
IS GOD IRRELEVANT?

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INTRODUCTION

In a small, posthumous book called *Religion Without God*,¹ the late Ronald Dworkin argues that morality does not need God. Though not himself a theist, Dworkin does not argue against God’s existence in this book. Dworkin’s argument, rather, is that whether or not there is a God, He (or She, or It) is neither necessary nor even helpful in grounding or explaining moral goods and obligations.²

Dworkin’s position is hardly novel. As Mark Movsesian observes in a perceptive review,³ the bottom-line argument goes back at least to Plato’s *Euthyphro*.⁴ Dworkin himself thinks his conclusion follows closely and naturally from “Hume’s principle” – namely, David Hume’s famous claim that “ought” statements cannot be derived from factual or “is” statements⁵ (including, presumably, statements that, “It is a fact that God commands such-

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¹ RONALD DWORKIN, *RELIGION WITHOUT GOD* (2013).

² *See id.* at 25-26 (“I do not argue in this book . . . that there is no personal god who made the heavens and loves its creatures. I claim only that such a god’s existence cannot in itself make a difference to the truth of any religious values. If a god exists, perhaps he can send people to heaven or hell. But he cannot of his own will create right answers to moral questions or instill the universe with a glory it would not otherwise have.”).

³ Mark L. Movsesian, *Religion Without God*, CENTER FOR L. & RELIGION F. ST. JOHN’S U. SCH. L. (Oct. 31, 2013), <http://clrforum.org/2013/10/31/religion-without-god>, *archived at* <http://perma.cc/M7D8-GCCS>.

⁴ PLATO, *EUTHYPHRO, APOLOGY OF SOCRATES, AND CRITO* (John Burnet ed., 1924) (c. 399 B.C.E.).

⁵ DAVID HUME, *A TREATISE OF HUMAN NATURE* 469-70 (L. A. Selby-Bigge ed., Oxford Univ. Press 2d ed. 1978) (1739).

and-such”).⁶ Philosophers have developed arguments essentially similar to Dworkin’s, but in a more methodical and rigorous fashion.⁷

Despite this impressive pedigree, my own view is that this recurring argument for God’s irrelevance reflects a misunderstanding of the way religious believers think God relates to “moral” principles and obligations. Dworkin’s is thus another in a series of (quite possibly good faith) misconstructions of religion emanating from nonbelievers.⁸ Because these misconstructions are then imported into discussions about the role of religion in public life and public discourse,⁹ it seems worth attempting to offer a more faithful account of “how God matters” from a theistic perspective. Of course, not all theists share a uniform understanding of how God matters to morality – far from it. Nonetheless, I try in this Essay to offer an alternative account that I believe coheres with a great deal of what has been said and believed in the biblical tradition about God and about what we today call “morality” – an account that also illuminates the deficiencies in Dworkin’s account of morality and religion.

One caveat: Like Dworkin’s book, this Essay assumes, albeit only for purposes of argument, that some version of traditional theism is true. For those who find this possibility implausible, disagreeable,¹⁰ or even inconceivable, the ensuing account of morality is likely to seem alien or unattractive. This Essay’s goal, however, is not to persuade anyone of the truth of theism, but rather to consider how, for those who hold theistic beliefs, God is related to what we typically call morality.

⁶ DWORKIN, *supra* note 1, at 26-28.

⁷ See, e.g., David O. Brink, *The Autonomy of Ethics*, in THE CAMBRIDGE COMPANION TO ATHEISM 149 (Michael Martin ed., 2007); Michael S. Moore, *Good Without God*, in NATURAL LAW, LIBERALISM, AND MORALITY 221 (Robert P. George ed., 1996).

⁸ Jeremy Waldron observes:

Secular theorists often assume that they know what a religious argument is like: they present it as a crude prescription from God, backed up with threat of hellfire, derived from general or particular revelation With this image in mind, they think it obvious that religious argument should be excluded from public life

JEREMY WALDRON, GOD, LOCKE, AND EQUALITY 20 (2002). Waldron pronounces this description a “travesty.” *Id.*

⁹ See Steven D. Smith, *The Constitution and the Goods of Religion*, in DIMENSIONS OF GOODNESS 319, 321 (Vittorio Hosle ed., 2013) (“I agree [with Waldron], and it seems to me an unhealthy state of affairs when judges and theorists peremptorily dismiss the concerns, beliefs, and commitments of millions of citizens on the basis of crude caricatures and unanalyzed assumptions.”). In this instance, Dworkin’s understanding – or misunderstanding – of religion informs his argument later in the book against giving special legal protection to the exercise of religion.

¹⁰ For example, Thomas Nagel, Dworkin’s NYU colleague to whom the book appears to be dedicated, candidly acknowledges: “It isn’t just that I don’t believe in God and, naturally, hope that I’m right in my belief. It’s that I hope there is no God! I don’t want there to be a God; I don’t want the universe to be like that.” THOMAS NAGEL, THE LAST WORD 130 (1997).

I. THE INDEPENDENCE OF GOODNESS

The basic question propounded in the *Euthyphro*, and the question to which Dworkin's argument can be traced, can be put like this: Is something good because God approves or commands it? Or is it the other way around: Does God approve or command things – actions, or rules of conduct, or personal characteristics – because they are good? Plato's dialogue, though characteristically leaving the issue in suspense or aporia, seems calculated to suggest that the latter view is more tenable; and, in any case, most readers likely lean to that position.¹¹ Murder and rape are not bad because God forbids them; rather, God forbids them because they are bad. Thus, goodness somehow exists independent of God. Indeed, the claim that "God is good" seems to presuppose as much; if goodness were identical with, rather than independent of, God, the claim would dissolve into an empty tautology.

But if goodness is independent of God, then it seems we do not need God in order to have, or to make judgments about, goodness – including goodness in actions, and in character (and also in laws and public policies). A good deed is good without regard to whether God approves it; a good person is good without reference to what God has commanded. In sum, morality, which concerns itself with good actions and good character,¹² does not depend on God.

Even on this view, of course, God might still serve a useful role as an epistemic authority. In other words, although God does not make things good, God as an omniscient being presumably would know what is (independently) good better than we fallible mortals do, and we might thus be well advised to respect divine instructions as reliable indicators of the good. For the present, though, I think we need not pursue this possibility. That is because, although most theists probably do accept God as an epistemic authority, they also think God is considerably more than that: God is not just some sort of counselor or consultant on whose moral advice we can confidently depend.

Dworkin sometimes seems to suppose that what we can call the *Euthyphro* argument (supported in his presentation, as observed, by Hume's objection to deriving *ought* propositions from *is* propositions) subverts or refutes the traditional religious believer's understanding of the relation of God to morality.¹³ This is an odd supposition, though, because it seems likely that

¹¹ PLATO, *supra* note 4, at 4.

¹² Dworkin talks mostly of "value," and thus does not dwell on a debate that has exercised some philosophers – namely, whether morality is concerned mostly with the "good" or the "right" or personal characteristics described as "virtues." Although I use the term "good," I will for the most part follow Dworkin in this respect.

¹³ DWORKIN, *supra* note 1, at 22 ("Theists assume that their value realism is grounded realism. God, they think, has provided and certifies their perception of value: of the responsibilities of life and the wonders of the universe. In fact, however, their realism must finally be ungrounded. It is the radical independence of value from history, including divine history, that makes their faith defensible.").

most believers would readily agree that the statement “God is good” is not an empty tautology, and that God does not make actions or qualities good or bad by sheer fiat. A few believers – like William of Ockham,¹⁴ maybe – have held the sort of view that Dworkin apparently ascribes to traditional theists,¹⁵ but these have been the exceptional cases.¹⁶

But if God does not make deeds or qualities good by approval or decree, then what exactly *is* the relation between God and morality? Why would it not follow, as Dworkin and company suppose, that God is irrelevant to morality (except, conceivably, in the peripheral supporting role of epistemic authority)?

II. HOW SHOULD I LIVE?

We can hardly hope to get clear about the relation of God to morality without saying something about what sort of thing “morality” is, and so we need to make a brief foray into the forbidding territory of metaethics. But contemporary work in metaethics is as likely to confound as to clarify; indeed, as Michael Smith has remarked, “if one thing becomes clear by reading what philosophers writing in metaethics today have to say, it is surely that enormous gulfs exist between them, gulfs so wide that we must wonder whether they are talking about a common subject matter.”¹⁷ So let us try to sidestep some pitfalls and philosophical controversies, at least initially, by suggesting that we do not start out in life, most of us anyway, with a belief in some ethereal body of duties or prohibitions or Platonic forms or virtues called “morality” that we are somehow obligated to respect. What happens, rather, is that in going about our lives in a day-to-day, down-to-earth way, we find ourselves up against a very practical, existential, inescapable question: *How should I live?*

You get out of bed, and you have to do *something* (because even going back to bed would be doing something), but should you first put on your clothes, or take a shower, or eat breakfast, or what? These trivial choices quickly issue into larger ones. Should you stay at home, or go to work? What work? After work, should you go home and watch TV, or go to visit your lonely but insufferably fussy grandmother? What about tomorrow? Next week? Next year? How should you – and how should I – live?

¹⁴ See, e.g., ANTHONY KENNY, *A NEW HISTORY OF WESTERN PHILOSOPHY* 466 (2010) (“Ockham taught that the moral value of human acts derived entirely from God’s sovereign, unfettered, will. God, in his absolute power, could command adultery or theft, and if he did so such acts would not only cease to be sinful but would become obligatory.”).

¹⁵ See DWORKIN, *supra* note 1, at 22 (“Theists assume that their value realism is grounded realism. God, they think, has provided and certified their perception of value . . .”).

¹⁶ There are other versions of divine command theory that might have more to recommend them, and that arguably would figure in a more complete account of the relation of God to morality, but this is not the occasion to consider such theories. See, e.g., JOHN E. HARE, *GOD’S CALL: MORAL REALISM, GOD’S COMMANDS, AND HUMAN AUTONOMY* (2001).

¹⁷ MICHAEL SMITH, *THE MORAL PROBLEM* 3 (1994).

There is no getting around the question. And the most obviously cogent responses to that question have what is sometimes called a “subjective” quality. You and I – surely subjects, not mere objects¹⁸ – find that we have particular needs and desires. This is an observable fact. It is an observable fact as well that actions that fulfill these needs and desires bring satisfaction – satisfaction that we may call “pleasure,” or “contentment,” or maybe “happiness.” Pleasure and happiness are thus “good” (or, to use Dworkin’s preferred term, of “value”) in the very immediate sense that we in fact desire them, seek them, find them satisfying or fulfilling. They are thus directly relevant to the question “How should I live?” So if you get out of bed and ask, “How should I live?” (or, more likely, “What should I do now?”), I *could* respond with “the Bible says . . .” or “Confucius taught . . .” or “Kant’s analysis indicates . . .” And then you might cogently reply, “So what? I don’t care about the Bible or Confucius or Kant. Can’t you please speak to *me*, about *my* question?” But if I respond, “You are hungry, so you should eat something; you’ll feel better,” I will at least have said something that is responsive to your question.

Could it be that *any* cogent response to the “How should I live?” question will be subjective in this sense – will appeal, in other words, to subjective needs and desires that we subjects in fact experience? Before disdainfully dismissing this suggestion, we should notice that subjective answers need not be as simple, or as simple minded, as my examples thus far might suggest. On the contrary, subjective responses can take account of the many complexities of life. Let us notice three such familiar complexities.

First, even for a single individual, some desires and satisfactions can compete with others, thereby requiring the denial or deferral of some desires in order to satisfy other desires. You desire and would gain pleasure from eating the lemon pie, maybe, but you also know that this pleasure would be more than offset by the discomfort of feeling less healthy tomorrow.

Second, desires and satisfactions need not be – and at least for most human beings *are not* – limited to the physical gratification variety. You may desire and enjoy the taste of lemon pie, but you also desire and enjoy the satisfaction that comes with mastering the violin or the game of golf. And some powerful needs and desires arise from the fact that we are social animals. So you desire and enjoy the love and respect of your peers. And you want your loved ones to be happy: when they are miserable, *you* are miserable. Consequently, a subjective response to the question “How should I live?” need not dissolve into narrowly self-directed hedonism; indeed, any such reduction would be implausible – *empirically* implausible. That is just not how (most) people are constituted.

Third, subjective satisfactions are not all of the same kind, or all on the same level, so to speak: the physical gratification that comes from eating a piece of

¹⁸ For further discussion, see Steven D. Smith, *Persons All the Way Up*, 55 VILL. L. REV. 1177, 1178 (2010).

lemon pie is not the same as the aesthetic satisfaction that comes from hearing a Mozart symphony, or the intellectual satisfaction to be derived from reading a thoughtful, well-written book. And we value some forms of satisfaction more than others. We may say, for example, that “happiness” is to be valued more than mere “pleasure.” Having become familiar with these judgments, we are capable of imagining the possibility that there are kinds or levels of fulfillment that we have not yet experienced. Thus, a friend tells me that although I do not currently enjoy listening to Wagner or Puccini, if I cultivate my aesthetic sensibilities I will be able to experience a level of musical enjoyment from opera that my current regimen of bluegrass music cannot deliver. I am dubious; still, it is *possible* that he is right. His claim is something that I can at least understand.

These complexities lead to situations in which it makes complete sense to say, “You *want* to do X, but you shouldn’t; you *should* do Y.” Although doing X would provide some gratification, the “should” conveys the judgment that X is on balance inadvisable because it would prevent the realization of other, greater satisfactions. Such judgments are perfectly familiar, and they can account for statements that make use of the language of “should” or “ought,” and that set the “should” or “ought” in opposition to some other observation that may we may convey with the vocabulary of “want.”

In reflecting on the choices that confront us, we might find it helpful to distinguish these more complex “should” judgments from other statements that comment on the more direct and simple satisfaction of immediate wants. If so, we might distinguish the complex judgments by employing an adjective like, say, “moral.” Why not? And, collecting such judgments, we might describe the collection as “morality.” Or we might reserve that term for some subset of the more complex judgments – those dealing with sexual matters, maybe, or those addressing our social nature and our relations to other people. The term can be, and is, used in various ways. But the important point is that this sort of account offers an explanation of the kinds of statements and judgments that we associate with “morality” without invoking anything ethereal or ontologically mysterious; it is grounded in our experienced (or experienceable) wants and needs and satisfactions *as subjects*. Morality is “subjective” *in this sense*.¹⁹

Some accounts of morality do of course take this form; they are typically described as “utilitarian” or “consequentialist,” and they have been developed by theorists with great sophistication. Such accounts would seem to support Dworkin’s overall conclusion because, at least as we have sketched them thus

¹⁹ Morality, in this account, would *not* be subjective in other familiar senses in which “subjective” means something like “purely a matter of private judgment,” or lacking the property of being true or false. Thus, a claim that, say, “cheating is wrong” or “slavery is wrong” would not be equivalent, as a number of twentieth-century philosophers thought, to saying that the speaker disapproves of cheating or slavery. Rather, the claim would mean that cheating or slavery are not conducive to human happiness, or something of that sort, and *that* claim could be true or false regardless of the opinions or emotional reactions of particular speakers or societies.

far, they appear to make no reference to God. On the contrary, morality seems to be a purely human and even self-centered affair.

Dworkin himself would likely forswear the support of this sort of account, however, because, like many other thinkers, he finds a purely subjectivist account of morality inadequate.²⁰ So before getting back to the question of God's relation to morality, we need to push on a bit further and notice the major objection to the subjectivist kind of account.

III. THE METAETHICAL DILEMMA: "SUBJECTIVE" VERSUS "OBJECTIVE" MORALITY

Statements about subjective needs and desires are responsive to the question "How should I live?" And as we have seen, it is possible to understand "morality" basically as a category covering some subset of such statements. Critics object, however, that this sort of utilitarian or consequentialist account does not faithfully capture what we understand "morality" to be.²¹

But why not? One familiar objection observes that subjectivist accounts essentially make "morality" into a matter of self-interest – extended or enlightened self-interest, perhaps, but still self-interest – while we commonly think of "morality" as concerned with our obligations to other people. But this objection does not in itself seem decisive, so long as we understand that we are social beings whose needs and desires are in fact often other-directed. David Hume gave an extended account of a whole range of moral virtues in subjectivist terms by emphasizing that we are inherently social beings who feel "sympathy" toward our fellow humans.²²

Perhaps the more incisive objection asserts that subjectivist accounts make morality *contingent*, whereas we usually understand moral principles and duties to be more *categorical*. The proposition that "slavery is wrong" is true, we think, and it is and was true for all people at all times regardless of what they believed, just as it was always true that the earth is and was round even when many people thought it was flat. Nor did the truth of the proposition that "slavery is wrong" rest on some toting up and balancing out of the various pleasures (of masters, for example) and pains (of slaves) that the institution produced.

Critics of utilitarian ethics have developed standard examples to illustrate the point. What if some petty despot tells you, and means it, that he is going to execute ten innocent men unless you yourself will murder one of them? Even though the murder being urged upon you would seem to maximize human

²⁰ See DWORKIN, *supra* note 1, at 20.

²¹ IMMANUEL KANT, *THE MORAL LAW, OR GROUNDWORK OF THE METAPHYSIC OF MORALS* 82-84 (H. J. Paton trans., Hutchinson's Univ. Library 1948) (1785).

²² David Hume, *An Enquiry Concerning the Principles of Morals*, in *ENQUIRIES CONCERNING HUMAN UNDERSTANDING AND THE PRINCIPLES OF MORALS* 167, 212-84 (L. A. Selby-Bigge & P. H. Nidditch eds., Oxford Univ. Press 3d ed. 1975) (1777).

welfare, some will still consider it wrong.²³ Or what if we could know, maybe through brain scanning techniques, that a rapist would get more pleasure from his deed than the pain that would be inflicted on the victim? The rape would still be wrong.²⁴ These examples are calculated to show that *moral* goodness and badness are not mere matters of calculating effects on human happiness. Or so goes the objection. Human wants and needs are simply too contingent to support the more categorical duties and prohibitions that we ascribe to morality.

The objection is sometimes made with the use of Kant's distinction between hypothetical and categorical imperatives.²⁵ A hypothetical imperative says, "If you want *A*, you should do *B*." Anyone can escape that sort of instrumentalist injunction either by denying the "if" premise ("Well, I don't care about *A*"),²⁶ or by denying the connection between premise and conclusion ("I do want *A*, but I think I can have it without doing *B*"). A *moral* duty should not be so easily defeasible; it should be categorical in nature. It should obligate regardless of what a particular person may happen to want.

The point is sometimes secured by imagining an unsavory character whom we might call "the pure egoist."²⁷ By hypothesis, the egoist lacks the sort of "sympathy" or "fellow feeling" on which Hume relies; the egoist reports, sincerely, that he gains genuine satisfaction from taking whatever he wants and using people in any way he can so as to get more wealth, power, or physical gratification. And he is clever enough to know how to do such things with only a negligible risk of being caught or punished. Other, less selfish, people might feel remorse for such conduct, of course, or they might lament the lack of deep and genuine friendships that this sort of life precludes, but not the egoist: he doesn't care. So unless we cheat by sneaking in some nonsubjective moral duty to act for the benefit of others, then it seems that on subjectivist premises the egoist *ought to* steal, exploit, and abuse whenever he can profitably do so.

This conclusion seems unacceptable, though, even scandalous; this and related embarrassments lead some thinkers to reject subjectivist accounts of morality in favor of more "objective" or "realist" understandings. Dworkin is very much in this vein. He asserts "the full independence of value" – meaning

²³ The example is discussed in Bernard Williams, *A Critique of Utilitarianism*, in J. J. C. Smart & Bernard Williams, *Utilitarianism: For & Against* 77, 98-99 (1973).

²⁴ See David Lyons, *Ethics and the Rule of Law* 34 (1984).

²⁵ Kant, *supra* note 21, at 82-84.

²⁶ Are there ends that no one could possibly reject? Probably the leading candidate would be "happiness." And, indeed, philosophers including Kant and Aristotle sometimes suggest that no one, or at least no rational being, could reject happiness as a goal. But in fact, in everyday life, it is possible to find people who claim not to care about happiness. And perhaps more importantly, as an empirical matter, there are surely people who (from hatred or vindictiveness, or sometimes from a sense of moral duty) consciously act in ways that they do not believe will lead to their own happiness.

²⁷ Plato offered an early version of this character and argument in his "ring of Gyges" discussion. PLATO, *THE REPUBLIC*, bk. II, at 358b-361d (Paul Shorey trans., 1935).

independence from subjective desires and judgments.²⁸ And he emphatically rejects the idea that “value judgments are in the end only subjective.”²⁹ On the contrary: “Our felt conviction that cruelty is wrong is a conviction that cruelty is *really* wrong; we cannot have that conviction without thinking that it is objectively true.”³⁰ In moving to an “objective” or “realist” version of morality, Dworkin has plenty of distinguished company (among both secular and religious thinkers).

But objectivist accounts of morality encounter their own familiar embarrassments. Here we may notice two especially serious ones. The first problem is ontological in nature; it is what J. L. Mackie famously described as the problem of “queerness,”³¹ or what contemporary philosophers more often describe with a term like “spooky.” It is easy enough to *say* that morality is “objective” or “real,” but what kind of “object” is it? Once we detach it from subjective human wants, needs, or desires (or from something like divine commands), what sort of “reality” is there left for morality to be? Some sort of weird ethical ether floating around in the air? Surely not. But what then? As Mackie put it: “If there were objective values, then they would be entities or qualities or relations of a very strange sort, utterly different from anything else in the universe.”³²

Philosophers inclined to moral realism have sometimes tried to deal with this difficulty by saying that morality “supervenes” upon natural facts without being quite identical to those facts,³³ or that morality is an unnatural reality or property.³⁴ Dworkin himself scoffs at some of these proposals: he does not think purely naturalistic accounts (such as those of the supervenience theorists) are adequate, he denies that morality is part of “the fabric of the . . . universe,”³⁵ and he mocks the idea that there is some sort of moral substance (such as particles that we might describe as “morons”).³⁶ But although it is all well and good to say that morality *is not* any of those “spooky” things, we are still left to wonder what exactly morality *is*.³⁷

²⁸ DWORKIN, *supra* note 1, at 16.

²⁹ *Id.* at 20.

³⁰ *Id.* (emphasis added).

³¹ J.L. MACKIE, ETHICS: INVESTING RIGHT AND WRONG 38-42 (1977).

³² *Id.* at 38. After considering and rejecting several possible accounts of objectivity in value, Susan Wolf concludes that the matter remains “an unsolved problem in philosophy.” SUSAN WOLF, MEANING IN LIFE AND WHY IT MATTERS 47 (2010).

³³ See Michael S. Moore, *Moral Reality Revisited*, 90 MICH. L. REV. 2424, 2441 (1992).

³⁴ See GEORGE EDWARD MOORE, PRINCIPIA ETHICA 13-14, 20-21 (1903).

³⁵ See Ronald Dworkin, *Objectivity and Truth: You’d Better Believe It*, 25 PHIL. & PUB. AFF. 87, 99, 105 (1996).

³⁶ See RONALD DWORKIN, JUSTICE FOR HEDGEHOGS 32, 36 (2011) (ridiculing the belief in physical particles constituting morality, to which the author jokingly refers as “morons”).

³⁷ It is not my purpose in this Essay to try to give an exposition of Dworkin’s account of morality’s ontological status, or to criticize that account. For present purposes, it may be enough to say that Dworkin seems to identify moral reality with the reasons, arguments, or

A second problem that afflicts objectivist accounts of morality might be called the problem of motivation. Suppose that a moral realist can articulate an adequate account of the ontological status of morality. Maybe morality is some sort of ethereal reality that, though unnatural or “spooky,” can nonetheless be rendered intelligible. Or maybe morality is after all constituted by the “morons” – the special moral particles – that Dworkin mocks. Contrary to all expectations, maybe, such particles are discovered in some new version of a particle accelerator radically enhanced to detect unnatural realities, and those particles can be shown to bombard some actions (compassionate ones, maybe) in heavier doses than they touch other actions. So morality is “objective” and “real” after all, and we have even figured out what sort of objective reality it is. But now the question is: Why should anyone care? Since by hypothesis morality has been detached from people’s subjective needs and desires, what difference should it make to them, or to us, that some objective “morality” purports to command or prohibit such-and-such? Why should we let some impersonal and ontologically “spooky” entity boss us around? Why should we even care what *it* thinks – especially since, being impersonal, it *doesn’t* think, and doesn’t even know when we have violated its injunctions?

We might put this point in another way. If we say that moral obligations or prohibitions are “objective” and not grounded in people’s subjective needs and desires, then there could in principle be a situation in which doing *X* will make you (or us, or society, or everybody, or whomever we think the relevant population is) happier, but it would be wrong. Doing *Y* will leave you (or us) less happy and prosperous, but it would be the right thing to do. In this situation, why should anyone ever choose moral but less happy *Y* over immoral but happier *X*?

These two problems – of ontological status and of motivation – tend to converge. That is because defenders of “objective morality” are prone to say that the reason someone should perform a morally indicated action, regardless

justifications that we give in affirming or denying the morality of different actions or practices like cruelty. See DWORKIN, *supra* note 1, at 14-15 (suggesting that individuals bolster value judgments with arguments based on personal moral convictions they hold up as sources of moral “truth”). In that respect, his “ungrounded realism,” as he calls it, *id.* at 15, appears to take essentially the same view of the ontological status of *morality* that Dennis Patterson takes of the ontological status of *law*, see DENNIS PATTERSON, *LAW AND TRUTH* 21 (1996), and that Philip Bobbitt takes of the ontological status of *constitutional law*, see, e.g., PHILIP BOBBITT, *CONSTITUTIONAL FATE* (1982). The recurring move, it seems, goes like this: The theorist sees a kind of discourse (moral discourse, legal discourse, or constitutional discourse) that appears on its face to be *about* something independent of itself, but it is difficult to explain what that something is, and so the theorist declares that *the discourse itself* is the reality: the discourse, at least in its normative dimension, is not about anything that exists outside itself. (Of course, the normative judgments generated by the discourse *are* applied to facts in the world.) I elsewhere criticize this account of law, see STEVEN D. SMITH, *LAW’S QUANDARY* 70-74 (2004), and I suspect that the same criticisms would apply to Dworkin’s comparable account of morality.

of his or her subjective desires, is that the action possesses the property of “have-to-be-doneness,”³⁸ or something of that sort.³⁹ But that property seems exquisitely “queer,” as Mackie put it,⁴⁰ or “spooky.” To be sure, our ontological inventories typically have room for properties of various sorts: hot and cold, light and heavy, swift and slow, radiant and dark. But “have-to-be-doneness”? Seriously? And even if we do postulate such a “spooky” property, it is not clear that the problem of motivation is thereby solved. Okay, so I omitted to do some action that possessed “have-to-be-doneness” as a property. If you and I and everyone else are happier for my omission, then once again: Why should anybody care?

Our efforts to explain what sort of thing morality is reveal a dilemma. We started without presupposing anything about the nature of “morality,” but instead with a very practical and inescapable question: How should I live? One kind of answer to that question is “subjective” in the sense that it appeals to subjective needs and desires that people in fact have. This kind of subjective answer, as I explain previously, can account for various complex “ought” statements that we typically associate with morality. And it has the immense advantage of being responsive to the initial and driving question – How should I live? – without positing realities beyond those we encounter every day: human beings, their experienced needs and desires, and the satisfaction they obtain when these needs and desires are fulfilled. But the “oughts” generated by subjective accounts seem to be contingent and defeasible, not categorical in the way we typically think moral “oughts” are. This difficulty may push us to suppose that morality must be something “objective” or “real,” not grounded in and reducible to human needs and desires. But then it becomes very difficult to say just what sort of reality “morality” is, or why we should care about it.⁴¹

IV. HOW GOD HELPS (AND DOESN'T HELP)

Which brings us back to the question of God's relation to morality. One possible position at this point would connect morality to God's commands. This position would have the advantage of making moral duties “objective” at least in the sense that they would be independent of *human* needs and desires. A divine command account might also explain in what sense morality is real: it is real in the same sense that the President's executive orders are real.⁴²

³⁸ See, e.g., Moore, *supra* note 7, at 229 (describing Mackie's aversion to moral realism's suggestion that objective “morality” by its nature prescribes particular action).

³⁹ See MACKIE, *supra* note 31, at 38-42.

⁴⁰ See *id.* at 40.

⁴¹ Another alternative is to view morality as a kind of noble lie: there are no such things as objective moral duties, but we would be better off if we believed there were, because this belief could serve as a sort of internal policeman to enforce norms that are beneficial if everyone (or almost everyone) complies with them. And so we invent or evolve morality as a useful fiction. See, e.g., RICHARD JOYCE, *THE MYTH OF MORALITY* 175-85 (2001).

⁴² All this assumes, of course, that God is real: if there is no God, then on this account it

Dworkin seems to suppose that this is the account of morality to which theists are committed. But as discussed above, this “divine command” account runs squarely into the Euthyphro problem. Nor does it seem to be the view that most believers in the Judeo-Christian tradition have taken.

So we should consider another possibility: perhaps God supports morality not by making it “objective” but rather by sustaining and extending its “subjective” quality in a way that eliminates the apparent contingency and thereby deflects the objections made against subjectivist accounts. Recall that a central objection asserts that subjectivist accounts leave morality too contingent. Morality seems to consist of “if/then” propositions (“If you want X, then do Y”) that can be defeated either by denying the “if” condition or by doubting the instrumentalist connection between X and Y. But perhaps God’s function is to reinforce both the conditional and the connection so that the imperative is no longer contingent in an objectionable sense.

There is a common version of this response, however, that will again lead us astray. The common version understands the religious position to be distinctive in supposing that God enforces moral duties or prohibitions by promises of rewards for compliance and of punishments for deviation. To “Thou shalt not commit adultery,” God adds: “And if thou dost, thou shalt burn in hell; but if thou refrainest and keepest thyself chaste, thou shalt be rewarded with a celestial mansion.” However plausible or implausible this account of God’s function may be, this sort of supplementation is no help with the metaethical problem we have been considering. That is because, in this view, it is still not God who makes adultery bad or wrong, chastity good or right. God enforces the rule or, if you like, incentivizes us to comply with the rule. But the goodness of chastity, or honesty, or compassion is still independent of God. And we still have the problem of accounting for that goodness in subjectivist or objectivist terms – with the embarrassments that attend each of those strategies.

It is more helpful, I would suggest, to think of God as supporting and fulfilling the subjectivist account in a different and less peripheral way. Despite vast variations in doctrine and theology, in the Western religious traditions the following beliefs are widely (though not universally) accepted: First, God created the universe. Second, God created the universe for a purpose, and with a design or plan for achieving that purpose. Third, God’s purpose for the universe is a supremely and inclusively good purpose – good in the sense that it involves the achievement of the blessedness of God’s creatures. This framework of beliefs about life and the universe is vastly different from a secular framework, which instead views life largely as a fortunate (or perhaps unfortunate) accident without any encompassing purpose or plan. Moreover, the religious framework operates to remove the otherwise

would seem to follow that, as Dostoevsky’s character Ivan says, “everything is permitted.” FYODOR DOSTOEVSKY, *THE BROTHERS KARAMAZOV* 351 (Andrew R. MacAndrew trans., Bantam Dell 1981) (1880).

debilitating contingencies of the subjectivist accounts of morality. As we have noticed, on nontheistic assumptions the subjectivist account seems contingent because a critic might (sincerely) deny either the “if” conditional (“If you want *X*, do *Y*”) or the instrumentalist connection between *X* and *Y*. To the first sort of denier – someone who denies the conditional by asserting, “I don’t care about being happy” – the theistic position suggests that the denial, however sincere, is mistaken.⁴³ Someone might *say*, or even *think*, that she does not want to be happy. But the theistic view responds that there is a kind of happiness or fulfillment that she may not have experienced but that she is capable of experiencing, and if she does experience it, she will find it to be supremely satisfying.

Of course, this sort of counsel is common enough even in nonreligious contexts. Parents plead with wayward children that they will regret the condition to which their actions seem to be leading them. On the positive side, I previously mentioned the friend who assures me that if I will just work at it, I will come to enjoy the aesthetic satisfactions of opera. Often these sorts of predictions are correct. But in a nonreligious context, such counsel is always vulnerable to the rebuttal: “Who are you to tell me what I want? Don’t I know myself – and what I like and don’t like – better than you do?” In a theistic context, by contrast, the counsel is validated by the fact that, by hypothesis, it proceeds from the One who created everything, and who knows the creatures (including the denier) better than they know themselves, and who also completely understands the overall design and purpose. Thus, the religious prediction that “If you do *X*, you will experience a kind of joy that you will find supremely satisfying” is not like the prediction of pundits, even learned and astute ones, forecasting the outcome of an election or a game. The pundits are at most fallible epistemic authorities. The religious counsel is more like a prediction about the outcome of a novel when the prediction is given *by the author*. The author is not merely an epistemic authority; she is the one who has constructed the world of the novel (or is in the process of constructing it), and who knows how it works because she is the one who made or is making it.

For a similar reason, the theistic response to the second kind of denier – namely, the person who admits that she desires the postulated goal (such as happiness) but who doubts that behaving in ways ordained as moral is the best way to achieve that goal – is reinforced by the premise of a design or plan governing life and the universe. Just as the designer of a program or system knows what procedures will lead to particular results within the system, God, as the Supreme Designer, knows what actions will lead to specified goals.

Further, the usual Christian or Jewish responses to both sorts of deniers maintain that there are levels of satisfaction or fulfillment, and that part of the function of living in ways deemed virtuous or “moral” is to form an individual’s character so that they may become capable of experiencing such

⁴³ Christians may explain such mistakes in part by invoking distortions in our nature sometimes associated with “the Fall.”

higher fulfillment.⁴⁴ Again, there are plenty of mundane analogies. Once again, a friend thinks I can experience greater aesthetic satisfaction from opera – but only if I cultivate my currently undeveloped or unrefined musical sensibilities. I should go to this evening’s lecture and to tomorrow’s performance not because I will immediately enjoy them, but instead because these exercises will help me develop so that I can experience the joys of opera at some time in the future. Or the literature professor explains that there is more beauty and insight in Shakespeare than in a TV sitcom – but this is accessible only to those who have learned to understand Elizabethan English and who work to appreciate the literary devices and themes that Shakespeare employed. Or perhaps there is a kind of fulfillment in fidelity to spouse and children that the man who limits himself to a series of more causal sexual encounters cannot grasp; but that fulfillment requires effort and the cultivation of character. The shallow hedonist thrown into the midst of family life will find that life dull and suffocating.

Religious interpretations of morality typically make central this idea of levels of fulfillment and the associated commitment to the cultivation of character (or reception of grace) so as to be able to experience such higher satisfactions.⁴⁵ Some levels of satisfaction may be thought to exceed the capabilities of most people in this present world: “Eye hath not seen, nor ear heard, neither have entered into the heart of man, the things which God hath prepared for them that love him.”⁴⁶ And the ultimate fulfillment is thought to inhere in a loving relationship with God himself,⁴⁷ at least for those who make themselves or are made capable of such a relationship. Thus, the first question in the *Westminster Shorter Catechism* asks, “What is the chief end of man?” and the answer is: “Man’s chief end is to glorify God, *and to enjoy him forever*.”⁴⁸ The Catholic catechism elaborates:

Desire for true happiness frees man from his immoderate attachment to the goods of this world so that he can find his fulfillment in the vision and beatitude of God. “The promise [of seeing God] surpasses all

⁴⁴ Cf. ABRAHAM J. HESCHEL, *MAN’S QUEST FOR GOD* 95 (1954) (“The problem to my professors was how to be good. In my ears the question rang: how to be holy. . . . To the philosophers: the idea of the good was the most exalted idea, the ultimate idea. To Judaism the idea of the good is pen-ultimate. It cannot exist without the holy. The good is the base, the holy is the summit. Man cannot be good unless he strives to be holy.”).

⁴⁵ See, e.g., 1 JOSEPH TELUSHKIN, *A CODE OF JEWISH ETHICS: YOU SHALL BE HOLY* 37 (2006) (“Judaism regards improving character as the goal of life.”).

⁴⁶ 1 *Corinthians* 2:9.

⁴⁷ Thus, Michael Wyschogrod explains that in the biblical narrative of the relation between God and Israel, “there has been a love here compared to which all other loves vanish into insignificance.” MICHAEL WYSCHOGROD, *THE BODY OF FAITH* 123 (1983); cf. TELUSHKIN, *supra* note 45, at 491-92 (discussing the importance of mutual love between God and humans in the Jewish faith).

⁴⁸ THE WESTMINSTER ASSEMBLY, *THE WESTMINSTER SHORTER CATECHISM* (1647), archived at <http://perma.cc/K2XR-JHHL> (emphasis added).

beatitude. . . . Whoever sees God has obtained all the goods of which he can conceive.”⁴⁹

In this understanding, God stands to goodness not as a Commander handing out orders, but rather as a Friend with whom it is a supreme joy to be.⁵⁰ Countless Christian hymns celebrate this idea. “Jesus, Lover of my Soul.” “What a Friend We Have in Jesus.” “Jesu, Joy of Man’s Desiring.”

Thus, to the egoist who insists, sincerely, “I genuinely enjoy the power, wealth, and physical gratification that I gain from cheating, stealing, and exploiting, and despite all your moralizing I can attest that this enjoyment is not offset by any feelings of remorse or aloneness,” the theistic response is *not*, “Maybe so, but you still should not do those things because they are (objectively) wrong.” Neither is the response, “You may be happy *for now*, but just wait: God will punish you.” Or if those responses are sometimes given, they should be understood as shorthands for or adolescent-accessible versions of a fuller account. And that account would go like this: “You may in fact enjoy the gains of your behavior. But these are shallow and ephemeral pleasures. And there are higher levels of satisfaction – of joy – that you may not now experience, but that you *can* experience if you develop your character by living in a more virtuous or exalted way. If you do that, you will come to understand that those satisfactions are far more fulfilling than the petty gratifications that occupy you at present.”

The egoist might not believe this response, of course; he might dismiss it as “pie in the sky” nonsense. Nothing in this Essay precludes that sort of dismissal: once again, this Essay does not attempt to show that the theistic position is *true*. And if the theist is wrong “on the facts,” so to speak, his account of morality will be irreparably damaged; that is because in a subjectivist account, questions of “value” cannot be neatly detached from questions of “fact” in the way Dworkin supposes.⁵¹

For purposes of this Essay, the important point is only that the theistic position does not try to avoid the objections to subjectivist morality, as Dworkin and others seem to suppose, by positing an “objective” morality, binding on us whether we like it or not, that somehow derives from God’s commands. Rather, the theistic position is profoundly subjectivist in character; it is super-subjectivist, or a sort of super-ideal utilitarianism, if you like. Theism removes the contingencies from the subjectivist account by making the goods to be sought and the ways of obtaining those goods parts of (a *personal*) God’s design and thus built into human nature and existence. Perhaps both the “if” and the “then” in moral imperatives are still *logically* contingent – we can

⁴⁹ CATECHISM OF THE CATHOLIC CHURCH 2548 (1994) (quoting ST. GREGORY OF NYSSA, DE BEATITUDINIBUS 6, at 44, 1265A).

⁵⁰ Cf. *John* 15:15 (“Henceforth I call you not servants; . . . but I have called you friends . . .”).

⁵¹ See DWORKIN, *supra* note 1, at 22-25 (describing the major theistic religions as composed of two “conceptually independent” parts – “a science part and a value part”).

without contradicting ourselves imagine that things could be otherwise – but they are not contingent *in fact*. So they are no more and no less contingent than, say, the law of gravity. And God figures in this scheme not mainly as Commander but rather as Creator, Designer and Sustainer, and, ultimately, consummate Friend. “[I]n thy presence is fulness of joy,” says the Psalm; “at thy right hand there are pleasures for evermore.”⁵² “I am come,” Jesus says, “that they might have life, and that they might have it more abundantly.”⁵³

V. THE GREAT DIVIDE

Dworkin argues that not only morality but also religion can get along without God. In itself, that claim is hardly provocative. “Religion” can be defined in a variety of ways, and it is commonplace that some “religions” are nontheistic.⁵⁴ Our previous discussion, however, raises doubts about Dworkin’s way of dividing religion from nonreligion.

Defining religion in terms of two commitments – to the objective meaningfulness (or value of human life) and to the sublimity of nature⁵⁵ – Dworkin suggests that he and traditional theists share a common opposition to people (like Richard Dawkins) who think that the only kinds of value are “subjective” in character.⁵⁶ But this Essay argues that theists in the Christian and Jewish traditions need not and typically do not reject a subjectivist conception of value, but rather embrace and extend that conception by believing in a divine design and purpose culminating in goods that may be transcendent but are still profoundly “subjective” in character.

So then what *is* the salient philosophical and cultural divide that separates the “religious” from the “nonreligious”? I would suggest that rather than using “objective value” to draw the line of demarcation, we would do better to take a suggestion from Plato. In the *Laws*, a character described as the Athenian and seemingly a spokesperson for Plato himself sketches two fundamentally different views of the world. The more common view is propagated by “experts—as our young people regard them—” who teach that “fire and water, earth and air [are] . . . the first of all substances” and that “soul . . . was derived from them, at a later stage.”⁵⁷ Thus, the universe and everything in it comes

⁵² *Psalms* 16:11.

⁵³ *John* 10:10.

⁵⁴ For a discerning discussion of the various conceptions of and “approaches to defining religion” at law, see 1 KENT GREENAWALT, *RELIGION AND THE CONSTITUTION: FREE EXERCISE AND FAIRNESS* 124-56 (2006).

⁵⁵ See DWORKIN, *supra* note 1, at 10 (“The religious attitude . . . accepts the objective truth of two central judgments about value. The first holds that human life has objective meaning or importance. . . . The second holds that what we call “nature” . . . is itself sublime . . .”).

⁵⁶ See *id.* at 5-6, 12-13, 41-43.

⁵⁷ PLATO, *Laws*, in PLATO: COMPLETE WORKS *890a, *891c (John M. Cooper & D. S. Hutchinson eds., Trevor J. Saunders trans., 1997).

about by “neither intelligent planning, nor a deity, nor art, but . . . [by] nature and chance.”⁵⁸ The other view, favored by the Athenian, holds that “*soul*” is “born long before all physical things, and is the chief cause of all their alterations and transformations.”⁵⁹ In the Jewish and Christian traditions, what Plato describes abstractly as “*soul*” becomes a transcendent Person, whose essence is Love.⁶⁰ Thus, life and the universe are the creation of, and are governed by, a mindful and loving Person. The personal – the subjective – is primary; the objective is secondary and derivative. And the whole is suffused with purpose and love.

Dworkin, it seems, largely sides with the first view. To be sure, he criticizes and rejects the prevailing “naturalism” exemplified by thinkers like Dawkins, and he speaks of “transcendental” value, of “sublimity” in the universe, of the “numinous,” and even of “supernatural” realities.⁶¹ But these departures from naturalism, it seems, apply only to matters of “value.” In what we might call his basic cosmology, Dworkin gives no indication that he is not pretty much in agreement with Dawkins. In Dworkin’s “religion without God,” there evidently is no designer and hence no mindful design;⁶² rather, the universe somehow came into existence without the exertion of any active mind or person, and in its unguided unfolding it has somehow thrown up or evolved a variety of things, including persons, and also including something that is real though ontologically elusive called “value.” This cosmological picture seems closer to Dawkins than to Aquinas, Maimonides, or the Bible.

In sum, the great divide, at least in Western patterns of thought,⁶³ is not between people who believe in “objective” value and those who merely accept “subjective” value. The divide, rather, is between those who think that the universe, including the world of humanity, is the product of a loving and intelligent Author or Designer who created it according to a plan and for a good purpose, on the one hand, and on the other those who reject the belief in any guiding intelligence and any encompassing and mindful plan. That is a difference with profound implications for most of the great issues of life (including, almost certainly, issues implicating law and politics). And although cooperation and dialogue are surely to be encouraged, as Dworkin proposes, it would seem that in relation to that divide, the company to which Dworkin belongs or belonged must still converse with more traditional theists from opposite sides of the chasm.

⁵⁸ *Id.* at *889c.

⁵⁹ *Id.* at *892b.

⁶⁰ See 1 *John* 4:8 (“[F]or God is love.”).

⁶¹ See DWORKIN, *supra* note 1, at 6, 10, 12-13, 42.

⁶² A belief that the universe is the product of design does not, of course, in itself say anything about how that design has been implemented – whether all at once, or in more gradual or evolutionary fashion.

⁶³ I lack the knowledge, and the confidence, to say how something like, say, Buddhism fits into this scheme.