WHEN IS THERE NOT ONE RIGHT ANSWER?

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I. THE PROBLEM DELINEATED

This article takes as its point of departure my rejection of moral skepticism. Moral skepticism is understood here not as moral relativism (namely, the thesis that the correctness of moral principles is relative to various communities or other groups), but instead as an insistence on the sway of indeterminacy in the realm of morality. A skeptic maintains that, to every moral question or nearly every moral question, there is no determinately correct answer. In the eyes of skeptics, the discretion of someone replying to any such question is largely unrestricted.

In the third chapter of my forthcoming book *Moral Realism as a Moral Doctrine*, I have sought to expose the fallacies in the arguments propounded by moral skeptics. Yet, given that such theorists have wildly exaggerated the degree of the indeterminacy that is present in the domain of morality, how far should we go in rejecting their skeptical claims? In legal philosophy, Ronald Dworkin has long affirmed that there is a uniquely correct answer to every legal question or virtually every legal question that might arise in any particular jurisdiction. Is a similar stance warranted in moral philosophy? Dworkin himself has based his view of law's determinacy partly on his belief that—at least in any legal system relevantly similar to that of the United States—the answers to legal questions are determined not only by the familiar materials of law such as statutes and adjudicative rulings and administrative regulations and constitutional provisions, but also by the most attractive moral principles that are immanent in those materials. That is, he believes that the uniquely correct legal answer in every case is the uniquely correct moral response to the problem raised by the case (in the light of the institutional history within which the case arises). For him, the comprehensive determinacy of law rests on the comprehensive determinacy of morality. Is he right to think that the moral realm partakes of perfect determinacy?

On the one hand, Dworkin’s affirmation of such determinacy is not to be derided as ridiculous. Particularly noteworthy in this regard is his emphasis on the distinction between indeterminacy and indemonstrability. When Dworkin insists on the existence of uniquely correct answers to thorny moral questions, he is hardly implying that people will invariably concur on what those answers are. On the contrary, he has repeatedly accentuated the intractability of the disagreements that surround difficult moral or legal cruxes. The distinction between determinate correctness and demonstrable correctness is especially salient in his jurisprudential theorizing because of his contention that correct principles of morality will be among the legal norms in any morally authoritative system of law. Given that the correctness of the basic principles of morality is independent of anyone’s outlook or mental processes, Dworkin’s claims about uniquely correct answers to vexingly complicated legal/moral questions plainly do not entail any claims about widely agreed-upon answers to those questions. Accordingly, the preposterousness of claims of the latter sort should not be attributed to claims of the former sort.

Similarly noteworthy is Dworkin’s emphasis on the related distinction between indeterminacy and uncertainty. When Dworkin declares that there is a uniquely correct answer to virtually every moral question, he is in no way suggesting that everybody or almost everybody will feel confidently inclined to take a stance on each such question. More than anyone else, he has highlighted the distinction between indeterminacy and uncertainty. He has done so precisely because he is keenly aware that many people are genuinely unsure about the best answers to difficult moral questions. Insofar as such people register their uncertainty as uncertainty—and insofar as they thus refrain from inferring that their divided and baffled feelings indicate that there are no determinately correct answers to the questions that puzzle them—they are saying nothing whatsoever that is at odds with Dworkin’s position.

On the other hand, although Dworkin’s insistence on the existence of a uniquely correct answer to virtually every moral question is far from risible, it is excessively bold. Notwithstanding all that has been said here in his defense, there are good grounds for declining to go as far as Dworkin. He is right to challenge the orthodox (and rather complacent) view that there are no determinately correct answers to numerous moral questions, but his challenge does not altogether succeed. There undoubtedly remain some moral issues in connection with which the competing considerations are either evenly

balanced or incommensurably pitted against each other. Contrary to what
some opponents of moral realism have suggested, realists—with their
insistence on the objectivity of morality—can readily acknowledge the
existence of a certain degree of indeterminacy in the moral realm.

As should be plain, the scale of the determinacy or indeterminacy in the
moral realm is itself a moral matter. In reply to Dworkin’s overweening
claims about the comprehensive determinacy of that realm, we have to pose
moral inquiries. For each especially difficult moral issue, we have to ask
whether the existence of a determinately correct way of handling the issue
would be morally superior to the inexistence of any such way. Although
Dworkin believes that the answer to such an inquiry will always be “yes,”
there are solid reasons for thinking otherwise.

II. MORAL VAGUENESS

Consider, for example, the problems engendered by the ineliminable
vagueness of many moral concepts. Albeit a full-scale treatment of the topic
of vagueness is well beyond the scope of this article, a laconic sketch of one
mundane instance of the problem will suffice for my present purposes; the
same basic considerations that bear on this instance will bear on countless
other instances as well. Suppose that six months would be an unreasonably
long period of time for students to be kept waiting for the disclosure of their
examination results, and that three days would be a reasonably short period of
time for such a wait. Yet, if a period of six months is unreasonably long, then
so is a period of six months minus one tenth of a second. Any basis for
deeeming the former to be unreasonable in length would apply as well to the
latter. Conversely, if a span of three days is reasonably short, then a span of
three days plus one tenth of a second is likewise reasonable. Any distinction
between those two lengths of time that is centered on their reasonableness or
unreasonableness would be zany. No correct principle of morality would ever
classify three days as reasonable while classifying three-days-plus-one-tenth-
of-a-second as not reasonable. In this context, much the same can be said
about every reasonableness-focused or unreasonableness-focused distinction
between any span of length $L$ and a span of $L$-plus-one-tenth-of-a-second or
a span of $L$-minus-one-tenth-of-a-second. Whatever may be the numerical
value of the “$L$” variable, any reasonableness-focused or unreasonableness-
focused distinction between $L$ and $L$-plus-one-tenth-of-a-second or between
$L$ and $L$-minus-one-tenth-of-a-second would be untenably arbitrary. Given as

6. See, for example, David Wong, Moral Relativity (Berkeley, CA: University of
California Press, 1984), 141.
much, however, somebody who ventures to pin down the distinction between
the reasonably short and the unreasonably long will proceed indefinitely in
contemplating the addition of tenths of seconds to the length of three days, and
will likewise proceed indefinitely—until reaching zero—in contemplating the
subtraction of tenths of seconds from the length of six months. There is no
point at which a non-arbitrary line will mark the end of the reasonableness of
the former length. Nor is there any point at which a non-arbitrary line will
mark the beginning of the unreasonableness of the latter length. No correct
principle of morality would ever sustain any such line. We therefore seem
impelled toward the conclusion that a period of six months or even longer is
reasonably brief, and that a period of three days or even shorter is
unreasonably protracted.

To come to grips with this sorites paradox, which has been known since
ancient times and which bears mutatis mutandis on many dichotomies rather
than only on the reasonableness/unreasonableness distinction, we have to
allow that each such dichotomy is associated with a gray area of borderline
cases. Within that gray area—the boundaries of which are themselves vague
at a higher-order level—there is no determinate answer to the question how
any particular borderline phenomenon is to be classified. Now, among the
vague properties that give rise to such gray areas are many of the properties
within the domain of morality. Those properties differ among one another in
the extent of their vagueness and in the degree of its practical importance, but
each of them can generate questions to which there are no determinately
correct answers. The potential for some such questions is ineliminable, since
any means of closing off vagueness in one or more of its manifestations within
the moral realm will require the invocation of other moral properties that are
themselves not impervious to lines of reasoning broadly parallel to the
argument sketched in my preceding paragraph. Although vagueness can
usually be lessened, and although it can always be shifted from one focal point
to another, it can never be overcome completely. Its ineliminability, in the
present context, stems from the unsustainability of any moral principles that
would draw fundamental differences on the basis of extremely fine gradations
such as those highlighted in my preceding paragraph. Because no defensible
moral principle would ever classify $L$ as a reasonably short length of time for
the marking of examinations while also classifying $L$-plus-one-tenth-of-a-
second as a length of time that is not reasonable—and because no defensible
moral principle would ever classify $L$ as an unreasonably long period of time
for the marking of examinations while also classifying $L$-minus-one-tenth-of-
a-second as a period that is not unreasonable—we shall find ourselves

engulfed by sorites paradoxes unless we acknowledge the existence of a gray area in which some questions about the reasonableness or unreasonableness of certain spans of time are not determinately answerable. In other words, we have to acknowledge that there are no determinately correct answers to some moral questions. Moreover, pace Dworkin, such an acknowledgment is required on moral grounds. We have to accept the notion of a gray area, because a rejection of that notion in this context entails the implicit or explicit postulation of outlandish moral principles.

Admittedly, the problems of vagueness are viewed as purely epistemic by a few of the most sophisticated contemporary analysts of such matters. If a defender of Dworkin were to embrace such a view, he or she could maintain that the gray areas of borderline cases surrounding vague concepts are regions of ineradicable uncertainty rather than of indeterminacy. However, as the epistemicist philosophers of vagueness are themselves aware, they are very much in the minority, and their views have been challenged at length. As Roy Sorensen, one of the premier exponents of the epistemicist account of vagueness, has amusingly commented: "Unlike most paradoxes, the difficulty with the sorites paradox is not devising a subtle solution. The epistemicist solution is straightforward....The real problem is to explain why people have so much trouble accepting the simple solution. Including me."  

At any rate, there is no need here for me to enter into the debates over the general soundness of the epistemicist approach to vagueness. Whatever may be the merits and shortcomings of that approach in other areas, its shortcomings are insuperable and devastating in the domain of morality. According to the epistemicist account of moral vagueness, every divide between reasonably short spans of time and unreasonably prolonged spans of time is sharp. For some value of "L," L is a reasonably short period of time for the marking of an examination, whereas L-plus-one-tenth-of-a-second is an unreasonably lengthy period. Yet, the epistemicist theorists firmly insist, nobody can ever know—even in principle, much less in practice—where the sharp line between reasonableness and unreasonableness lies. No human being or any other rational agent could ever know that L-plus-one-tenth-of-a-second is an unreasonably long stretch of time for the marking of examinations, yet it is indeed unreasonably long. So the epistemicists assert.


As a result, their accounts of vagueness in application to this moral problem
and to other moral problems are doubly vulnerable.

In the first place, as has already been contended, no tenable moral principle
would ever establish both that \( L \) is a reasonably short period of time for the
marking of examinations and that \( L + \text{one-tenth-of-a-second} \) is unreason-
ably long. Any such differentiation between those stretches of time would be
crazily unprincipled and arbitrary. Moral principles cover morally significant
differences, rather than differences that can never truly matter morally. Still,
this first retort to the epistemicist theorists of vagueness would probably strike
those theorists as question-begging. They would presumably reply that, for
some unknowable value of \( "L"," \) the difference between \( L \) and
\( L + \text{one-tenth-of-a-second} \) is morally significant. That difference constitutes the
division between a reasonably short span of time and an unreasonably
protracted span of time for students to be kept waiting for the disclosure of
their examination results. We can never know where that morally significant
difference resides—so the epistemicist philosophers would maintain—but a
correct principle of morality will capture it precisely among the principle’s
implications. Though such an implication will be strictly unknowable, it will
obtain as a corollary of a correct principle of morality.

In the second place, then, in response to the epistemicist rejoinder that has
just been posited, we should turn to a point which I have discussed elsewhere
at length. No correct principle of morality will ever yield implications that
are wholly unknowable under optimal conditions, for no such implications
would have any normative purchase on human life. As numerous
philosophers have rightly declared, no true moral principle can be radically
recognition-transcendent. Thomas Nagel, for instance, is right to deny that
"the truth about how we should live could extend radically beyond any
capacity we might have to discover it (apart from its dependence on non-
evaluative facts we might be unable to discover)." Any radically
recognition-transcendent moral standard would lack bindingness and would
therefore not be a veritable moral standard. Considerations of elementary
fairness and respect for moral agency would militate against such bindingness.
In this respect, the correct principles of morality differ from the physical laws
of nature and the truths of mathematics. There might conceivably be physical

11. Kramer, Moral Realism as a Moral Doctrine, ch. 2.
12. See, for example, Hilary Putnam, “Are Moral and Legal Values Made or Discovered?”
Quasi-Realist,” in Moral Knowledge?, ed. Walter Sinnott-Armstrong and Mark Timmons
(Oxford: Oxford University Press, 1996), 94; Andrei Marmor, Positive Law and Objective
laws of nature and mathematical truths that forever exceed the grasp of human beings even under optimal epistemic conditions, yet those unknowable laws govern our physical existence, and those unknowable truths constrain our mathematical reasoning (in that we cannot correctly believe anything that is inconsistent with them). By contrast, a starkly recognition-transcendent moral mandate would be grossly unfair and would thus be devoid of normative force—which in turn means, of course, that it would not be among the correct principles of morality.

To be sure, the sway of the "ought"-implies-"can" precept is far from unlimited. If certain individuals are morally too obtuse to apprehend basic moral principles, or if a whole society is morally so backward that the members of the society are incapable of recognizing many moral truths, then there is no unfairness in deeming them to be morally derelict. Arrantly unfair, however, would be a world in which people are morally required to abide by some standard that hovers esoterically beyond the comprehension of everyone with admirably refined moral sensibilities. If any moral standards were not only unknown but also altogether ungraspable by any human being, then their demands or authorizations would not have any normative purchase on human life. Not only would such standards fail to guide people; in addition, they would fail to obligate anyone and would fail to authorize any exercises of ostensible moral powers. If human beings generally (rather than merely some benighted people) stand no chance at all of learning of moral requirements or prescriptions to which everybody is putatively subject, then the value of moral agency would be flouted if anyone were genuinely subject to those inaccessible requirements or prescriptions. Whereas the contents of the correct principles of morality never depend on being recognized, they do depend on being recognizable (at least under optimal conditions). Without recognizability, they would possess no rightful claims on people's moral striving, and they would consequently not be the contents of the correct principles of morality.

Let us return to the problem of vagueness by considering this point in the context of the example involving the marking of examinations. According to the epistemicist account of the matter, some person P responsible for marking examinations might be committing a moral wrong against students simply by taking one tenth of a second longer in the process of marking than somebody who has finished the task within a reasonably short period of time. Neither P nor anyone else could ever know that the additional tenth of a second would render his conduct unreasonable. Yet, given that no one could ever know that

P was under a moral duty to refrain from expending the additional tenth of a second, he was under no such duty. After all, his inability to apprehend such a moral duty is not attributable to any moral failings or other failings on his part. Instead, it stems from the fact that any such moral duty would lie utterly inaccessibly beyond the investigative efforts of every human agent even under optimal conditions. Consequently, we can be certain that there is no such duty. Nobody is ever under a moral duty to refrain from expending an additional tenth of a second in the marking of examinations, because nobody is ever under a moral duty that is not only unrecognized but also completely unrecognizable. A moral duty of that sort would ludicrously flout P's moral agency. Given that morality is not ludicrous, the epistemicist account of vagueness—whatever its virtues and weaknesses in other domains—is unsustainable in the moral realm. Defenders of Dworkin cannot fall back upon the epistemicist approach in order to salvage their view that the moral realm is comprehensively determinate. It is a matter of moral necessity that some moral questions lack any determinately correct answers.

III. INCOMMENSURABILITY AND VALUE-PLURALISM

This conclusion about the modest but abiding presence of indeterminacy in the domain of morality is strengthened when we ponder some other potential aspects of moral situations. Most obvious but perhaps least frequent as a locus of indeterminacy is any situation in which the morally relevant considerations on each side of an issue are exactly evenly balanced in importance. Dworkin himself has always acknowledged the possibility of such situations and has likewise accepted that they involve genuine indeterminacy. However, he has also rightly submitted that competing moral considerations are seldom balanced precisely evenly. Though by no means impossible, the occurrence of a moral problem with conflicting factors exactly matched in importance is exceptional rather than typical. Still, although such situations are uncommon, there are no determinately correct answers to the questions which they pose.

Somewhat less rare than moral quandaries with precisely counterpoised considerations are moral cruxes that give rise to indeterminacy because of incommensurability. Dworkin's claims about the existence of a uniquely correct answer to virtually every moral question are closely bound up with his resistance to the idea of the incommensurability of clashing moral factors, and

with his concomitant rejection of value-pluralism in morality (namely, the thesis that basic moral values collide with one another in certain respects and that they therefore sometimes have to be traded off against each other). To be sure, his doubts about incommensurability and value-pluralism in the domain of morality are salutary to some degree; people are too ready at times to presume that the difficulty of reconciling certain moral desiderata is indicative of the sheer impossibility of doing so. Nevertheless, his stance is overweening insofar as it is meant to apply in a blanket fashion. The tenability of that stance is a moral matter, of course, and there are solid moral reasons for thinking that Dworkin has gone too far. Owing to problems of incommensurability, moral principles will fail to generate determinately correct answers to some moral questions.

A. Liberty and Equality

In his efforts to show that the values of political morality and other moral ideals do all mesh in ways that overcome incommensurability and value-pluralism, Dworkin has to resort to some far-fetched lines of argument. His lines of reasoning are to be rejected on moral grounds. For example, when Dworkin explicates major values of political morality as aspects or subdivisions of the sovereign virtue of equality, he eliminates the distinctiveness of those values. He adopts, for instance, a conception of freedom which I have criticized elsewhere as "moralized." He maintains specifically that the prevention of any person P from engaging in some conduct or from bringing about some state of affairs does not encroach at all upon P's freedom unless the stymied conduct or state of affairs would have been legitimate. As Dworkin writes: "In my view, liberty means the freedom to use what is properly or morally your property as you wish provided you respect the rights of others." For Dworkin, the rights of others are determined by the value of equality. Hence, under the conception of liberty encapsulated in this quotation, each person's liberty is entirely derivative of the value of equality. Dworkin also seems to have in mind a slightly different moralized conception of freedom, when he writes that "liberty is not infringed by just taxation." Given that this latter statement immediately follows the one quoted above, Dworkin presumably believes the two to be expressive of the same understanding of freedom. In fact, however, this second statement

19. Ibid.
suggests a subtly different moralized conception, according to which the prevention of \( P \) from engaging in some conduct or from bringing about some state of affairs does not encroach at all upon \( P \)'s freedom unless the prevention is illegitimate. Since Dworkin believes that the justness of taxation rests on the principle of equality of resources, he is in effect quite straightforwardly claiming that a person's freedom is in no way constricted by governmental measures that are properly promotive of the ideal of equality. Hence, although the two versions of the moralized conception of liberty are subtly non-equivalent, they are alike in that each of them construes liberty as an aspect or offshoot of equality.

Dworkin's moralized conception of freedom is morally objectionable for several reasons. For one thing, such a conception disallows any appeals to freedom as an independent desideratum. By expounding liberty as a dimension of equality, the moralized approach has stripped liberty of any independence as a factor that can militate either in favor of various socio-political arrangements or against them. This point is most obvious in connection with the second of the two versions of the moralized conception, which addresses the legitimacy or illegitimacy of the constraints on what a person can do or become. Because the only constraints on human conduct that will count as limitations on liberty are unjust constraints, a denunciation of certain institutions as restrictive of liberty will add nothing to a denunciation of them as unjust. Likewise, because such a moralized theory treats of freedom as nothing more than the absence of illegitimate constraints, a commendation of certain institutions as promotive of freedom will add nothing to a commendation of them as legitimate and fair. In short, the fostering or impairing of freedom (as understood by a moralized theory of this kind) will have ceased to be a consideration that might carry some independent justificatory or condemnatory weight. Though moralized approaches to liberty that are focused on the illegitimacy of obstacles might seem to elevate the status of liberty by imbuing it with a morally favorable hue, they in fact eliminate it as an independent value. They reduce all questions of greater or lesser freedom to questions of greater or lesser rectitude, by characterizing freedom as a facet of some other substantive moral ideal such as equality—an ideal on which the whole burden of any justification or condemnation of institutions must repose.

A very closely related reason for rejecting Dworkin's subsumption of liberty under equality is that his general technique for effecting such a subsumption trivializes liberty by allowing it to be squared with any values,

including noxiously repressive values. An objection to Dworkin along these lines has been pressed by Robert Nozick in a 1991 workshop, as recounted by Ian Carter: "Nozick pointed out that [Dworkin's technique for reconciling freedom with equality] was rather an easy way to show that liberty and equality were compatible, and that a Muslim fundamentalist could just as easily show liberty to be compatible with Muslim fundamentalism by defining liberty as 'the power to do what one is able to do in an ideally Muslim fundamentalist society'."21 Of course, Dworkin can undoubtedly argue cogently that freedom as an aspect or offshoot of liberal-democratic equality is morally superior to freedom as an aspect or offshoot of Islamist extremism. Though correct in itself, however, such a retort would miss the point. Nozick's objection is not that Dworkin has endowed the ideal of freedom with an unattractive content. Rather, his complaint is that Dworkin has evacuated that ideal of all independent substance and has thereby obliterated everything distinctive about it. By eviscerating liberty as a separate element of political value, Dworkin effectively removes it from playing any role in the contestation of pernicious political creeds. For him, its role in such contestation must instead be taken over by the sovereign virtue of equality; for any theorist of a different political persuasion who similarly eviscerates the ideal of freedom by seamlessly reconciling it with some other value, the role of freedom in political disputation will have been taken over by that other value. Anybody who prizes freedom as a worthy desideratum in its own right—anybody who believes that socio-political arrangements are to be appraised not only on the basis of their justice or injustice but also (partly independently) on the basis of their conduciveness or inconduciveness to high levels of overall liberty for individuals—should eschew Dworkin's moralized account of freedom.

Perhaps the most obvious reason for forswearing that moralized account is that it gives rise to unacceptable ascriptions of freedoms and unfreedoms. Every moralized theory of liberty insists that even the severest constraints on the latitude of a person \( P \) might not deprive \( P \) of any of her freedoms. No loss of her freedoms will have taken place unless the constraints are wrongful or unless the prevented conduct would have been legitimate. Thus, for example, if Alec's prevention of Susan from wantonly setting fire to a neighbor's house is morally legitimate, then Alec does not interfere with her liberty at all when he manages to avert the arson by grabbing and restraining her. If she struggles to reach the neighbor's premises so fiercely that he has to pin her to the ground and even bind her hands and feet, she will still not have undergone any impairment of her freedom. Likewise, if the placement of a dangerous

criminal in chains or a straitjacket is legitimate because of his uncontrollably violent behavior, neither of those means of immobilization will divest him of any freedoms. So a proponent of Dworkin's conception of liberty has to contend. His conception is to be rejected, then, because it entails judgments about people's freedom that are reminiscent of the mad utterances in an Orwellian dystopia. We shall enhance the clarity of our moral insight if we decline to accept that somebody justly confined in chains or immured in prison has not undergone any diminution of freedom. To think with proper moral acuity about freedom, we need to distinguish between the occurrence and the legitimacy of any loss thereof.

B. Moral Conflicts

As the last several paragraphs have maintained, Dworkin's effort to overcome value-pluralism by subsuming the ideal of liberty into the ideal of equality is morally unsustainable. My discussion has concentrated on those two values because Dworkin himself devotes far more attention to them in his discussions of value-pluralism than to other values. However, if we were to probe other basic ideals of political morality, we would arrive at parallel conclusions. Monistic attempts to collapse those ideals into one overarching desideratum are impoverishing and distortive.

Before we ponder the consequences of the failure of Dworkin's value-monism, we should examine one of his further arguments in support of his position. Dworkin claims that the postulation of potential conflicts between basic moral values is tantamount to the suggestion that everybody is subject to two or more distinct moral sovereigns.22 In an attack on Isaiah Berlin's value-pluralist view that governments sometimes cannot avoid acting wrongly, he asks: "When are we entitled, not simply to the negative idea that we do not know what it is right for us to do, but to the positive claim that we know that nothing that we do is right because, whatever we do, we do something wrong?"23 He raises this question with the hope of showing that the notion of inescapable wrongness is at best extremely implausible if not downright incoherent. His argument, presented with reference to controversies over the banning of racist declamations, should be quoted at some length:

[W]e might be uncertain whether a government does wrong when it prohibits racist speech, or, on the contrary, it does wrong when it permits such speech. What further argument or reflection could replace this indecision with the positive conviction that government does wrong in either case?...[W]e are drawn

22. Dworkin, Justice in Robes, 110-11.
23. Ibid., 110.
to each of the rival positions through arguments that, if we were finally to accept them as authoritative, would release us from the appeal of the other one. If we really believe that citizens have a right to speak out even in ways that offend certain other citizens, then it would be odd also to believe that certain citizens have a right not to be offended by what other citizens say. And vice versa....It seems puzzling how we could be persuaded, at one and the same time, that citizens have a right that racial insults not be uttered and that citizens have a right to utter racial insults. But unless we can finally accept both of these claims, and at the same time, we cannot claim the positive view that we violate citizens' rights whatever we do about racist speech.24

Dworkin in this argument commits several fallacies of equivocation, for he trades repeatedly on the ambiguity of the term "right." Two distinctions should be highlighted here: the distinction between claim-rights and liberty-rights, and the distinction between moral rights and legal rights. (A claim-right of a person normally consists in her being entitled to the adoption of some specified course of conduct by some other person. The other person is under a duty to engage in that course of conduct. A liberty-right of a person consists in her being permitted to engage in some specified course of conduct; a liberty-right to do \( x \) is the absence of a duty not to do \( x \).)

With these two distinctions in mind, let us examine the following sentence from the passage above: "If we really believe that citizens have a right to speak out even in ways that offend certain other citizens, then it would be odd also to believe that certain citizens have a right not to be offended by what other citizens say." The first right to which Dworkin refers here is clearly a liberty-right, while the second right to which he refers is equally plainly a claim-right. If the liberty-right is a legal entitlement, and if the claim-right is a moral entitlement, then there is no oddity whatsoever in the combination of beliefs which Dworkin mentions. Anybody can perfectly coherently maintain that each citizen \( C \) is legally at liberty to rant in ways that seriously offend other citizens, and that \( C \) is morally duty-bound to refrain from ranting in ways that seriously offend other citizens—who therefore each have a moral claim-right to \( C \)'s abstaining from ranting in those ways. Incoherence would be generated only if somebody were to contend that both the specified claim-right and the specified liberty-right are legal, or that both of them are moral. No perspicacious value-pluralist would commit such an error.

Now, it may well be that \( C \) has a moral claim-right against the governmental authorities' legally prohibiting him from ranting in ways that seriously offend other people. \( C \), that is, might have a moral claim-right against their imposing on him a legal duty to eschew a mode of behavior

24. Ibid., 111.
which he is morally duty-bound to eschew. Such a state of affairs is perfectly possible and indeed fully credible. Governmental authorities may well be morally duty-bound to refrain from legally prohibiting certain moral wrongs. Hence, if the authorities do clamp down on racist speech by outlawing it, they will be violating citizens' moral claim-rights against the introduction of such legal regulation.

What might also be true is that the governmental authorities are morally obligated to take all feasible steps to prevent people from being seriously offended by tirades in public places. If so, and if the outlawing of venomously racist speech in public places is a feasible step that will be an effective deterrent, then the authorities are morally obligated to proscribe such speech in such places. Any person who might be seriously affected by racist speech in public places has a moral claim-right to the government's legal proscription of it. If the governing authorities decline to take such a step, they will be committing a moral wrong.

Thus, if the moral claim-rights broached in the last two paragraphs are indeed held by citizens, we encounter a situation in which the governing authorities cannot avoid committing a moral wrong. If they outlaw racist speech in public places, they will pro tanto be violating each citizen's moral claim-right against the legal prohibition of such discourse. If the authorities instead forbear from legally banning racist speech in public places, they will be violating the moral claim-rights of detrimentally affected citizens to the imposition of such a ban. Pace Dworkin, the moral claim-rights against the prohibition of hate speech and the moral claim-rights to the prohibition of hate speech can perfectly coherently coexist. The governmental authorities can be both under a moral duty to φ and under a moral duty to abstain from φ-ing. What can never be the case, of course, is that the authorities are both morally duty-bound to φ and morally at liberty to abstain from φ-ing. A combination of such a duty and such a liberty-right would indeed be incoherent. By contrast, the combination of a moral duty to φ and a moral duty to abstain from φ-ing is impeccably coherent—precisely because a duty to abstain from φ-ing is not at all the same as a liberty-right to abstain from φ-ing.

Of course, nothing just said is sufficient to support the view that the governmental authorities in the United States or in any other country are in fact under a moral duty to outlaw racist speech and simultaneously under a moral duty to abstain from outlawing racist speech. Though neither of those moral duties is outlandish, a solid case for the actuality of each one would require some extensive moral argumentation. My aim has simply been to show that the combination of those two duties is not self-contradictory or preposterous. Governmental authorities might be under both of those duties,
and might therefore be unable to avoid acting wrongly on the matter of racist speech. Dworkin’s brisk dismissal of the possibility of such an upshot is glib.

C. Incommensurability

Dworkin’s resistance to the prospect of conflicting moral duties, with his oversimplification of the relevant issues, is especially regrettable because it is unnecessary for the sustainment of his thesis that every moral question or virtually every moral question lends itself to a uniquely correct answer. Fully consistent with his thesis is the specter of inescapable wrongness; sometimes, the uniquely correct response to a moral problem lies in opting for the lesser of two wrongs. If somebody faced with such a quandary does not choose the lesser evil in order to avoid the greater, he or she will have failed to adopt the uniquely correct course of conduct. (It should go without saying that “lesser” and “greater” need not be understood here in utilitarian terms.) Any sensible proponent of value-pluralism will recognize this point about gradations of wrongness.

Nevertheless, we should also recognize that the possible occurrence of conflicting moral duties does amount to a further potential source of incommensurability in the moral realm. Although most pairs of conflicting moral duties do not give rise to any indeterminacy — because one of the duties in each pair is determinately more important and stringent than the other duty — the remaining such pairs do involve indeterminacy. Some clashes between moral duties are productive of indeterminacy because of the equal balance between the duties in each clash, while some others are productive of indeterminacy because the underlying considerations that generate the duties are incommensurable.

Incommensurability as understood here is a property of moral ontology rather than purely of moral epistemology. That is, it consists in a mind-independent state of unrankability rather than in an epistemic incapacity to detect rankings that nonetheless obtain. Of course, in circumstances in which two conflicting duties are strictly unrankable—in other words, in circumstances where neither of the duties is more important than the other and where they are not of equal importance—nobody even under optimal conditions will be able to perceive correctly any ranking of superiority or equality between them. However, that epistemic inability corresponds to the actualities of the moral situation; it is not a purely epistemic limitation that abides despite those actualities.

Now, as has already been stated, neither the plurality of basic moral values nor the potential for conflicts between moral duties is in itself sufficient to render inevitable the emergence of incommensurability and consequent
indeterminacy. All the same, although incommensurability is not absolutely inevitable, and although it is not present in most situations, it is overwhelmingly likely in some circumstances. No full-scale investigation of this matter is possible within the confines of this article (which stems from a book that takes as one of its aims a vindication of the general determinacy of morality), but a few terse remarks should indicate that Dworkin has almost certainly pushed his point too far when he presumes that incommensurability is never or almost never lurking in the domain of morality. For moral reasons, we should decline to go as far as he.

Let \( G \) stand for the size of the gap between the stringency of some moral requirement and the stringency of a conflicting moral requirement. If each of the moral duties in a clashing pair is exactly as weighty morally as the other, then \( G = 0 \). If one of the duties is morally more weighty than the other, then \( G \neq 0 \). Now, plainly, either \( G = 0 \) or \( G \neq 0 \). Hence, when somebody believes that two duties pertaining to inconsistent courses of conduct are morally incommensurable, he or she should not be seeking to specify a value for \( G \) in application to those duties. Instead of seeking to come up with a value that is neither equal to zero nor not equal to zero, such a person should reject the proposition that there is any coherent parameter \( G \) to be specified at all. There is no \( G \) in such a situation, not even a \( G \) of zero magnitude. If conflicting obligations are morally incommensurable, there is no coherent moral basis for an overall comparison between them.

Given that incommensurability is a property of the sort just outlined, it is most likely to arise in a complicated situation where the only suitable basis for a moral comparison is multivalent and where the results of the multivalent comparison would not constitute any univocal or coherent \( G \). Any such situation is epistemically challenging, of course, but—insofar as it is marked by genuine incommensurability—the epistemic barriers within it correspond to the absence of any determinate overall moral relation (of equality, superiority, or inferiority) between one course of conduct and another. Suppose that an overall moral comparison between two specified courses of conduct would have to advert to five key moral values at stake in any choice between those courses. Suppose further that the results of any accurate enquiries into those five key touchstones would be profoundly inconclusive. Some of the values would cut in one direction by various margins, while the remaining values would cut in the other direction by various margins. A defender of Dworkin will have to maintain either that the conflicts among the values are always ultimately illusory or that those conflicts are always ultimately generative of a determinate overall moral relation between the two courses of conduct under consideration. We have already seen that the first of these Dworkinian rejoinders would be unsatisfactory. Any effort to
collapse the sundry basic values of morality into one sovereign virtue such as equality or maximal utility will distort rather than illuminate the issues that are being addressed. Anybody who construes freedom as a species of equality, for example, is thereby eliding some of the key normative features of situations that would be taken into account by an adequate investigation of political morality.

Is the second Dworkinian rejoinder more successful? On the one hand, it is admirably pertinent as an admonition against drawing any facile inferences about the sway of indeterminacy from the presence of complexity and uncertainty. Multivalent comparisons are bound to be complex and are frequently attended by uncertainty on the part of many people. Such complexity and uncertainty are hardly in themselves sufficient to establish that two obligatory courses of conduct are genuinely incommensurable. Indeed, people who feel great uncertainty are in no position to deny (or affirm) the existence of a coherent G between the duties pertaining to those courses of conduct. Even so, notwithstanding that uncertainty and complexity are distinct from incommensurability, anyone who suggests that those phenomena are never accompanied by incommensurability is straining credulity.

Defenders of Dworkin might believe that the wholesale absence of incommensurability is necessary in order to ensure that any relevant moral obligations in situations of great moral complexity are binding as obligations. They perhaps think that, if none of the overall verdicts that might emerge from a complicated moral comparison between courses of conduct is determinately correct, then no moral obligations on either side of the comparison will be operative. Now, if such a line of thought were well-founded, then there would obviously be strong moral reasons for rejecting the notion of incommensurability in the moral domain. In fact, however, such a line of thought is baseless. As has already been discussed in my remarks on the regulation of racist invective, moral obligations can clashingly coexist on opposite sides of a moral quandary. Typically, the moral obligation(s) on one side of such a quandary will surpass in importance any moral obligation(s) on the other side. In such circumstances, as was suggested earlier, there is a uniquely correct way of dealing with the problem. That uniquely correct approach consists in opting for the lesser of two wrongs. In other morally problematic situations of conflicting obligations, however, there are no determinately correct responses. In any situation of the latter sort, it is not the case that the moral requirements on either side of an issue cumulatively exceed in importance the moral requirements on the other side. Those sets of requirements might be exactly evenly balanced (in which case the G between them is 0), or they might instead be incommensurably counterpoised (in which case there is no coherent overall G between them).
What is crucial here is that conflicting moral obligations will remain operative regardless of whether there is a determinately correct choice to be made between them. In a moral predicament where the moral requirements on one side are cumulatively more weighty than those on the other side—and where there is consequently a uniquely correct way of resolving the predicament—the requirements on each side are fully binding. Anyone faced with the predicament must not only comply with the weightier set of requirements, but must also remedy his failure to comply with the other set. He incurs remedial duties precisely because those less weighty requirements remain binding despite their having been overtopped by countervailing obligations that are even more pressing. Being overtopped does not amount to being negated. In a similar vein, being equally or incommensurably counterbalanced does not amount to being negated. When somebody abides by certain moral duties at the expense of equally stringent moral duties, she will thereby have incurred remedial obligations under which she has to rectify her noncompliance with the unfulfilled duties. She incurs those remedial obligations because the neglected duties have remained fully operative despite being exactly offset by the duties to which she has conformed. Likewise, when somebody complies with certain moral duties at the expense of other moral duties that are incommensurably juxtaposed with them, she will thereby have incurred remedial obligations—which are triggered precisely because the unfulfilled duties have remained fully operative despite being offset by duties that are not less weighty morally. In other words, whenever a moral crux throws up conflicting moral duties, those duties persist as binding moral requirements irrespective of whether the relation between them is one of inequality or of equality or of incommensurability. When conflicting moral obligations coexist incommensurably, just as much as when they are unevenly related or evenly balanced, each of them continues to obtain as a moral obligation. A person's noncompliance with any such obligation is a wrong that will have to be rectified.

Thus, insofar as Dworkinians may worry that the absence of any determinately correct answer to the question posed by a moral plight is inconsistent with the sway of any moral duties inside the ambit of that plight, their fears are groundless. Whenever some inconsistent courses of conduct $C_1$ and $C_2$ are incommensurably pitted against each other, any person faced with such a dilemma might be under a moral duty to opt for $C_1$ and also under a moral duty to opt for $C_2$. Being able to fulfill only one of those duties, she will be morally obligated to remedy her noncompliance with the other one. Clashes between moral duties are not unique to situations of

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incommensurability, of course, but neither are they precluded in such situations. Quite the contrary. The existence of a uniquely correct resolution of a knotty moral dilemma is not necessary for the moral obligatoriness of any course of conduct covered by the dilemma. Moral obligatoriness can obtain all the same. Even though \( C_1 \) is not morally superior to \( C_2 \)—and is likewise not morally inferior or equal to \( C_2 \)—any relevant person might be under a moral obligation to opt for \( C_1 \). (Naturally, an exactly parallel point is true of \( C_2 \).) If a person is indeed under a moral duty to opt for \( C_1 \), then her adoption of any contrary course of conduct will impose on her a moral obligation to remedy her nonfulfillment of that duty. That is, the moral consequences of the nonfulfillment will be broadly the same in circumstances of incommensurability as in circumstances where \( C_1 \) is morally superior to \( C_2 \) and where it is thus the uniquely correct course of conduct. To be sure, the consequences in the latter circumstances will differ in one significant fashion. When somebody has opted for \( C_2 \) and has therefore not complied with a moral duty to opt for \( C_1 \), the requisite remedy will be more severe if \( C_1 \) was the uniquely correct course of conduct for her than if \( C_1 \) and \( C_2 \) were incommensurably juxtaposed. When one’s nonconformity with a moral obligation is due to one’s conformity with an incommensurably potent moral obligation, the nonconformity is extenuated to a greater degree than it would be if it were due to one’s conformity with a less important moral obligation. However, that dissimilarity is a difference of degree rather than a fundamental difference of kind. It pertains to the stringency, rather than to the existence and bindingness, of a moral obligation. As far as the existence and bindingness of a moral obligation are concerned, the fact that that obligation is in conflict with another moral obligation of incommensurable moral importance—rather than of equal or unequal importance—does not make a difference.

Accordingly, given that the sway of incommensurability in certain complex moral quandaries does not pose a threat to the bindingness of any moral duties that are involved, there are no credible moral reasons for declining to acknowledge that some such quandaries indeed fall under that sway. There are in fact solid moral reasons for recognizing the occasional presence of incommensurability, since we can thereby improve our grasp of the severity or leniency of the remedies that are due for particular breaches of moral obligations. Of course, the reign of incommensurability—like the reign of other types or sources of indeterminacy—would be devastating if it were far-reaching. No tenable account of morality can yield the conclusion that incommensurability is commonplace. Morality would be undermined if its function of normatively regulating human conduct were generally thwarted by the prevalence of incommensurability. Still, what has been claimed here is certainly not that the phenomenon of incommensurability is prevalent; rather,
what has been claimed is that that phenomenon is occasionally present in situations of great multivalent complexity. Some such situations involve not only complexity and uncertainty but also genuine incommensurability. To allow as much is hardly to endorse any wild-eyed skeptical pronouncements about pervasive indeterminacy. A firm rejection of skepticism is consistent with acknowledging that the competing factors at stake in some especially gnarled moral cruxes are incommensurable.

IV. CONCLUSION

Dworkin’s claims about the existence of a uniquely correct answer to every moral question or virtually every moral question are to be taken very seriously. Nevertheless, his claims reach too far. Because of the vagueness of some moral concepts and properties, indeterminacy in the domain of morality is inevitable. Although the indeterminacy will not be wide-ranging, its presence in some form or another is unavoidable. The occurrence of further indeterminacy in the moral realm is rendered overwhelmingly likely by conflicts between moral duties and by incommensurable tensions among a plurality of ethical values. Notwithstanding that the additional indeterminacy leaves Dworkin’s one-right-answer thesis intact over a vast range of moral problems, it does curtail that range to some degree. Moreover, the curtailments are not regrettable shortcomings that constitute deviations from an ideal of perfect univocality. To whatever extent they occur, they are products of fundamental moral considerations. Determinacy looms large throughout the domain of morality, but the basic principles of that domain set limits to determinacy’s prevalence.