Dworkin and the Possibility of Objective Moral Truth

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Abstract:

Ronald Dworkin’s ‘right answer thesis’ states that there are objectively right answers to most legal cases, even in hard cases where there is deep and intractable disagreement over what the law requires. Dworkin also believes that when deciding cases in law judges and lawyers must necessarily take moral considerations into account. This is problematic, however, for if moral considerations come into play when legal decisions are made, then there can only be a single right answer as a matter of law if there is a single right answer to the relevant moral question; Dworkin’s right answer thesis implies that morality is objective. Arguing against Brian Leiter’s claim that the only plausible conception of objective truth in ‘evaluative’ domains (such as morality, law, aesthetics and philosophy) is one modeled on the conception operative in ‘hard’ domains such as science. The following paper will show that this scientific understanding of objectivity is inappropriate for evaluative domains such as morality and law. I demonstrate that, contrary to people like Leiter and John Mackie, this conclusion does not preclude the possibility of objective moral truth. I argue that the conception of objectivity that Dworkin believes is appropriate for domains such as morality and law is a legitimate one, and also that it is one we ought to embrace so that we may indeed speak of objectively ‘right’ answers to legal cases, so that the possibility of law itself is not compromised, and so the state’s authority is made legitimate.

Dworkin and The Possibility of Objective Moral Truth

One of Ronald Dworkin’s most controversial positions is what has been dubbed his ‘right answer thesis’. Dworkin claims that in most legal cases, even in ‘hard’ cases where there is ‘deep and intractable disagreement’ over what the law requires, ‘right’ answers can be found by searching in “reason and the imagination” (Dworkin 1986, ix). Dworkin believes this is the case
because of his now famous interpretation of legal practice which states that when deciding cases in law, lawyers and judges, “should try to identify general principles that underlie and justify the settled law […] and then apply those principles to [the case at hand]” (Dworkin 2006, 143). There are two dimensions here: the principles identified should ‘fit’ with established law and ‘justify’ it by interpreting it in the best possible light (see Dworkin 1986, 230-1). Since lawyers and judges themselves are justifying the settled law when determining how to answer a legal case, Dworkin believes they must necessarily bring moral considerations into play. He claims lawyers and judges make their own value judgments when deciding, “which of competing sets of principle provide the best - morally most compelling – justification of legal practice as a whole” (Dworkin 2006, 144), and as such Dworkin believes, “legal argument is a characteristically and pervasively moral argument” (Dworkin 2006, 144). What is especially controversial about this position, and what places the thesis within certain philosophical debates, is the notion that these answers are ‘right’ in what Dworkin believes to be an objective sense.

In *The Oxford Handbook of Jurisprudence and Philosophy of Law* Brian Leiter surveys numerous ways in which ‘objectivity’ has been understood in the history of philosophy and discusses how philosophical issues concerning objectivity arise in law. He says that, “[w]e expect legal decisions to be objective in the sense of reaching the result that the law really requires without letting bias or prejudice intervene” (Leiter 2002, 977). Leiter claims it is with respect to this issue “in particular, that questions about the objectivity of ethics intersect with those about law” (Leiter 2002, 977). Indeed, if moral considerations come into play when legal decisions are made, as Dworkin claims, “then there can only be a single right answer as a matter of law if there is a single right answer to the question of political morality” (Leiter 2001b, 66). If Dworkin’s right answer thesis is sound, he must show that we can speak of objective moral truth.

Arguing against Brian Leiter’s claim that the only plausible conception of objective truth in ‘evaluative’ domains (such as morality, law, aesthetics and philosophy) is one modeled on the conception operative in ‘hard’ domains such as science, I will show that this scientific understanding of objectivity is inappropriate for evaluative domains such as morality and law. I will now show how for Dworkin, and contrary to people like Leiter and John Mackie, that this does not preclude the possibility of objective moral truth. I argue that the conception of objective that Dworkin believes is appropriate for domains such as morality and law is a legitimate one,
and is one we ought to embrace so that we may indeed speak of objectively ‘right’ answers to legal cases, so that the possibility of law itself is not compromised, and so the state’s authority made legitimate.

At the beginning of ‘Objectivity and Truth: You’d Better Believe It’ Dworkin makes the following statement:

I shall assume that all readers [...] accept that our shared language and common experience include assessments on what we take to be a distinct moral dimension. I shall not attempt to define that dimension, or to separate the predicates we use to employ it. If I am right, no helpful definition of morality as a whole can be given. In any case, the existence of a moral dimension of assessment in our experience is not in question, though its status is. (Dworkin 1996, 90)

Both sides of the debate regarding the objectivity of morality seem to agree that we have distinct moral, aesthetic, and other ‘evaluative’ dimensions to our experience. The debate specifically concerns, however, what Dworkin refers to as the ‘status’ of these domains: whether or not we can talk of these domains as ‘objective’, and whether or not this conception of objectivity is similar to the conception found in the natural sciences. As Leiter claims in the introduction to Objectivity in Law and Morals: “a recurring issue [in the debate surrounding objectivity in law and morals concerns] the alleged ‘domain-specificity’ of conceptions of objectivity, that is, whether there is a conception of objectivity appropriate for ethics that is different in kind from the conception of objectivity appropriate, say, for the sciences” (Leiter 2001a, 2). As we will see, Dworkin does not argue for a ‘domain-specific’ conception of objective truth, but rather, one that is appropriate for all ‘domains’ which nonetheless results in there being different criteria of truth depending on the domain.

In his survey of how objectivity has been understood in the history of philosophy, Brian Leiter distinguishes between three different types of objectivity: metaphysical objectivity which, “concerns the extent to which the existence and character of some class of entities depends on the states of mind of persons” (Leiter 2002, 969), the less they depend on the states of mind of persons the more objective these entities are; epistemological objectivity which, “concerns the extent to which we are capable of achieving knowledge about those things that are metaphysically objective” (Leiter 2002, 969); and semantic objectivity which is concerned with, “whether or not the propositions in some realm of discourse […] can be evaluated in terms of
their truth or falsity” (Leiter 2002, 969). With respect to the issue of whether or not there is objective moral truth, one could claim that we are dealing with issues of epistemological or semantic objectivity. One could say the issue is concerned with epistemological objectivity because we are concerned with the extent to which we can know our moral positions to be objectively correct, and semantic objectivity because we are concerned with whether or not moral propositions can in fact be evaluated in terms of their objective truth or falsity. We have seen above that Leiter defines epistemological objectivity as being concerned with how we can know objects that are metaphysically objective, but he also claims that, with respect to semantic objectivity, “for the statements in [a] discourse to be true, then the things referred to by the terms of that discourse (i.e. quarks, desires, justice, legal facts) must be metaphysically objective” (Leiter 2002, 969). According to Leiter’s account, therefore, if the domains of morality and law are objective, then moral and legal ‘facts’ must be metaphysically objective. For Leiter, the objectivity of morality and law necessarily presupposes metaphysical objectivity, the existence of some class of entities independent of human beings, and our methods of knowing them.

Leiter rightly acknowledges in both The Oxford Handbook and in ‘Objectivity, Morality, and Adjudication’ that Dworkin, “contests [this] entire way of conceptualizing objectivity” (Leiter 2002, 982). What Dworkin contests is precisely that metaphysical objectivity is a requirement for the possibility of epistemological and semantic objectivity in ‘evaluative’ domains such as morality, law, and aesthetics. Dworkin concentrates on the moral domain because it is his purpose to show that the law is objective by virtue of morality being objective, and therefore this paper follow that same vein. In order to better understand why Dworkin believes the objectivity of morality need not presuppose any sort of metaphysical objectivity we need to examine Dworkin’s interpretation of what we are doing when we make objective moral claims.

Both in Law’s Empire, and ‘Objectivity and Truth: You’d Better Believe It’, Dworkin claims there is a natural or ‘face-value’ way to read what we are doing when we make objective moral claims. In Law’s Empire he claims, “[w]e use the language of objectivity, not to give our ordinary moral or interpretive claims a bizarre metaphysical base, but to repeat them, perhaps in a more precise way, to emphasize or qualify their content.” (Dworkin 1986, 81) What it would look like to read our objective moral claims as making metaphysical or ontological claims will
be considered later. Here it is important to understand exactly what Dworkin means when he says using the language of objectivity repeats, emphasizes, or qualifies the content of our ordinary moral claims.

One can find that Dworkin believes there are three ‘uses’ of objective language. First and perhaps the most basic use for the ‘language of objectivity’ is, “to distinguish the opinions so qualified from other opinions that [we] regard as ‘subjective’” (Dworkin 1996, 98); “to distinguish genuine moral […] claims from mere reports of taste.” (Dworkin 1986, 81) Dworkin also believes that the language of objectivity is used to assert that our moral claims are ‘universal’ and/or ‘absolute’. With respect to the claim that ‘abortion is wrong’, if one were to say: “in my view abortion is wrong for everyone, no matter in what circumstance or culture or of what disposition or from what ethical or religious background” (Dworkin 1986, 98), one would be claiming the universality of the wrongness of abortion, or that it is wrong for all and everywhere. If one were to claim that abortion, “is never overridden by competing considerations: that it is never true, for example, that abortion is the lesser of two evils” (Dworkin 1986, 99), one would be claiming that abortion is absolute, or that nothing can change the fact that abortion is wrong. These assertions say not only that abortion is wrong, but that it is ‘objectively’ or ‘really’ wrong by repeating, emphasizing, or qualifying the content of that original claim (abortion is wrong) by asserting abortion’s universality and/or absoluteness. For Dworkin, using words like ‘objective’ and ‘really’ only emphasize or qualify the content of the claim ‘abortion is wrong’ in that they assert that abortion being wrong is not just a subjective report of taste, but that its wrongness is ‘universal’, ‘absolute’, or both.

In order to fully understand this natural or ‘face-value’ reading of what we are doing when we use the ‘language of objectivity’, we should consider the full story Dworkin tells us in ‘Objectivity and Truth: You’d Better Believe It’. He states:

Imagine I am speaking at length about abortion. I begin by saying ‘Abortion is wrong.’ This is […] a positive, first order, [proposition] of morality. Now, drawing breath, I add a variety of other claims […] ‘What I said about abortion was not just venting my emotions or describing or expressing my own or anyone else’s attitudes. My opinions are true. They describe what morality, quite apart form anyone’s impulses and emotions, really demands. They are, moreover, really and objectively true. They would still be true, that is, even if no one but me thought them true – even, indeed, if I didn’t think them true. They are universal and they are absolute. They are part of the fabric of the universe, resting as they do, on timeless, universal truths about what is sacred and fundamentally right or wrong. They are reports, that is, of how things really are out there in an independent, subsisting, realm of
moral facts.’ [...] Call all the statement I made after drawing breath [...] my ‘further claims’. (Dworkin 1996, 97)

Read in such a way, Dworkin believes, “[t]he claim that abortion is objectively wrong seems equivalent, that is, in ordinary discourse, to another of the further claims I made: that abortion would still be wrong even if no one thought it was. That, read most naturally, is just another way of emphasizing the content of the original moral claim, of emphasizing, once again, that I mean that abortion is just plain wrong, not wrong only because people think it is.” (Dworkin 1996, 98) Following this reading, Dworkin claims the assertions about moral ‘facts’ being ‘out there’ in an ‘independent’ realm should be interpreted as “inflated, metaphorical ways of repeating what some of the earlier further claims say more directly: that the wrongness of abortion does not depend on anyone’s thinking it wrong, for example.” (Dworkin 1996, 99) Reading objective moral claims that include metaphysical terms in this way is fairly controversial, however.

In ‘Objectivity and Truth’ Dworkin surveys numerous different interpretations of what we are doing when we make objective moral claims but is primarily engaged with the interpretation which takes the metaphysical and ontological language literally. Dworkin does this because he wants to show that it is absurd to take this language literally and that it is not necessary that we do so if we want to talk about objective truth in morality and law. Before getting into why some believe we ought to take the metaphysical language literally if we want morality to be an objective domain, we ought to first consider what it would look like and what it would mean to take this language literally. The following considerations are what Leiter has called “the most common form” (Leiter 2001b, 74) of this reading: reading objective moral claims as making claims about the existence of certain properties in the universe.

Leiter believes that Dworkin’s natural or ‘face value’ reading of what we do when we make moral claims is “quite obviously wrong” (Leiter 2001b, 69). Leiter states that when we make objective moral claims, claiming that something is true independently of what we think about the matter, we are making metaphysical or ontological claims. Specifically we are making claims about what kind of properties there are in the universe:

To claim that abortion is objectively wrong is, on a natural reading, not simply to ‘repeat’ or ‘emphasize’ that abortion is wrong but rather to assert a certain metaphysical thesis: to wit, that there exists a property of moral wrongness, which abortion has, and which it has quite independently
Indeed, if we were to use metaphysical language when describing our objective moral claims it is natural to read them as making metaphysical or ontological claims, not as metaphorical ways of stating our positions are ‘universal’ or ‘absolute’. Dworkin asks, however, whether or not we can legitimately read the further claims as taking up positions on metaphysical questions such as “whether there are moral properties in the universe, and, if so, what kind of properties these are.” (Dworkin 1996, 100)

Dworkin claims that to do the above would be to, “assert that moral properties exist as genuine properties of acts or events, and that such properties cannot be eliminated from a full and accurate description of how the universe is” (Dworkin, 1996, 100). Such an interpretation, “claims that some acts really are unjust, or some people really are good, or something of the sort” (Dworkin 1996, 100), that the moral properties of goodness and justness, for example, exist as predicates of people or things. But can we say that, “moral properties ‘consist in’ or ‘are the same properties as’ more ordinary, natural, properties” (Dworkin 1996, 100)? Can we say, for example, that just as, “the property of being water is the same as the property of having the chemical composition H20, so the property of rightness is the same as the property of maximizing happiness” (Dworkin 1996, 100)? Dworkin claims that such property identification with respect to morality implies what he calls the ‘moral-field thesis’. Before considering this, however, we need to give this reading of our objective moral claims full credit by considering Leiter’s argument that we ought to read our moral claims in this way if the objectivity of morality is possible at all.

Leiter argues, in both The Oxford Handbook and ‘Objectivity, Morality, and Adjudication’ that, “science has, as an a posteriori matter, ‘delivered the goods’: it sends planes into the sky, eradicates certain cancerous growths, makes possible the storage of millions of pages of data on a tiny chip, and the like.” (Leiter 2001b, 71 and Leiter 2002, 985-6) Because of this, he argues, using Quine as an authority, “causal power has shown itself over the past few centuries to be the best-going indicia of the knowable and the real” (Leiter 2002, 985). Leiter believes that, “science - and the norms of a scientific epistemology, that is, the implicit norms on
which scientific practice relies” (Leiter 2001b, 71), is our best picture of the world to date, and as such, it is the highest tribunal when it comes to knowledge (See Leiter 2001b, 71). He emphasizes that, “in the post-enlightenment world, the only tenable guide to the real and the unreal is science, and the epistemological standards we have inherited from successful scientific practice” (Leiter 2002, 985). While these may be extremely strong claims, and Leiter does not seem to consider the problems science has delivered, he is right to point out that what he is calling a ‘scientific epistemology’ is a high standard when it comes to knowledge, and is one which allows us to say we have objective knowledge of the natural world; that claims about the natural world can be evaluated in terms of their objective truth or falsity.

Scientific epistemology, according Leiter, amounts to saying, “(a) only that which makes a causal difference to experience can be known; and (b) only that which makes a causal difference to experience is real.” (Leiter 2002, 984-5) He also adds that a scientific epistemology is rooted in a basic empiricist doctrine that claims the senses are the best source of knowledge (see Leiter 2002, 985). Leiter further states that the success of science generates epistemological pressure on all our other beliefs to meet up to the standards of a scientific epistemology (see Leiter 2002, 985-6 and Leiter 2001b, 77-8). With respect to knowledge in morality, Leiter claims that, “[t]he demand to find a place for moral facts within a scientific epistemology is neither arbitrary nor a priori, but simply the natural question to ask given the a posteriori success of science” (Leiter 2001b, 77); “Given that we have a useful guide to the true and the real already in hand – namely, science and its epistemic norms – why not see [...] whether or not ‘moral facts’ can meet these demands” (Leiter 2002, 986). While this may indeed be the natural move to make given the fact that the epistemic norms of science do allow for the possibility of objective knowledge, albeit of the natural world (the a posteriori success of science on its own being a questionable reason for extending science’s epistemic norms to other domains), if it is determined that we cannot find a place for our moral beliefs within a scientific epistemology (for whatever reason), then we should abandon the attempt and determine what sort of epistemological criteria we can use for our moral beliefs, and whether or not such criteria allow for the possibility of objective moral knowledge.

If we want to be able to know moral ‘facts’ with the same certainty that we know natural or physical facts in the sciences, then we have to interpret moral claims in a certain way such that
we can use our scientific epistemology to evaluate their claims to truth or falsity; reading moral claims as making claims about what kind of properties exist in the world, for example. Dworkin asks whether or not we can do this: “can we read the further claims to say something parallel [to scientific beliefs and facts] about moral beliefs and moral facts – to say, that is, that the latter cause the former?” (Dworkin 1996, 103) If we are able to do so then perhaps we can know moral facts with the same certainty we know physical facts, or facts about the natural world. This will indeed lead to the possibility of our beliefs being evaluated in terms of their truth or falsity, or to having moral knowledge be as certain as our knowledge of the physical world. Dworkin argues this is possible, however, only if we say that there is, “a direct and independent impact of moral properties on human receptors” (Dworkin 1996, 103); only if we say that moral facts somehow make a causal difference to our experience and thus can be known by us.

If one reads Dworkin’s ‘further claims’ as asserting that moral properties (the justness of rightness of an action or person, for example) are identical with natural properties and we think of objectively ‘right’ actions as identical to actions which promote happiness (a utilitarian reading) then “we might as well say that the fact that it is right causes people to think it is” (Dworkin 1996, 104). Dworkin writes:

The idea of a direct impact between moral properties and human beings supposes that the universe houses, among its numerous particles of energy and matter, some special particles – morons – whose energy and momentum establish fields that at once constitute the morality or immorality, or virtue or vice, of particular human acts and institutions and also interact in some way with human nervous systems so as to make people aware of the morality or immorality or of the virtue or vice. We might call this picture the ‘moral-field’ thesis. (Dworkin 1996, 104)

Indeed, “if someone thought that his moral beliefs were directly caused by moral particles, he would regard that as a vindication of those beliefs, as we regard the discovery that our ordinary observations are caused by what we claim to observe” (Dworkin 1996, 105). On this interpretation, “[i]t might even be said that only a direct impact of morons on the brain could justify a moral conviction.” (Dworkin 1996, 105) I think Dworkin is correct to say, however, that this moral field thesis is absurd, ‘insanity as a piece of physics’, and generally not something we would want to charitably attribute to anyone who made any of what he has called the ‘further claims’, even if they used metaphysical or ontological language. Since it is absurd to suppose ‘morons’ exist in the universe and causally make a difference on the nervous systems/senses of
human beings, a ‘scientific epistemology’ is not applicable to moral beliefs. Dworkin writes: “[s]ince morality and other evaluative domains make no causal claims” (Dworkin 1996, 120), applying a scientific epistemology to moral and other evaluative beliefs is not the appropriate thing to do. Gerald Postema agrees with Dworkin here when he claims the following:

[T]he ‘success’ of natural science depends at least in part on the fact that it self-consciously brackets, and thus remains silent about, large portions of human experience (notably the normative dimensions of experience). Moreover, normative discourse does not deal in the base currency of natural science – causal explanations; why, then, should we accept that success in charting the world organized under the category of causation gives license to determine the tools for reasoning our way around the practical world? (Postema 2001, 134)

Dworkin’s rejection of the moral field thesis is fairly straightforward and convincing. Leiter claims, however, that this is not the point of thinking of moral properties as natural properties. Leiter says that many would, “agree that this thesis is, indeed, quite absurd, that it is ‘barely intelligible’” (Leiter 2001b, 75). Leiter claims that, “the realist wanted to identify moral properties with natural properties” (Leiter 2001b, 76), because the moral-field thesis is absurd: “The motivation for the naturalistic reduction, in short, is to find a place for the ‘moral’ within a scientific epistemology.” (Leiter 2001b, 76) It is difficult to understand why Leiter would still think this a good idea if he himself believes the moral field thesis is absurd. Leiter does attempt to explain why this should be done, however.

Due to science having supposedly ‘delivered the goods’, Leiter believes we should attempt to have all knowledge meet the standards of science’s epistemological norms, specifically the norm which says ‘only that which makes a causal difference to experience can be known’. He claims: “A scientific epistemology…is one of the most precious legacies of the Enlightenment, a legacy under attack from those corners of the academy where bad philosophy reigns supreme” (Leiter 2002, 985). Leiter invokes the enlightenment project of requiring that beliefs and theories answer to experience, insisting that ‘evidence matters’, and that our beliefs must be able to be checked by reality if we are to be justified in holding them; that our beliefs should not simply be accepted on authority (See Leiter 2002, 985). However, if it is the case that the epistemological norms of science are not appropriate for our moral and legal claims because they do no make causal claims, and it is absurd to posit ‘morons’ as existing in the universe, then why should we ‘dogmatically’ require our moral and legal beliefs to be subject to the
epistemological norms of science? Leiter believes that requiring all of our beliefs to stand up to the norms of science is being faithful to the enlightenment, but it seems that believing in this requirement rests on a failure to acknowledge that the epistemological norms of science are not appropriate for morality; to require that all of our beliefs meet a scientific standard of knowledge after realizing this is an inappropriate requirement for moral, and other evaluative beliefs would itself be a belief based on the authority of not considering the evidence. As such it seems the requirement that all of our beliefs stand up to the epistemological norms of science would be unfaithful to the enlightenment.

Dworkin calls a ‘hierarchical epistemology’ one which, “tries to establish standards for reliable belief a priori, ignoring the differences in content between different domains of belief” (Dworkin 1996, 118-9). With respect to the domain of morality he says, “[w]e do need tests for reliability of our moral opinions, but these must be appropriate to the content of these opinions” (Dworkin 1996, 120), i.e. appropriate to beliefs which make no causal claims. The truth of a belief cannot depend solely on its relation to the state of affairs it describes. For the physical world, it is reasonable to assume a test for reliable belief involves direct, remote, or at least potential interaction between the belief and the state of affairs it describes but this is not the case for moral beliefs. If we assume moral beliefs must be tested in the same way as beliefs about the physical world then no moral belief is reliable.

Leiter believed that we ought to ‘find a place for the moral within a scientific epistemology’ because he, as well as others, believed that this was the only way for morality to be objective. John Mackie, in Ethics: Inventing Right and Wrong, argued that because morality does not make any claims about what kind of properties exist in the universe, and moral claims therefore cannot be known or evaluated in terms of their truth or falsity in the same way claims about the physical world can, morality cannot be objective (see Dworkin 1996, 113). If, however, we do have good reason to believe that we can have reliable, ‘objective’ moral belief without having to subject morality to the epistemological norms of science, as Dworkin does, then the assumption that morality can be objective only if moral beliefs are subject to the epistemological norms of science is a false assumption.

Dworkin often claims that we have good evidence in our own experience that we have a unique capacity to make moral judgments (Dworkin 1996, 118 for example) and seems to
believe that if there is a moral ‘domain’ at all, it is an objective one. He claims, “we cannot regard the idea that morality is more than self-interest as a contestable hypothesis that we might consider dropping. It is of the essence of morality.” (Dworkin 1996, 124) Indeed, if morality were not objective, it would be hard to imagine moral claims as anything more than subjective reports of taste. As such, it seems genuine moral claims are objective. While it is a large issue to discuss whether or not objectivity is required for the possibility of morality in the first place, although I think there is good reason to believe this, there are good reasons not to assume that morality can be objective only if moral beliefs are subject to the epistemological norms of science. As we have already seen, Dworkin and his opponents generally accept that, “if moral considerations figure decisively in determining the answer to a legal dispute, then there can only be a single right answer as a matter of law if there is a single right answer to the question of political morality” (Leiter 2001b, 66). Throughout ‘Objectivity and Truth: You’d Better Believe It’, Dworkin insists that the objectivity of morality is necessary if legal practice is not to be compromised. He claims, “it is now strenuously argued that since there is no objective truth about interpretation or art or morality there can be no standard of merit or success in artistic or moral or legal thought beyond the interest a theory arouses and the academic dominion it secures. This auto-de-fe of truth has compromised public and political as well as academic discussion.” (Dworkin 1996, 89) As such, we have reason to try and understand how morality could be objective aside from the scientific sense in order to preserve the possibility of law. Also, in ‘Embracing Objectivity in Ethics’, Philip Petit notes that we can challenge legal decisions with reference to moral values, but not vice versa; morality has priority in the sense that it is the final tribunal whose criteria we can use to critique the demands of law (Petit 2001, 234). Petit therefore claims that morality is the “ultimate currency” (Petit 2001, 235) for justifying action, and as such, if legal decisions are justified in terms of morality, then the law will have a particularly authoritative status which contributes to law’s legitimacy as an authority. If it can be shown that the demands the law makes on its citizens are morally justified demands, the law’s authority is made legitimate with reference to the highest tribunal or ‘ultimate currency’ when it comes to justifying action: morality. Indeed, Petit notes that it is objective value in particular, “that has a characteristically authoritative standing” (Petit 2001, 234). Not only do we thus have an interest in bringing moral considerations into play when making legal decisions, but we also have an interest in understanding morality as objective because we have an interest in the law
being objective. Gerald Postema makes the point clearly when he writes: “Without a credible claim to objectivity, we could not hope to sustain the legitimacy of law and the modern political society it serves.” (Postema 2001, 116). The legitimacy of the law rests on the law being objective in the sense of its decisions on legal cases being the ‘right’ ones, and these decisions being justified in the terms of the highest tribunal of action justification: objective morality.

While we may have reason to preserve the objectivity of law and morality, this does not mean we ought to find a minimal or cheap sense of objectivity applicable for these domains. It means that if there is a legitimate way to understand these domains as objective other than the scientific way then we have an interest in articulating such a conception and in explaining why it is a legitimate one. This is precisely what Dworkin wishes to do.

In *Law’s Empire* Dworkin attempts to clarify what his right answer thesis amounts to when claiming that, ”the question whether we can have reason to think an answer right is different form the question whether it can be demonstrated to be right” (Dworkin 1986, ix). He claims that his right answer thesis does not mean that, “in these cases one answer could be proved right to the satisfaction of everyone” (Dworkin 1986, ix). What he means is that one can legitimately say that the claim ‘abortion is wrong’ is objectively right if one has, “compelling reasons for believing that abortion is wrong, reasons that I have no doubt justify that conclusion”, that one has, for example “unchallengable, obviously compelling, reason for condemning it [abortion].” (Dworkin 1996, 98) Dworkin’s conception of objective truth in ‘evaluative’ domains is an argumentative or rational one, such that truth is established through ‘substantive normative argument’ (Dworkin 1996, 127-8). The way in which we can test for the reliability of moral and other so-called evaluative positions, indeed even our philosophical positions, is by showing that a specific position can stand up to criticism and is the best position compared to the alternatives. Our moral and other ‘evaluative’ convictions which cannot be tested for reliability with reference to their causes, or with what they interact with or make reference to in the physical world must be tested for their reliability and truth through rational argumentation.

In *Law’s Empire* Dworkin claimed that he would offer arguments:

> [A]bout what account of law provides the most satisfactory interpretation of that complex and crucial practice. These arguments will not – because they cannot – be demonstrations.
They invite disagreement, and though it will not be wrong to reply, ‘But that’s only your opinion,’ neither will it be helpful. You must then ask yourself whether, after reflection, it is your opinion as well. If it is, you will think that my arguments and conclusions are sound and that other, conflicting ones, are unsound and wrong. If it is not your opinion, then it falls to you to say why not, to match my arguments or naked convictions with your own. For the exercise in hand is one of discovery at least in this sense: discovering which view of the sovereign matters we discuss sorts best with the convictions we each, together and severally, have and retain about the best account of our common practices. (Dworkin 1986, 86)

This is precisely the sort of argumentative account of truth Dworkin believes in: the beliefs we retain and can claim are objectively true are those which we have good reason for believing in, those which can stand up to serious criticism, and are more convincing than the opposing positions. The title of the main article in which Dworkin argues for his conception of objectivity, ‘Objectivity and Truth: You’d Better Believe It’, says something important about his position. There, Dworkin makes the following claim: “If you can’t help believing something, steadily and wholeheartedly, you’d better believe it. Not […] because the fact of your belief argues for its won truth, but because you cannot think any argument a decisive refutation of a belief it does not even dent.” (Dworkin 1996, 118) If we believe a moral or legal or aesthetic or philosophical claim is true, the criticisms of the position are not strong enough to refute it, and the position is the best among other competing positions on the issue, then we can reliably hold such a belief and claim it is objectively true. The reliability test for beliefs, which cannot be verified in the physical world, is their subjection to substantive normative argument.

Dworkin does acknowledge that, “we may well discover that what we now think about virtue or vice or duty or right is inconsistent with other things we also think, about cosmology or psychology or history. If so, we must try to reestablish harmony.” (Dworkin 1996, 128) Dworkin realizes his conception of objective truth is not a timeless one, but allows for ‘truth’ to be challenged and even changed. That being said, our moral and other positions can be objectively true insofar as they have not yet been overridden; if I have good, obviously compelling, thus far unchallengeable reasons for justifying my belief in a moral, legal, aesthetic, etc. position, then my position is a reliable one and I can claim it is ‘true’ in an objective sense. John McDowell has a similar position in that he believes objectivity in domains such as morality amounts to, “[s]usceptibility to reasons” (cited in Leiter 2001b, 82), or, rather, belief backed by substantial reason such that if others were to become aware of such reasons they too would hold the same
belief. Postema has a similar view with his conception of objectivity ‘as publicity’. According to Postema, on this view, “a judgement is correct…if it is backed by sound reasons that are or can be articulated and assessed publicly” (Postema 2001, 117). Belief backed by substantive argument, good reasons for holding the belief, and the possibility that the belief can be challenged _are_ enough to establish truth in an objective sense.

This idea of truth as argumentative or rational is not a new one, but is almost the default conception of truth we constantly use and cannot do without. The truth of any philosophical or theoretical position in general is evaluated in terms of the reasons one has for holding it, whether or not there is a better competing theory or position. Leiter disagrees because he claims that if we do not hold all of our beliefs up to the standards of the epistemological norms of science, we revert to a, “pre-Enlightenment conception of the world that we seem to do better without” (Leiter 2001b, 83). There is no sense to be made of this claim because for Leiter’s own theory to be convincing or regarded as true, which he undoubtedly does believe, he must believe in the conception of truth Dworkin is arguing for and believe we do in fact need it. Dworkin’s conception of truth is one applicable for all domains or all of discourse as long as there are not better criteria, appropriate to the domain, for determining reliable belief.

We have seen how Dworkin’s right answer thesis takes sides on a certain meta-ethical debate. If moral considerations are taken into account when answers to legal cases are determined, and there are objectively right answers to legal cases, then morality must be objective. It was shown how the conception of objective truth appropriate for science is not appropriate for domains like morality, according to Dworkin, but that this does not preclude the possibility of morality’s objectivity. After illustrating some motivations for not limiting the objectivity of morality and law to a ‘scientific’ conception, it was shown that Dworkin’s conception of objective truth is one that is established through substantive normative argument. It was show how this conception of truth _is_ appropriate for morality, law, and even philosophy, and is the conception operative in discourse as a whole. I think it helps Dworkin’s position to say that his conception of truth fits into legal practice as it currently functions. The notion of proof ‘beyond a reasonable doubt’ suggests that the answers judges make at a particular point in time can be regarded as the right ones, objectively, given the information at hand and the possibility of appeal acknowledges that the objectively true answer to the case can change in the future.
pending additional information is brought forth. As such, Dworkin’s conception of objective truth seems a legitimate one for law and morality and should be taken seriously given it helps explain how there can be objectively right answers to legal cases, it preserves the possibility of moral and legal discourse, and makes the authority of the state legitimate.

Works Cited:


