# Introduction

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Ordinary language and thought are replete with claims to objectivity. "Abortion is objectively wrong, no matter what some people think." "Creationism is objectively false; evolution is just an objective fact." "Research on sex differences is rarely objective; it reflects the male-dominance of the field." "You're not being objective when you let your strong dislike of him affect your evaluation of his performance." "Calm down and try to be objective about the situation." "Supreme Court justices aren't any more objective than any other partisan political actors."

What is at stake in these claims about objectivity? This introduction sets out *one* conventional philosophical way of understanding these claims, in which we read them as raising issues in metaphysics and epistemeology. So understood, we can distinguish two kinds of worries about objectivity implicit in ordinary language and thought. In some of the above examples, the demand to be objective is the demand to be free of *bias* or other factors that distort judgment, that prevent the things we are judging from presenting themselves clearly and accurately. This, then, is a demand for *epistemic* objectivity: that the cognitive processes and mechanisms by which we form beliefs about the world be constituted in such a way that they at least *tend* toward the production of accurate representations of how things are. Notice that epistemic objectivity does not require that cognitive processes always yield true representations: that would demand more than is attainable and more than what we have in mind when we worry about epistemic objectivity. We might think of *epistemic* objectivity as obtaining when either of the following is true: (1) the cognitive processes at issue *reliably* arrive at accurate representations, or (2) the cognitive processes are free of factors that we know to produce inaccurate representations.

Already, though, we have made reference here to another kind of objectivity. For the worry about the objectivity of our epistemic faculties has been explicated as a worry about their ability to deliver accurate representations of *the way things truly or objectively are.* This latter thought involves a demand

for *metaphysical* objectivity: that things are what they are *independent* of how we take them to be.

This "independence requirement" is often thought to be central to meta-physical objectivity,[1] though its proper interpretation raises two important questions: independence *from what* and *how much* independence? The most plausible answer to the first question is that metaphysical objectivity demands *epistemic* independence: something is objective if its existence and character does not depend on what we *believe* or would be *justified* in believing about it. How much independence of this kind is demanded varies on different views. Traditional "metaphysical realists" demand absolute independence from epis-temic constraints: even at the ideal end of inquiry, what we believe or are justified in believing could be false. Putnam's "internal realism" and related views demand less in the way of independence: only that the existence and character of a thing not depend on what we believe or would be justified in believing *except* under ideal epistemic conditions.

These tentative characterizations are, of course, not wholly uncontroversial, even among contributors to this volume. While some (including David Brink, myself, Philip Pettit, and Sigrún Svavarsdóttir) develop or defend this kind of approach to objectivity, broadly construed, others (especially Gerald J. Postema, but also, in some respects, Joseph Raz) resist this way of thinking about issues of objectivity. For these latter writers, as well as Ronald Dworkin, Thomas Nagel, "British" moral realists like John McDowell, and perhaps various Kantian constructivists, issues about objectivity arise "internal" to the practices of normative argument and do not lend themselves to translation into metaphysical and epistemological categories. Indeed, a recurring issue in this volume will concern the alleged "domain-specificity" of conceptions of objec-tivity, 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. For those committed to the domain-specificity of objectivity, the conceptualization offered in this introduction will be part of what is at issue in thinking about objectivity in ethics. Nonetheless, this conceptualization con-stitutes a natural starting point in the metaethical literature, one that even the defenders of domain-specificity recognize the need to argue against.

Two arenas of our practical life – law and ethics – present special, and important, cases for worries about objectivity. In ethics, these questions are familiar: when we ask about whether there are absolute moral standards, or whether morality is relative, we are asking about the objectivity of ethics. Those who deny that moral judgments have cognitive content (and thus deny that they can be evaluated as either true or false) are defending a view about the objectivity of ethics as well.

In law, too, issues about objectivity arise along a variety of dimensions. For example: (1) We expect the content of our laws to be objective in the sense of treating people the same unless they are "relevantly" different. (2) We expect

judges to be objective in the sense of not being biased against one party or the other. (3) We expect legal decisions to be objective in the sense of reaching the result that the law *really* requires without letting bias or prejudice intervene. (4) In some areas of law, we expect the law to employ "objective" standards of conduct (like "reasonable person" standards) that do not permit actors to excuse their conduct based on their subjective perceptions at the time.

In this volume, we are interested in the objectivity of law primarily with respect to the issues posed in (3). Indeed, it is here, in particular, that questions about the objectivity of morality intersect with those about law. We may think of the central problematic in the following way.

Judges must decide cases. They must consult and interpret the relevant legal sources (statutes, precedent, custom, etc.) in order to determine the governing legal principles and rules, and then decide how these are to apply to the facts of the case. Let us call the "class of legal reasons" the class of reasons that judges may legitimately consider in deciding a legal question.[2] If the law is "rationally determinate" on some point that means the class of legal reasons justifies a unique answer on that point: there is, as is commonly said, a single right answer as a matter of law.

We may now speak of the law as *objective* along two possible dimensions:

1. The law is *metaphysically* objective insofar as there exist right answers as a matter of law.
2. The law is *epistemically* objective insofar as the mechanisms for discovering right answers (e.g., adjudication, legal reasoning) are free of distorting factors that would obscure right answers.

The scope of these claims about the objectivity of law may vary. We may think the law is metaphysically objective only with respect to a narrow range of cases (as the Legal Realists do), or with respect to nearly all cases (as Dworkin does). We may think the law is epistemically objective some of the time or almost none of the time. The claims to objectivity can diverge as well. The law may be metaphysically objective, but fail to be epistemically objective. On the other hand, the above characterization of epistemic objectivity presupposes for its intelligibility that the law be metaphysically objective: we can get no purchase on the notion of a "distorting factor" without reference to the "things" we are trying to know. Not all writers accept this link; in particular, Gerald Postema, in his contribution to this volume, questions whether an adequate account of the epistemic objectivity of law need make reference to an antecedent notion of the law as metaphysically objective.

How is the objectivity of ethics implicated in the objectivity of law? The metaphysical objectivity of law, as we have seen, is a matter of its rational determinacy, that is, it is a matter of the class of legal reasons justifying a unique outcome. If the class of legal reasons, however, includes *moral* reasons,

then the law can be objective only if morality (and moral reasoning) is objective. The class of legal reasons can come to include moral reasons two ways.

First, and most obviously, the familiar sources of law – like statutes and constitutional provisions – may include moral concepts or considerations. The United States Constitution provides the most familiar examples, since it speaks of "equal protection," "liberty," and other inherently moral notions. For courts to apply these provisions is for them necessarily to apply the incorporated moral concepts. For the law to be metaphysically objective in these cases requires that these moral concepts have objective content. Of course, this objective content need not be fixed in virtue of morality being objective: an interpretive principle like "Interpret each provision as the framers of the provision would have intended" may suffice to make the application of the Equal Protection Clause of the Fourteenth Amendment determinate, without presupposing anything about the "objective" meaning of "equality." Yet in some cases, and under some theories of interpretation, what will be required is precisely to understand what equality *really* requires. Such an approach to legal interpretation is developed in David Brink's contribution to this volume.

Second, moral reasons might be part of the class of legal reasons because they are part of the very criteria of legal validity. Natural lawyers hold that for a norm to be a legal norm it must satisfy moral criteria:[3] thus, a judge wondering whether a particular norm (relevant to a particular case) is a valid legal norm must necessarily engage in moral reasoning. Some Legal Positivists ("soft" or "inclusive" positivists) accept a similar view: they hold that, as a contingent matter, morality can be a criterion of legal validity if it is the practice of legal officials in some society to employ moral considerations as criteria of legal validity. For these positivists – who include the century's leading defender of the doctrine, H. L. A. Hart[4] – legal reasoning in such societies will include moral reasoning.

Of course, even those positivists ("hard" or "exclusive" positivists) who deny that morality is ever a criterion of legality may still hold that it is a judge's duty in exercising discretion in hard cases to reach the morally correct result. Thus, while the objectivity of morality won't, for these positivists, affect the objectivity of law, it will still matter in thinking about what judges ought to do in hard cases.

In all these ways, then, the objectivity of morality may be implicated in how we think about the objectivity of law (or the objectivity of the adjudicative process).

The seven original essays that constitute this volume do not try to canvass all the different senses in which we make claims to objectivity. Their focus is more narrow: they consider objectivity in law, from both metaphysical and epistemological perspectives; they examine the intersection between objectivity in ethics and objectivity in law; and they develop a variety of approaches, constructive and critical, to the fundamental problem of objectivity in ethics.

The metaethics literature is, to date, far richer than anything that has been written about objectivity in law. Four of the contributors here – Sigrún Svavarsdóttir, Joseph Raz, Philip Pettit, and David Sosa – focus their attention on this rich literature, in some cases taking issue with positions developed by philosophers like John Mackie, Thomas Nagel, John McDowell, and David Wiggins, and in other cases trying to extend and develop existing lines of thought. Three of the essays (mine, David Brink's, and Gerald Postema's) explicitly examine the intersection of the objectivity of law and the objectivity of ethics, showing how positive or skeptical views about the latter have ramifications for the former. As a whole, the volume presents a state-of-the-art survey of live issues in metaethics and examines their relevance to theorizing about law.

David O. Brink's essay, which opens the volume, introduces a theme that, as noted, occupies many of the contributors: whether there are "domain-specific" conceptions of objectivity, or whether one conception of objectivity (typically, one drawn from the natural sciences) suffices for thinking about objectivity in all fields, including the practical domains of ethics and law. Brink's position is unchanged from his earlier work: objectivity is not a domain-specific concept. "[E]thics is or can be objective in much the same way" that the sciences are objective.[5] Insofar as certain legal questions depend on moral arguments and considerations, they too have objective answers. Brink's essay revisits and refines his earlier, well-known approach to the intersection of issues about objectivity in ethics and in law.[6] He begins with a critical discussion of the "verificationism" about law found in some of the American Legal Realists, the apparent view of writers like Holmes and most clearly John Chipman Gray that "law" is just what the court says it is.[7] He agrees with H. L. A. Hart that such skepticism is untenable (indeed, incoherent), but disagrees with Hart's modest concession to skepticism, namely, that there will be some cases in which the language of the applicable rule dictates no clear result, and so judges must exercise discretion. Hart, Brink believes, was driven to this conclusion by his tacit embrace of an outdated semantic theory. This outdated "descriptional view" of meaning (as Donnellan, Kripke, Putnam, and others have argued) fails to give an adequate account of the meaning of proper names and natural kind terms.[8] Brink argues in favor of the "new" or "causal" theory of reference, according to which reference fixes meaning, and in which reference is not mediated by the descriptions or beliefs a speaker associates with a term. Such a semantics, Brink argues, can be fruitfully applied not only to the interpretation of legal terms[9] but also to understanding the abstract intentions that underlie particular legal provisions (like an intent to prohibit "cruel and unusual" punishments), intentions that we must often consult given the limitations of textualism. This sets the stage for a wide-ranging defense of judicial review, in which the famous U.S. Supreme Court decisions in *Brown* and *Griswold* figure as central examples. In the process, Brink considers, refines, and in most cases

criticizes the views of Bork, Dworkin, Sunstein, and various Critical Legal Studies writers about the objectivity of legal interpretation. He concludes by showing how the correct understanding of legal interpretation helps establish a middle ground between legal positivism and natural law theory regarding the relationship between law and morality.

My own contribution to this volume shares Brink's rejection of the domain-specificity of objectivity. I approach the topic by considering Ronald Dworkin's often perplexing writings on objectivity and right answers. According to Dworkin, the right answer to a legal dispute is the answer that follows from the principles that both *fit* the prior institutional history and provide the best *justification* of that history from the standpoint of morality. Dworkin's theory thus thrusts moral considerations into the center of law and makes the objectivity of morality a necessary condition for the objectivity of law. The kind of objectivity at stake, however, is domain-specific according to Dworkin, something that moral skeptics like John Mackie are said to misunderstand. While I argue that much that Dworkin says about this objectivity "internal" to morality is confused or mistaken, I do find a core animating idea from Dworkin worth salvaging, one that he shares with John McDowell: namely, the idea that it suffices for the objectivity of morality if moral views are (in McDowell's phrase) "susceptible to reasons." Dworkin and McDowell, in turn, reject a "naturalistic" conception of objectivity, which demands that moral facts be objective in precisely the same way the objects studied by the natural sciences are objective: namely, that they are both mind-independent and causally efficacious. I argue, against Dworkin and McDowell, that "susceptibility to reasons" is not adequate to account for objectivity and that, in any event, morality is only susceptible to reasons in the trivial sense that noncognitivists have long recognized, namely, that the factual and logical underpinnings of moral views are susceptible to reasons. This leaves Dworkin's theory of adjudication vulnerable, then, to the moral skeptic who denies the objectivity of law because he denies the objectivity of morality.

Gerald J. Postema's essay, "Objectivity Fit for Law," takes a different tack (as its title would suggest): he defends the domain-specificity of objectivity and develops an account of objectivity that makes sense for law and adjudication. In particular, Postema wants to vindicate the objectivity of law against some of the more radical and incautious claims made by law professors associated with Critical Legal Studies, Critical Race Theory, and feminist theory who believe, wrongly, that a role for political and moral values in adjudication is *incompatible* with the objectivity of law. Postema asks us to start with a "generic" concept of objectivity according to which a judgment is objective when the judger is "open" in the appropriate ways to the subject matter of that judgment. More precisely, the generic account requires, according to Postema, that the judgment be *independent* of the judging subject in the appropriate way; that the judgment be truth-evaluable, and that its truth-value be an objective

matter; and that there be invariance of judgment across (competent) judging subjects. Postema develops these criteria in some detail, as well as exploring the motivations for expecting objectivity in practical arenas (like law and morality). This discussion sets the stage for Postema's own theory of "objectivity as publicity," which holds (very roughly) that a judgment is objectively correct if it can be vindicated by public practical reason,[10] that is, by sound reasoning in a public deliberative process. It is crucial on this view, then, to specify, as Postema does, the features of a public deliberative process whose issuances are eligible for objectivity. Law and adjudication, he then argues, are (or can be) such a process. Notice that Postema's account of the objectivity of law is *epistemic,* focusing on the *procedures* by which judgments are arrived at, rather than on the metaphysical status of some domain of legal facts to which such judgments answer. One of the especially interesting features of Postema's essay is his defense of the idea – against myself and others – that an account of epistemic objectivity does *not* presuppose an antecedent view about the metaphysical objectivity of the subject matter of our judgments.

Sigrún Svavarsdóttir's essay, "Objective Values: Does Metaethics Rest on a Mistake?," shifts the volume's focus from the objectivity of law and the intersection of law and ethics, to the objectivity of ethics itself. Yet central to her essay remains the question of the domain-specificity of conceptions of objectivity. Svavarsdóttir does not defend a particular account of objectivity, though like myself and Brink, she remains skeptical about the claim that there is a domain-specific notion of objectivity appropriate to ethics. Svavarsdóttir approaches the question through a sustained interpretation and critique of Thomas Nagel's views in metaethics. Nagel shares with Dworkin the thought that much skeptical writing about ethics (once again, Mackie is the prime target), as well as much moral realism, presupposes a mistaken picture of what the objectivity of ethics consists in – this is the alleged "mistake" of Svavarsdóttir's title. Like Dworkin, Nagel thinks this mistake consists, roughly, in treating moral realism as demanding that moral judgments correspond to some fact in an observer-independent external world. Rather, Nagel thinks, moral realism is vindicated from "within" value inquiry itself. To reach this understanding of Nagel, however, Svavarsdóttir first offers a careful discussion of the differing claims about objectivity at stake in Mackie's and Nagel's writings. Nagel's notion of objectivity, Svavarsdóttir shows, is primarily *epistemic* – and thus is silent on the metaphysical commitments of value realism – while Mackie is concerned with the *metaphysical* objectivity of moral facts, as well as their "normative objectivity," that is, the categoricity of moral demands that flows from their normative force being independent of agents' antecedent concerns and desires. Situating Nagel's views on normative realism with respect to those of Simon Blackburn and Peter Railton, Svavarsdóttir concludes that the real "mistake" in metaethics for Nagel is an allegiance to methodological naturalism,[11] to the idea that philosophical

method is simply continuous with scientific method, and thus metaethical questions should be answered within the framework of a broadly scientific epistemology. To the contrary, Nagel argues, value realism must be sustained from within ethical inquiry itself, whose methods are not continuous with, but stand apart from, those of science. Svavarsdóttir concludes by arguing, contra Nagel, that giving up on methodological naturalism, in metaethics or elsewhere in philosophy, is deeply problematic.

Joseph Raz's essay offers both a substantive account of objectivity and a partial defense of the objectivity of practical thought itself. Raz begins by exploring an *epistemic* sense of objectivity (and cognate notions like *impartiality*) and what he calls "domain-objectivity" (not to be confused with what I have been calling "domain-specificity"). Domain-objectivity, according to Raz, is a property of thoughts, propositions, and statements that are properly objects of knowledge. If practical thought is to enjoy domain-objectivity it must satisfy various conditions, for example, that error in judgment about matters in the domain be possible, and that judgments concern an "independent" reality. These, and five other conditions, constitute what Raz calls "the long route" to understanding objectivity. After defending the "long route," Raz considers various doubts that might arise about the objectivity of practical thought. One set of doubts arises from the role of "parochial concepts" – concepts that cannot be mastered by all, often because they require parochial interests or imaginative capacities – in practical thought. Here Raz defends practical thought against objections from Nagel and Bernard Williams contesting the objectivity of any domain dependent on parochial concepts. Another set of doubts, again suggested by Williams (though elaborated in new directions by Raz), arises from the idea that knowledge of objective reality demands knowledge of "what is there anyway," independent of anyone's thought or experience. Since the truth-value of evaluative claims (Raz considers especially the case of thick concepts) depends on social facts, it is unclear how practical thought could meet this condition for objectivity. Raz argues that this worry about the objectivity of practical thought can be dispelled once we distinguish between different ways value judgments "depend" on shared (social) understandings. Rightly understood, Raz concludes, the dependence of practical thought on the social is no threat to its objectivity.

Philip Pettit's article picks up some related themes in the course of the volume's most systematic and sustained defense of the objectivity of ethics, along semantic, ontological (what we earlier called "metaphysical"), and justificatory dimensions. Indeed, those needing a thorough introduction to the basic issues in the metaethics literature of recent decades may find Pettit's essay an excellent place to start. Pettit's standpoint is resolutely naturalistic, and the ambition is to make sense of moral objectivity on a picture of the world as composed of microphysical elements governed by natural laws. The objectivity of values does not demand Platonism, that is, positing a nonnatural realm

of transcendent values. (David Sosa, as we shall see, takes a different view about the necessity of Platonism.) We are to take our cue, as it were, from color properties, which have the trappings of objectivity, but which are neither transcendent nor even independent of human responses: something *is* red, we might say, just in case normal observers are disposed to judge it to be red under normal conditions; yet at the same time, it is natural to explain a correct judgment that "X is red" by appealing to the fact of its redness.[12] So, too, perhaps moral predicates like "good" or "right" just pick out the property that plays or realizes the dispositional role of making us judge something "good" or "right" in the appropriate circumstances. Thus, the extension of moral terms, like the extension of color terms, would be "response-dependent," but at the same time, objective because, in part, it remains independent of any particular agent's response. Pettit's proposal here, however, introduces one important modification to this basic idea.[13] Moral terms, Pettit argues, pick out natural properties that play not only a dispositional role (as above), but also a certain "functional" role, in the sense that the property realizes a functional role described by a network of shared working assumptions about the term. This "moral functionalism," as Pettit calls it, unlike functionalism in the philosophy of mind, is not limited to identifying only causal roles, but also includes inferential roles. Yet like its philosophy of mind cousin, moral functionalism maintains that we fix the content (in this case of moral terms) by understanding its place in an interconnected network of relations. Pettit devotes the remainder of his paper to a defense of moral functionalism, showing how it meets the demands for semantic, ontological, and justificatory objectivity with which he began.

David Sosa's paper, "Pathetic Ethics," which concludes the volume, is a sustained attack on the idea (found in related forms in Raz and Pettit) that making value dependent on human response or sensibility could really be adequate to capture the *objectivity* of value.[14] The famous "pathetic fallacy" refers to the projection of *our* feelings onto external objects. "Sensibility theories" of value are "pathetic" in this sense: they see the ethical qualities of things as dependent on our sensibilities, though they do not, of course, view this as involving any kind of "fallacy" or "error" – though Sosa does (hence his title). Rather, such theories are motivated by the idea that only when we demand of the objectivity of ethics that it be *independent* of human sensibility in a way it could not be are we driven to skepticism. Sosa wants to reject this idea (and thus reject the domain-specificity of objectivity), in favor of the idea that any genuinely objective property must be objective in the way "primary" qualities were thought to be objective: namely, as features of things that do not depend in any sense on how we take them to be (how we respond to them, what we judge about them, etc.). His route to this conclusion begins by a careful analysis of the dispute between Mackie and McDowell over the kind of objec- tivity ordinary ethical thought demands. Sosa finds McDowell's alternative

account – the "no-priority view" – untenable. On this view, neither the features of things nor our sensibilities have priority one over the other. Funny jokes do have comic qualities that we respond to, but for a joke to be funny is just for it to have properties that dispose us to find it funny. The same is true for the ethical features of things, according to McDowell. This, Sosa shows, leads to vicious circularity, McDowell's protestations to the contrary notwithstanding. Moreover, there seems to be no noncircular way to fix the responses that would be properly constitutive of ethical value. Similar problems afflict David Wiggins's related account, which leads Sosa to consider variants of the theory developed more recently by Crispin Wright and Mark Johnston. These variants focus on the idea that the extension of certain concepts (like color concepts and perhaps also value concepts) could be given by biconditionals of the following form:

> $x$ is red $\leftrightarrow$ for any $S$: if $S$ were perceptually normal and were to encounter $x$ in perceptually normal conditions, $S$ would experience $x$ as red.

In the end, Sosa identifies a variety of ways in which these proposals fail to capture a suitably "full-blooded, hardcore" sense of objectivity – a sense captured best by traditional Platonism. He concludes by sketching how we might think of the objectivity of value precisely on the model of the objectivity of primary qualities.

### Notes

1. For an overview of relevant issues, see Brian Leiter, "Objectivity and the Problems of Jurisprudence," *Texas Law Review* 72 (1993): 190–196. For related, and more detailed discussions, see Elliott Sober, "Realism and Independence," *Noûs* 16 (1982): 369–385, and Bruce W. Brower, "Dispositional Ethical Realism," *Ethics* 103 (1993): 238–246.
2. For this way of conceptualizing indeterminacy, see Brian Leiter, "Legal Indeterminacy," *Legal Theory* 1 (1995): 481–492.
3. Satisfying the moral criteria might simply be *necessary* for a norm to be a legal norm, or it might be both necessary and sufficient. The strongest forms of natural law theory hold the latter.
4. See the "Postscript" to the 2nd edition of P. Bulloch and J. Raz (eds.), *The Concept of Law* (Oxford: Clarendon Press, 1994).
5. David O. Brink, *Moral Realism and the Foundations of Ethics* (Cambridge: Cambridge University Press, 1989), p. 6.
6. David O. Brink, "Legal Theory, Legal Interpretation, and Judicial Review," *Philosophy & Public Affairs* 17 (1988): 105–148.
7. For doubts that this is really Holmes's view, see my "Legal Realism," in D. M. Patterson (ed.), *A Companion to Philosophy of Law and Legal Theory* (Oxford: Blackwell, 1996), p. 263.
8. Natural kind terms pick out natural properties that figure in the laws of the sciences.