. There is nothing in this account that necessarily requires that the wrongness of the contemplated act have motivating power. Yet it is this supposed necessity of motivating power that Mackie would use to show that moral qualities are "queer" even on some nonparochial standard of "queerness." 150

All of this does not prove, of course, that moral entities such as rights, or moral qualities such as goodness, exist. It only shows that the skeptical arguments commonly advanced against there being such things all fail. Some more general notions about how one tells what exists are needed to make the positive case for the existence of moral entities and qualities. Hitherto we have been able to get by with intuitions that numbers, kinetic energy, and intentions all exist, as do tables and chairs. But how would one prove that any of these things existed?

One answer is that worked out by Gilbert Harman and W. V. Quine. 151 We decide what there is, on this view, by building an explanatory account of our collective experience. We build, in effect, a theory about why it is we see blue when we look at the sky; why the volume, pressure and temperature of gases vary with each other in systematic ways; why people often do what they say they are going to do. We seek to infer, in Harman's well-known phrase, "the best

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150. The skeptic might attempt to get some mileage out of the linguistic fact that "wrong" used in its noninverted commas sense does have some customary illocutionary force attached to it. See, e.g., M. Platts, supra note 146, at 258. If one says that killing is wrong, and means not that conventional morality thinks it is "wrong" but that it, killing, is in fact wrong, then ordinarily the force of that person's utterance is to express disapproval, to proscribe the action to oneself or others, etc. (This is the grain of truth in the positive claim of emotivism/prescriptivism.) Of course, if the utterance in fact expresses such feelings and proscriptions, then the speaker must possess the motivating mental states so expressed. The mistake is to think that such force is more than a usual (but not inevitable) accompaniment of "wrong" used in a noninverted commas sense. Customary force only betokens the psychological truth that most people are in fact motivated by knowing the good. The skeptic requires that people necessarily are motivated by their apprehending the good, and customary force is no evidence of such necessity.

A skeptic might reply that the very distinction between the usual use of "wrong," and the inverted commas use of "wrong," depends on the presence or absence of this customary force; and that, accordingly, when "wrong" is used in its noninverted commas sense, it necessarily expresses emotion (because if it did not, "wrong" would be used in the inverted commas sense). The mistake here is to think that the presence of such force determines whether "wrong" is used in one sense or the other. Yet the distinction between the two senses of "wrong," realist and conventional, is a semantic distinction, a case of genuine ambiguity; it is not determined by merely pragmatic features of utterance. It may well be "odd" for someone to say, "that killing is (really) wrong" when his utterance does not express the speaker's disapproval; such oddness (because of the lack of customary force) does not affect the truth of what he says nor make it "nonsense."

151. See supra note 110. Others have accepted this theory. See supra note 114.
explanation” for all of these things, considered together.¹⁵² That total explanatory account will include statements containing ontological commitments.¹⁵³ In our explanations of the three items mentioned, for example, we are committed to the existence of the quality of blueness, kinetic energy, and the mental states of intention. Because our best explanatory account includes such commitments, we have good grounds for believing that those entities, qualities and states really exist in the world.

Beliefs about ontology do not stand on any special footing. There is no guarantee that any particular thing we think exists, really does exist. This is another way of stating the point made earlier, that there are no “pinned down” beliefs or “inferenceless readoffs of reality.” To know what exists is to know the best explanatory account of all experience.

To make the positive case for the existence of moral entities and qualities would be to itemize those items of our experience for which the best explanation would be the realist one: we have such experiences because there are moral qualities. Such a case is made plausible at least by showing that the relation between moral facts and natural facts is not the “queer” relation skeptics believe it to be. As argued immediately below, moral qualities may be inferred from natural qualities in a way no “queerer” than the way in which the existence of one natural quality may be inferred from another. Because of this, it becomes more plausible to assume that we have moral intuitions in response to a moral reality progressively revealed to us as we mature and gain wisdom.

¹⁵². Harman, Inference to the Best Explanation, supra note 110.

¹⁵³. An “ontological commitment” is a commitment we make when we say what there is. According to Willard Quine’s linguistic criterion of ontological commitment, we can tell to what entities our theories commit us in two steps. Quine, On What There Is, supra note 110. First, we examine the sentences of our theories and ask what things must exist for these sentences to be true. We can tell what things there must be by looking for one unit of our speech, the existential quantifier—paraphrased as the expression “there is something.” For example, the sentence, “some dogs are white,” commits us to the existence of dogs, because one would reformulate the sentence into Quine’s canonical notation as follows: “There is something such that it is a dog and it is white.” The existential quantifier tells us that we are committed to there being something, and the pronoun, or “variable,” shows us what we are committed to.

The second step of Quine’s test is the method of paraphrase. Quine points out that “many of our casual remarks in the ‘there are’ form would want dusting up when our thoughts turn seriously ontological.” Quine, supra note 148, at 100. In other words, we may use the expression “there is something” and not really mean it. We show that we do not really mean it by our willingness to paraphrase a sentence that begins with “there is something,” into one that does not.
b. "Queer" relations

It is thought to be a serious problem for a nonnaturalist to give an account of the relation that exists between, for example, the natural fact that an act is an instance of deliberate cruelty and the non-natural fact that the action is wrong. That there is no relation is logically possible, just as it is logically possible that no relation exists between mental states and brain states, or between actions and bodily movements. Yet this "noninteractionist" dualism is counterintuitive, as much for moral philosophy as in the philosophy of mind or the philosophy of action; for our common inference-drawing patterns suggest that a regular relation holds between all three pairs of things. Accordingly, a nonnaturalist should discard the noninteractionist position, even though it is a logically possible one.

The nonnaturalist thus needs to describe a relation that corresponds to the inference-drawing patterns we in fact employ as we move from natural facts to moral conclusions. He needs this, not only because such faithfulness to our experience is a virtue of any philosophical theory, but also because any positive argument for there being moral entities and qualities requires it. The assertion that we make ontological commitments to moral entities and qualities can be true for a nonnaturalist only if nonnatural (moral) facts have a necessary place in the best explanation of moral intuitions. If these intuitions are better explained by other facts, such as psychological facts about the holder of the intuition, then we should dismiss any purported commitment to the existence of moral facts, for our theory of the moral sentiments would not really require them. We will not do so for things like tables and colors so long as the best total explanatory account for having perceptions of them is that there really are such things.

The alleged "queerness" of the relation between moral facts and natural facts dissuades the ontological skeptic from relying on moral entities and qualities when explaining a moral experience. To see why, suppose one seeks to explain a particular intuition, e.g., that some act of deliberate cruelty is wrong. A nonnaturalist's ex-
planation of this moral experience might be:

1. The act is cruel. Therefore:
2. The act is wrong. Therefore:
3. I believe that the act is wrong.

This account, as it stands, is incomplete. It lacks the relations that hold, first, between the natural fact of cruelty and the moral fact of wrongness and, second, between the moral fact of wrongness and the natural fact that someone believes that the act is wrong. If the only relations a nonnaturalist can postulate are “queer,” (in the sense that they are not backed up by some account that is itself adequate), then one rationally should prefer an explanation making no use of moral facts, such as:

1. The act is cruel.

And:

2. I was educated to believe that cruel acts are wrong.

Therefore:

3. I believe that the act is wrong.

The second explanation need appeal only to natural facts and the causal relations that exist between them. On the general principle that “queer” relations make for bad explanations, the skeptic would assert that the second is the best explanatory account of our moral sense, an account making no commitment to moral entities and qualities.

To avoid this kind of success for subjectivist explanations of

believe. (See id. at 8: “[T]here 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.”)

Harman’s main argument to his conclusion appears to be different than the “queer relation” argument treated in the text. Harman appears to believe that just because there are explanations of an actor’s moral beliefs in terms of that actor’s education and “psychological set,” we can rule out morally realistic explanations of that actor’s beliefs. See id. at 6-7; see also J.L. Mackie, supra note 57, at 42-46. This argument then becomes a form of the skeptical argument from genesis, see supra note 95, and a form of the supposed disanalogy in justifying moral versus factual beliefs, see supra note 131.

Harman’s argument here fails because he assumes that genetic explanations of moral beliefs compete with realistic explanations of those beliefs. (The idea of “competing explanations” is developed by Harman in Thought, supra note 110, at 132.) Yet genetic explanations of beliefs—any kind of beliefs—do not compete with realistic explanations of those beliefs. We believe that the moon is a sphere both because that is what we have been taught and because that is how it is. Given the prevalence of “overdetermination,” many causal accounts do not compete in the explanation of any single event or state; rather, many such accounts together form the “best total explanatory account.”

Hence, by itself the existence of explanations for why we have our moral beliefs should not incline one to skepticism. Only if the subjective account of moral beliefs were of a kind of explanation (say rote-learning) that gave one legitimate grounds to doubt that the beliefs were formed in response to objective features of the world, would such an explanation count against the realist account of moral beliefs. This latter possibility is considered in some detail, and rejected, in Lean, supra note 68.
moral experience, the nonnaturalist must describe the required relations in a way that is familiar to us. Positing there to be *sui generis* relations, and giving them strange labels, will not do. Yet a nonnaturalist can describe the familiar relations here. The relation between an act being cruel and its being wrong is one of meaning. The relation between an act being wrong and someone believing it to be wrong is one of causation. A simple analogy from perception would be: the fact that a table is red entails that it is colored, and that it is colored causes someone to believe that it is colored.

It is commonly thought that each of these responses is illegitimate for a nonnaturalist. Against the first, it is said that one cannot be a nonnaturalist and yet maintain that there are relations of meaning between words describing natural facts and words describing moral facts; for if there were such relations, then nonnaturalism supposedly becomes naturalism.¹⁵⁵ That is, if “wrong” means, at least in part, “cruel,” in the way that “colored” means, at least in part, “red,” then “wrong” like “colored” must name a natural property or at least a set of natural properties. Yet this is in fact not so; “wrong” need not name a natural property even though there is a meaning relation between “wrong” and “cruel.” This is because the only meaning relation a nonnaturalist need be committed to here is an evidentiary one.¹⁵⁶ Specifically, he is committed to there being a

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¹⁵⁵ If one collapses any distinction of meaning between naturalism and nonnaturalism, as is urged *infra* text accompanying notes 196-200, there is a sense in which this charge is true—but in that sense, it is harmless.

¹⁵⁶ The idea that evidentiary relations can count as meaning-relations is a relatively recent and nonobvious development in the philosophy of language. The traditional idea of a meaning relation is semantic entailment or analyticity, to be distinguished sharply from all synthetic, factual, or merely evidentiary relations. Yet this traditional idea of a meaning relation has been widely attacked. *See* Quine, *Two Dogmas of Empiricism*, supra note 110. In its place is substituted the kind of evidentiary relation discussed in the text. According to Hilary Putnam, for example, H. Putnam, *supra* note 148, the relation between feeling pain and being in pain is an evidentiary one. “Feeling pain” does not entail “being in pain,” yet the feeling is part of our “stereotype” of pain so that the relation between feeling pain and being in pain should be counted as a meaning relation.

To say that such evidentiary relations are meaning relations is emphatically not to be committed to the “criteriological” theory of meaning. On certain general views of meaning associated with the later Wittgenstein, it is often thought that some evidence stands in a special relation to that for which it is evidence. Such evidence is special because it is not established inductively. For example, one might take water falling out of the sky as noninductive evidence of the fact that it is raining, on the grounds that part of the meaning of “it is raining” is that such facts as water falling out of the sky count as evidence for the truth of that statement. Meaning relations, on such a theory, are only those evidential relations established noninductively. (For an example of this view of meaning, see, e.g., Lycan, *Noninductive Evidence: Recent Work on Wittgenstein’s “Criteria,”* 8 Am. Phil. Q. 109 (1971).) The realist’s account of meaning defended earlier rejects this view. *See* Rorty, *Criteria and Necessity*, 7 Nous 313 (1973) (rejecting the criteriological account on Quinean and Putnamesque grounds); *see generally* Moore, *supra* note 4, at 218-21. Accordingly, ordinary, evidential
substantial overlap between actions in the extension of “is cruel” and in the extension of “is wrong.” Because of this overlap, he is entitled to the normal evidentiary inference, “if the action I see before me is cruel, that is some evidence that it is wrong.” That inference is as unproblematic as the inference that someone else is in pain from the perceived fact that he engages in typical pain-expressing behavior. Such an evidentiary relation between things that are cruel and things that are wrong is distinct from any claim that the two sets of things are coextensive. It is also distinct from any semantic claim that an act being cruel entails (because of the meaning of “wrong act”) that it is wrong, or vice versa. Actions that are cruel are also usually wrong, but the supposed evidentiary relation need claim nothing as strong as equivalence or semantic entailment. Because of this, a nonnaturalist supposing there to be an evidentiary relation between acts that are cruel and those that are wrong is not a naturalist in disguise; for he is not committed to there being either an entailment of “wrong” by “cruel” or an identity between the properties of wrongness and cruelty.

There is thus nothing “queer” about the relation between the natural fact of cruelty and the moral fact of wrongness, if one can make it out to be no thing more than an evidentiary relation familiar to us in many areas of knowledge. A skeptic must thus show why the relation cannot be of this unproblematic kind. He might begin by asking why the set of actions truly described by “cruel” overlaps with the set of things truly described by “wrong.” An analogous question would be, why is there substantial overlap between things within the extension of “is feeling pain” and those things within the extension of “is having the C-fibres in the central cortex of his brain stimulated?” To work out an answer to the latter question is to work out a theory of pain. The recognized overlap between feelings of pain and C-fibre activity makes the latter some evidence of the former but the explanation of why there is the overlap—and there can be no guarantee that there really is any overlap—is not a precondition of the observed relation. The relation is not “queer” because it is not yet fully backed up by a complete explanatory account. The evidentiary relation is part of the best theory we have so far about what pain really is.

Analogous remarks should be made about the relation between wrongness and cruelty. There is an observed evidentiary relation: that an action is cruel is evidence that it is wrong. Such a relation is
what is meant by the "because" in the statement: "that action is wrong because it is cruel." There is nothing "queer" about this "because," no more than the "because" in "he was in pain because his C-fibres were jingling." The "because" signals that there are grounds for legitimate inference in an implicit evidentiary relation. That relation itself is not guaranteed to be true, as if it were an analytic truth, but is part of the best theory we have yet been able to articulate about which acts are wrong.

A skeptic would doubtless press further here. He would urge, as Strawson once did, that "generally we may say that whenever q is evidence of p . . . we can have knowledge of the state of affairs described by p independently of knowledge of the state of affairs described by q."117 Therefore, to claim that there is an evidentiary relation between an act being wrong and its being cruel is to claim that one could know the wrongness of that act and others like it independently of knowing that it was cruel; for without this independent knowledge of its wrongness, how could one observe that the acts in the extensions of "is wrong" and "is cruel" overlapped? A nonnaturalist thus needs an explanation of how he can know that an act is wrong without knowing any of the natural properties of that act. It will not do, the skeptic can conclude, to think that the needed explanation is provided by the correctness of past intuitions of wrongness: "The only possible evidence for the existence of a tendency to have correct intuitions is the correctness of actual intuitions. And it is precisely the correctness of actual intuitions for which we are seeking evidence and failing to find it."156

One should see in this skeptic's reply a return to the demand for foundations for knowledge that we nowhere possess. How would we know that an action was wrong if we did not know that it was cruel, that it caused pain to others, that it was motivated by sadism, or any other natural fact? We would not, nor would we know that a person was in pain if he could neither move nor speak, nor were his C-fibres stimulated. Strip away our knowledge of any evidence for the existence of anything, and we will not know that it exists. A nonnaturalist does not need an account of a priori knowledge that we do not possess.

The picture the skeptic has in mind is something like this: we can know we are in pain because some criterion of being in pain is satisfied, e.g., we feel it. Then we correlate that knowledge of being

157. Strawson, supra note 125, at 27. Harrison, supra note 25, at 203, makes a similar point.
158. Strawson, supra note 125, at 27.
in pain with other independently knowable states—C-fibre stimulation, for example. We always build our evidentiary relations, such as the relation between being in pain and having our C-fibres stimulated, by such a two-step procedure. We first fix the meaning of "is in pain;" only then do we seek contingent connections.

This is an inadequate view of meaning. In order to find the meaning of "pain" we must build a theory about the true nature of pain, and there can be no sufficient conditions that fix the meaning of "pain." We fix the meaning as we discover more and more about what pain really is. Because of this, we do not have any independent means of verifying that we are in pain before we seek contingent connections to such things as C-fibre stimulation. It is, of course, true that we had some indication that there is a thing about whose nature we need a theory before we learned any physiology: for pain, we felt pains and observed the pain-behavior of others. Yet these "indications" have no privileged epistemic status, as necessary or sufficient conditions of pain. We may start with them, but if we retain them they simply become part of our theory of the true nature of pain.

Analogously, we build theories of what sorts of actions are really wrong; we do not first fix the meaning of "wrong" by the discovery of some mysterious, simple, nonnatural property (even if G.E. Moore thought we did). A nonnaturalist accordingly needs no justification for this separate, first step because it is one he need never take. He will have some "indications" that there is a quality some actions share, i.e., their wrongfulness. These indications may even include cruelty. Still, where he begins in building his theory—with cruelty or with some other natural fact—does not betoken some special status to cruelty or those other natural facts in the continued elaboration of his theory of wrongfulness. Cruelty and other natural facts remain no more than evidence of an action's wrongfulness, and a nonnaturalist may rely on the evidentiary relation between them without being convicted of any residual "queerness" in his ideas of when such reliance is appropriate.159

159. See supra note 156. These indications do not even have the anemic epistemic privilege of being "noninductive evidence" of pain. They are only evidence of pain on the same footing as physiological findings.

160. Although we have used "pain" as an analogue in our argument against the skeptic, the point is perfectly general. If we apply this skeptic's argument and the picture of knowledge and meaning on which it is built, to the problems of perception or of induction, we find that we cannot know what we pretend to know there either. There is no answer to the skeptic about perception who demands that before we use "appears blue" as evidence of "is blue," we must show how we know that the two are correlated. We cannot establish this correlation by showing that it is an analytic truth, because it is not. Yet the correlation cannot be estab-
The second relation thought to be "queer" exists between the moral fact that an action was wrong and the natural fact that one believed that it was wrong. Specifically, it was suggested earlier that the moral fact of wrongness causes the belief of wrongness, just as something being colored causes one to believe that it is colored. A skeptic would make two replies to this suggestion. First, he would note that the causal relation that connects the real world to perceptual beliefs is backed up by a more general account of perception. For example, we have an account of visual perception that explains how light is reflected from objects, how it impacts on our retinas and of what they are composed, and how retinal images are transformed into signals in the optic nerve. The causal relation between an object being red and someone's belief that it is red, is not a "queer" relation only because it is backed up by this general explanatory account. A nonnaturalist needs a similar account if he is to develop a causal theory of intuition. Second, the very idea that a causal relation could exist between a natural event and a nonnatural event is incoherent for the skeptic. How could an account be developed of such a relation when what it relates are two different orders of being? Although causal relations in general are not "queer," this kind of causal relation would be thought so.

Taking the second of these skeptical objections first: it should

lished inductively without grounds for knowing a thing is blue that are independent of that thing's blue appearance. (See R. CHISHOLM, PERCEIVING (1957), who argues that the relation between an action being charitable and it being right is no different than the relation between something appearing to be blue and it being blue.) Analogously, there is no answer to the skeptic about induction who demands that before we use any data from past inductions, we must first justify the practice of induction itself. Specifically, the skeptic would reject solutions (or dissolutions) such as Nelson Goodman's, that rely on the "entrenchment" of certain predicates in our practices to show why we may select such predicates in our future projections, N. GOODMAN, supra note 106.

It may seem that my discussion of evidentiary relationships misses Mackie's point that the "queer" relation needed by a nonnaturalist was that of supervenience. See supra text accompanying note 59. Yet the point of the discussion is that a realist does not need to posit a "supervenient" relation between moral and natural properties. Evidentiary relations can exist between two or more properties because of the overlapping sets of things they describe, even if there is no supervenience.

In any case, supervenience is not a "queer" relation. Briefly, one property supervenes on a set of other properties when the first property cannot come into being or cease to exist without some change in the set of other properties. Supervenience is introduced to capture the idea that the moral universe is founded upon the natural world in a loose sense that does not amount to identity. If this were a "queer" relation, then so would be the widely accepted token identity thought to exist between mental states and brain states. Yet such token identity is widely accepted because it is quite plausible to think that mental states supervene on brain states, in the sense that any change in mental states must be accompanied by some change in some brain states. (See DONALD DAVIDSON, ACTIONS AND EVENTS (1980), for a defense of this supervenience of mental states onto brain states and for an explication of the analogy to supervenience of moral properties onto natural ones.)
be clear that any form of metaphysical dualism will produce the kind of puzzles to which the skeptic here adverts. If mental states, for example, exist in some different "order of being" than physical states, then one will have problems in conceiving of a causal relation existing between the two. We do want to say that a table being brown causes us to form the perceptual belief that it is brown; yet on a dualist view about mind it is difficult to give an account of a causal relation that exists between two such different things. How, one might ask, does the signal in the optic nerve (a physical event existing in time and space) cause the corresponding belief or sensation, which is a mental state (existing in time but not in space)?

The metaphysical dualist faces this kind of problem only if he allows his dualism to be cast as some kind of unbridgeable ontological divide. Only if a dualist believes that there is some kind of moral "stuff" as well as natural stuff, mental "substance" as well as physical substance, is he in trouble about causal relations existing between these two "modes of being." Yet a dualist need not adopt the extreme versions of dualism represented by G. E. Moore's views about morals and DesCartes's views about minds. "Nonnatural quality" and "mental state" may name certain kinds of things not identical to physical things; yet such things need not exist in some kind of special realm. A dualist can believe that we live in one world even if there is a quite diverse variety of things in it.

It is now time to discard "queer" as the scare word that it is. We seek to infer the best explanatory account of our experience of ourselves and the world around us, and "queer" is only a reminder that inconsistencies in our account need attention. Yet alternative nondualistic accounts may be even less consistent with everything we believe to be true. One should be troubled by the difficulties one has in talking about the relation between optic-nerve events and belief states; yet these difficulties should not lead one to abandon a causal theory of perception if doing so causes more trouble than retaining it. One should instead retain the causal theory of perception and attempt to work out a theory of perceptual beliefs that will accommodate a causal relation between physical events and mental states.

Turning to the skeptic's other point here: one does need an account to "back up" and give credence to the causal relation asserted to exist between the moral fact that an action is wrong and the natural fact that someone has a belief that it is wrong. Yet the skeptic's picture of what sort of account is needed here is misleading. The skeptic would burden the nonnaturalist with the task of giving an account strictly parallel to what we know about our abilities to sense
natural qualities coupled with the stipulation that the nonnaturalist's account must be about some special human faculty that can apprehend some special, ghostly realm. Yet a nonnaturalist does not need some story of this kind, with intuitions or emotions being cast as the "sense organs" of morality. He has no need for this because he need not think that we come to our moral beliefs in this way. We "see" that an action is wrong by applying the best moral theory we have about wrongfulness to the action before us. The sensory equipment that need be accounted for here is no more and no different than that required for the account of perception itself. To judge an action as cruel is already to have made certain inferences from certain perceptions. To judge the act to be wrong involves but a further inference. Because we regularly make such inferences, one is entitled to say that there are causal relations between the qualities of wrongfulness and cruelty, on the one hand, and the corresponding beliefs, on the other. This is, no doubt, such an ordinary explanation of the causal relation between moral reality and moral beliefs that it is a disappointment to some, who expected something more magical. Such expectations are generated because people often have the "special realm" picture of moral reality and expect therefore the account of the causal relation to be something more fantastic.

c. "Queer" modes of knowing

Two quite distinct charges are usually made when skeptics characterize the nonnaturalist's intuitive mode of moral knowledge as being "queer." The first accusation is that intuitions are "queer" mental things themselves, and the second is that intuitions are "queer" sources of knowledge. Because neither criticism is at all persuasive, they can be dismissed quickly.

If one thinks of an intuition as a mental event distinct both from emotions and from beliefs, then it does indeed become quite elusive—as elusive, indeed, as the volitions that a generation of action theorists hunted to extinction in the recent philosophy of mind.161 When one reaches the conclusion, for example, that one is obligated to keep a certain promise to a friend, one might recall: (1) the various emotions or feelings one had about various aspects of the situation, and about the obligation itself; and (2) various beliefs that one had, including prominently the belief that one is obligated

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161. See G. RYLE, supra note 134, at 62-69. See also R. TAYLOR, supra note 137, at 57-74, and A.I. MELDEN, FREE ACTION 43-55 (1961), for further tales of the hunt for volitions.
to keep the promise. Lacking, however, may be some third event, act or state called the "intuition." If intuition names such a third thing, then it is "queer" in the sense that it is not a recognized part of the furniture of our minds.\footnote{162}

Similar argument has long been directed at "sense-data" in the philosophy of perception. Sense-data too are mysterious entities, if they are not identified either with the physical goings-on incident to perception or with the perceptual beliefs that we all undeniably have. Traditionally, sense-data were thought to be some third kind of thing that were nonetheless the true objects of perception. Such things are essentially problematic, however, in that: (1) no one seems to have any recollection of experiencing such sense-data in forming one's perceptual beliefs; (2) we do not even have a vocabulary with which to describe such things; and (3) the motives for the "discovery" of sense-data are suspicious, in that one suspects some \textit{ad hoc} positing of things in order to ground factual knowledge in the certainty we each possess about our own mind.

The way to avoid these problems in the philosophy of perception is to avoid thinking of sense-data as some distinct, third kind of thing. Rather, one should think of the phrase "sense-data" as a misleading name for the perceptual beliefs about how the world is that we acquire when we perceive things.\footnote{163} To avoid the analogous problems about intuitions in moral philosophy, one should identify intuitions with the beliefs (or dispositions to believe) about how the world really is.\footnote{164} There is nothing "queer" about beliefs and dispositions to believe.

The other skeptical point about intuitions, that they are "queer" sources of knowledge,\footnote{165} falls away once one establishes non-"queer" relations between moral facts and natural facts. If a nonnaturalist makes out the evidentiary connection between natu-

\footnotetext{162}{See the quotes from Strawson, \textit{supra} note 129, for a version of this argument.}

\footnotetext{163}{See G. Pitcher, \textit{supra} note 113, for this kind of account of perceptual states. Similarly, in the philosophy of action, one should think of "volition" not as some mental act of willing but as a belief one acquires noninferentially about what one attempts to do. See Michael Moore, \textit{LAW AND PSYCHIATRY: RETHINKING THE RELATIONSHIP} (1983), for a theory of human action that would reconstrue talk of volitions into talk of noninferential beliefs about basic actions.}

\footnotetext{164}{As discussed earlier, see \textit{supra} text accompanying notes 128-29, one does not want to identify intuitions with emotions. Intuitions include dispositions to believe as well as actual beliefs because one does not always believe what one first intuits about the moral qualities of some act, just as one does not always believe one's eyes. Yet we have at least a disposition to believe, in both the case of prima facie obligations that we later reject and in the case of prima facie perceptions that we later reject (as, for example, hallucinations).}

\footnotetext{165}{This is Mackie's argument. See \textit{supra} text accompanying note 60. See also Harrison, \textit{supra} note 25, at 202-04.}
Moral Reality

Moral Reality

rational properties and moral properties discussed earlier, and the causal connection between moral properties and moral beliefs, there will be nothing at all odd about the mode of acquiring moral beliefs.

Nonetheless, a skeptic might complain about emotions having any role in generating intuitions. Even though intuitions are not identified with emotional states, it is well known that moral beliefs often are acquired and maintained with a feeling unparalleled in the acquisition and maintenance of factual beliefs. The skeptical argument then becomes relatively straightforward: emotions are impediments to knowledge; they are not, in any event, sources of knowledge. Our emotional makeup is not like our sensory apparatus. Our emotions tell us about ourselves; they cannot tell us about the world. To the extent that moral knowledge is built on emotions and feeling, concludes the skeptic, it is not truly knowledge.

That thought is to be separated from feeling, and reason from passions, has deep roots both in philosophy and ordinary thought. Yet it is an old prejudice that should be discarded. While emotions tell us things about ourselves that the five senses do not, they are not to be thought of as the “images” in some sixth “sensory” way of apprehending moral qualities. What emotions tell us about ourselves is how we react to the world. Emotions have causes, and they have objects. An insult causes me to be angry, and the object of that anger is the person who insulted me. In this way, an emotion is not like some kinesthetic sensation that tells me, for example, that my stomach is upset. Rather, the information about me that the emotion imparts is connected to its real world causes and objects.

Further, it is not true that any emotion can be felt for any situation. There is, rather, a structured connection between the emotions we feel, and how the world is. There are causal regularities that lie behind our various emotional reactions to various situations, and there are norms of appropriateness that we employ, however implicitly, in selecting the objects of our emotions. Nothing in Freud’s work on free-floating anxiety, or unconscious emotions in general, argues against the existence of this structure. Rather, Freud’s work

166. See Williams, Morality and the Emotions, in PROBLEMS OF SELF (B. Williams ed. 1973).
167. For the classic distinction between the cause of an emotion, and its object, see L. Wittgenstein, supra note 51, at 135e. See also G.E.M. Anscombe, INTENTIONS 16 (1963), for an elaboration of Wittgenstein’s distinction.
168. The norms of appropriateness of emotions, and their role in generating practical knowledge, are explored in de Sousa, The Rationality of Emotions, and Scruton, Emotion, Practical Knowledge and the Common Culture, both in EXPLAINING EMOTIONS (A. Rorty ed. 1980). See also Williams, supra note 166; McGill, supra note 33, at 6-7; Kerner, supra note 107, at 177-87.
on unconscious emotions can be seen as a subtle extension of these norms of appropriateness to the unconscious, which also obeys them. Emotions are thus connected to the real world in a sufficiently structured way that one may use one's emotional reactions as the basis for legitimate inferences about how the moral world really is. One may form an intuition that some action is wrong by the inference one draws from one's emotions of revulsion, for example. One need not have these emotional experiences to know that an action is wrong, but if one has them, they are grounds for legitimate inference to the moral belief.

There is nothing in a nonnaturalist's moral theory that requires him always to give a carte blanche to the emotions in the formation of moral beliefs. The moral theory that a person adopts will, and should, be turned back on the range of emotions that generated it in order to judge their moral worth. Emotions such as blind hatred, racial prejudice, and fears of various sorts will be rejected by a proper moral theory as unworthy of being given weight in the continued elaboration of that theory. In short, emotions are not only "connected to the world," but the nature of that connection is such that one has every reason to expect them to be an important basis of genuine insight and knowledge. The skeptical slogan that "morality is only a matter of feeling" is an accurate enough statement, if one drops the "only" and ignores the implication that feelings cannot be the source of objective knowledge about the world.

2. NATURALISM AND THE NATURALISTIC FALLACY

The preceding skeptical argument from ontology has no force against naturalism, whatever its force against nonnaturalism. If one is, for example, a Utilitarian-naturalist, one will maintain that the good is the maximization of utility, which is, e.g., the maximal sum of satisfied preferences. There are no "queer" entities, "queer" relations, or "queer" modes of knowing for such a naturalist. He is committed only to the natural states of desire. Analogously, a naturalist who believes that the phrase "a good knife" means no more than the phrase "a sharp knife" is committed only to a quality of sharpness in the world. The argument a skeptic must make against the naturalist must be at the level of meaning, not of ontology; for at the latter level the naturalist has no strange ontological commitments.


170. See Dworkin, supra note 128.
The naturalist stands in the same secure position about moral qualities as does the physicalist about mental states: when presented with objections of "queerness," both can retort that they are committed to nothing stranger than the ordinary physical world.

Of the several varieties of skepticism-generating theories of meaning, we have already rejected subjectivism and conventionalism. That leaves emotivism/prescriptivism as the philosophically favored reconstruction of the popular notion that morals are only matters of feeling and not of cognition. Yet neither of the traditional arguments presented—from negative inference nor from positive assertion—can sustain emotivism/prescriptivism in light of the developments in contemporary semantics.

The argument by negative inference for emotivism/prescriptivism sought to eliminate naturalism on the ground that it sought to define the indefinable: the good and the right. That no such definitions could be discovered for ethical words was thought to be shown by Moore's open question: of any proposed definition in terms of natural properties, it is a significant question whether an object's possession of those properties is good. Therefore, it cannot be an analytic truth that the possession of those properties is good.

Attempts have been made to show that if one restricts the sense of "good" or the range of things said to be "good," then it is not an open question whether, e.g., pursuing human happiness is "good" for human beings. It has also been suggested that no individual speaker may know the definition of "good," but that this lack of linguistic competence cannot be taken as conclusive on the meaning of "good." Our argument takes a third approach. There may be no analytic truths connecting "is good" or "is right" to any set of natu-

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171. See supra text accompanying notes 33-40.
172. See supra text accompanying notes 44-50.
173. See supra text accompanying notes 51-56.
174. This is the strategy of J.R. Flynn, supra note 2. Flynn relies on G.H. Von Wright, The Varieties of Goodness (1963), for parsing "good" into numerous different senses; in each such sense, Flynn urges, identification of good with natural properties leaves no open questions.
175. G. Harman, The Nature of Morality, supra note 76, at 17-20. Harman asserts: [A]s it stands the open question argument is invalid. An analogous argument could be used on someone who was ignorant of the chemical composition of water to "prove" to him that water is not $H_2O$. This person will agree that it is not an open question whether water is water but it is an open question, at least for him, whether water is $H_2O$.
Id. at 19. One cannot use any individual speaker's knowledge about water, or the good, as the touchstone of the meaning of "water" or of "good;" the meaning of these words is to be found in theories about the true nature of such things. We have, Hilary Putnam reminds us, a "division of linguistic labor" so that most people in a society may not know the state of the art theory about what water, molybdenum, or justice, really are. See supra note 148.
This may be true no matter how one restricts the context in which these ethical predicates are used, and no matter how linguistically competent the speaker is that one latches onto as one’s touchstone of meaning. The problem for Moore, and for the tradition built upon his arguments, is that the argument is too widely applicable. The success of the open question technique betokens a very general linguistic fact: no words, moral or otherwise, have as their meanings a set of conditions necessary and sufficient for their correct usage. If no words have these criteria, the open question technique will always succeed. The result is that the “definist fallacy” becomes just that: a mistake in thinking that one can discover a definition, in terms of necessary and sufficient conditions, for any word in any context. What the technique cannot show is any gulf between natural and moral qualities, on pain of committing us to such a gulf between all natural properties as well.

There are extensive arguments in contemporary philosophy against there being necessary and sufficient conditions for any of the various kinds of words used in natural languages. Without reproducing those arguments, one can appreciate the implausibility of thinking that words have necessary and sufficient conditions for their correct application, by examining one kind of word, that which denotes a “natural kind.” Take “tiger.” A standard definition would be: “a large Asiatic carnivorous mammal of the cat family, having a tawny coat transversely striped with black.” Most things we meet that fit this description will probably, in fact, be tigers, and, conversely, most tigers we see will probably, in fact, fit this description. Yet that is not what the critics of naturalism must establish. Rather, their task is to show us that anything that meets such a description analytically must be a tiger, and that anything that fails to meet such a description analytically must not be a tiger. We do have a theory about what sort of hidden nature a thing must possess in order to be a tiger. Indeed, “of Asiatic origin” and “mammal”...
are part of that theory. Yet it is only a scientific theory; none of it is guaranteed to be true by the meaning of “tiger.” A better scientific theory about what tigers really are may show us that tigers are not mammals, or, alternatively, that there are many carnivorous mammals with stripes, etc., that are not tigers. It is thus an “open question” whether something that is a large Asiatic carnivorous mammal, etc., is really a tiger. The question is open in the sense that our definition cannot foreclose the possibility of more and better information about what tigers really are. This “of course, place tigers in some nonnatural realm. No more than goodness, by this argument, can be shown to be in such a realm.

Similarly, one cannot buttress Moore’s conclusion by adverting to the generality in the application of “good.”"180 Certainly, a wide number of things can be called “good,” in which the natural characteristics that make the things “good” vary greatly. No single natural property can plausibly be substituted for “good” in “good knives,” “good horses,” and “good whiskey.” Yet again, what this linguistic fact betokens is not some gulf between the world of facts and values. Rather, “good,” like many nonmoral words, is attributive; it depends on the word it modifies for its meaning. “Good” in “good knives” and “good horses” may name no single property; but then neither does “improved” in “improved lands” and “improved patients,” nor “hard” in “hard choices” and “hard chairs.” Many words are either ambiguous, or general because they are used attributively. There is nothing in that to tempt one to say that such words lack descriptive meaning. The consistent conclusion for all such words should be that they do have descriptive meaning, even if that meaning depends heavily upon the context of utterance.

One is left, then, with the argument by positive assertion. The argument, it will be recalled, was that one must be expressing emotion and prescribing when one engages in serious moral discourse.182 The heart of the argument was that one could express emotion and issue prescriptions about anything and that moral words could not be used to do this if they had any descriptive meaning; such descriptive meaning, it is thought, would block the needed universal applicability of moral words.

The first thing to notice about this version of the argument is the narrowness of the defense it would provide. It defends only the

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180. See supra text accompanying notes 46-47.
181. Geach, Good and Evil, 18 ANALYSIS 103 (1957), reprinted in THEORIES OF ETHICS (P. Foot ed. 1967).
182. See supra text accompanying notes 51-56.
most general words of commendation and disapproval—"good" and "bad," "right" and "wrong," "ought" and "ought not"—as being exclusively emotive/prescriptive in function. The argument has to admit that we perform these same expressive and prescriptive speech acts with other words all the time: "courageous," "cowardly," "greedy," "murder," "manipulative," etc. Just because these more precise weapons in our arsenal of verbal slings and arrows can clearly have emotive/prescriptive force in their typical uses, hardly precludes their having descriptive meaning.

In any case, even as a limited defense of the most general words with potential evaluative force, the argument fails. The argument assumes that we cannot understand the emotive/prescriptive force of many utterances if the words employed were misdescriptions. Thus, if "good" names quality "x," and someone says that something is "good," even though it is in truth not "x," we would not be able to understand the utterance as a commending speech-act of the speaker. Yet we do understand the emotive/prescriptive force of "good" applied to anything with any qualities, even if we disagree morally. Therefore, the argument concludes, "good" cannot name a real property. The problem is that the argument ties meaning much too simply to the illocutionary act-potential of words. It assumes that if one violates the (descriptive) meaning rules for a word, then the audience cannot understand the kind of speech-act being performed. That this is false can be seen by looking at metaphor, where it is just the literal falsehood of what is said that nudges us (and we understand that the metaphor is intended to nudge us—that is its force) to seek hidden similarities. Consider also the woman who shouts at a surgeon who has failed to save her husband's life, "you murderer." We understand that she is condemning him, even though she violates one of the ordinary indicators of "murder," i.e., intentional killing. Hence, it will not do to say that "good" would not be understood as performing its commendatory role if it described anything, for the conventional force of the word could be understood even if the word were being misapplied in terms of its

183. Speaking is a type of act. Beginning with the work of J.L. Austin, supra note 41, there has been considerable attention to the different kinds of acts—"speech acts"—we perform with language, including the expressive and prescriptive speech-acts so relied upon by the moral skeptic.

184. "Illocutionary act-potential" is William Alston's convenient phrase with which to describe the characteristic speech acts that can be performed with a given word or sentence. The illocutionary act-potential of "Boo!" for example, does not include the act of expressing joy. See William Alston, Philosophy of Language (1964).

185. Such a view of metaphor is defended in Davidson, What Metaphors Mean, 5 Critical Inquiry 31 (1978).
What kind of argument could show us that moral discourse is not descriptive? If one rejects nonnaturalism and naturalism on grounds unrelated to meaning, then one has good reason to subscribe to emotivism/prescriptivism. The alternative would be to consign moral discourse to the rubbish heap as total nonsense, even at the level of speech-act analysis. This position undoubtedly provides for many their motive for adopting emotivism/prescriptivism. Such a motive, of course, reduces the meaning theory to a consequence of skepticism but eliminates it as constituting an independent argument for skepticism.

Alternatively, one might defend emotivism/prescriptivism on some yet unthought-of linguistic grounds. Unless and until these other linguistic arguments are made, however, one is entitled to take the descriptive character of moral discourse seriously. To say, “that action of yours yesterday to Jones was unjust,” is to refer to a particular event and to attribute to that event a property, that of injustice. The “surface grammar” is the real grammar, until someone gives us good reason to think otherwise.8

None of this should be taken to say that emotivism/prescriptivism is wrong to assert that our use of “good,” “bad,” and many other words is typically expressive of emotion and prescriptive in force. We do perform these speech-acts when using these words, perhaps always with the general words, and usually with the more particular words such as “murderer.” The mistake is to think that we are not also performing assertorial speech-acts when we use these words, that is, attempting to describe how the world is. That we are performing both kinds of speech-acts at once reflects the nature of our morals, which are matters of cognition no less than of emotion and feeling.

There is something inconclusive about rebutting emotivism/prescriptivism in an inquiry about moral realism. This does not stem from the fact that such a theory of meaning is not the philo-
sophistical darling that it was twenty years ago. Rather, it is because this meaning theory and the arguments advanced for it only obliquely capture the popular intuition that moral language is not used to describe natural facts. That intuition is based on another factor that makes moral questions seem open in a way in which questions of natural fact do not. This is the freedom to give meaning to “good” and the like that we feel when we make moral decisions. Richard Hare nicely describes this sense of freedom:

[A] man who is faced with a [moral] problem knows that it is his own problem, and that nobody can answer it for him. He may, it is true, ask the advice of other people; and he may also ascertain more facts about the circumstances and consequences of a proposed action, and other facts of this sort. But there will come a time when he does not hope to find out anything else of relevance by factual inquiry, and when he knows that, whatever others may say about the answer to his problem, he has to answer it. If any one were to suggest that the answer must be such and such, because everybody says so—or that, even he would be abusing the English language if he gave any other answer—he will, if he understands what moral questions are, feel that to accept these suggestions would be to accept a diminution of his own freedom. For one of the most important constituents of our freedom, as moral agents, is the freedom to form our own opinions about moral questions, even if that involves changing our language.

The prima facie inconsistency between this experience of freedom and naturalism is readily apparent: we seek to do what is right or good in particular cases; yet we feel that this does not require conformity to any conventions, including the conventions of language. Yet, if “good” in some context means natural property x, then to try to do good would be to do x and nothing else. Thus, we who know what “good” means could never think we were doing good if we sought to exercise the freedom Hare describes. Yet we do think: (1) that we know the meaning of “good”; (2) that we are on

187. The fact that prescriptivism is hostage to there being a speech-act semantics that has never materialized, is a datum of philosophy’s recent history that has not yet affected moral skeptics who are lawyers. See, e.g., Leff, supra note 1, who regards the proposition that “good” names no properties because its use requires an evaluator, as so obvious that no argument is necessary:

There remains ... only one considerable approach to the validation of ethical systems. Under it no search is made for any evaluator, but rather some state of the world is declared to be good, and acts which effect that state are ethical acts. Merely to express this approach is, of course, to refute it, for a good state of the world must be good to someone. One cannot escape from the fact that a normative statement is an evaluation merely by dispensing with any mention of who is making it.

Leff, supra note 1, at 1239.

188. R.M. Hare, supra note 27, at 1-2. Hare’s argument from freedom against naturalism is explored in Wallace, Anti-Naturalism, 78 ETHICS 296 (1968).
The problem with thinking that naturalism is incompatible with freedom stems from a misguided idea of what naturalistic meanings are like, and from an equally misguided idea of what "knowing the meaning" of a moral word must therefore be like. The idea is the same as the one attacked earlier in the discussion of non-naturalism: that meanings were to be thought of as criteria (necessary and sufficient conditions) for the correct application of any word. Meanings on this view are social conventions that arbitrarily stipulate how a word may be correctly used. On such a conventionalist-naturalist account of the meaning of "good," we indeed have little freedom: truly to seek to do good would be to follow the conventions that define the word.⁹⁰

A naturalist should reject this conventionalist view of meaning and adopt the kind of realist theory mentioned earlier. Moral questions are not to be answered by looking to conventions. Rather, one can only rely on the best theory one can muster about what rightness or goodness is in particular contexts. As a realist and a naturalist, one is committed to there being right answers to moral questions—right answers framed exclusively with reference to natural facts. One is not committed, however, to thinking that one's theories of the good or the right are at present adequate to yield all or many right answers, or, a fortiori that one is possessed of analytic truths containing such answers. Rather, we are each "condemned to our freedom" to articulate the best theory that we can about what natural facts make an action right, or a state of affairs good. The supposed strait jacket of naturalism turns out, on a realist account of meaning, not to be a strait jacket at all. Indeed, a realist-naturalist position would seem to be the best articulation of our sense of freedom from the constraints of convention.

3. MORAL REALISM

A moral skeptic would liken the course a moral realist must steer to Ulysses's choice between Charybdis and Scylla. If the realist urges nonnaturalism, he is beset with ontological problems; if he

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189. See supra note 156.
190. We may, perhaps, concede too much to Hare's freedom argument against naturalism. Even if one were more conventionalist in one's theory of meaning, so that as a naturalist, one were committed to statements of moral facts as entailed by certain statements of natural facts, there need not be anything obvious about the entailment. A conventionalist might think that many entailments are not at all obvious. See Swinburne, supra note 50, at 14-15.
urges naturalism, he is beset with meaning problems. Since naturalism and nonnaturalism seem to exhaust the possibilities, the moral realist seems to be in trouble no matter which way he turns.

The immediately preceding discussion has shown that the realist has neither of these difficulties. Indeed, the basic point that allows him to escape both of them lies in his realist theory of meaning. This theory allows him to avoid both the "queer relations" argument and the naturalistic fallacy argument. Two questions remain: first, whether the realist is entitled to help himself to a theory of meaning developed for other contexts, and second, whether the course charted by using this theory of meaning is a naturalist or a nonnaturalist one. We shall consider each of these questions in turn.

The theory of meaning relied on throughout the second half of this article is a realist theory of meaning. It asserts that the meaning of a word is not given by any set of conventions that, for example, assign certain things as "paradigm examples" of words, or assign meaning to words by virtue of their analytic relationships to other words. The realist theory asserts that the meaning of a word is to be found only by developing a theory about the kind of thing to which the word refers. Thus, it is the nature of things, and not social conventions, that determines the extension of a moral word.

Such a theory is most at home as a theory about "natural kinds," that is, words that name classes of things or qualities that occur in nature without human intervention. Examples are names of species, such as "tiger" or "dog," names of elements, such as "gold" or "water," and names of qualities, such as "red." The assumption about these things, thought to be embedded in our speech, is that they have a hidden nature shared by all instances of such natural kinds. It is the business of science to reveal this hidden nature progressively by building better and better theories about these kinds. Since the extension of natural kind words is governed by the best theory of the hidden nature of the kind, all conventional aspects of meaning—such as examples and definitions—are reduced to contingent and approximate guides to current usage. They are contingent because they are hostage to a change in theory, and approximate because even by the present theory they are known to be incomplete and inaccurate.

We should not classify moral qualities as being natural kinds,

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192. This account—essentially Hilary Putnam's—is drawn in greater detail in Moore, supra note 4, at 204-26.
at least if one means by this that "wrongness," for example, names the natural property of cruelty. This would commit us to naturalism, a commitment that a realist should avoid. One thus need not argue that there is a hidden nature of a physical sort to generosity, courage, or injustice. To justify the application of a realist theory of meaning to moral words, it is enough to show that they, like the names of natural kinds, betray our commitment to the necessity of theory. One need only show that moral words have a kind of "semantic depth" akin to that possessed by natural kind words: the intentions with which we speak are in each case to apply such words, not by conformity to stipulated conventions, but rather by the best theory we are able to articulate about what sort of quality pain or justice really is. It may be that our faith in the existence of "moral kinds" is stronger for more particular words, such as the names of virtues, than for our most general words of evaluation such as "good," "bad," "right," or "wrong." It may be, as has often been suggested, that the most general words are so attributive or ambiguous that no unified theory is plausible and that the only "moral kinds" that justify the application of a realist meaning theory are of a more particular sort, such as generosity or courage. There is no a

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193. This is not to say that a realist should be a nonnaturalist. She should avoid either commitment. See infra text accompanying notes 196-200.

194. See M. Plattis, supra note 146, at 261-62:
Moral concepts have a kind of semantic depth. Starting from our austere grasp upon these concepts, together perhaps with some practical grasp upon the conditions of their application, we can proceed to investigate, to experience, the features of the real world answering to these concepts. Precisely because of the realistic account given of these concepts and of our grasp upon them—precisely because they are designed to pick out features of the world of indefinite complexity in ways that transcend our practical understanding—this process of investigation through experience can, and should, proceed without end. Our grasp upon what, say, courage is can, and should, improve without limit; we must rest content with the thought that at death approximate understanding is all that we can hope for. But all along we have a grasp of what the concept is, as manifested by our grasp upon austere [truth conditions] sentences involving it; and, perhaps all along we have a grasp upon some gloss, some dictionary definition, of the term picking out that concept. But for the realist this austere grasp, that knowledge of the dictionary, is the beginning of understanding, not the end; there is, for us, no end, yet that starting point is far indeed from it. Just the same could be said, by the realist, about scientific concepts.

195. For suggestions along this line, see M. Plattis, supra note 146, at 246; McGill, supra note 33, at 9-11; Summer, supra note 55, at 779-80:
Hare shares with others in the tradition the desire to show that no naturalistic analysis of any "value-word" is possible. He also shares the strategy of attempting to prove this quite general position by concentrating attention on one in particular of these value-words, namely "good". . . . The result is a rather questionable strategy, that of "refuting" naturalism by dealing exclusively with what is certain to be one of the hardest cases for a naturalist. It is possible that no simple or convenient or interesting naturalistic analysis of "good" is possible, just because no simple or conve-
priori answer to such a question, any more than there is to the ques-
tion of whether certain aggregations of species are themselves natu-
ral kinds, or whether "jade" names one natural kind or not. Only
further attempts to develop unified theories of multiple sclerosis, of
jade or of justice can tell us whether these are kinds for which uni-
ified theories are possible. Yet if these attempts are fruitless, the cor-
rect conclusion should not be that the realist theory of meaning is
inappropriate but only that more particular categories should be
sought as the subjects of moral or scientific theories.

It may also be true that we know less about what kind of kind
we are talking about with our moral vocabulary than with our sci-
cient vocabulary. We have a good inkling of the sorts of physical
properties in terms of which any theory of the hidden nature of
tigers, for example, might be constructed. We have less of an idea of
the sort of nature that distributive justice, for example, might have.
Yet this is only a contingent feature of our ignorance. The same can
be said about the depths of our ignorance about what kind of kind
mental words might name. In neither case should such ignorance
prevent the application of the realist theory of meaning.

The second question remaining for a moral realist is whether
the position outlined herein is naturalist or nonnaturalist. As noted
earlier 196 the distinction between naturalism and nonnaturalism re-
ally consists of three different distinctions. It is first and foremost
an ontological distinction: moral properties are identical to natural
properties (naturalism) or they are not (nonnaturalism). Secondly,
it is a semantic distinction: predicates describing natural properties
semantically entail predicates describing moral properties (natu-
ralism) or they do not (nonnaturalism). Finally, it is an epistemic
distinction: one apprehends moral properties through the five ordi-
nary senses (naturalism) or one resorts to a special moral sense,
intuition (nonnaturalism). 197

Despite the defense given earlier in terms of this traditional
opposition, the position defended is but one position, moral realism.
Nothing forces the realist to characterize his position as either natu-
ralist or nonnaturalist. With regard to the ontological branch of the

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196. See supra note 50.

197. The degree to which these distinctions may sort theories into two camps is illus-
trated by G. E. Moore, whose version of nonnaturalism committed him: (1) to distinct moral
properties; (2) that are apprehended through intuition; and (3) that are describable only
with a moral vocabulary not definable in terms of natural descriptions. See generally Moore,
supra note 45.
distinction, the moral realist must admit that at least some moral words name something like natural kinds. Yet he need not assert an identity between these “moral kinds” and natural properties, any more than a realist about mental states needs to assert that those states are identical to physical states. Realists about either minds or morals should admit to there being correlations (but not identity) between the two kinds of properties or between the two kinds of states. (Such correlations are necessary for there to be the evidential relations required earlier). In neither instance need the realist be committed to either position about identity.\(^{198}\)

With regard to the semantic branch of the distinction, semantic entailment is not the right distinction here at all. No descriptions of any set of natural properties entail that someone is in pain; yet surely “pain” does not thereby name a nonnatural property. Accordingly, insofar as there could be a semantic distinction to be drawn here at all, it would have to be in terms of something other than entailment. The distinction that suggests itself is that drawn by the later Wittgenstein between criteria and symptoms.\(^{199}\) On this view there are two kinds of evidentiary relations: those that are noninductively established as true and those that are known to be true only by repeated observation. The first are meaning truths and the second, ordinary factual truths. On this view the connection be-

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\(^{198}\) It is often thought that a moral realist, if not committed to a relation of identity between moral and natural properties, is at least committed to a weaker relation called “supervenience.” A convenient modern characterization of supervenience is S.W. Blackburn’s:

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 \(N_1 \ldots N_n\).


If the realism defended herein is committed to supervenience of moral properties upon natural properties, and if supervenience (in lieu of identity) serves as a mark of naturalism (as R.M. Hare appeared to believe, see R.M. Hare, supra note 40, at 80), then our realism would be of a naturalist variety. However, neither of these conditions is necessarily satisfied. First, as Blackburn recognizes, “there is no very good argument for [supervenience] which a realist need accept.” Id. at 114. Thus, even though supervenience may exist between moral properties and natural properties, there is nothing in the realist position defended here that commits us to it. One could thus be a naturalist or a nonnaturalist by this criterion without changing any of the argument. Second, a realist who accepts supervenience can be characterized as a naturalist only in an extended sense, namely, the same kind of extended sense in which a functionalist about mind who also happens to accept token-identities between mental states and brain states, but rejects type-identities, can be characterized as a “physicist” about minds. Just as functionalists in the philosophy of mind reject being cast as physicalists (or as dualists), so moral realists should reject being cast as naturalists (or as nonnaturalists).

\(^{199}\) This is the criteriological theory of meaning developed from the later Wittgenstein, and discussed supra note 156.
between "it is raining" and "water is falling out of the sky" is one of meaning; whereas the connection between "it is raining" and "Jones is wet all over" is one of ordinary evidence. If this distinction were a viable one, then the realist position defended here would be naturalist or nonnaturalist, depending on how this vague line would be drawn. Yet this distinction between evidentiary relations and meaning connections collapses in light of the considerations adduced earlier against the criterial theory of meaning: no evidence has any privileged status as a necessary indicator for a word. Although lawyers may properly distinguish between evidence that is "direct" and that which is "circumstantial," no evidence is so "direct" that it can claim a necessary (meaning) connection to a word. That being so, there can be no semantic distinction between naturalism and nonnaturalism. Natural properties are simply good evidence of moral properties, and that is the end of the matter.

Finally, one might think that the choice between naturalism and nonnaturalism is yet thrust upon us by a purported choice we face when characterizing moral intuitions: if we think of them as a species of sensory perceptions, then we are naturalists; whereas if we think of them as different from sensory perceptions, we are nonnaturalists. The ontological distinction follows from this epistemic distinction if the objects of each mode of knowing must have their own mode of being. Yet the "direct realist" account of intuitions developed earlier does not take a position on this. Intuitions are the same as perceptions in the sense that both are beliefs or dispositions to believe. If these two sorts of beliefs are to be distinguished from each other it will be because the objects of each set of beliefs (value and fact, respectively) are themselves thought to be different. Yet it is just this choice of ontological category that the realist need not make: why characterize the objects of the respective beliefs as of the same kind or not? Surely, we need not answer this question in order to answer questions about whether our particular beliefs are the same; we know that a belief that it will rain tomorrow is different from a belief that someone is in pain, different yet from a belief that slavery is unjust, without taking a position about the ultimate kinds of beliefs these may be.

Even if we abandon this direct realist account for some kind of phenomenalism, whereby "intuitions" and "sensations" would name different kinds of mental experiences, the ontological choice is still not thrust upon us. Differing modes of knowing built upon these differing mental experiences need not betray different ontological categories. It is just the contrary assumption that raised havoc in the philosophy of mind for so long—the assumption there
being cast in the form that the privileged mode we each have of knowing our own minds must imply that minds were in a different ontological category than brains. Nothing, thus, forces one to characterize moral realism in terms of the familiar categories. The position defended here is best called, simply, moral realism.

C. The Response to the Argument from Vagueness and Conflict: That Moral Knowledge is of Particulars as Well as Universals

The last of the surviving skeptical arguments was that of vagueness and conflict: that even if there were objective moral truths, they could hardly govern particular decisions. The example earlier adverted to was Sartre’s student who faced the choice between fighting for the Free French during World War II or staying with his mother who needed him. Sartre tells us that nothing in the meaning of any moral principle can answer that particular question for him because the vagueness of moral principles and the conflicts between them prevent resolutions of such concrete problems.

Often conflated in this strand of the skeptic’s argument is the question of whether there is a right answer to particular moral dilemmas with the quite different question of whether such an answer is known. A moral realist must say “yes” to the first of these questions if his moral realism is to parallel his scientific realism; he need not think that everyone or even anyone can be at all certain that they know the right answers to hard moral dilemmas. A realist in science and morals can accommodate puzzlement and ignorance about hard issues at least as well as a skeptic. The skeptic’s argument here thus cannot rely on our ignorance about how we would resolve certain moral dilemmas. Rather, the argument has to be that there are no right answers to moral dilemmas such as that raised by Sartre.

The answer to this version of skepticism is implicit in the answer already given to the earlier arguments from logic, meaning and ontology. This is because the argument from vagueness and conflict presupposes the same Cartesian conception of justification as does the argument from logic and will thus suffer from the same shortcomings. Both skeptical arguments assume that moral knowledge is only of general statements, and that more particular statements (and the decisions they dictate) are justified only if they follow deductively from the most general statements. In crude form, this resembles the morality that young children possess. For them, moral

200. See supra notes 96-100 and accompanying text.
knowledge is of general statements or rules, without regard to the niceties of particular circumstances that ought to call for either amendment or elaboration of such rules. This is also the morality of heavily religious persons, insofar as they have an authoritative source of moral pronouncements. It may also be an adequate characterization of those who are radically conventional in their morality, if the conventions that they adopt are those of their society at a rather general level of formulation. Without much fairness to lawyers, this kind of morality has often been called "legalistic."

Yet if justification consists of generalization of particular observations as much as it consists of deduction from general principles, then the fact that particular moral decisions cannot be deduced from general moral principles without some amendment of the latter is no argument at all that there is no right answer about what one should do in particular cases. In ethics and in natural science, one knows particular facts as well as general rules. Such intuitions of what ought to be done in particular cases may arise from hypothesized situations or from one's own past moral experiences. These intuitions may also, of course, arise about the very case in which one has to make a decision at any particular time. The process of deciding what one ought to do, and of justifying the choice one makes, is not simply to look to some general principle and deduce the particular decision. Rather, as we have seen, it is to cohere all one's particular judgments with one's more general principles into a system of moral beliefs that best fits both one's considered judgments about particulars and one's intuitively plausible principles. What one does in a particular case is thus a matter of bringing to bear all one's moral knowledge, not simply one's knowledge of some set of general propositions. It is true that one's particular decisions should follow deductively from one's general principles. Yet this systematization of one's moral beliefs does not require that one force one's intuitions to fit some canonically formulated moral rules; rather, one more typically will reformulate the rules so that they better accommodate one's particular intuitions.²⁰¹

The main mistake of the skeptical argument from vagueness and conflict thus lies in the mistaken preeminence it accords general moral standards vis-a-vis more particular knowledge. A second flaw in the argument lies in its assumption that moral principles are vague or that they do conflict. Taking vagueness first, if one thinks that hypothesizing particular cases and reflecting upon past moral

²⁰¹. See C.J. Warnock, supra note 100, at 53-70, for a sympathetic account of the place of moral rules in moral reasoning.
experience are part of a process of arriving at the meaning of a moral concept, then the rule or principle containing that concept need not be vague at all. On this supposition an entire range of knowledge about results in particular cases delineates the meaning of the concept, and one’s decision process is not limited simply to staring at some word in some rule and hoping that some set of conventions constituting a definition of that word will provide an answer. If one is trying to decide, for example, whether a particular person deserves a certain punishment, the word “deserves” would be much less vague if one includes as part of its meaning all the conditions under which culpability is fairly ascribed to another.

The skeptic might interject that one is confusing linguistic judgments about the meaning of “deserves” with substantive moral judgments about when people deserve things. To this, a realist has a ready answer: there is no difference between giving the meaning of a moral word such as “desert” and making substantive moral judgments about when people deserve punishment. Moral words, by this analysis, join the names of natural kinds as having their meanings unpacked only by more and more factual discovery about what, in a particular case, the moral quality or natural kind really is. There is, on contemporary accounts of the meaning of these words, no difference between further factual judgments and judgments about what the word means.

This potential for indefinite continued elaboration of the meaning of moral principles also forms the core of the realist’s second answer to that branch of the skeptic’s argument that stems from conflict. Moral principles, such as “be kind to your mother” and “fight evil,” conflict in their demands only at a certain level of generality. Sartre’s young student cannot satisfy both as they stand, so he faces a genuine dilemma. Yet each principle is susceptible of more complex elaboration. Each is subject to an indefinitely large list of unstated exceptions. One should be kind to one’s mother, un-

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202. Whether moral words are vague or not depends on whether one views vagueness as a purely conventional aspect of meaning. That is, if “vague” means that there will be some penumbral cases in which most native speakers will not know whether to apply the word or not, then moral words are vague. If, however, one is a realist about the meaning of moral and scientific words, then one need not concede that these words are vague at all. That many speakers may not know whether to apply the word “molybdenum” to a range of substances does not make the word vague. Natural kind terms may be characteristically misapplied by most native speakers. Likewise, many speakers may not know whether to apply moral terms in some circumstances, yet it need not follow that moral terms are vague.

203. What I have in mind are the conditions of voluntary action, intentionality, causation, rationality, absence of justification or excuse. For an introduction to some of these conditions, see Moore, Responsibility and the Unconscious, 53 S. CAL. L. REV. 1563, 1567-88, 1640-69 (1980).
less, e.g., she has little need of kindness and others need it more. As one's principles are refined to accommodate the peculiarities of the particular case, it becomes increasingly likely that one will eliminate the conflict between them. The student's mother was not just a mother; she was his mother with all her particular strengths and needs, some of which will influence the strength of his obligations to her. Any adequate formulation of the relevant principles will be specific enough to take these specific characteristics into account. When made sufficiently specific, the conflicting demands may either disappear or be shown to be resolvable because one can see that in this case one principle outweighs the other.

None of this, of course, makes moral dilemmas such as the one described by Sartre, any less true dilemmas. The realist's assertions—that there are right answers, that moral words need not be vague and that moral principles need not conflict—do not imply that one will be certain about what to do in many particular cases. Formulating our principles so that they do not conflict, or constructing an adequate theory of the virtues to find the meaning of, say, "courage," are not easy tasks. What realism does imply is that the anguish such dilemmas can provoke is appropriate, for we are not in such instances deciding between two or more equally arbitrary positions. Our anguish in these cases expresses our realist conviction that the answers are not equally arbitrary and that getting it right matters.

III. Conclusion: Towards a Natural Law Theory

A. Objectivity and the Parallel Argument

This article amounts to a partial proof only of the objectivity of moral judgment. It does this by suggesting that moral knowledge has been discriminated against in epistemology. If one applies to

204. For this last possibility, see Guttenplan, supra note 130, at 72:
If this specific/general distinction is overlooked, incommensurability [of moral principles] might seem forced on us. For example, it would generally be accepted that wisdom and gentleness were valuable though we might find it senseless to be asked to rank them. Nonetheless, it just does not follow from this that we would be unable to rank two particular acts one of which exhibited gentleness and the other wisdom. The question whether Englishmen are heavier than Frenchmen (except on a certain reading) is unanswerable, but it is nevertheless true that we expect to be able to decide whether any given Englishman is heavier than any given Frenchman. Guttenplan goes on to explore and then reject what he takes to be a more serious challenge to moral realism posed by the existence of moral dilemmas, namely, that when such dilemmas are resolved often they leave an emotional distress that would be irrational for a realist to feel if he has truly done the right thing.
moral knowledge the standards of meaning, ontology and justification thought adequate in contemporary philosophy for nonmoral knowledge, the former does not suffer at all in terms of its objectivity.

Nothing in this parallel forces one to regard moral judgments as objective. One could, after all, regard one’s knowledge of fact as not being objective either. In such a case, the parallel would lead one, like Roquentin in Sartre’s Nausea,²⁰⁵ to see both his own moral life plan and his own factual conception of the world dissolve before his eyes. The alternative to such existential “nausea” is to regard one’s factual judgments as objective and to use them as a standard of comparison for judging the objectivity of any kind of judgment. If one adopts this latter tack, then the parallel between moral and factual judgments renders moral judgments objective as well.

A more complete argument for the objectivity of moral judgments would thus have two premises: (1) that moral judgments parallel factual judgments in their objectivity; and (2) that factual judgments are objective. Our partial proof that moral judgments are objective can only be convincing to someone already convinced that factual judgments are objective. One suspects that, in fact, most people who are moral skeptics are not fact skeptics. It is one of the hallmarks of modern thought to attempt to draw just the distinction that this article has urged cannot be drawn.²⁰⁶ This is particularly true of skeptically minded lawyers, who tend toward just that empirical cast of mind that thinks that facts are “hard” but values are “soft.” If some such diagnosis is correct, our partial proof addresses the premise most in need of addressing.

B. Moral Realism and Natural Law

In that part of the philosophy of law known as the theory of adjudication, one of the central problems is to articulate how judges can rely on values in their decisions and still achieve the “rule of law” virtues of having a legal system.²⁰⁷ In order to address this problem better one should initially subdivide the theory of adjudi-

²⁰⁵. JEAN PAUL SARTRE, NAUSEA (L. Alexander trans. 1959). For a more systematic development of this consistently skeptical attitude, see RICHARD RORTY, PHILOSOPHY AS THE MIRROR OF NATURE (1979).

²⁰⁶. Hilary Putnam comes to a similar assessment of the state of our collective psyche, urging that in our society the assumption “that fact and value are totally disjoint realms, that the dichotomy ’statement of fact’ or value ’judgment’ is an absolute one, has assumed the status of a cultural institution.” H. PUTNAM, REASON, TRUTH AND HISTORY 127 (1981).

²⁰⁷. The rule of law virtues are those of predictability, the formal justice of treating like cases alike, the protection of reliance on legal standards, and the like, all of which are
cation into four subtheories: a theory of logic and its place in legal reasoning, a theory of law proper, a theory of interpretation, and a theory about factual knowledge. Such subtheories are necessary because every judicial decision involves a judge in selecting which standards she is to regard as authoritative in reaching her decision; in finding the facts and describing them; in interpreting the authoritative standards in such a way that they bear on the facts of the particular case; and in justifying her decision as following deductively from the legal, factual, and interpretive premises. Subdividing the theory of adjudication in this way also makes it possible to pinpoint the way in which values do and must enter into legal reasoning. There are in general three ways: values enter into the formulation of at least some legal standards, notably common law rules and principles; second, values also play several important roles in any plausible theory of interpretation; and lastly, value judgments are made when a judge or jury selects the descriptions under which it will characterize the facts.

Spelling out all of this in detail would be to describe a full-fledged theory of adjudication. Developing each of these subtheories and identifying the role of value judgments in each is not a task to be undertaken here. This article, however, should be seen as a necessary first step to be taken in developing a natural law theory of adjudication. Only if there is a moral reality can judges be enjoined to seek it when they decide cases.

Any plausible theory of adjudication will find a place for values in its theories of law, fact and interpretation. The Legal Realists convinced us of as much decades ago. This necessary infusion of values, however, need not inevitably generate a natural law theory of adjudication, even if one is a moral realist. To explain: one might well grant the objectivity of moral judgments and yet exclude such knowledge from the kinds of things that a judge should take into account in deciding a case. To test this, consider the kind of case in which the necessity of relying on some kind of values is most blatant, that is, where the legislature uses an unmistakably moral term. An example of this is the typical child custody statute that directs a

threatened for the morally skeptical legal theorist who must find room in his theory of adjudication for value judgments by judges.

208. This is the thrust of Ronald Dworkin's attack on legal positivism. R. Dworkin, Taking Rights Seriously (1978).

209. Moore, supra note 4.


211. One might do this, for example, because one might think that the majority (as represented by their conventional morality) has the right to be wrong.
judge in a divorce situation to award custody of minor children to that parent who will maximize the "best interests" of the child. The statute requires the judge to have recourse to some set of values in order to unpack the meaning of the word "best" as it appears in the standard the legislature has made authoritative for her decision. The judge might rely upon conventional morality to unpack the meaning of the word "best" in the statute. She might, that is, rely on what most people in society think is in the best interests of a child. Alternatively, but much less plausibly, she might think that the statute requires her to use her own personal notions of what is best for children, in awarding custody. The arguments presented in this article suggest a third possibility: the legislature may have meant that she is to award custody by what is really in the best interests of the child before her, irrespective of what she thinks or of what society may think in this regard. A realist about morals will at least see such a third possibility. A skeptic will think that there are only two, neither of which are very attractive; the first commits her 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. Only a realist about moral judgments can avoid the dilemma of being a tool to a societal consensus that she condemns, or an anachronism in a liberal, democratic society. This is not to

212. This alternative, conventional morality, in fact includes a wide range of different sorts of things, depending on such variables as whether one is willing to restructure popular, particular judgments in light of more deeply held (but still popular) general moral principles; on which segments of society one thinks are relevant, and on what time frame one takes as crucial in seeking consensus (past, present, or future). For taxonomies of "shared values" along these and other dimensions, see Ely, supra note 98, and Brest, The Fundamental Rights Controversy: The Essential Contradictions of Normative Constitutional Scholarship, 90 YALE L.J. 1063 (1981).

213. There is a sense, of course, in which even the moral realist judge must rely on her own personal notions of what is best for children. To judge what is (really) best, she must judge by her own lights, i.e., by what she thinks is best. Yet a statute that sets a subjective standard for the awarding of custody remains quite distinct from a statute that sets an objective standard. Under the first sort of statute the judge who is sincere in her subjective judgments of what is best cannot be criticized, whereas under the second sort of statute she can be criticized for her sincere but wrong value judgments.

214. See, e.g., Leff, supra note 1, at 1245-49, who regards the values necessary to interpret the Constitution as resting either on individual will or on social convention. Where these sources disagree, "we really have no choice but to be arbitrary." Id. at 1249.

215. Moral realism weakens, but does not eliminate, the democratic arguments against a judge who ignores conventional morals when making value choices in adjudication. See supra note 211. Still, a judge who looks to what is really right is not in the anomalous position of the skeptic here, who must think of himself as forcing his own minority view on the majority despite his belief that the authoritativeness of a moral belief is strictly proportional to the number of persons holding it.
say that if she pursues the realist option, she will always or even often be very confident that she is right in any particular case. What a realist who is a natural lawyer can rely upon in going against her society's consensus, is that there is something objective about which she could be right.