Teaching Ethics in an Atmosphere of Skepticism and Relativism

By W. BRADLEY WENDELE

As ANY TEACHER of applied ethics knows, the project of teaching values in professional school encounters predictable resistance from students. At some point in most professional ethics courses, some student adopts a cynical stance and demands that the teacher defend the entire enterprise of moral reasoning against the challenges of skepticism, subjectivism, or relativism. In response to an ethical argument—say, that a corporation should not profit from exploitive working conditions in developing countries, or that a lawyer should not knowingly tell a lie—we have all heard statements like these:

"That's just your ethical belief."

"It's not illegal, so what's wrong with it?"

"Maybe I wouldn't do that, but if it's not wrong for them, who am I to say that it's wrong?"

"All ethics is just subjective [or a matter of opinion, or a mask for the will to power, or the interests of the strongest, or not something about which we can have knowledge], so why are we talking about it?"

"You shouldn't impose your views on others."

These queries vary considerably in their philosophical sophistication, but all reveal a deep discomfort with the language of values and assertions of truth or objectivity in ethical discourse.

More practically, in the law school classroom, questions like these threaten the ability of a teacher to make progress discussing "ethics beyond the rules," that is, a critical moral framework from which not

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only individual actions but a regime of legal rules may be evaluated.\(^1\) Without such a framework, a law teacher is limited to teaching doctrine. Doctrine is not a bad thing; it is certainly important for students in professional responsibility courses to be able to analyze a complex client fraud or conflict of interest problem. Teaching legal doctrine, however, is not the same thing as teaching legal ethics. The source of ethics is not positive law, although there may of course be moral reasons for obeying enacted law. Ethics has its source in something else, which is precisely the focus of student skepticism.\(^2\)

I would like to do several things in this essay. First, I am interested in the sources of students' wariness about moral reasoning and claims about objectivity and truth in ethics. Sometimes I feel like a teacher of geography who must confront a deeply entrenched belief that the earth is flat. The earth is not flat, nor is ethics just a matter of opinion, but one wonders why students persist in thinking the opposite. Teaching effectively requires an understanding of where students are coming from. Accordingly, the opening section of this essay is structured around a series of hypotheses to explain the origins of student disquiet with moral reasoning in professional education. Following this initial inquiry, I would like to review briefly the scholarship on skepticism and relativism, to see how ethical theorists respond to this challenge. The size of this literature is staggering,\(^3\) and my interest here is

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2. A brief definitional note: I do not distinguish between ethics and morality—the terms are intended to be completely interchangeable throughout this essay. Some philosophers do observe a distinction between these terms. Bernard Williams, for example, regards morality as a subset of ethics, with the latter term being equivalent to the subject dedicated to answering the question, "How should one live?" See *Bernard Williams, Ethics and the Limits of Philosophy* 5–7 (1985). Morality, for Williams, is peculiarly concerned with rights and duties, and is stringently universal and impartial. See *id.* at 60–64. The domain of morality is an extremely interesting issue, and some linguistic distinction is needed to capture the difference between questions about how in general one ought to live one's life (who to marry, what career to choose, where to live, and so on) and what special obligations apply in virtue of one's status as a moral agent. However, I will not use the terms ethics and morality to capture this distinction here.

not to respond to any particular metaethical argument. Thus, the portion of the essay that discusses ethical theory will be nothing more than a suggestive and brief sketch of an account of ethical reasoning that avoids the pitfall of relativism. Despite glances at metaethical issues and an occasional detour into technical matters, I believe that when teaching practical ethics, such as a law school professional responsibility course, one can safely avoid many of the questions that preoccupy moral philosophers. One needs to be a specialist in contemporary ethics to make sense of the debate over internalism and externalism, or to keep straight the varieties of noncognitivism, but this is not required to teach an applied ethics course. This is not to say that anyone may dabble in professional ethics without investing time and careful study in the subject. It would be a mistake, however, to confine a course on legal ethics to doctrine out of fear that the discussion would lead inevitably to matters that are beyond the expertise of anyone but a narrowly focused expert in philosophy. One of the goals of this essay is therefore to suggest some strategies for responding to some commonly expressed concerns of students about ethics, while steering clear of technical quagmires.

Briefly summarizing this approach, I believe that ordinary discursive practices, with which students are familiar, contain abundant resources for thinking about ethical issues and reaching judgments that we are willing to assert publicly and defend rationally. Every day students engage in practices of evaluation, assigning blame and praise for moral reasons. For some reason they do not generally recognize that they are working within the domain of "ethics," but that is precisely what they are doing. We can make progress teaching ethics by beginning with the foundation of everyday experience.4 Starting from the bottom up we can do two important things: First, we can reason by

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analogy to relevantly similar cases in professional life. If we think it would be wrong to keep a secret when revealing the secret would avoid harm to another person, we can ask whether a lawyer is justified in keeping a client’s secret under similar circumstances. Second, we can reason upward from particular cases in the direction of more abstract ethical principles. The process of reasoning by analogy and deriving higher order evaluative principles cannot proceed without standards for judging ethical arguments as better or worse. It is our tacit agreement on those standards that enables ethical discourse to occur, even though we may not recognize the pervasiveness of these criteria of judgment.

To take a mundane example, suppose we agree that it is wrong to cut in a line of students that has formed to get into a Duke basketball game at Cameron Indoor Stadium. This is a moral evaluation—a student would use value-laden language (e.g. “that person is a jerk!”) to describe someone who jumped the queue and got into the basketball game, while others farther back in line were excluded. We can then ask in virtue of what it is wrong. The answer will tell us something about the nature of moral principles. In the example of the queue, the wrongness of cutting ahead of others is related to the function of the line as a solution to a coordination problem. Everyone wants to get into the basketball game, but not everyone can fit, and certainly not everyone can get through the doors at the same time. Thus, in order to secure a collective good (the game, and safe access to the stadium), it is necessary for everyone to submit to a fair procedure by which their interests and the interests of others are treated impartially. This is a trivial example, but it nevertheless reveals something about the function and nature of ethical reasoning. It shows that the standards of acceptability of ethical judgments include virtues such as impartiality, generalizability, and avoidance of human suffering. It further shows that particular kinds of human goods, desires, activities, and interests can serve as part of the foundation for ethical evaluation. The standards for evaluating ethical arguments, which emerge from the discussion of everyday controversies, are objective in the sense that they are definite, knowable, and shared among participants in ethical disputes. And as Hilary Putnam, from whom much of this method of analysis is drawn, has said, “that is objectivity enough.”

5. Putnam, RHF, supra note 4, at 178.
This analysis does not avoid metaethics altogether.\textsuperscript{6} The answer to the queue jumping question does not make reference to God’s will, or moral facts, or the dictates of pure reason. We may want to revise our answer after deeper reflection on the structure of morality. Notice, however, that the justification for our response ("that person is a jerk!") to the situation does exclude some varieties of relativism and skepticism. It is inconsistent to say that ethics is just the interests of the stronger and to maintain simultaneously that the line cutter is a jerk, for if he gets away with cutting in line, he is by definition stronger than those patient souls who stood in line and failed to get into the stadium. It is also inconsistent to criticize the cheater and to hold that ethics is relative to individual belief systems (as students sometimes carelessly do when they say that something is "wrong for me," but not for the person in the case under discussion). Ethics must have some interpersonal bite if we are to make sense of everyday evaluative terms like "cheater," "jerk," "sleazeball," and the like. The reaction of our hypothetical observers also undercuts the claim that we should not impose values on others, for surely the observers would have no quarrel if security guards ejected the cheating student from the game. Finally, the response is inconsistent with skepticism about first order ethical truths, because the speaker has not withheld her criticism on the grounds that ethical truths are unknowable, although it may be compatible with second order doubts about the objectivity of her value judgment.\textsuperscript{7}

That is what I mean by everyday discursive practices—the process, in which people engage in their daily lives, of making judgments about their own behavior and the actions of others, based on moral reasons. My claim in this essay is that there are enough resources to get the students beyond their reflexively relativist or skeptical reactions to the language of morals. Ethics is presupposed by our interactions with others. By reasoning analogically from our evaluative response to particular cases, we can construct a moral framework from the bottom up, without getting bogged down in highly abstract questions of ethical theory that are both difficult for the non-specialist teacher to tackle and daunting for students without the appropriate

\textsuperscript{6} Metaethics is the investigation of the nature of moral judgments, including questions about how moral claims are justified, and whether they are objective or subjective. It is to be contrasted with normative ethics, which is concerned with questions of what actions are right or wrong. See Stephen Darwall et al., \textit{Toward Fin de siècle Ethics: Some Trends}, 101 \textit{Phil. Rev.} 115, 125-26 (1992).

\textsuperscript{7} For the terminology of first and second order skepticism about ethics, see J.L. Mackie, \textit{Ethics: Inventing Right and Wrong} 15-17 (1977).
The reactions to particular cases are there—I doubt very much that students get by without responding to the actions of others using evaluative terms such as right and wrong, good and bad, loyal and disloyal, kind and cruel, generous and stingy, trustworthy and untrustworthy, “a stand-up guy” and “an asshole,” and so on. And they probably do not act like people living in a Hobbesian condition of the war of all against all, resorting to violence to settle even inconsequential disputes and refusing to respond to reasonable efforts at persuasion. People do ethics without much trepidation, it is only talking about ethics that seems to frighten students.9

Although the definition of moral relativism will emerge over the course of this essay, through the discussion of similar concepts, it is important to begin with a provisional definition. In general, moral relativism is the claim that “practices and actions are never just or unjust absolutely and without further qualification. They are just or unjust only conditionally, given the norms of justice in a particular society, and only in relation to those norms.”10 The clause following the word “given” is important here, because moral relativism differs according to what ethical claims are supposed to be relative to—the conventions of a society,11 a culture,12 a tradition,13 or a “form of life”


9. I have always treasured this line from Nozick: “When in the Republic Thrasymachus says that justice is the interests of the stronger, and Socrates starts to question him about this, Thrasymachus should hit Socrates over the head.” Robert Nozick, Philosophical Explanations 434 (1981) [hereinafter Philosophical Explanations]. Our students behave exactly like Thrasymachus—they vociferously express doubt about whether moral principles are intersubjectively valid, but also engage in reasoned arguments about ethically charged matters, the hot button issues on campus such as affirmative action, sweatshop labor, globalization, and so on. Their participation in these arguments refutes their earlier contention that ethics is just the interests of the strong, or is purely relative to cultural groups.


11. “If the moral principles recognized in the society of which X is a member imply that it is wrong to do A in certain circumstances C, then it is wrong for X to do A in C.”
in Wittgensteinian parlance.\textsuperscript{14} (In the classroom, the relevant group is usually suggested as one that is small enough to relieve the student of having to make a moral judgment.) Some relativists assert that ethical claims are entirely subjective, that is, relative to belief systems of individuals, rather than to the conventions and practices of societies or other large groups.\textsuperscript{15} Another version of this claim is familiar as the argument of Thrasymachus in Plato’s \textit{Republic}. Justice is nothing more than the label that the strong give to their interests.\textsuperscript{16} This argument was famously inverted by Nietzsche, who thought that the language of ethics was used by the weak to lord it over the strong, who are in the thrall of false beliefs about the nature of morals.

An anti-relativist stance will accordingly be one that does not terminate the chain of justification with a statement about how things are done in the agent’s culture, tribe, or society. Non-relative ethical reasons must in some sense be cross-culturally valid, but it is important not to set this bar too high. I think a good deal of the seductive quality of moral relativism is due to the tendency of students to assume that the only beliefs that count as “knowledge” are those that can be verified through the methods of the empirical sciences. We know the moon is not made of cheese because we have brought back moon rocks and subjected them to physical and chemical analysis. Because we cannot verify that genocide is evil by performing similar tests, it is tempting to conclude that we do not know that genocide is evil. This is the wrong conclusion to draw from the difference between justification in natural science and in ethics. I, for one, am just as confident that genocide is evil as I am that the moon is not made of cheese; the challenge for teachers of ethics, though, is to suggest to students how one might undertake to justify that claim.

There are several promising alternatives. One is to establish a common point of view (generally hypothetical, with constraints on the participants to ensure that they behave “reasonably”) from which we can evaluate moral claims for their acceptability to all affected per-

\textsuperscript{12} See Melville J. Herskovits, \textit{Cultural Relativism: Perspectives in Cultural Pluralism} (Frances Herskovits ed., 1972); \textit{Edward Westermarck, Ethical Relativity} (1932).


\textsuperscript{15} For a definition of “relativism,” see \textit{The Cambridge Dictionary of Philosophy} 790 (Robert Audi ed., 2d ed. 1999) (distinguishing conventionalism and subjectivism).

The interaction may also be modeled on individual interactions, rather than society-wide rules of justice. For example, we might ask whether a given principle can be defended on grounds that no one may reasonably reject. Alternatively, we could take an approach inspired by Kant and attempt to locate the objectivity in ethics in the structure of reason, as Christine Korsgaard attempted to do by elucidating the human characteristic of reflective self-consciousness. We could also understand reasoning a bit less ambitiously than Kant, and seek only to identify standards for the rational acceptability of ethical arguments. We might even posit that these criteria which identify ethical arguments as better or worse are dependent upon common human experiences, sentiments, concerns, interests, and capacities—immediate emotional and physical sensations such as pain, grief, loss, suffering, longing, pleasure, anger, jealousy, love, and alienation; facts about how we confront the world, such as our need for food and shelter; inclinations such as the desire for respect, esteem, and glory, and the opposed need for peace and security; our sociable and disputatious natures; our capacities to lead more or less fulfilling lives; and so on. None of these approaches makes reference to mysterious non-natural moral properties that directly underwrite normative evaluations, yet they provide a foundation for ethics that extends the reach of ethical judgments beyond one's own culture.

This is the sort of response that strikes me as the right approach to ethics, although it may have insufficient substantive content to satisfy those who would like the content of morality to be more determinate at the first order of evaluation. The principal claim of this paper is that teachers and students should not expect ethics to be primarily about substantive truths that are underwritten by rationality. Rather, the objectivity of ethics consists in its being a particular kind of rationality, which uses certain reasoning procedures to frame disagreements about moral issues. This is not intended to be a radical position; rather, it closely parallels some fairly mainstream philosophy. It is inspired in part by the epistemological position that truth (in regard to empirical questions) is largely a matter of having one's procedures of verification right. In other words, the predicate "true" in the sentence "it is true that the sun is 93 million miles from the earth" expresses the speaker's endorsement of a set of investigative and Justificatory tech-

18. See Thomas M. Scanlon, What We Owe to Each Other, passim (1998).
20. See Putnam, RHF, supra note 4, at 135–92.
niques which have won acceptance in a community of scientific inquirers, and which support the proposition that the sun is ninety-three million miles from the earth. Just as science delivers objective truths by employing methods of investigation, verification, and justification, the objectivity of ethics is located in its use of particular methods of reasoning, making reference to facts and reasons that are relevant in the domain of ethics. In other words, instead of getting excited about words like “truth” and “objectivity,” we can make progress by examining more carefully the processes by which claims to truth are supported by reasoning.

Before developing these arguments in more detail, it may be interesting to inquire into why our students are so quick to assert skeptical or relativistic arguments. That is the task of the first Part.

I. Sources of the Climate of Relativism

The arguments in this Part are a kind of speculative, armchair sociology, based on observing undergraduate and law students in professional ethics courses, and talking with them outside of class. The goal here is not to convince readers that there is one correct explanation for student resistance to talking about ethics. Rather, I would like to offer a series of hypotheses and see whether they resonate with the experience of other ethics teachers. In my experience, student reaction to ethics is highly variable. Some students regard the whole enterprise as a sham, perhaps identifying themselves with self-styled debunkers such as Friedrich Nietzsche, Richard Rorty, Michel Foucault, or Stanley Fish; other students may be deeply religious and resent the secular approach taken by some ethics teachers; some may have an ideological quarrel with their professor, and object only to the slant of the discussion, not the use of value laden language; and perhaps the majority is simply unacquainted with this way of thinking and may be put off by the jargon. Naturally there may be students who are comfortable with the language and methods of ethics and are not put off at all by classroom discussions of normative issues. As for the skeptics and relativists, however, I think their attitude may be ex-

21. It is probably too early to assess the impact of the September 11th terrorist attacks on the classroom climate surrounding discussions of ethics. Several people who attended the AALS panel presentation on teaching ethics in law school suggested that student skepticism toward ethics may have diminished somewhat in the wake of an act of undeniable evil. If this is true, I am hopeful that this newly found openness to ethics does not dissipate, like the fear of flying that also increased last fall. Some have suggested that the Enron debacle may similarly embolden students to speak up and identify a business practice or action by a professional as wrong. Again, I think it is too early to tell, but what has been
plained by one or more currents in the wider intellectual culture: the occasional association in popular attitudes between non-relative ethical arguments and the political Right; the multiculturalism movement; the decidedly chilly reception given to American assertions of universal rights in international law, and the broader attack on traditional sources of authority and certainty carried out by critics who brand themselves postmodern.

A. Ideological Capture

For many students, assertions of universal, trans-culturally valid, or objective values have a tendency to come off sounding priggish, sanctimonious, or dogmatic. For example, in the debate over the confirmation of John Ashcroft as United States Attorney General, his opponents frequently labeled him as "moralistic." I recall a recent letter to the *New York Times* which used this very word, but then went on to excoriate Ashcroft for his homophobia. The letter struck me as exceedingly odd, since the very term "homophobia" implies a cluster of moral arguments about the civic equality of gays and lesbians. One cannot use the word "homophobia" intelligibly without presupposing moral positions, but taking moral stances is supposed to be the fault the letter writer finds in Ashcroft.22

Upon reflection, however, I could understand the sentiments expressed in the letter as the result of the quite effective capture, by the political Right, of the rhetoric of values. The appalling suggestion by Pat Robertson and Jerry Falwell that American sinfulness was the cause of the September 11 terrorist attacks is the sort of pseudo-ethical reasoning that quite naturally alienates many students from the language of right and wrong. To cite another example, a book by William Bennett, with a jacket blurb from Rush Limbaugh, is entitled *The De-Valuing of America*, as if the cultural trends that Bennett deplores are actually the result of a lack of values, rather than the conclusion of a moral argument based on a different set of values. Or, consider Robert Bork's screed *Slouching Towards Gomorrah*, sounding the familiar

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22. To be fair, the letter writer criticized Ashcroft for being "moralistic," not for engaging in moral reasoning. A moralistic person can be defined as someone who is aroused to anger and motivated to censure others over a wide variety of things that others regard as matters of moral indifference. See Blackburn, RP, supra note 3, at 13. Although this example may not be precisely on point, I have heard numerous disparaging references to conservative Republicans' tendency to assert moral claims. The mocking of Dan Quayle's (admittedly strident) critique of the entertainment industry may be a better case in point.
social conservative theme that American society has lost sight of moral values. A theme that is constantly heard in the popular media from the Right is that the Left is characterized by its lack of ethics, as opposed to being characterized by moral principles with which conservatives disagree. Finally there is the cultural force of romanticism: In general the language of objectivity sounds constraining, and appears to be the means by which those in authority maintain their power over those who seek to follow the path of inspiration. It is therefore understandable that the political opponents of social conservatives, and in particular the younger generation opponents of the ancien régime, would adopt a debunking attitude toward claims about objectivity and truth in morality.

As a moment's reflection will reveal, there is no reason that only the Right should talk in terms of values. Consider this famous passage:

There are those who are asking the devotees of civil rights, “When will you be satisfied?” We can never be satisfied as long as our bodies, heavy with the fatigue of travel, cannot gain lodging in the motels of the highways and the hotels of the cities. We cannot be satisfied as long as the Negro’s basic mobility is from a smaller ghetto to a larger one. We can never be satisfied as long as a Negro in Mississippi cannot vote and a Negro in New York believes he has nothing for which to vote. No, no, we are not satisfied, and we will not be satisfied until justice rolls down like waters and righteousness like a mighty stream.

This is an elaborate ethical argument for racial equality, delivered by one of the great moral heroes of the twentieth century. Yet the reaction of many self-styled liberals, progressives, or radicals has been to avoid the explicit appeal to moral values. It is ironic that, although many students who espouse ethical relativism identify themselves with the political Left, the unrelenting opposition to objectivity and truth in ethics that is a feature of relativism has the perhaps unintended effect of defanging any ethical criticism of existing structures of power. If nothing can be said about the norms of a polity, society, or culture other than they are just or unjust “according to its lights,” then there seems to be little purchase for a critic who wishes to argue that “the lights” are part of the problem. The result is that certain kinds of leftist thought, often those calling themselves modern or postmodern, are quietistic in their orientation toward structures of

24. See Nozick, Philosophical Explanations, supra note 9, at 21-23.
25. Martin Luther King, Jr., I Have a Dream, in I Have A Dream: Writings and Speeches That Changed the World 218-19 (James Melvin ed., 1992)
dominance and oppression. Relativism defangs ethics, by making it something about which it is impossible to be wrong. If someone on the political Left is a relativist, how is she supposed to speak truth to power? The response of the powerful would simply be, “It’s not wrong by our lights, so take a hike!” Those who eschew ethics forget that it would be impossible to formulate King’s critique without a foundation in moral reasons that are shared by the oppressor and the oppressed.

The wariness of law students toward the discourse of values is reinforced by the tendency of legal education to translate ethical questions into purely legal ones. And once they are in the legal classroom, students absorb the message that the law is malleable, indeterminate, unstable, and arbitrary from the standpoint of morality—in short, a foundation of shifting sand upon which to build any kind of normative system. Law students have a natural tendency to respond favorably to the obvious virtues of legality. By the time they take upper level professional responsibility courses, they have learned the enduring lessons of the legal process theorists, that freedom is best safeguarded by assigning limited roles to various legal institutions and preventing any one of them from acquiring too much power over the daily lives of individuals. This is the sort of argument that underlies one kind of moral argument in favor of the right to choose: We think abortion poses difficult moral and theological questions, about which reasonable people can disagree, and we think that the role of government in a case like this should be to step back and let people make agonizing decisions without facing coercive state power.

The problem comes when law students forget how to translate backwards. Although it may be true that there are reasons, specific to the virtues of the rule of law, for distrusting the power of the state to make judgments about moral questions, that does not mean that these judgments are in principle incapable of having a rational foundation. There are good reasons not to give too much power to the government to decide contested moral issues. It is emphatically not the case, however, that one of these reasons is that no moral argument is any better or worse than another. Remember, if there were no better or worse moral reasons, then there would be nothing wrong with giving the government power to decide these issues. It might be foolish or ill considered, but not wrong, since evaluative terms like right and wrong

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27. See David Luban, Lawyers and Justice 23 (1988) for the related argument.
presuppose standards of rational acceptability of moral arguments. So a legal process or libertarian argument for limiting government power cannot support attitudes of skepticism toward ethics. Nevertheless, Roger Cramton is probably correct to point out that legal education tends to get students out of the habit of making ethical arguments, since the only arguments traditionally admissible in the law school classroom are those which make reference to legal concepts. This tendency can be particularly pronounced in a professional responsibility course, in light of the frequent use of the imprecise term “legal ethics” to describe the law governing lawyers. A teacher in such a course may have to make an extra effort to focus student attention on moral argumentation that stands apart from legal analysis.

B. Multiculturalism and Toleration

The multiculturalism movement has provided a welcome corrective to the dominance of a particular set of values and norms in political, historical, and aesthetic discourse. Indeed, it can be seen as a corrective to the rhetoric of social conservatives, who claim that their moral positions are objectively and universally true, that their canonical dead white male authors are the only ones that should be taught in universities, and that history basically proceeded without the involvement of women and people of color. Unfortunately, this benign form of multiculturalism has a tendency to shade into moral relativism rather easily, at least in classroom discussions of ethics. To see how this elision is possible, it is useful to distinguish two varieties of multiculturalism—weak and strong. The central claim of weak multiculturalism is that other cultures might have something important to offer, such as insights into leading a good human life, and we should not be so blinded by our prejudices and preconceptions that we fail to recognize alternative conceptions of value that could inform our own lives. Frequently, however, the proponents of multiculturalism make the strong claim that cultures can be evaluated only by internal standards, and that there is no such thing as an argument that can be evaluated using trans-cultural standards. The strong claim is susceptible to the caricature of multiculturalism, familiar from the “culture wars” of the 1990s, as a Balkanization of interest groups into warring camps that are unable to talk to each other.

The strong claim of cultural relativism does not follow logically from the “rather unsurprising observation” that societies are constituted differently and sometimes have difficulty understanding one an-
other. Nevertheless, arguments for relativism in ethics frequently make use of anthropological evidence. One variation on this argument is to point out the alien and “untranslatable” or incommensurable moral concepts used by another culture—for example, the commands of a deity, honor in the Mediterranean or the Antebellum South in the United States, or face in some Asian cultures. This form of the argument is subject to the devastating response that its proponents always seem to manage to translate the concept adequately into English. If translation is possible, there must be a way to represent the foreign concept in a way that makes sense to its interpreters; if that is so, then there must be a set of concepts in common to both speakers, to which all parties can refer in making moral arguments. We may disagree about a moral question—say, whether honor justifies killing an adulterous spouse—but we understand how the question is framed. When we encounter another culture or tradition, we assess its ethical concepts by translation, using our own concepts as a starting point.

I have no quarrel with the weak claim of multiculturalism, that other ways of life are interestingly different from ours, and may reveal previously unappreciated problems with our moral self-understanding. When thoughtful people from other cultures come up with different answers to the ethical questions we are asking, it is well to consider whether they may be on to something. This principle of extending at least provisional respect for seemingly different systems of belief can even be an ideal of the philosophical method, as Russell argues:

When an intelligent man expresses a view which seems to us obviously absurd, we should not attempt to prove that it is somehow true, but we should try to understand how it ever came to seem true. This exercise of historical and psychological imagination at once enlarges the scope of our thinking, and helps us to realize how


31. Note that I did not say “whether honor requires killing.” It may be true that within one’s culture an imperative of honor is felt as an ethical necessity, but it is still open to question whether that command is justified. The extension of a concept like “honor” may be relative to one’s culture, but that observation alone does not warrant the further conclusion that killing an adulterous spouse is morally justified.

foolish many of our own cherished prejudices will seem to an age which has a different temper of mind.\textsuperscript{33}

It is important, however, not to conflate this observation about the virtue of being charitable toward the seemingly strange beliefs of others into what Bernard Williams calls "vulgar relativism," a non-relative imperative of toleration that seeks to command everyone (regardless of the culture in which they are situated) to be equally respectful of others' ethical beliefs.\textsuperscript{34}

The problems with this kind of argument are well known.\textsuperscript{35} First, relativism quickly collapses into subjectivism or existentialism because there seems to be no reason to terminate the chain of justification with the conventions and practices of a cultural or national group.\textsuperscript{36} What if there is disagreement within a culture? (Think of the joyous reaction in cities such as Kabul when the Taliban was overthrown, and compare it with the attitude in some rural villages in Afghanistan, where the values enforced by the Taliban were part of traditional local culture.) Presumably dissident groups would argue that the truth of ethical claims ought to be relative to their understanding of their culture's values. And then there could be factions within that dissident group, and so on, down to the level of the individual.\textsuperscript{37} In a complex and diverse culture, how would someone know whose ethical claims to pay attention to? Furthermore, if a relativist wishes not to be a subjectivist, he must explain why the ethical claims of a group have priority to those of the individual.\textsuperscript{38} Ironically, the reasons he gives will probably be sufficiently general to support ethical arguments that are valid across cultures and traditions as well, so he will find his argument against subjectivism undermining his argument for relativism.

\textsuperscript{33} Bertrand Russell, A History of Western Philosophy 39 (1945).

\textsuperscript{34} Bernard Williams, Ethics and the Limits of Philosophy 158–59 (1985); Williams, supra note 29, at 20–25.

\textsuperscript{35} See, e.g., Wong, supra note 3, at 177–97.

\textsuperscript{36} This kind of subjectivism is associated with Hobbes.

[W]hatsoever is the object of any man's appetite or desire that is it which he for his part calleth good; and the object of his hate and aversion, evil; and of his contempt, vile and inconsiderable. For these words of good, evil, and contemptible are ever used with relation to the person that useth them, there being nothing simply and absolutely so, nor any common rule of good and evil to be taken from the nature of the objects themselves, but from the person of the man . . . .


\textsuperscript{37} See Leslie Green, Internal Minorities and Their Rights, in The Rights of Minority Cultures 257 (Will Kymlicka ed., 1995).

\textsuperscript{38} See Yael Tamir, Siding with the Underdogs, in Susan Moller Orin, Is Multiculturalism Bad for Women? 47 (Joshua Cohen et al. eds., 1999).
Second, if one wishes to argue from the apparent diversity of viewpoints on ethics that people should not impose their views on others, the argument is incoherent. It is self-contradictory because it seeks to establish a universal moral principle—"it is wrong to seek to require people to do something of which you cannot persuade them through reasoning"—in response to the observed absence of a universal perspective from which these kinds of claims can be asserted. If the principle is stated differently—"one should not interfere with reasonable choices made within a valid way of life"—then again the argument runs into the problem that it depends on cross cultural standards of reasonableness and validity for ways of life. The attitude of toleration and respect for difference is an ethical ideal, but one which applies across the differences in observed first order ethical beliefs. So, an argument that a good (national or global) society would be one in which people could agree to differ and could resolve their disputes peacefully is an argument based on ethical reasons, such as the priority of reasoned and orderly resolution of disputes and the value of respect and open mindedness. This latter argument is what I have called the weak version of multiculturalism; it is philosophically unobjectionable and contains a great deal of truth. But it does not support the strong relativist claim that observed differences in moral beliefs terminates the discussion.

The apparent diversity of human practices and beliefs about ethics nevertheless tends to make one hesitant to claim that ethics is capable of delivering conclusions that are objectively true or false. As John Mackie argues, "radical differences between first order moral judgments make it difficult to treat those judgments as apprehensions of objective truths." Of course, there might nevertheless be a fact of the matter, despite the disagreement; it could be the case that Culture A is right in its ethical judgment about X, while Cultures B, C, . . . Z are wrong. But it seems hubristic to assert ethical claims too confidently, given the observed diversity of ethical belief. Ultimately, what appears to be a core of truth in ethical relativism can be stated as ethical pluralism, the claim that there is a diversity of human goods, a plurality of wholly incompatible, but genuinely good ways of life, and a wide variety of moral ideals. Virtues or ideals such as liberty and equality, fairness and welfare, temperance and courage, and justice and mercy may coexist in a moral system, yet be incompatible in many cases of conflict between them. The standard examples of divergent ways of life

39. See Blackburn, RP, supra note 3, at 21.
40. Mackie, supra note 7, at 36 (English spelling in original altered).
are the moral ideals underlying fourteenth century Florentine morality, emphasizing conceptions of virtù (political action), Christian conceptions of humility and brotherly love, Homeric heroic virtues, and the character traits that emerge in the Socratic dialogues. "The virtues of the Homeric epics and of the Sermon on the Mount are irreducibly divergent and conflicting, and they express radically different forms of life. There is no Archimedean point of leverage from which they can be judged." Not only do different cultures embody incompatible ways of life, but these ideals may exist within one culture, making possible different, and incompatible models of human excellence. "Within any complex culture, there will typically be a diversity of forms of life, each with its associated virtues and excellences, available to many people, but it will not be possible to combine these forms of life within the compass of a single biography." Conflicts among these competing values and ideals cannot be resolved by some kind of unitary master value or conception of the good life (eudaimonia). Thus, we can locate one source of moral disagreement and the diversity of ethical beliefs in the diversity of moral ideals to which people may be committed.

Significantly, pluralism is compatible with a kind of limited ethical objectivity, in the sense that certain ways of life are morally worthy for humans to pursue, while others are worthless or evil. It does not rule out the possibility of making rational trans-cultural comparisons of values and finding some ethical ideals deficient, from the point of view of genuine human good, although there may be more than one conception of human flourishing from which ethical ideals may be derived. "[T]wo moral principles might both be 'objective,' in any case more than a matter of mere 'individual preference,' and yet we might not have a way of rationally settling conflicts that arise between the directives they yield in particular circumstances." Pluralism is not the same as conventionalism—the goodness of ethical ideals and desirable forms of life does not inhere solely in the fact that a particular culture or group has subscribed to them or pursued them as an idea. We will return to the theme of pluralism after developing an account of ethical reasoning in the next section. For now, we can examine another source of the climate of relativism, the debate over

43. Id. at 54; see also Charles E. Larmore, Patterns of Moral Complexity 35 (1987).
44. Larmore, supra note 43, at 28.
universal rights or values in international law and the claim that these values are simply parochial concerns of developed nations, cloaked in the spurious assertion of universality.

C. Imperialism: The Special Problem of “Universal Rights” in International Law

In the international law arena, assertions of universal moral values or human rights strikes a dissonant chord with developing nations, who associate the rhetoric of universality with Western values and imperialist foreign policies. “The development of international law relied on European ideals as universals and these standards were imposed by colonialism and conquest [sic].”45 The pronounced rightward tilt of American politics does nothing to reassure other nations that we are espousing genuinely universal rights and values. For example, a school board in Florida adopted a resolution declaring that state-mandated instruction about other cultures “shall include and instill in our students an appreciation of our American heritage and culture such as: our republican form of government, capitalism, a free-enterprise system, patriotism, strong family values, freedom of religion and other basic values that are superior to other foreign or historic cultures.”46 Although not so blatantly jingoistic, George Bush’s 2002 State of the Union address also included contested political principles, such as the right to private property, within a list of supposedly universal moral truths. World reaction (particularly in light of Bush’s “axis of evil” label for Iraq, Iran, and North Korea) was predictable: The United States is acting like a unilateralist bully, using the assertion of universal values as a smokescreen for purely self-interested power politics.

It is hard to disagree with the proposition that the foreign policy of the United States has not always shown respect for the ethical positions elaborated by other nations, assuming instead simply that we are right and they are wrong. We Americans should also be mindful of the common sense maxim that people who live in glass houses should not throw stones. If, for example, we criticize the Chinese government for jailing people who simply wish to practice breathing exercises in public, we must be prepared to turn this kind of critical scrutiny inward and ask whether it is just to execute mentally retarded prisoners,

maintain a system of capital punishment that is almost totally indifferent to the value of effective counsel for defendants, tolerate staggering gaps in wealth and access to resources like education and health care (which often exist along racial lines), ignore the impact of our economic activities on the environment, and accept no sense of being part of a global community with developing nations.

Having said this, it is nevertheless important not to let the pendulum swing too far in the other direction, and assume that a claim involving rights, or "Western" values is automatically illegitimate when applied in a different national context. For one thing, I am fairly confident that it is better to be healthy than sick, despite relativist claims such as one French anthropologist's statement that the introduction of smallpox vaccine into India by the British was an occasion for regret because it eradicated the cult of Sittala Devi, the goddess to whom the afflicted would pray for relief of smallpox.\footnote{47} In addition, for every instance in which an assertion of a cross-cultural universal was made to mask imperialist domination, there are other cases in which the language of universal values and rights has been used as a means of liberation by colonial subjects. Writing of the ideology of the rule of law, the English historian E.P. Thompson had this to say:

Transplanted as it was to even more inequitable contexts, this law could become an instrument of imperialism. For this law has found its way to a good many parts of the globe. But even here the rules and the rhetoric have imposed some inhibitions upon the imperial power. If the rhetoric was a mask, it was a mask which Gandhi and Nehru were to borrow, at the head of a million masked supporters.\footnote{48}

Indeed, many of the claims advanced by oppressed persons in the developing world—women, ethnic and linguistic minorities, political dissidents, and the like—rely on patterns of ethical reasoning that would be readily recognized in American political discourse.\footnote{49} It may be these patterns of ethical reasoning, not the exotic-sounding rituals such as female genital mutilation and praying to Sittala Devi, that are

\footnote{47} The statement was made in a paper presented to an international conference on values and technology, and described in \textit{Martha C. Nussbaum, Sex and Social Justice} 35 (1999). As Nussbaum reports, the paper has since been published. \textit{See F.A. Marglin, Smallpox in Two Systems of Knowledge, in Dominating Knowledge: Development, Culture, and Resistance} 102 (Frederique Apffel Marglin & Stephen A. Marglin eds., 1990).


\footnote{49} \textit{See J.M. Roberts, Twentieth Century: The History of the World, 1901 to 2000}, 519–20, 555–54 (1999) (observing that the rejection by Asian countries of Western domination was expressed in terms borrowed from Western thought, such as Marxism or nationalism).
the most constitutive of a foreign culture.\textsuperscript{50} Ironically, cynical appeals to artificially constructed homogeneous cultural traditions have frequently been employed by oppressive regimes to manipulate the appearance of political legitimacy.\textsuperscript{51} In any event, the normative claims made within a culture are generally intended to apply universally, not only to people within the same culture.\textsuperscript{52} For example, conservative Pashtuns do not believe that only their own women should wear the \textit{burqa}, but that all women should display similar modesty. Thus, it is difficult to say anything universal about arguments from universal values.

Not all skeptical arguments in international affairs rely on disagreement with the particular values that are promoted by a powerful nation. Many observers point instead to the hypocrisy, inconsistency, cynicism, and aggression of nations and politicians, and suggest that there is no such thing as morality in international relations, only “power politics.” Of course, there has always been a significant tradition of \textit{realpolitik} in international affairs, which argues that power and national interest are the only standards by which the conduct of nations may be judged.\textsuperscript{53} Morality is therefore said to be irrelevant (and perhaps even dangerous) in international relations. It is important, however, not to assume that morality in international relations necessarily is equivalent to “utopian ideals and sentimental slogans.”\textsuperscript{54} Even the hard nosed realist position is underwritten by moral arguments for the priority of one’s own nation, the necessity of using violence to advance legitimate national interests, the permissibility of deception and threats in dealing with one’s adversaries, and so on. Properly understood, these are not arguments from the absence of morality, but from ordinary morality as applied to the special setting of international relations. Ordinary moral principles, such as the prohibition on lying or obtaining one’s way through threats of violence, contain exceptions for compelling cases, such as the familiar example of lying to the Gestapo about the presence of Jews in one’s basement. In international affairs, the importance of defending one’s homeland or protecting a valuable way of life may permit what would otherwise be

\textsuperscript{51} See Nussbaum, \textit{supra} note 47, at 35–37.
\textsuperscript{54} \textit{Id.} at 7.
moral wrongdoing. In short, there is no reason to think a moral principle must be absolute in order to count as a moral principle instead of a move in a game of power politics.

There are parallels here between international affairs and professional ethics, which are worth drawing out. Politicians and lawyers claim special dispensations from the strictures of ordinary morality, so that they may be permitted to perform actions (ordering the assassination of an enemy, obfuscating the evidence to create a mistaken belief in the mind of jurors at trial) that would be condemned by moral principles if they were engaged in by a private citizen not acting pursuant to some kind of political or professional role. Although some scholars refer to the lawyer's position as an "amoral role," it is not amoral at all; rather, it is justified by a complex moral argument based on the structure and function of political institutions within a society and the necessity of creating classes of experts who can work within those institutions to realize the ends for which they are constituted.\textsuperscript{55} Ordinary morality and legal (or political) morality do not occupy distinct spheres. Or, to put it another way, norms that are internal to the evaluation of lawyers and politicians are not hermetically separated from ordinary moral standards. They may incorporate ordinary morality by reference, and indeed they must if the political or legal institutions are themselves justified.\textsuperscript{56} In the case of lawyers, consider a plausible internal norm: "You may cross-examine a witness to discredit her testimony in the eyes of the jury, even if you are convinced she is telling the truth." This norm would be morally justified only if the practice of which it is a part—adversary trials—is itself a morally justified aspect of the legal system. This is not the place to rehash the arguments that are made for and against the adversary system, in terms of whether it is justified by virtue of its capacity to determine factual truth, protect individual rights from overreaching by the state, serve certain therapeutic goals, and so on. The point is merely that the standards by which any practice is evaluated are ultimately connected with ordinary morality, not freely floating and amoral.


\textsuperscript{56} See Cohen, supra note 53, at 14–15. (There are numerous distinct social groups or practices with internal normative standards—for example, criminal drug gangs, right wing "patriot" militias, and racist hate groups—which cannot claim moral justification for their actions, because their own internal standards are not justified on ordinary moral grounds.)
D. Skepticism About Foundations

Law students have undoubtedly been exposed as undergraduates to various strands of “postmodern” thought in such disciplines as literature, history, political science, ethnic and gender studies, and sociology. One feature of postmodernism (although I hesitate to generalize about this “movement”) is its critique of the foundations that had once given a degree of certainty to theorizing about morals.\(^{57}\) No one believes in Platonic forms, and our times are notoriously skeptical of religious authority as the basis for believing in truths of ethics. The model of empirical science seems inapt as an account of objective truth in ethics.\(^{58}\) Besides, the objectivity of science has been questioned with equal vigor. What’s more, we have become accustomed to seeing formerly cherished ethical “truths” refuted—consider the beliefs about the inferiority of women and African Americans that have been under attack since the middle of the twentieth century. Finally, arguments within moral philosophy have cast considerable doubt on the existence of “moral facts,” reference to which justifies ethical judgments. The best known is John Mackie’s “argument from queerness”: If there are moral facts, and they are facts like any other, it is hard to see how the accurate perception of them should motivate action. If they are different somehow from ordinary facts, so that they were sufficient to motivate someone to act in a certain way, then they are strange “facts” indeed.\(^{59}\) Arguments like this one have caused many to doubt whether ethics can be given a secure, objective basis in the external world, akin to the grounding of the natural sciences.

It is not only ethics that is afflicted by the skepticism about foundations—the theory of knowledge (epistemology) and the philosophy of natural sciences have struggled to understand how we know things to be true, and have rejected many of the common sense answers that have typically been offered. For example, one might think that a belief or a proposition of fact (“there is a desk in my office”) is true if it corresponds to how things actually are in the world (there is a desk in

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\(^{57}\) I have drawn much of this discussion from the work of Christopher Norris, an acute critic of postmodernism, although the outlines of the anti-foundationalist argument should be familiar from the legal literature of the past couple of decades. See generally Christopher Norris, What’s Wrong With Postmodernism: Critical Theory and the Ends of Philosophy (1990); Christopher Norris, Deconstruction: Theory & Practice (1982); see also the discussion of Derrida in Barry Allen, Truth in Philosophy 96-112 (1993).

\(^{58}\) See Darwall et al., supra note 6, at 128-29; see also Putnam, RHF, supra note 4, at 163-78.

\(^{59}\) See Mackie, supra note 7, at 38-42.
my office). This is certainly how many people who have never wandered into the philosophical bramble bush of theories of truth imagine that statements are shown to be true. But there is a well known objection to the correspondence theory of truth that can be raised here. How is it that we come to have two separate thoughts—having the belief in our minds (thinking, “there is a desk in my office”) and having a picture of the way things actually are—at the same time, but from different points of view?60 The correspondence theory of truth posits a mysterious standpoint we supposedly occupy when we judge that our belief bears the right relation to the facts about the world as it is. When we verify a belief—when I bang my fist on the desk and pronounce, “there is a desk in my office”—we are occupying only the standpoint of a person who judges that things are so; we do not have unmediated access to the world of how things actually are.

To put it another way, saying that my belief that there is a desk in my office is true if it corresponds to the existence of a desk in my office does not tell us how we are supposed to ascertain whether there is a desk in my office. If the answer is, “look around your office and see if there is a desk,” then the only perspective from which I can ascertain the truth of that belief is the point of view of the person doing the investigating and the judging. If the answer is, rather, that there is a desk in my office if in fact there is a desk in my office, then we can reasonably ask how it is possible to transcend the perspective of a normally constituted human being poking around his office to see if there is a desk. The correspondence theory imagines that we can put our belief in the existence of a desk alongside the fact of there being a desk and verify that they match somehow. But it fails to explain how it is that we can go beyond beliefs, and processes of testing and justifying our beliefs, to the pure realm of facts. I will have much more to say on the subject of verification and justification throughout this Part, beginning with the “deflationist” response which attempts to meet this objection head on. For now, however, it is sufficient to point out that the seemingly natural notion of truth as “correspondence with the way things actually are” is beset with significant theoretical difficulties.

Similarly, the early twentieth century movement in American philosophy known as pragmatism has been hugely influential in the legal academy, attracting supporters on the Left and Right of the political

60. See Simon Blackburn, Spreading the Word: Groundings in the Philosophy of Language 224–26 (1984) [hereinafter Blackburn, SW].
Pragmatism begins by asking what difference truth makes—why ought we be concerned that a statement such as “torturing small children for fun is wrong” is true or false? The answer is that ideas are true insofar as they help us make sense of the relationship between that idea and other aspects of our experience. Ideas are true instrumentally, to the extent that they link disparate parts of our lives in a coherent manner. This is not to say that truth is arbitrary; rather, “[t]rue ideas are those that we can assimilate, validate, corroborate and verify.” In James’s famous expression, truth has a “cash value.” That means that the consequences of holding the belief are better for its holder than the consequences of not holding it.

Methodologically pragmatism is empiricist; it takes concrete, particular experience as relative more central to philosophy than a priori principles and highly abstract categories. It defines truth as the terminus of an ideal inquiry, rather than correspondence with the world, and insists that justification be holistic, not a case by case matter. These are philosophical positions—they have consequences for familiar debates about truth, metaphysics, and the philosophy of mind and language. James’s theory is not “anti-philosophy,” and it has particular implications for ethics. One can be a pragmatic ethicist by adopt-

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63. See id. at 100.
64. Id. at 112, 114.
65. Id.
66. See Bertrand Russell, William James’s Conception of Truth, in Truth 60, 74 (Simon Blackburn & Keith Simmons eds., 1999). One can tell an evolutionary story about truth that explains why we might have come to value truth, although it does not necessarily define truth: “It seems reasonable to think that our original interest in truth was instrumentally based. Truths served us better than falsehoods and better than no beliefs at all in coping with the world’s dangers and opportunities.” Robert Nozick, The Nature of Rationality 68 (1993). This story brings to mind a picture of a caveman evaluating the statement, “Here comes a sabre-toothed tiger!” Of course, from his point of view, it is better to act on a true statement of that form, by running like hell. But the evolutionary story does not mean that good practical consequences are constitutive of truth, for the reasons noted by Russell.
67. See James, supra note 62, at 96–97.
68. See David Luban, What’s Pragmatic About Legal Pragmatism?, in The Revival of Pragmatism: New Essays on Social Thought, Law, and Culture, supra note 61, at 275, 278.
69. Stanley Fish’s repeated insistence that principles are just rhetorical smokescreens may loosely be called one form of pragmatism—Luban calls it “primitive pragmatism.” David Luban, The Posner Variations (Twenty-Seven Variations on a Theme By Holmes), 48 Stan. L. Rev. 1001, 1007–08 (1996). It is not, however, what James and Dewey were talking about.
ing a particular view about the justification of ethical beliefs, in which justification depends on context and the data of experience, in addition to foundational principles, such as human dignity.\footnote{70} This is not the same as saying that context is all there is, so that "philosophy" in the sense of more abstract theoretical considerations has no role to play in ethics.

Pragmatism presents a number of recognized difficulties as a theory of truth. Stating the claim of pragmatism too strongly does risk lapsing into the error of relativism, in the conventions of some social group are the sole criteria of truth. Conventions can be jettisoned or modified at will; there seems nothing that constrains the adoption of a particular convention. Serbian conventions are good for Serbs, but surely there is more to say than that when thinking about whether Milosevic’s militant nationalism embodied true beliefs about what ought to be done. Serb beliefs are not good for humans generally, but of course that rejoinder begs the question of the appropriate frame to adopt when evaluating whether an idea is good for us—who is the relevant "us"? There seems to be nothing in the pragmatic method that requires the question of the goodness of a belief to be assessed relative to people outside one’s own social, tribal, ethnic, or national group. In addition, it is odd to make the ascription of truth to a belief dependent upon good consequences. For one thing, "good" is a term like "true" that stands in need of definition. Surely good cannot be defined pragmatically, with reference to the goodness of consequences, because that definition would be circular. Bertrand Russell, a severe critic of pragmatism, observes that pragmatism also gets the causal relationship of truth and belief backwards.\footnote{71} The fact that Columbus sailed in 1492 is the cause of my true belief that Columbus sailed in that year; pragmatism, by contrast, seems to imply that the good that is brought about (whatever that may be) as a result of my belief that Columbus sailed in 1492 causes a historical event to have been the case. Finally, Russell also notices that many patently false beliefs can have good consequences. Children derive a great deal of pleasure out of their belief in Santa Claus and, Russell suggests, the same is true of adults' belief in God. (Russell was famously irreligious.) These good consequences can be quite independent of the truth of the belief asserted.

In any event, my intent here is not to do justice to the rich debate over philosophical pragmatism, but to suggest how pragmatism, as

\footnote{70. See David Luban, Legal Modernism 156 (1994) [hereinafter Legal Modernism].
71. See Russell, supra note 33, at 817–18.
part of a general *Weltanschauung* in higher education, may tempt students down the primrose path of relativism. Pragmatism shares with postmodernism a tendency to be misunderstood and misapplied. Whatever else may be the consequences of pragmatism, it certainly does not imply subjectivism or relativism in ethics. The pragmatic definition of truth, in ethics or metaphysics, requires a standard of truth external to the thinker.\(^7\) Moreover, in some pragmatic definitions of truth, such as John Dewey's concept of truth as warranted assertability, it is clear that truth is conceptually independent of majority opinion on the subject.\(^7\) This is because majority opinion on the subject is dependent upon *something*; otherwise there would be no agreement. In Hilary Putnam's example, whether one's cultural peers would agree with the statement “my kitchen needs painting” must depend on whether the paint is dingy and peeling, and those facts, in turn, must depend on physical laws that are independent of the opinion of one’s cultural peers.\(^7\) In any event, the familiarity of pragmatism in universities, particularly law schools, seems to have accustomed students to thinking of truth as being relative to communities. The next Part considers the complex relationship between truth, communities, and the physical world.

**II. The Deflationist Response**

The first three potential sources of the climate of relativism—association with political conservatism and legitimate concerns advanced by multiculturalists and observers of international relations—are susceptible to fairly brief responses. The broad intellectual trend of antifoundationalism is another matter altogether. It is a sophisticated attack on traditional sources of certainty and, as such, deserves a careful reply. One such response is simply to jettison talk about foundations from our conceptual vocabulary, understanding truth and objectivity along different lines. Suppose we are interested in asserting a proposition, \(p\), that no one is likely to deny: In mathematics it may be “2 + 2 = 4,” in ethics it may be “slavery is wrong.” Consider the following “ladder” of sentences:

1. \(p\)

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2. It is true that \( p \).
3. It is a fact that it is true that \( p \).
4. It corresponds to the eternal factual and normative order of the universe that \( p \).^{75}

Philosophers who adopt a "deflationist" view of truth are inclined to assert that none of the sentences above, beginning with #2, add anything to \( p \). The sentence, "Slavery is wrong" is equivalent to the sentence, "It is true that slavery is wrong." Deflationism simply shifts the focus from the loaded word true to the kinds of arguments we would employ if we were interested in defending \( p \). We can, of course, disagree about the underlying proposition, \( p \)—someone may deny it, and say that slavery is not so bad after all. But what would be the response to that denial? The proponent of \( p \) would not simply bang the table and say "It is true that slavery is wrong." Rather, she would patiently explain why slavery is wrong, making reference to the violation of human dignity it causes, the suffering it entails, perhaps to religious revelation, historical examples, the effect on the character of the slaveholders, and so on.

These arguments, which rely on the moral reasons for slavery's wrongness, would lend support to two different conclusions—"slavery is wrong" and "slavery is wrong' is true." Since the pattern of justification is the same, deflationists ask why we should not dispense with the "is true" predicate in the second sentence.^{76} You take the first proposition out of quotation marks and then go about investigating whether it is true:

"Slavery is wrong" is true if and only if slavery is wrong.

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75. The ladder image and this example are from Simon Blackburn. See Blackburn, RP, supra note 3, at 78; Simon Blackburn & Keith Simmons, Introduction, in TRUTH 1, 4 (Simon Blackburn & Keith Simmons eds., 1999). The arguments in this Part are not Blackburn's, or Hilary Putnam's (who is also cited frequently in this section), or those of any other specific philosopher. They are rather my amalgamation of a number of related positions in metaethics, put together with the aim of showing how one might respond to the desire for an objective foundation for ethical judgments.

76. The disquotational approach to the truth of sentences originates in a paper published in the 1940s by the Polish logician Alfred Tarski, entitled "The Semantic Conception of Truth," in PHIL. & PHENOMENOLOGICAL RES. 341 (1944); see also Alfred Tarski, The Concept of Truth in Formalized Languages, in LOGIC, SEMANTICS, METAMATHEMATICS (J.H. Woodger trans., 1956). To be more precise, I am talking here about "methodological deflationism," not a purely disquotational theory of truth. See Blackburn & Simmons, supra note 75, at 18; Hartry Field, Deflationist Views of Meaning and Content, in TRUTH, supra note 75, at 351. Also, to avoid complications, in this essay I am not taking a position on whether the relevant bearer of meaning is a belief, sentence, statement, proposition, or other token. I am being deliberately loose here, with the idea being only that truth in ethics is something ascribed to an evaluation, whether the evaluation is in the form of a belief, statement, or even an emotional reaction that is not articulated in propositional form.
This odd way of stating the truth conditions of the sentence “slavery is wrong” is supposed to focus attention on the uselessness of the predicate “true” in a domain such as epistemology or ethics. Truth does not refer to some general property; rather, it is a predicate we apply to indicate our justified commitment to a proposition about the world or about values. If we are interested in the truth of the proposition “slavery is wrong,” what else is there to do but try to figure out whether slavery is wrong? The resulting method is an empirical theory of meaning, in which the meaning of any sentence is given by its truth conditions. We can tell something about the meaning of sentences only if we can explain how people manage to speak and understand a language. Consider the example often given in epistemology, which I believe was introduced by Quine:

“Snow is white” is true if and only if snow is white.

In this example we should unpack the meaning of the whole sentence by reference to the processes of interpretation, understanding, verification, and justification that we bring to bear on the words following “if and only if.” The idea here is that the predicate “true” does nothing more than direct us toward two sensible tasks: Understanding how competent speakers of a language use words, and figuring out whether snow is white, using empirical processes of testing and verification. Without knowing the standards by which someone evaluates whether a statement is true, we do not know anything about what it means for a statement to be true; no one wants to say “snow is white” unless snow is really white, but that is all we mean by wondering whether it is true that snow is white. We know snow is white because we agree on the processes of observation, interpretation of observed data, and assignment of descriptions to these interpreted observations. If this sounds grandiose when applied to an ordinary experience, consider how we know that \( E = mc^2 \), or that atoms are composed of protons, neutrons, and electrons. We know that the latter statement is true only because we agree that a certain observed track in an ini-

78. For an application to ethics, see Wong, supra note 3, at 16–22.
79. See also Donald Davidson, The Inscrutability of Reference, in Inquiries into Truth and Interpretation 227, 228 (1984) (referring to a “translation manual” and a theory of truth as equivalent). It may help to see a theory of truth as providing an analogue to translation. The significance of Tarski’s approach to truth finally made sense to me when a professor in a graduate seminar suggested this gloss: “Schnee ist weiss” is true if and only if snow is white.
strument such as a cloud chamber following a particular collision between atoms should be interpreted as revealing the existence of a theoretically posited particle conventionally called an electron. That agreement depends, in turn, on a great deal of theoretical argumentation, ridiculously complicated mathematics, and further observations under specified laboratory conditions. The same is true for ordinary observations about snow, but we overlook the background of shared standards of interpretation that are presupposed by discourse about the physical world. The point to underscore, however, is that even empirical science—which some believe to establish truth by direct correspondence with the physical world—depends on a number of initial assumptions about how observations should be interpreted and correlated with theoretical entities. It is not so simple as “reading off” the truth from the world as it is in itself.

The nature of the tasks of verification and justification also throws light on the inherent normativity of language, an important point that will return when we consider truth-conditions for propositions of morality. In short, the meaning of language is a public matter—there is no such thing as a meaningful language that is not shared with other persons. It is part of the nature of language that a person may be mistaken in the way he uses words, for instance by saying “snow is green.” And whether the speaker made a mistake can be assessed only in relation to the community of language users of which the speaker is a part. Other users of the language check the speaker’s assertions, and it is the interaction among speakers of the language, not some fact in the external world or the speaker’s intention, that determines the truth of sentences. Significantly, this is the case in epistemology as well as ethics. Even the truth aptitude of a statement about the physical world, such as “snow is white,” is ultimately constituted by how that statement is used in a community of speakers of a language.


82. See Kripke, supra note 82, at 75–78, 89–101; Putnam, RHF, supra note 4, at 185.

83. This is not the only way to be a deflationist, and the philosophers I have cited throughout this section, such as Quine, Davidson, Putnam, and Blackburn, have very different approaches to the problem of truth. For example, many disagree with the view elaborated by Kripke, supposedly based on Wittgenstein’s rule-following argument. My hope is merely to show one way of responding to the student who expresses skepticism about “essences” or foundations in ethics and therefore the possibility of non-relative ethical knowledge. It is certainly not to defend a highly controversial position in epistemology, metaphysics, or the philosophy of language.
the example of atoms. The truth of the statement “atoms are made up of protons, neutrons, and electrons” is given not only by experimental data and observations, but by community standards regarding how those observations should be interpreted and matched up with theoretical concepts.

Now, this obviously sounds like the relativist position I have tried to avoid. Meaning and truth can be assessed only relative to the standards of rational acceptability endorsed by communities—is that not the very argument the relativist has been advancing? As some deflationists in ethics are quick to point out, however, they are simply shifting the focus of the discussion to the reasons why one might want to assert or believe a statement. In science, you can say “snow is white” only if snow is white. In ethics, it is wrong to kick dogs not merely because we have a certain reaction to the act; rather, we react the way we do (condemning the dog kicker in moral terms) because kicking dogs causes them pain. The standards of justification and verification are not relative arbitrarily to the community’s use of language; rather, the community’s use of language is constrained in some way by the way the world is constituted. The capacity of dogs to feel pain is an essential link in the justificatory chain supporting the statement, “it is wrong to kick dogs,” just as the physical structure of water is an essential aspect of the justification of the statement “snow is white.” The example of snow suggests an analogy between ethics and sensory perception of the physical world. The color white is not part of the explanatory and causal structure of the universe; if you ask a physicist why you perceive snow as white, the explanation will have to do with the wavelengths of light that are absorbed and reflected by the snow, as well as the way our retinas and brains process sensory stimuli. Color


85. Nozick gives a fanciful example from the philosophy of language which, I think, helps support Blackburn’s argument about the non-arbitrariness, yet socially constituted nature of ethical language:

[S]ome other culture and language, it is said, might divide things quite differently, for instance having a term “zanzar” that refers to anything which is either a chair or a river or half of a house. However, even if terms embody arbitrary divisions of the world, it does not follow that the statements or propositions made with these arbitrary terms are not true. Define an “ourth” as anything that is either a chair or a river or half of a house or is identical with Grover Cleveland. That is, according to us, an arbitrary term. Be that as it may, it is true that all zanzars are ourths. And it also is true that the object in the corner of my office is a zanzar, and that Grover Cleveland is an ourth but not a zanzar. The arbitrariness of the constituent terms does not make the truth of these statements an arbitrary matter.

NOZICK, INVARIANCES, supra note 10, at 48 (emphasis added).
is a secondary quality, dependent on our response to physical, or primary qualities of the object. Although the ascription of color is a function of human language and perceptual capacities, our perception that snow is white is regulated by intersubjective standards of correct usage. The statement “snow is green” would be judged wrong in a community of competent users of English. Thus, the inherent dependence of color attribution on the psychological makeup of human beings does not make the statement “snow is white” any less objectively true. For example, X is good if and only if well socialized people would be disposed to choose X when faced with it. There is obviously a lot of room for playing around with the definition of the terms inserted in brackets, as I suggested by the term “well socialized people.” A major challenge for those who are attracted to response dependent concepts is to explain why particular choices are made for the bracketed terms. The dependence of a language on the conventions of a particular group does not make meaning arbitrary, or relative to convention. The sentence “2 + 5 = 7" could be expressed using different symbols; the use of the symbol “2” to refer to the number 2 is simply a convention. Yet the truth of the sentence “2 + 5 = 7" does not depend on linguistic conventions.

Similarly in ethics, the community’s judgment is not arbitrary—there is something to be wrong about. The statement “kicking dogs is wrong” depends on the emotional and psychological constitution of humans, but like the attribution of whiteness to snow, it is both grounded in our experience of the external world (our perception of the dogs’ suffering) and justified by its place in a whole scheme of ethical attributions that constitutes our moral life. The practice of making moral judgments is “quasi-objectified,” to paraphrase Blackburn, by this multilateral relationship between our perception of the relevant facts, the attitudes we express toward them, and the judgments made by others about our attitudes. We subject our behavior and ethical attitudes to the impartial scrutiny of others. For example, we would be judged callous if we were not moved to anger by the sight of someone kicking a dog. It is important to recognize, too, that

87. See Darwall et al., Toward Fin de siecle Ethics: Some Trends, supra note 6, at 153. On response-dependent concepts generally; see also Simon Blackburn, Circles, Finks, Smells and Biconditionals, 7 Phil. Perspectives 259 (1993).
88. For this example, see Blackburn, SW, supra note 60, at 19.
89. Blackburn’s term is “quasi-realism.” See id. at 171.
90. See Blackburn, RP, supra note 3, at 204.
the second order judgment of callousness is underwritten not by a sense that the dog kicker is violating some social norm, but is doing something wrong, in virtue of the dog’s suffering. To put it another way, if we believe we are talking about matters that depend only on tacit agreement or social convention, we cannot possibly think we are talking about anything of importance,91 and would not be motivated to express a judgment about a person who violated ethical standards. On the other hand, we make ethical arguments precisely because we believe there is something worth arguing about, namely the “human values and significances”92 that are implicated by our actions. This argument is developed further in the next section.

A. Deflationism and Moral Truth

The significance of the ladder image and the deflationist approach to truth for the anti-relativist position can be seen by inverting the ladder. Imagine that someone utters the following series of sentences:

1. Slavery is wrong.
2. Our opinion is this: slavery is wrong.
3. Slavery is wrong. That is just our opinion.
4. Slavery is wrong. “That is an opinion reflecting an independent order of reason.”93

In this case, all of the sentences in the ladder are either misleading or equivalent to #1. The deflationist would first maintain that #4 is hopelessly confused because we have no access to the independent order of things, the Platonic or Kantian universe of forms or things-in-themselves. Next the task is to neutralize #3 by showing that it is equivalent to #2. In other words, the epithet “just” does not add anything to the assertion of the opinion that slavery is wrong. The next step is to show that #2 does not differ, in any respect that matters, from #1. Thus, the key word in the ladder is “opinion.” The relativist means to say something shocking by asserting that “slavery is wrong” is a matter of opinion. But what is meant by that predicate, and how does it differ from the statement, “‘slavery is wrong’ is true” or “slavery is wrong?”

Blackburn argues that it does not differ at all, because calling something an opinion is not the same as asserting that it has no foundation whatsoever in reason. The next question is, “On what is that

91. See Luban, Legal Modernism, supra note 70, at 133.
93. Blackburn, RP, supra note 3, at 305.
opinion founded?” If someone says that in his opinion slavery is not wrong, we would immediately query him about the features of slavery that make it morally acceptable. There is still something to argue about, even though we may label the competing positions “opinions,” as Blackburn recognizes:

If the relativist is saying that it is just our opinion as opposed to a good or better opinion that approves of slavery, we are in a moral dispute, certainly. But it is then up to him to locate this good or better opinion and defend it, and this we know he will be unable to do, for we are certain that slavery is a bad system. If he is saying that it is just our opinion as opposed to e.g. the opinion of the gods, or an opinion [that corresponds with the eternal order of the universe], then he is under a misapprehension about what opinion could ever be.

If we accept the deflationist view of truth in the first ladder, we recognize the equivalence of the sentences “Slavery is wrong” and “Slavery is wrong’ is true.” The sentences are equivalent because we would use the exact same methods of justification to establish either—adducing evidence about the suffering that slavery causes to humans, and urging that others pay attention to our reasons. Similarly, we would back up the opinion “slavery is wrong” by the very same evidence

94. SCANLON, supra note 18, at 197 (“Typically, our intuitive judgments about the wrongness of actions are not simply judgments that an act is wrong but that it is wrong for some reason, or in virtue of some general characteristic.”). Calling something an opinion invites the rejoinder, “de gustibus non est disputandum.” It is true that some matters come down to an arbitrary judgment which can be referred to in everyday use as taste, preference, or opinion. There is really not anything that can be used to adjudicate between a preference for Cajun food and a preference for Italian; it is just something that you like or dislike, and that is all there is to it. Most opinions, however, at least on any subject that matters, are founded in something, not just the person's subjectivity. For example, suppose I say, "In my opinion Cosi fan tutti is a great opera." That is an opinion, to be sure, but it is not grounded on pure preference—I have a set of aesthetic criteria in mind for what makes a great work of art. Of course, people can disagree—Beethoven loathed Cosi—but again, that disagreement is based on something, it is not just the mutual assertion of subjective preferences. Beethoven believed that great art cannot be cynical, so he concluded that Cosi cannot be great art. The disagreement is really over the nature of great art, whether it has to be uplifting or can be cynical. And that is something worth arguing about. See also PUTNAM, RHF, supra note 4, at 179, 182–83. No one thinks these arguments come down to pure assertions of opinion, even though there are disagreements; there are some arguments that are ruled out, some have more plausibility than others, and communities (such as informed listeners and music critics) have standards and criteria for assessing the quality of someone’s contribution to the debate. At some point pure preference can enter the picture. One might prefer Figaro to Cosi, or prefer Verdi to Mozart. But the existence of some questions of opinion in a domain such as aesthetics does not mean that fruitful discussions are impossible because all questions in the domain come down to subjective preferences.

95. BLACKBURN, RP, supra note 3, at 305; see also HAMPSHIRE, supra note 10, at 64.
and arguments we would use to defend the statement "slavery is wrong."

The truth conditions of the sentence (call it an opinion if you like), "slavery is wrong," are constructed with reference to concepts we share with others. I am not saying we necessarily share all our values with others, or even a great many of them. At least we do, however, share evaluative concepts like pleasure, suffering, fairness, dignity, violence, and peace, although we naturally disagree about the extension of these concepts and the way they might be harmonized in any situation of conflict among them. This point is related to the argument from Davidson, noted above, that any disagreement can be understood only against a background of agreement. We act for reasons, and we can make those reasons known to others. If we disagree with someone, it is because we disagree with their reasons, but we do understand them.\footnote{96. See, e.g., Gilbert Harman, \textit{Metaphysical Realism and Moral Relativism: Reflections on Hilary Putnam’s Reason, Truth and History}, 79 J. Phil. 568, 570–71 (1982).} If we did not share concepts with persons with whom we disagreed, they would be unintelligible to us, not opponents in a debate. If someone said, “slavery is not wrong, because snow is white,” we would think he was crazy, or playing elaborate metaphorical games. Simply to participate in the practice called “ethics” means to be committed to a process of giving certain kinds of reasons in justification for judgments about what one ought to do. If people who disagree are at all motivated to move beyond the impasse, and they think language is the appropriate medium for doing so (as opposed to, say, duels), then there are logical constraints that apply to any such language that functions as a medium for resolving ethical disputes.\footnote{97. See \textsc{Blackburn, RP}, \textit{supra} note 3, at 229; \textsc{Nozick, Invariances, supra} note 10, at 55–58.}

Only certain things count as reasons in ethics, and it is clear what those reasons are \textit{from talking about ethics}. Again, ordinary discursive practices illuminate the nature of the subject matter. In the classroom, it should not be difficult to find something that a student regards as wrong—cheating on one’s spouse, crossing picket lines, torturing confessions out of suspects, sexually abusing children, forcing women to cover themselves from head to toe when leaving their homes, “partial birth” abortions (or prosecuting women for having abortions), maintaining separate water fountains for whites and blacks, using racial epithets, slipping date rape drugs to women, performing medical experiments on ignorant participants, executing criminals by methods such as the electric chair and the gas chamber, and so on. For a mo-
ment, put aside disagreements about the extension of ethical concepts, or what we might call first order normative judgments—for example whether an unborn fetus counts as a human life. Instead, we can give examples of ethical reasons that can be offered in support of or in opposition to particular evaluations. The point of these examples is that certain concepts, categories, and patterns of argument recur in ethical discourse. The following list of ethical concepts includes examples, in parentheses, of the first order judgments they might underwrite:

- Ethical reasons must be generalizable to relevantly similar cases.98 (If abortion is wrong because no one may intentionally take a human life under any circumstances, then the death penalty is also wrong.)
- One must act consistently on ethical principles, applying them to oneself with the same force as they are urged on another. (If one moral justification for the American entry into the Second World War was that Hitler’s Germany was a racist regime, then the United States should not permit racial segregation in the military or at home.)
- Some facts about the natural world (“nonmoral facts”), such as the capacity of humans to suffer, are relevant to the evaluation of actions.99 (It is wrong to cause suffering without a good reason, and the alleviation of suffering is a prima facie good.)
- Relatedly, there are certain things that all would agree are human goods, and things that all would agree are human bads.100 (All things being equal, a society in which there is less misery is preferable to one in which there is more misery.)
- Because ethics is a substitute for resolving disputes by force, ethical reasoning should strive for the resolution of disputes in a way that avoids coercion, domination, and threats, using instead “a regular and reasonable procedure of weighing claims and counter-claims.”101 (You shouldn’t threaten visiting lecturers with pokers to win arguments.)
- Purely self-regarding reasons are insufficient to justify an action ethically; that is, ethics is something that matters from the stand-

98. See Mackie, supra note 7, at 83–90.
99. See Nussbaum, supra note 47, at 39–42 (indicating that capacities provide the interpersonal basis for making ethical arguments).
100. See Simon Blackburn, Being Good: A Short Introduction to Ethics 86–97 (2000) [hereinafter Blackburn, BG]; Larmore, supra note 43, at 139–41. Some philosophers take the basic human good as being relatively empty of substantive content—for example, both Nozick and Gauthier define the purpose of ethics as securing mutually beneficial cooperation. See Nozick, Invariances, supra note 10, at 240; David Gauthier, Morals By Agreement (1986).
101. Hampshire, supra note 10, at 63, 75.
point of people other than ourselves.\textsuperscript{103} (If I won $10 million in the lottery and dissipated it all on drugs, lavish parties, and expensive cars, "I had a lot of fun" would not be an answer to the argument that I should have given some of the money to charity.) Incidentally, the strong Kantian version of this principle is that only actions done out of respect for the moral law count as "ethical."

- Family and kinship ties, political institutions, and intermediate associations such as labor unions generate obligations. (You should remain faithful to people in certain kinds of relationships and not betray their expectations.)

- At the same time, ethical reasons ought to be impartial to some degree, among affected persons, including the agent.\textsuperscript{104} (It is wrong to give too much preference to one's own family, social group, or nation. It is unfair for the United States to emit a disproportionate share of greenhouse gases, just because cutting back on emissions would hurt the United States economy.)

- Just as obligations can arise from associations, permissions and excuses can arise from volitional acts such as consent.\textsuperscript{105} (The absence of consent can make an otherwise permissible act like sexual intercourse into the morally wrong act of rape, and medical experimentation without consent is wrong.)

- Particular aspects of human difference are ruled out as reasons for action. In other words, one function of ethics is to counteract the natural tendency of human beings to sympathize only with people who are like them in some way.\textsuperscript{106} (Racial segregation is wrong, while sex-segregated restrooms are not.)

- Ethics is something that is concerned primarily with our relationships with others. The subject matter of ethics can be distinguished from arbitrary tastes and preferences by the legitimacy of the concern which others express toward our actions, preferences, and concerns.\textsuperscript{107} (If someone suggested that he enjoyed torturing children we would not regard this as merely a preference and therefore determine not to interfere with him.)

Although this is meant to be a rough and merely suggestive sketch (others may come up with quite different lists, some of which would contain only one entry), I contend that some categories like these are logically constitutive of ethical reasoning. If someone said that sexually abusing children was not wrong during a full moon, we


\textsuperscript{104} Gert, \textit{supra} note 103, at 77–95 (1988).

\textsuperscript{105} See Appelbaum, \textit{supra} note 55, at 166–67.

\textsuperscript{106} See Mackie, \textit{supra} note 7, at 108; Gert, \textit{supra} note 103, at 107–08. This principle underlies Rawls's "veil of ignorance" device, which is intended to screen parties in the original position off from particularities such as their race, sex, and social class. See Rawls, \textit{supra} note 8, at 136–42.

\textsuperscript{107} See Blackburn, \textit{RP}, \textit{supra} note 3, at 8–11.
would question his sanity. More seriously, we would deny that the fact that something is good for me or my tribe or my nation is, by itself, an ethical reason that could be given in a debate over, say, whether the United States should join a worldwide effort to reduce global warming. These procedural ground rules for what counts as a valid move in an ethical argument are not invented anew every time two people try to resolve a disagreement; rather, they are the standards that make this kind of argument possible.

If this line of argument is correct, then the nature of ethical justification would be the locus of objectivity in ethics, not any particular evaluative judgment we may reach or the correspondence between ethical judgments and some kind of entities that inhere in the fabric of the universe. Criteria of acceptability of ethical reasons give us tools for evaluating ethical judgments as better or worse, although not necessarily absolutely right or wrong. It may be true that we cannot compel someone to accept a particular ethical judgment, on pain of being regarded as irrational. But this is a false ideal. Ethics should not be held to an impossible standard, so that we become suspicious of all ethical reasoning if it is unable to deliver mandatory judgments. This is, however, precisely the criterion of success for ethical reasoning that many philosophers have established. As Simon Blackburn points out, the concept of rationality is notoriously plastic in ethics,

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108. Although some self-styled "postmodern" or "pragmatic" critics of ethics think they are casting doubt on the whole enterprise of making normative judgments, they are saying something quite banal. Stanley Fish, for example, thinks it is fatal to the practice of reason-giving in ethics that certain kinds of reasons must be excluded from the discussion ab initio. Stanley Fish, The Trouble with Principle 69–72, 160–61, 169–70 (1999). But no process of reasoning can even get started without a set of working assumptions about what counts as a reason within that domain. Fish regards this as a process of coercion or imposition, but these are just metaphors. No complex process of reasoning can be rested only on self-validating axioms of pure reason that everyone must accept. Still, Fish believes he is morally permitted to write a book in which he tries to persuade his readers of something, which requires principles for evaluating arguments that are shared between Fish and reader. Either Fish's metaphor of reasoning as violence proves too much or he is appealing to some kind of exception to the moral proscription on coercion, which remains unarticulated.

109. See Hampshire, supra note 10, at 74–75. This argument resembles Lon Fuller's "inner morality of law," which seeks to ground the authority of law not in the substantive nature of its prescriptions, but in the formal characteristics of valid laws. See Lon L. Fuller, The Morality of Law 33–94 (rev. ed. 1969).

110. See Wong, supra note 3, at 1–9 (suggesting different ways of defining objectivity in ethics); Thomas Nagel, Subjective and Objective, in Mortal Questions 196, 206–07 (1979) (subjective and objective are poles of a continuum, not a binary opposition).

111. See Putnam, RHF, supra note 4, at 182–83; Blackburn, BG, supra note 100, at 28.

112. See Blackburn, RP, supra note 3, at 261.
because of the obsession with constructing normative judgments that are "necessary," "non-contingent," and valid from the "transcendental standpoint of reason." Instead, he says, we should be willing to rest content with a notion of moral reasoning that aims at evaluating personal moral beliefs and political institutions, in terms of the excellence of the lives they promote, the values that these lives embody, and the disasters from which they protect us. Political liberalism, for example, is worthy of our admiration because it helps keep in check such evils as religious warfare, ethnic hatreds, and abuses of authority by dominant groups. That is enough basis for us to praise and desire liberalism as a governing ideology as opposed to, say, Maoism. These judgments may be provisional, not final, and our ethical judgments may in principle remain open. However, this is not necessarily a bad thing—it helps us avoid the vices of dogmatism, pride, and narrow-mindedness that might accompany a tendency to think of moral judgments as delivering some kind of absolute, necessary, good-for-all-places-and-all-times kind of truth.

Note that one can take this kind of argument a step farther, and attempt to specify particular substantive concerns that belong to the domain of ethics. I am content to locate the objectivity of ethical judgments in agreement on procedural standards, such as those listed above, but a common move in response to relativist or skeptical arguments in philosophy is to observe the wide range of intercultural agreement on certain ethical principles, stated at a high level of abstraction.

Every society that is recognizably human will need some institution of property (some distinction between "mine" and "yours"), some norm governing truth-telling, some conception of promise giving, some standards restraining violence and killing. It will need some device for restraining sexual expression, some sense of what is appropriate by way of treating strangers, or minorities, or children, or the aged, or the handicapped. It will need some sense of how to distribute resources, and how to treat those who have not. In other words, across the whole spectrum of life, it will need some sense of what is expected and what is out of line. A list such as this one—describing universal human goods, human capabilities, or principles of ethics—can be found in the work

113.  Id. at 271.
114.  See id. at 275.
115.  See PUTNAM, RHF, supra note 4, at 183.
116.  BLACKBURN, BG, supra note 100, at 23.
of such diverse philosophers as the Christian apologist C.S. Lewis, the natural law theorist John Finnis, and the liberal feminist political philosopher Martha Nussbaum. Others, such as the sociologist Alan Wolfe, argue that there are broad areas of agreement, at least in American society, regarding a great many supposedly disputed ethical issues. Whether hypothesizing agreement at higher or lower levels of abstraction, this strategy is the kind of argument suggested by Jonathan Glover’s richly detailed and horrifying “moral history” of the last hundred years. Glover suggests shifting the emphasis in ethics from theoretical to practical concerns, by which I understand him to be suggesting an empirical, bottom up approach to moral questions.

Looking for an external validation of morality is less effective than building breakwaters. Morality could be abandoned, or it can be re-created. It may survive in a more defensible form when seen to be a human creation. We can shape it consciously to serve people’s needs and interests, and to reflect the things we most care about.

Glover and Simon Blackburn (two philosophers who otherwise have much to disagree about) share the ambition to ground ethics in “people’s needs and interests.” This approach naturally invites the rejoinder: “What if my interests are those of the Nazi party? What if I care only about the welfare of Hutus, not Tutsis?” One response is to seek to ground the objectivity of ethics (via the standards for rational acceptability of ethical judgments) in facts about human nature that are commonly shared by all people. For example, Hilary Putnam, citing Durkheim, argues that we have a deeply rooted and central need for social solidarity, which is violated by practices such as ethnic cleansing and genocide. A similar response is to argue that no ethical justification can be offered for the Nazi program or the Hutu-sponsored ge-

117. See generally C.S. Lewis, The Abolition of Man (1947) (listing highly abstract universal moral norms, such as treating the dead with respect and refraining from wanton killing).

118. See generally John Finnis, Natural Law and Natural Rights 85–90 (1980).

119. See Martha C. Nussbaum, Sex and Social Justice 41–42 (1999) (listing universal human functional capabilities, such as bodily health and integrity, emotions, play, and effective participation in one’s political environment).


122. Id. at 41.

123. See Putnam, RHF, supra note 4, at 189.
nocide, because the kind of life these visions imagine are devoid of
authentic human goods and full of multifarious evils, cannot be gen-
eralized to situations in which the shoe would be on the other foot
(the Nazis would not approve of a eugenic program run by Slavs and
Jews and the Hutus certainly would not want to see ethnic cleansing
applied to them), and trade on differences between humans which
are impermissible as a basis for allocating benefits and punishments.

I am aware that all of these reasons are contestable, and someone
could be required to explain why, for example, it is illegitimate to
discriminate on the basis of ethnicity. In this essay I am concerned
only with sketching what an ethical justification would look like but if
necessary, anyone could take the argument deeper, and give further
ethical reasons that racial discrimination is evil. At the very least, a
skeptic or relativist is required to do more than just say, “Well, the
Nazis and the Hutus thought race discrimination wasn’t a bad thing.”
Rather, the opponent of our argument must give reasons why race
discrimination is not a bad thing for anyone, not just for Nazis or
Hutus. The opponent must be able to point to some form of genuine
human flourishing, or excellence, or form of life that was advanced by
the Nazis or the Hutus.124 A society in which people of one race are
systematically deprived of rights, or their lives, simply does not pro-
mote any kind of human good.125

More to the point, the opponent cannot demand a full blown
metaethical account of the nature of morality to buttress the state-
ment that genocide is evil. In most discussions of ethics, the reason
giving process occurs at the first order, not the second. A brilliant
illustration of this slippage is provided by Simon Blackburn’s critique
of Mackie’s subjectivism.126 Mackie defended an error thesis: Al-
though people think they are talking about objective right and wrong

124. See Gray, supra note 42, at 53.

125. Another response here is to point to the foundation of the argument in human
goods and exclaim, “Aha! If humans were different, if we had nine lives like cats, then it
might not be true that taking a human life is one of the grossest evils.” The reply to this
argument is simply to ask why we would require a definition of the concept of ethics that is
so general that it can answer questions about what would be right and wrong if we were
radically different. In another brilliant illustration by Robert Nozick (he was wonderful
with examples), if someone demands to know what is a good wine, we could produce a
wine encyclopedia, listing good vintages and regions, and we could explain why a particu-
lar wine tastes good. An explanation of what would be a good wine if the Earth’s atmos-
phere were different, or if the chemistry of grapes was not as it is, or if our taste receptors
were not attuned to the same flavors, would be unilluminating, because those counterfac-
tuals are not true. See NOZICK, INVARIANCES, supra note 10, at 69–70.

126. See Simon Blackburn, Errors and the Phenomenology of Value, in MORALITY AND OBJEC-
when they talk about ethics, they really are not; they are systematically in error about the nature of morality. Blackburn then asks why Mackie did not attempt to purge his vocabulary of all moral terms that contained this spurious assurance of objectivity. Why not adopt instead a "shmoral" vocabulary? But in the second half of his book, Mackie did not talk in shmoral terms; rather, he simply argued for a number of moral propositions, as if he had never advanced his error thesis. (In other words, he argued for first order claims about what one ought to do, and implied that his position was right and opposing arguments were wrong.) If Mackie, a vigorous critic of morality's claim to objectivity if ever there was one, nevertheless is content to use a purportedly objective moral vocabulary, we may be justified in wondering what the point is of raising doubts about second order ethical claims.

B. Doubts About Deflated Truth

There will be many who resist dispensing with the term "truth" in ethics, but the challenge for those who would retain the concept of truth is to explain what it is for an ethical judgment to be true. Deflationists about truth merely maintain that the concept is redundant, not that ethical judgments are purely subjective or relative to the conventions of cultural or social groups. If truth means instead something like correspondence with "ethical facts" that are out there somewhere in the natural world, what are those facts and how do we have any knowledge of them? People who argue that an ethical theory must correspond somehow with the facts of the external world are known as realists.\textsuperscript{127} Realists think their theories not only provide a satisfying account of the way in which ethical judgments are justified, but that theirs is the only way to head off the relativist challenge. Although the issue is by no means settled, I think the project of giving a realist account of objectivity in ethics faces insurmountable obstacles. John Mackie is right that even if there are something like "objective values" out there to be observed through some mysterious faculty of intuition, it is hard to see how something that is part of the furniture of the universe can, by itself, underwrite prescriptions or practical conclusions, without reference to attitudes and desires of human actors.\textsuperscript{128} And I tend to agree with Jeremy Waldron, that even if there were \textit{in principle} some such thing as objective truth about ethics, it would not

\textsuperscript{127} This terminology is inverted in law. "Legal realists" believe that the law is not "really" there, but is (on some versions) simply a prediction about what officials will do in given cases.

\textsuperscript{128} See Mackie, \textit{supra} note 7, at 30–42.
be of much use to humans unless we could specify some procedures for using this objective truth to resolve ethical disagreements.\(^{129}\)

These are familiar anti-realist arguments for either dispensing with "truth-talk" in ethics altogether, or understanding the concept of truth in a more modest fashion.

The problem is that similar arguments can be raised against modest, or deflationist accounts of objectivity in ethics. Waldron doubts the existence of even the kind of procedural agreement I suggested above. In science, "a single (albeit loosely defined) conception of method for settling disagreements is shared by a significant group of people who regard themselves as engaged in serious disagreement with one another. . . . Among moralists, there is nothing remotely comparable."\(^{130}\) As between a utilitarian and a Kantian, there is no procedure they can use to settle their disagreements. But I am not so sure the world can be divided up into neat categories like "Aristotelians, Nietzscheans, Marxists, traditional conservatives like Burke, liberals like Rawls, feminists like Gilligan,"\(^{131}\) and so on. Rather, ordinary moral reasoning partakes of these different approaches, to varying degrees. "[W]e have an allegiance to several different moral principles that urge independent claims upon us (we cannot plausibly see the one as a means for promoting the other) and so can draw us in irreconcilable ways."\(^{132}\) Ethically conscientious people can deliberate among these plural values and perhaps choose to rank them differently, depending on some foundational assumptions they make about the excellence for humans.

As Isaiah Berlin pointed out again and again, there is no single form of the good life which encompasses all of the human virtues. An artist, in order to create a masterpiece, may lead a life which plunges his family into misery and squalor to which he is indifferent. We may condemn him and declare that the masterpiece should be sacrificed to human needs, or we may take his side—but both attitudes embody values which for some men or women are ultimate, and which are intelligible to us all if we have any sympathy or imagination or understanding of human beings.\(^{133}\)


\(^{130}\) Id. at 178.

\(^{131}\) Id.

\(^{132}\) Larmore, supra note 43, at 138.

This does not mean that anything goes, or that the Nazi sympathizer can appeal to Berlinian pluralism, for pluralism may nevertheless embody an account of objective goods. A great work of art and a harmonious family life are both moral ideals. Violently racist nationalism is not an appealing vision of the good for humans. But a Berlinian pluralist can respond to someone like Waldron, who believes there is no way to resolve disputes about morality, that we can at least inquire into questions such as the relative weightings of values in particular cases, whether a given ideal is indeed a contribution to a well-lived human life, and so on. There will always be interminable disputes—that is simply the consequence of pluralism—but a great many disputes will be capable of resolution, even though the world seems to invite moral analysis using incompatible theories like utilitarianism, dialectical materialism, and the ethics of care.

Another argument that is sometimes raised against even modest claims of objectivity in ethics points out the manifold errors that have been made by people who thought they were pronouncing moral truth. What we once took as a timeless truth is now regarded as the height of stupidity—the earth is flat, the sun revolves around the earth, women are inferior, slavery is a positive good for Africans, it is the Manifest Destiny for White European settlers to displace the native population of the Americas, and so on. Some of these claims are empirical ones which can be disproved by the methods of natural science, while others are normative. In the case of normative propositions, it is more difficult to establish shared criteria for truth or falsity; nevertheless, there is at least a widespread consensus on the falsity of numerous ethical positions that were once commonly held. Perhaps my college roommate (now a philosophy professor) is right, that subsequent generations will regard killing animals for food as a grave moral evil, and wonder how their ancestors could possibly have countenanced the practice for so long. In addition, as John Stuart Mill wisely pointed out, we all concede that we may be fallible, but we tend not to think that truths in which we believe strongly are the things about which we are mistaken. People who acknowledge their own individual fallibility, but check their own opinions against those

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134. See Gray, supra note 42, at 53.
135. Or, as Stuart Hampshire imagines, perhaps our grandchildren will ask, "How can they have failed to see the injustice of allowing billionaires to multiply while the very same economy allowed abject poverty to persist uncorrected next door to preposterous luxury." Hampshire, supra note 10, at 59.
of others in their world, often forget that “their world” often consists of only the part of the world with which they come into contact—their party, sect, church, tribe, social class, race, nation, and so on. 137

It is essential, however, not to unthinkingly assume a binary opposition between (1) a conception of ethical judgments as being necessarily valid at all times and in all places for all people, and (2) a relativistic conception, in which ethical judgments are valid only with respect to temporal and cultural particularities, or skepticism about the validity of all moral claims. We should recognize the potential fallibility of our ethical judgments, and be alert for resources that may help us revise our practices for the better. One of the most important contributions of multicultural education is to provide some leverage for criticizing existing ethical norms by showing how similar problems are handled by other cultures. In addition, ethical evaluation gets complicated when the judgments are made diachronically, not synchronically. In other words, although an ethical judgment made at some time \( t_1 \) may have been wrong, as we now know from the standpoint of time \( t_2 \), we nevertheless might introduce mitigating circumstances into our evaluation of the agent at time \( t_1 \), even though we maintain the evaluation that the moral judgment at \( t_1 \) was wrong.

There are degrees of culpability with respect to moral wrongdoing. Take the example of slavery: Slaveholding was morally wrong in antebellum Virginia, in classical Athens, in Muslim nations prior to the expansion of the Atlantic slave trade, and in Biblical times—just as wrong as it is today. Does that mean we should criticize George Washington as strongly as we would condemn someone today who advocated a return to slavery? I think the answer is no, even though the wrongfulness of slavery is identical in both contexts. The moral evaluation of the character of George Washington (as opposed to the evaluation of the morality of holding slaves) requires an assessment of the prevailing social mores. Opposing slavery, or refusing to hold slaves as a member of the propertied classes in an agrarian economy, may have been above and beyond the call of moral duty (“supererogatory” in the jargon of modern moral philosophy) in Revolutionary America, although it is undoubtedly a moral requirement today. Although some leading figures in early American history expressed some reservations about slavery, 138 in general no politician ever seriously pro-

\[137. \text{See id.}\]
\[138. \text{Consider Jefferson's statement that “I tremble for my country when I reflect that God is just.” Thomas Jefferson, Notes on the State of Virginia 163 (William Peden ed., 1955). Jefferson may not have been a thoroughgoing opponent of slavery, as he is some-}\]
posed its abolition. Indeed, it would have been little short of heroism for anyone to oppose slavery in a climate in which it was regarded as natural, religiously warranted, and beneficial for the enslaved. Even by the middle of the nineteenth century, opponents of slavery had to speak with exquisite care—consider, for example, that Lincoln felt compelled in his debates with Douglas to disavow any claims to the social and political equality of African Americans, even though he was deeply disturbed by slavery.

Jeffrey Stout is correct when he writes that “people who lived thousands of years ago don’t deserve epistemic blame for believing that the world is flat.” But he also believes that the earth is not flat. Squaring these two propositions with each other requires an account of blameworthiness (epistemic in the case of empirical propositions such as the flatness of the earth, moral in the case of propositions about the wrongness of slavery) that is independent to some extent of the underlying truth of the matter. Whether someone should be blamed for holding a belief is relative to one’s time and circumstances—the available evidence, prevailing criteria of verification, the culture’s store of experience, social pressures to believe or conform to the received wisdom, the degree a belief has been subjected to critical scrutiny, and so on. People in a given time tend to believe that certain practices and beliefs are “unalterable parts of the natural or divine order of things.” In light of the prevalence of social myths, we might expect reasonable people to believe something that, with time and distance from the received wisdom of a time, seems to us to be obviously false. This is what I mean by the relativity of blameworthiness. What is emphatically not relative, however, is the truth of the belief. The earth did not become round with the advent of more sophisticated measuring instruments and methods of mathematics; similarly, slavery did not become wrong when people discovered it was wrong. Nevertheless, we may permit an argument in mitigation on behalf of a historical figure whose best moral judgment at the time turned out, in hindsight, to be fallacious.

times portrayed by his hagiographers, but the quote does show that he entertained some doubts about the morality of the institution. See generally Joseph Ellis, American Sphinx: The Character of Thomas Jefferson 171–80 (1996).


140. Hampshire, supra note 10, at 57.

141. But you can’t have it both ways. Consider the character of Atticus Finch in Harper Lee’s novel, To Kill a Mockingbird. Finch is often held out as a paragon of virtue as a lawyer. As Monroe Freedman, a legal ethicist who has resisted the prevailing wisdom, points out,
Conclusion

The kind of objectivity I have been concerned to establish may not sound like much, and it may concede too much to the relativist cause. Despite my fulminations against the varieties of naive relativism and skepticism that students assert in ethics classes, I do think in ethics it can be difficult to navigate between the concerns of relativism, on the one hand, and an unrealistically stringent demand for objectivity, on the other. As Alasdair MacIntyre notes, the amount of energy that philosophers have devoted to "refuting" relativism suggests that there is some important, not to be ignored truth in the position they are attacking; after all, "[g]enuinely refutable positions only need to be refuted once."142 The reason that we cannot refute relativism once and for all is not only that it is a seductive position, for the reasons explored in the first section, but also because objectivity in ethics is not the same as objectivity in other domains, such as natural science. Ethics and epistemology are both public processes of reason giving, but empirical knowledge about the natural world seems so much more certain and objective, because its verification procedures are widely agreed upon, and tend to result in substantial agreement in most cases. In the case of ethics, we have to resort to procedures of justification and verification that do not produce determinate answers in all cases. For this reason, ethical knowledge seems to be of a different order of certainty altogether, at least if we do not rely on traditional sources of authority like divine revelation, "moral facts," or a mysterious faculty of intuition.143 The only thing we can rely upon for

Finch has some fairly unattractive views about the social equality of African Americans. If one is supposed to avoid the vice of "presentism" and refrain from judging Finch negatively because of his racism, which was common to many educated whites in Alabama in the 1930s, then it seems inconsistent to praise Finch using contemporary moral standards. Is that positive judgment not also an example of "presentism?" See Monroe H. Freedman, Atticus Finch—Right and Wrong, 45 Ala. L. Rev. 473 (1994). See generally Harper Lee, To Kill A Mockingbird (1960).


143. There is not room here to consider all of these now-disfavored sources of objectivity in ethics, although they probably do not have many adherents among academic ethicists. Many of our students may assert religious grounds for their belief in a proposition of ethics, however, and ethics teachers should be prepared to deal with this. The relationship between religion and ethics is of course an ancient philosophical problem, receiving well known treatment in Plato's dialogue Euthyphro. Socrates asked his interlocutor whether something that is holy is "holy because the gods approve of it, or do they approve it because it is holy?" Plato, Euthyphro 10a (Lane Cooper transl.), in THE COLLECTED DIALOGUES 169, 178 (Edith Hamilton & Huntington Cairns eds., 1961). Euthyphro eventually agrees with Socrates that the gods love that which is holy. In other words, the gods are not
a grounding is the nature of ethical language and the process of reasoning that is constitutive of ethical argument.

The alternative is a kind of dogmatism that has proven to be disastrous in human affairs. As Rawls has argued, the religious warfare of the sixteenth century marked the beginning of the realization that people have to figure out a way to get along in peace, despite their profound religious and cultural differences. One might argue that all ethical thought since the Reformation has been less than perfectly objective, or not objective at all, because it assumes that people can reasonably differ over ultimate issues, such as the true path to salvation. And it may be true, as MacIntyre has suggested, that too much pluralism and reasonable disagreement can produce a kind of cultural anomie, in which no one really believes in anything, and reasonable ethical discourse is paralyzed. But I doubt very much whether anyone would be willing to say that there is nothing in modern life to stand behind, endorse, and defend with all one’s might. Even in a culture in which not all moral issues can be resolved definitively through reasoning, we still try to resolve disputes through reasoning of a particular kind, making arguments with recognizable patterns, and appealing to values that are within the domain of ethics. Ethical reasoning can certainly rule out a great many actions and ways of life (slavery, child labor, apartheid, torture) as being immoral. In addition, through reasoning we can get clear on points of disagreement, and at least narrow the scope of our disputes. Once a dispute comes down to one intractable disagreement, such as whether life begins at conception, we may simply have to accept continued, and reasonable

arbitrary—they love things with good reason, and that reason is the holiness of what they love. This kind of argument has taken on heightened significance in view of the religious justification claimed by the perpetrators of the September 11, 2001, terrorist attacks. With the appropriate training, one can engage in textual criticism of the Koran and challenge Bin Laden’s interpretation of it. See, e.g., Andrew Sullivan, This is a Religious War, N.Y. TIMES MAG. Oct. 7, 2001, at 44 (reviewing arguments within the Islamic tradition for and against violence). Suppose the text is ambiguous, as is true of the text of most holy books—what then? In that case, one’s argument against Bin Laden must include the ethical claim that the Koran cannot possibly be understood correctly as permitting the slaughter of thousands of innocent people, because no true religion could countenance what took place on September 11th. The only way to understand internal arguments within a religious tradition is to accept Socrates’ view in the Euthyphro, that religious reasons can be criticized with reference to non-religious ethical reasons. The extent to which religious ethics is distinctive from secular ethics, and divine revelation provides a different kind of reason to act, is a subject about which I know less than I should. But I am fairly confident that asserting a religious basis for one’s action does not preempt ethical criticism of those reasons.

disagreement as the price we pay for a stable and harmonious society. As Rawls writes: “To see reasonable pluralism as a disaster is to see the exercise of reason under the conditions of freedom itself as a disaster.” 146

Is rough agreement on the kinds of procedures that are constitutive of ethics a sufficient basis for a claim to truth or objectivity in ethics? I have tried to show that the question may be a distraction. Labels like “true” or “objective,” whether in ethics or in epistemology, are nothing more than signs of our endorsement of the result of a specified procedure for verifying and justifying claims. These procedures are contingent to some extent—they depend, at least, on our capacity to experience pleasure and suffer pain; our desire to live together in harmony; the impact of scarcity of resources on our dealings with one another; our tendency to feel emotional ties of affection toward other human beings and feelings of dislike for others; our capabilities and potential; our physical limitations; and similar facts about the natural world and our natures. And it is certainly true that different cultures or societies will choose ways of life that differ in important respects from others. Procedures of ethical reasoning are not radically contingent, however. Not just any old argument will do, and not every culturally bound way of life will be one that is ethically acceptable. In other words, we may believe in a kind of objective pluralism, rather than simply accepting the diversity of beliefs as the end of the matter. This is the difference between the relativism against which I have been concerned to argue and a procedural ethics which takes pluralism as fundamental but which nevertheless leads to objective conclusions in some cases. Obviously this kind of ethics does not supply all the answers, but it at least gets the discussion started. For teachers of practical ethics, that is all that is needed.

146. Rawls, supra note 144, at xxvi–xxvii.