'Genuine' Disagreements: A Realist Reinterpretation of Dworkin

VERONICA RODRIGUEZ-BLANCO*

Abstract—This article contends that Dworkin's notion of 'genuine' theoretical disagreements, which is a fundamental pillar in his criticism of legal positivism and semantic disagreements, requires a realist reinterpretation. This view is defended according to two core arguments. First, a realist reinterpretation of 'genuine' theoretical disagreements enables Dworkin to avoid semantic criticisms such as the one advanced by Joseph Raz, who propounds a sophisticated model of criterial semantics to explain theoretical disagreements. Second, to make intelligible the distinction between theoretical and semantic disagreements in law, we need to resort to realist elements. The conclusion is striking and in clear contradiction with Dworkin's ametaphysical and epistemic abstinence. The article shows that there is a problematic tension within Dworkin's constructivist project and that he should revise either its ametaphysical view and epistemic abstinence, or notions such as 'genuine' theoretical disagreements.

1. Introduction

Ronald Dworkin's writing on legal theory has inspired important reflections in political, moral and legal philosophy. However, some commentators feel that fundamental contradictions plague Dworkin's constructivist legal and moral project. This article contends that Dworkin's notion of 'genuine' theoretical disagreements, which is a fundamental pillar in his criticism of semantic disagreements, requires a realist interpretation. The study shows that Dworkin's notion of 'genuine' theoretical disagreements, which is thoroughly examined in *Law's Empire*, is a problematic one, and explores the idea that when interpreted in realist terms the concept achieves a greater degree of credibility.

The central view of this article can be defended according to two fundamental arguments. The first argument is both practical and negative establishing that we need to argue that the notion of theoretical disagreements necessitates a realist interpretation. This would avoid semantic criticisms such as the one advanced by Joseph Raz, who considers that other interpretations of criterial semantics are more successful in explaining the nature of theoretical disagreements. The second argument is positive and establishes that to make

intelligible the distinction between theoretical[1] and semantic disagreements, we need to resort to realist elements. The core of the realist argument is that criterial semantic explanations of a concept should not be settled prior to the realist or ontological issue.

This conclusion might seem striking and in clear contradiction to Dworkin's ametaphysical and epistemic abstinence.[2] However, the arguments of this paper aim to show that there is a problematic tension within Dworkin's constructivist project and that, therefore, he should revise either its epistemic and metaphysical abstinence, or central notions such as 'genuine' theoretical disagreements. If Dworkin's notion of theoretical disagreements is to remain valid, one option for Dworkin is to resort to a realist interpretation to evade the difficulties pin-pointed in this paper, although this alternative might not be reconcilable with his ametaphysical view. Alternatively, he might revise his notion of 'genuine' theoretical disagreements, and in this case, he needs to rethink his criticism of both legal positivism and the notion of semantic disagreements.

The criticism of Dworkin put forward by Joseph Raz,[3] that a more sophisticated version of criterial semantic explanations helps to explain theoretical dis-agreements, forces us to conceive a different way of understanding and explaining these disagreements. Raz's criticism is based on the following four arguments. First, the criterion for applying a concept does not depend on an individual's beliefs but on his or her linguistic community. Second, semantic criterial ex-planations of a concept are complex and non-transparent; Dworkin's notion of theoretical disagreements as being different from semantic disagreements over-looks the complexity, non-transparency and non-individualistic features of cri-terial semantic explanations of a concept. Third, there is a relative independence of interlinked concepts, which refutes Dworkin's criticism of semantic dis-agreements. Lastly, theoretical criterial explanations are different from ordinary criterial explanations. According to Raz, Dworkin overlooks this latter feature of criterial explanations.

This article proceeds as follows. In section 2 the distinction between anti-realism and realism is discussed and a particular kind of realist view advocated by authors such as Michael Devitt[4] and David Brink[5] is explained. The third section elaborates upon the two core arguments in favour of the realist re-interpretation of Dworkin's notion of 'genuine' theoretical disagreements.

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[1] Stravropoulos and Hurley use the terms 'substantive' and 'conceptual' disagreements to analyse the distinction between theoretical and semantic disagreements. Stravropoulos argues that the distinction between conceptual and substantive disagreements might be explained within the Kripke-Putnam semantic realist model. However, he denies that it is necessary to advocate an ontological or metaphysical commitment. Like Hurley, he advocates cognitivism without metaphysical realism. See Nicos Stravropoulos, Nico, *Objectivity in Law* (Oxford: Clarendon Press, 1996) and Susan Hurley, *Natural Reasons* (Oxford: Clarendon Press, 1989).
[2] Dworkin advocates an ametaphysical thesis in both 'Truth and Objectivity: You'd Better Believe It' in *Philosophy and Public Affairs* (1996) 87–139, and in *Law's Empire* (Harvard: Harvard University Press, 1986).
[3] J. Raz 'Two views of the Nature of the Theory of Law: A partial comparison' in 4 *Legal Theory* (1998) 249–282.
[4] M. Devitt, *Realism and Truth* (Oxford: Blackwell, 1991).
[5] D. Brink, *Moral Realism and the Foundations of Ethics* (Cambridge: Cambridge University Press, 1989).

2. *Explanation of a Realist Perspective*

The philosophical controversy between realism and anti-realism is characterized by conflicting approaches. A number of scholars describe the distinction from a semantic point of view whereas others resort to epistemic or ontological perspectives. Consequently, it is necessary to clarify the various approaches in an attempt to disentangle the debate.

There are two key features to guide us in the understanding of the nature of the distinction between realism and anti-realism:

1. Realism as the idea that reality is independent of our minds.
1′. Anti-realism as the idea that reality is dependent on our minds.
2. Realism as the idea that truth should be defined in epistemic terms.
2′. Anti-realism as the idea that truth should not be defined in epistemic terms.

With regard to the independence criterion, it is important to note that philosophers use terms such as 'external' or 'objective'. However, objectivity is not a necessary and sufficient condition of independence. Thus, an object has objective existence if it exists and has its own nature whatever we believe, think or discover. This means that an object does not depend on our cognitive activities. There are, nevertheless, examples of objectivity without independence. The typical example of this possibility is Berkeley's notion of Ideas as mental but objective entities. According to this view, the world consists of objective mental entities of experience. The absolute idealist also believes that the universe is constituted entirely by some mind although he does not identify this mind with his own. The absolute idealist conceives that his mind and other peoples' minds are subsets of a comprehensive mind which might be called the World Spirit, God or the Absolute. This Absolute mind makes the objectivity of our own ideas and mental entities possible. Similarly, the solipsist claims that the only objective ideas are his own. However, they are not mind-independent. On the other hand realism requires entities that are independent of any mind. There are confusingly deceptive cases of mind-independent reality, whose nature does not depend on the mind, even though they refer to it. Sentences such as 'Arthur has a mind' or 'Arthur thinks the grass is green' are true because certain states of affairs obtain, although in some sense they depend on the mind. Therefore, an additional element to sharpen the independence criterion is needed. The characterization might be that entities are non-mental and exist and have a nature independently of our mind, epistemic values or cognitive capacities.[6]

The idea of independence is closely connected to the idea of existence. The existence criterion states that there is a reality. Therefore, the key problem is what constitutes this reality. A realist might be committed to properties, facts, states of affairs, entities, non-categorized reality such as the Kantian 'thing-in-itself' but at the other end of the spectrum the weakest form of realism is

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[6] Devitt, above n 4 at 15.

completely unspecified and merely states that something exists. Many anti-realists such as Thomas Kuhn and Nelson Goodman advocate this minimal form of realism, advocating only the existence criterion and rejecting the independence criterion. According to this kind of anti-realism, reality does not make any difference, since the only way to understand it is through our own paradigms or frames of reference.

Realists are generally committed to a more robust reality and adhere to the concept that there is a fundamental correlation between independence and the existence criterion. Thus, the more robust the existential dimension, the more compelling the tendency to abandon dependency claims. This means that if a philosopher advocates the idea that there are physical properties, microscopic objects, moral properties, aesthetic facts, common sense objects and functional kinds, then it is much more difficult to defend the idea that all these things depend on the mind.

There are many possible combinations with regards to the existential dimension. For example, Brink[7] is committed to moral properties constituted of physical or natural properties. He is also committed to scientific and common sense realism. Michael Moore[8] is committed to moral facts constituted by natural facts and functional kinds such as law. He also is committed to common-sense realism. Michael Devitt is committed to common-sense and scientific realism, and stands by the affirmation of common-sense realism; that there are physical entities such as trees, stones, and cats, together with the idea that there is common-sense stuff such as water. All are committed to the existence of common-sense physical entities, which are by and large, the observable ones. Scientific realism is, however, also committed to the existence of unobservable entities such as electrons that theoretically exist as scientific entities. In contrast instrumentalists and operationalists deny the existence of theoretically scientific entities and follow different strategies to show the truth of their assertions. Instrumentalists claim that our scientific theories are not true in any robust sense, and furthermore assert that such theories are simply tools to predict and explain our observable entities. The idea that scientific statements about unobservable entities could be translated without semantic loss into statements about observable entities is the main tenet of the operationalist conception.

Anti-realism opposes realism and claims that reality is dependent on the mind. Consequently many anti-realists claim that it is our own concepts that make the world (although the use of the word 'make' here is not causal). The type of change that anti-realists advance is not empirical. Furthermore, it is arguable that there is a distinction between cases of pseudo-dependency and cases of real dependency. In cases of real dependency there is the freedom to choose between incompatible true propositions. Questions such as whether geometrical points are to be taken as primitive or identified with pairs of intersecting lines or sequences of nested volumes, or whether the earth is to be taken as at rest or in

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[7] Brink, above n 5 at 156–67.
[8] Moore, 'Moral Reality Revisited', *Michigan Law Review* 2424–553 (1992).

motion resonate in the concept of real dependency. In contrast, there are cases of pseudo-dependency such as the idea that our concepts arrange the stars in the night in one way rather than in another because the sky can be described within a number of conceptual frameworks, such as constellations. However, there is always a single subject and our concepts are, therefore, just labels pinned onto the same underlying objects.

Anti-realists such as Nelson Goodman[9] offer incompatible but equally true pairs of descriptions from amongst which we can choose and adopt one frame of reference among others. Thus it is said—metaphorically—that we make worlds. The statement 'the earth stands still' is chosen because of its frame of reference; it does not causally mean that we change the world. The statements 'the earth stands still' and 'the earth orbits the sun' are true in different worlds.

The idea that truth should not be defined in epistemic terms focuses on one main conception, the notion that it is fundamental to distinguish the constituent aspects of reality and the evidential elements of it. This notion has three corollaries. First, there is a significant distinction between metaphysical or ontological issues and semantic ones. Second, it is crucial to differentiate between metaphysical projects of truth and projects of justification. Third, it is necessary to distinguish between semantic issues and epistemic ones. It therefore follows that there is no need to construct an *a priori* epistemology, since it is subsidiary to science and metaphysics.

The first corollary might be called the metaphysic-semantic dichotomy. The underlying intuitive idea is that, for realists, what exists is prior to our language or our ways of expressing it. The semantic issue arises only in our theory of people in relationship to the world. It is arguable that as a result of this view what is required is to settle the ontological issue before the semantic one. Contemporary criticism against realism gathers around the idea that we cannot construct an *a priori* semantic system and an *a priori* epistemology. The kind of realism that is defended in this study avoids these difficulties and claims that the different doctrines of truth—these doctrines are part of semantic projects—are not constitutive of realism. Devitt argues in favour of the precedence of the ontological issue over the semantic issue and two arguments support his point of view. First, he claims that realism does not entail any specific doctrine of truth. Second, he purports to show that the correspondence theory of truth does not entail realism, contrary to the common view of many critics of realism. The classical correspondence theory of truth is called semantic realism and might be defined as follows:

> Sentences of type x are true or false in virtue of: (1) their structure; (2) the referential relationships between their parts and reality; (3) the objective and mind-independent nature of that reality.[10]

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[9] Goodman, *The ways of world-making* (Hassocks: Harvester Press, 1978).
[10] Devitt, above n 4 at 3.

Devitt asserts that realism does not entail the correspondence theory of truth or any other project of truth. Thus, realist views are equally compatible with deflationary theories of truth and it might then be claimed that most current common sense and scientific physical existence statements are objectively and mind-independently (deflationarily) true or false.

However, the correspondence theory of truth does not entail realism either. The above definition of correspondence contains realist elements such as the notion of independence and it introduces metaphysical elements into a semantic doctrine. If the distinction between these two aspects is not preserved, then it is arguable that the correspondence theory of truth entails realism. Realism is a theory about the nature of reality, not about the symbols that play a role in our social life. If we look at the strictly semantic parts of the definition, there is no necessary link between the correspondence theory of truth and realism. According to Devitt,[11] there are three main philosophical reasons that have contributed to the idea that the correspondence theory of truth is constitutive of realism. First, the 'linguistic turn' in philosophy has produced the conflation of the theories of truth and metaphysical issues. Second, attacks on the correspondence theory of truth have played a significant role in attacks on realism. Therefore, it seems natural to link the correspondence theory of truth and realism. Typical challenges to realism follow these lines:

(a) If the realist's independent reality exists, then his or her thoughts or theories must mirror or represent that reality.
(b) Our thoughts or theories cannot represent or mirror the realist's independent reality.
(c) Therefore, the realist's independent reality does not exist.

According to Devitt, the nub of the dispute is premise (b), the question of whether or not our ideas or theories correspond to an independent reality. However, the plausibility of (b) has its basis in premise (a), which is false, because the question about the existence of an independent reality is different from the question of whether our theories represent this existence. Third, Devitt points out that the conflation of realism and the correspondence theory of truth can be traced to historical philosophical reasons. Descartes and the British empiricists assumed that what we immediately perceive are ideas in the mind. They argued that there might be a reality outside the mind, which causes and resembles these ideas; realism, according to this view, is committed to objects which correspond to these ideas.

The second corollary is the metaphysic-justification dichotomy and according to it, realists advocate the idea that what makes something true is prior to, and independent of, the practical criteria to determine its truth. Thus, ontological or metaphysical issues should be settled prior to epistemic ones. Devitt advocates common-sense realism, which is based in the idea of a naturalized epistemology.

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[11] Ibid at 48–50.

This notion is best understood within the philosophical framework of Cartesian scepticism. Descartes raised doubts about the possibility of knowledge arguing that if we have knowledge of the external world, then this knowledge is possible because of our sensory experiences. The key question is how do we know we can rely on these sensory experiences since they might be mere illusions? We think that we perceive the external world but perhaps we are only dreaming that we do. Cartesian scepticism challenges realism by positing alternative hypotheses, which realism must eliminate. According to anti-realists, realists are unable to eliminate these alternative hypotheses.

Devitt argues that there are four philosophical strategies that have been put forward to avert the consequences of Cartesian scepticism. First, foundationalists claim that the way to save knowledge of our external world is through self-evident ideas, sense data or any area of knowledge that is not susceptible to sceptical doubts. It may appear that the outcome of foundationalism is a realist conception. However it may equally be the case that foundationalism involves anti-realism. Foundationalists claim that we have non-inferential knowledge of the existence of sense data, and that we cannot gain non-inferential knowledge of the existence of reality beyond sense data. If the sense data are mental entities then the foundationalist's claims involve anti-realism, and in this case, epistemology determines metaphysics. Second, Kant distinguishes between the appearance and the thing-in-itself. The former is part of the phenomenal world, the latter is part of the noumenal world. Appearances are familiar objects like trees, stones, and so on. Our knowledge of these objects has two elements: the perceptual or experiential and the conceptual, which consists of the mind's imposition of *a priori* concepts and a spatio-temporal setting of objects. The third approach to scepticism is to accept it. This view leaves us with no knowledge of common things. Lastly, a number of philosophers advocate naturalized epistemology, which is based on the idea that justification should not conform to the requirements of scepticism by discovering an area of knowledge that allows absolute certainty. This view rejects the *a priori* epistemology of the foundationalists and Kant, accepting the claims of folk theory and science. The argument for common sense realism starts from folk theory and scientific theory. Both posit observable entities, which are described as objectively independent of the mental. Consequently, the relationship between the cogniser and the world becomes, as in any object of study, an empirical knowledge. We are born in the world with dispositions[12] to react to experiences, the brain orders our resulting experiences and we theorize the rest. We presume that these first dispositions take us beyond our experiences to the external world, and consequently that our beliefs are the outcome of our experiences. After many years of this kind of relationship with the world we begin to possess complex folk and scientific theories that posit independent and objective entities.

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[12] Ibid at 76.

The third corollary is called the semantic-epistemic dichotomy. The central idea is that we should distinguish between the relationship of our symbols to the world and our epistemic capacities. It is arguable that the correspondence theory of truth is the best semantic explanation of realism but as Devitt argues, there is the possibility that the correspondence theory of truth has no place in the explanation of language. Therefore, realism should not be given up for semantic reasons since this entails the idea that semantics precede metaphysics. It would be better, in this case, to abandon the correspondence theory of truth.

The key question is whether or not we could apply these metaphysical, epistemic and semantic reflections to morality and law. David Brink argues in favour of a continuity between ethics and science, and between common-sense knowledge of observable and non-observable entities in ethics and science. This analysis could however be extended to defend continuity between science and other evaluative considerations. My aim is to show the plausibility of this kind of realism, and to argue that Dworkin's notion of genuine theoretical disagreements might be reinterpreted in realist terms to avoid its inconsistencies and Raz's semantic criticism.

Like Devitt, Brink argues that there is an important distinction between metaphysical, semantic and epistemic issues, and that ethical realism is an overarching empirical hypothesis. The defence of the objectivity of morality and science follows the strategy of naturalized epistemologists. Naturalized epistemologists promote common sense realism and scientific realism in natural sciences as true. They also assert a continuity between natural events and social events; the existence of nature and social events are independent of our theorizing about them. Brink differentiates between the metaphysical, semantic and epistemic issues, arguing that we are committed to moral facts because they are the best possible explanation of our moral inquiries and experiences. A central tenet of his perspective is the idea that the way we inquire about morality shows commitment to the recognition, discovery and perception of certain moral properties. A typical example is two people disagreeing on moral matters, both of whom believe that their disagreement is 'genuine' and that one person is right and the other wrong. We regard our moral convictions as the proper ones and if disagreement persists we see others as morally mistaken. Thus, there is a clear distinction between the correctness of our moral deliberations and the justificatory conditions—the practical criteria that determine the correctness of our moral judgements. By this line of reasoning we may have an ideal justificatory theory and still be wrong.[13]

Moral realism, or other realisms concerning evaluative matters, is a special case of realism, which advocates the independence and the existence dimensions. The cogniser posits certain entities to explain moral experiences and the realist programme is merely an overarching empirical hypothesis. It is not a transcendental argument. The metaphysical horse is prior to the epistemic cart. We

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[13] Brink, above n 5 at 31.

feel constrained by moral deliberations and often resort to the character of common-sense morality, recognizing matters of moral facts subsequent to later reflections. In law, according to Dworkin, we theorize on the different purposes of legal practice and reach different conceptions. We then attempt to give the best possible interpretation of what law is according to the two criteria of fit and soundness. Within a realist interpretation, we can say that we posit entities that refer to the underlying principles of law and so we deliberate about the right answer, and 'genuinely' disagree. In morality, we can disagree on whether the Second World War was a 'just' war or whether Jesus is a paradigm of a good man. In the arts, we have genuine disagreements on whether photography is really an art. Furthermore in law, we have genuine disagreements on whether people have a right to compensation for reasonably foreseeable emotional injury produced by careless conduct. Essentially we disagree on the features that are constitutive of the principles of fairness and integrity.

The justificatory task is conceived of as being different from the metaphysical task. Truth is not defined in terms of justification and it is evidence independent. The evidence for moral truth does not constitute moral truth, or moral reality. This theory is consistent with the idea that the ontological or metaphysical issue is independent of the epistemic project. Brink's epistemological project has two halves. The first half aims both to criticize foundationalism showing that realism is not constituted by foundationalism. The second half aspires to show both the plausibility of the coherence theory of justification for moral realism, and the compatibility of moral realism with coherentism.

The defence of coherentism is based on the argument that objectivism about justification overstates the relationship between justification and truth. Therefore, coherentism entails the rejection of realism only if objectivism about justification is true. Brink[14] argues that knowledge implies truth, but justification does not necessarily do so. Consequently, it is essential to show that justification does not guarantee truth, but that it gives evidence of truth.

Brink distinguishes between first-order and second-order beliefs. The former concern features external to us whereas the latter concern first-order beliefs and their relationship to the world, involving different levels of generality. They relate to the nature and reliability of our first-order beliefs and belief formation mechanisms. Second-order beliefs are realist since the truth of these beliefs is metaphysically or conceptually independent of us,[15] and it is because of these second-order beliefs that we have a theory of the world and our place in it. The justification of this theory depends on its coherence and the fact that it must also explain our observational beliefs. An objection to this link between co-herentism and realism is that second-order beliefs are merely other beliefs and cannot give evidence of truth. However, according to Brink, the refutation of this argument rests on two ideas. The first establishes that second-order beliefs are maximally coherent, and that this feature is the best reason to consider them

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[14] Ibid at 126–7.
[15] Ibid at 138–9.

true. Consequently, second-order beliefs provide the best possible explanation for our common sense knowledge and observational beliefs consistent with other theoretical beliefs. The second argument establishes that the fact that there are sceptical possibilities does not support scepticism about justification but scepticism about knowledge.[16]

According to Brink, a similar strategy can be applied in morality. We have particular beliefs, therefore it seems necessary to search for general moral principles that will explain and support our moral views. We need to evaluate these moral theories by comparing the consequences for real or imaginary cases with our own existing or reflective moral view about these cases.[17] Second-order beliefs about morality are beliefs about the relationship between our moral beliefs and the world. These second-order moral beliefs must cohere with our other moral and non-moral beliefs, and they include beliefs about the reliability of some of our moral beliefs.

According to Brink there are a number of moral beliefs belonging to a more reliable class of moral beliefs, called *considered moral beliefs*.[18] These more reliable moral beliefs have been formed under conditions conducive to truth: they result from inference patterns, are not distorted by obvious forms of prejudice or self-interest, and are relatively stable over time. These are called the conditions of cognitive reliability. Considered moral beliefs are revisable, but not infallible and therefore coherence with these considered moral beliefs is evidence of objective moral truth.

There are three fundamental criticisms of this explanation of the moral coherence theory of justification and the possibility of an objective moral truth. The first challenge is the idea that these considered moral beliefs make the moral coherence theory of justification an intuitionist conception. Brink responds to this challenge by saying that if considered moral beliefs were the foundation of intuitionism, then they would be self-justifying beliefs. However, considering that moral beliefs are not self-justifying, they are justified as long as they cohere with moral and non-moral beliefs and are also justified both by cognitively reliable conditions and by a variety of plausible moral theories.

The second criticism says that coherence with other moral beliefs does not necessarily make them evidential. In other words, the coherence argument has no probative force. To have probative force, it is necessary to show that a coherent system is more credible than another, which is less coherent, because there is a class of initially credible beliefs which cohere with other beliefs. These beliefs are initially credible because they state facts of observation. Brink answers this challenge with one argument. He states that considered moral beliefs are like observational beliefs because they are more reliable than other beliefs and initially credible before reflection. It does not mean that they are non-moral observational beliefs. A comparison between moral and scientific cases might clarify this point. Scientific theories are tested in terms of their coherence with observational beliefs, which are explained in terms of other independent scientific

[16] Ibid at 129–30.
[17] Ibid at 131.
[18] Ibid at 132.

theories. This is what gives them initial credibility. The moral case is similar; moral beliefs should cohere with our considered moral beliefs and their reliability determined by psychological and moral theories.[19]

Third, it is argued that since considered moral beliefs need to cohere with other moral and non-moral beliefs, they cannot provide evidence of an objective moral truth. Brink contends that the coherence theory of justification in ethics provides evidence of truth without identifying moral truth and coherent moral belief. This view is consistent with Devitt's chief argument that it is necessary to distinguish the metaphysical issue from the epistemic one. Justificatory theories can only give evidence of truth, and are not constitutive of truth. Following Brink,[20] the link between coherentism and truth assumes as true two incorrect conceptions: first, objectivism about justification, and second that justificatory theories are constitutive of metaphysical theories such as moral realism. Objectivism about justification is the idea that only a theory of justification that has non-inferential and basic beliefs can guarantee that our justified beliefs describe the realist independent reality.[21] The principle of objectivism about justification links foundationalism to realism. Thus, within this conception, the epistemic view guarantees the metaphysical one. Brink rejects this and argues that the role of the epistemic view is not to guarantee the metaphysical perspective but to give evidence of it. This view does not involve replacing non-moral observational beliefs with considered moral beliefs. It involves the idea that we systematize all our beliefs. Therefore, a coherence theory of justification in ethics demands coherence with observational beliefs.[22] Brink's ontological or metaphysical task notoriously consists of the assertion that moral realism gives a better explanation of our common-sense moral thinking, which is the explanation of our moral judgments in terms of moral facts and our moral experiences.

The analysis and defence of this realist view, the central tenet of which is that there is a continuity between science and ethics, requires that the metaphysical issue should be settled prior to the semantic and epistemic issues. The realist view enables us to better understand Dworkin's notion of 'genuine' disagreements.

3. *Two Arguments to Support Dworkin's Distinction Between Theoretical and Semantic Disagreements*

A. *A Negative Argument: A Realist Interpretation to Rescue Dworkin's Idea of Theoretical Disagreements from Joseph Raz's Semantic Criticism*

As mentioned earlier, Raz challenges the idea that theoretical disagreements cannot be explained in terms of criterial semantic explanations. He claims that Dworkin is committed to three fundamentally mistaken views. He reinforces

[19] Ibid at 136.
[20] Ibid at 140–1.
[21] Ibid at 106.
[22] Ibid at 137.

this criticism by a fourth argument, stating that there is a relative independence of interlinked concepts, and that this feature refutes Dworkin's idea that disputes within the model of criterially explained concepts cannot explain theoretical disagreements.

Let us now analyse Raz's criticism of Dworkin's semantic sting argument and the consequences of this challenge. According to Raz, the semantic sting argument claims that certain words, including the word 'law', cannot be explained by criterial semantics. He considers that the semantic sting argument can be applied to the explanation of many concepts, including the concept of law. Thus, to make the semantic sting argument apply to the explanation of the concept of law and not merely to the meaning of the word 'law', Raz formulates the notion of 'a criterial explanation' of a concept as follows:

1. a criterial explanation states a rule setting out conditions from the correct use of a concept;
2. a criterial explanation is a true explanation by virtue of the fact that it is a correct statement of the conditions for the correct use of the concept actually used by those who use it.[23]

Raz asserts that Dworkin's primary argument against criterial explanations is that these kinds of explanation cannot explain concepts regarding which pivotal disputes are possible. Pivotal cases, according to Dworkin, are disputes about the nature or fundamental features of a subject matter. In contrast, borderline cases are disputes about marginal cases that cannot be recognized within the range of the different 'standard' cases. Thus, Dworkin uses the example of two different kinds of dispute among art critics. In the first debate, art critics are engaged in the discussion as to whether photography is like or unlike standard, uncontroversial art forms such as painting or sculpture. In the second debate, art critics consider all examples of art as potentially controversial focusing on the question of what art, properly understood, really is. In the former case the dispute is about borderline cases and the participants share common criteria to determine whether certain work is or is not a form of art. In the latter case the participants in the debate consider all cases as controversial. Raz asserts that in the latter case the debate is about the correct criteria for applying a concept on any occasion.

According to Raz, the question that arises is why Dworkin considers that criterial explanations cannot explain concepts regarding which pivotal disputes are possible. Raz argues that it seems Dworkin's view is that all competent users of a concept agree on the criteria for its correct application.[24] Consequently, when two participants disagree on the criteria for the correct use of a concept on any occasion, criterial explanations of a concept cannot explain this kind of dispute. This is because according to the criterial explanation view, two people

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[23] Raz, above n 3 at 259.
[24] Ibid at 261.

who share a concept recognize the criteria for the use of a concept and if these do not match then the parties involved are talking at crossed-purposes. However according to Dworkin, this semantic explanation is not an adequate one since we can disagree about the criteria for applying a concept and still make sense of this kind of disagreement. Therefore, the natural conclusion is that criterial explanations of a concept are not adequate explanations for debates about pivotal cases.[25]

According to Raz, Dworkin fails to explain why this describes the situation that occurs when two people disagree about pivotal cases.[26]

Raz undertakes this latter explanatory task and asserts that Dworkin is committed to three fundamentally mistaken views. The first mistaken view is the individualistic approach, which is a theory of mind deriving from Descartes, establishing that the nature and individuation of an individual's mental kinds are independent from the nature and individuation of all aspects of individual's environment.

The individualistic approach dominates the post-Cartesian tradition and is defined by Tyler Burge[27] as follows:

> Individualism is the view that an individual person or an animal's mental state and event kinds—including the individual's intentional or representational kinds—can in principle be individuated in complete independence of the nature of empirical objects, properties or relationships (excepting those in the individual's own body, on materialist and functionalist views)—and similarly do not depend essentially on the natures of the mind or activities of other (non-divine) individuals. The mental natures of all an individual's mental states and events are such that there is no necessary or other deep individuative relationship between the individual's being in states, or undergoing events, with those natures, and the nature of the individual's physical and social environments.[28]

Raz indicates that the individualistic approach supposes that each person holds a set of criteria that he or she follows when applying a concept and that these criteria define the concept for that person. Thus, if others follow different criteria there is no evidence that they are mistaken. On the contrary, it merely shows that they are following different concepts.

Raz criticizes the individualistic approach and argues that the criteria set by each person's individual rules for the correct use of terms are not fully specified. Quite the reverse is true and each individual's criteria are incomplete because the use of terms and concepts is governed by the common criteria for their use. People recognize that there are commonly shared criteria established by the linguistic community. However, they also acknowledge mistakes and errors when their personal criteria do not match those of the linguistic community, and do not insist that their personal criteria are the correct ones.[29]

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[25] Ibid.
[26] Ibid.
[27] Burge, 'Cartesian Error and Perception' in *Subject, Thought and Context* (Oxford: Clarendon Press, 1986).
[28] Burge, above n 27 at 119.
[29] Raz, above n 3 at 264.

Raz concludes that if Dworkin's argument is that people who use concepts cannot be mistaken about their criteria, and therefore that criterial explanations cannot explain pivotal or criterial disputes, then Dworkin's view should be rejected. Raz shows that Dworkin's argument presupposes an individualistic approach, which establishes that people are certain about their personal criteria for the correct use of a concept and that they do not accept that they make mistakes in following a rule. Within this individualistic model there cannot be disputes about the criteria for applying a concept. Raz further argues that the individualistic model is an unsound explanation of how we learn the correct criteria for applying a concept within a linguistic community. We do not develop our own personal criteria independently from others and we frame our errors and mistakes within the correct use of the community's rules.

Dworkin's second error is to overlook the complexity and non-transparency of criterial explanations. Raz argues that agreement on the actual use of concepts is neither a necessary nor a sufficient condition for agreement on the criteria for their application.[30] Consequently, even though participants in a linguistic community have a clear understanding of the criteria, they do make mistakes in applying a concept. Similarly, individuals might agree on the use of a concept but disagree on the correct criteria—such a disagreement becoming obvious in a hypothetical case.

Raz argues that the criteria for applying a concept are complex. They might be related to other applications of criterial examples. The typical example of this form is when we use a historical or religious personality such as Jesus as a criterial example of a 'good person'. Two people might agree that he is a suitable example of a good person and still debate the ways in which being like Jesus shows one to be a good person.[31]

Raz[32] also argues that we use concepts to criticize our original concepts and beliefs to revise our original beliefs. Indeed, we assess some of our beliefs whilst leaving others suspended and then revise these beliefs whilst being committed to yet others. According to Raz, in this process we also analyse the implications of beliefs we hold for matters about which we are undecided, continually clarifying the borders and contours of our concepts. This process involves a debate as to whether our criterial explanations are adequate. This argument serves as a defence against the objection that our evaluative disputes begin only after conceptual disputes are settled. For Raz the clarification of evaluative concepts plays a fundamental role in our evaluative disputes, and therefore, in questions such as whether or not our criteria for applying a concept are correct. He argues that changes to our concepts are gradual and partial, which means that the way our concepts change is similar to the way that our beliefs change. Furthermore, according to Raz, the fact that we have a common rule for the use of a concept does not involve the idea that this common rule is the reason to support a

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[30] Ibid at 265.
[31] Ibid at 267.
[32] Ibid at 268.

concept. This confuses the presupposition for sharing a concept with the reason used in debates about the concept.

Raz's third argument is the idea that there is a relative independence of interlinked concepts, which means that we need certain concepts to understand other concepts, even though we might not have a full understanding of the former. Following Raz, a particular concept may depend on other concepts but the correct criteria for applying the latter are not necessary for determining the criteria for applying the former. A well-known example is the concept of just war since this involves the idea of the proportionality of harm. The difficulty is that we might not know the correct criteria for applying the concept of proportionality of harm whilst we do know the correct criteria for applying the idea of a just war. To understand the idea of a just war it is unnecessary to have a comprehensive understanding of how to compare the severity of different harms. The two concepts of just war and proportionality of harm are only relatively independent. According to Raz,[33] it is unsound to assert that the correct criteria for applying the concept of just war depend on the correct criteria for applying the concept of proportionality of harm. This idea might entail absurd consequences such as the possibility that we may have a vast array of shared criteria but be unable to understand one concept without understanding all of them. This is not however how our concepts work since there is relative independence among them. Consequently, concepts such as just war can both be explained criterially and produce theoretical disagreements, i.e. disagreements about the correct criteria for applying a concept.

According to Raz, Dworkin challenges the supporters of criterial semantic explanations for the reason that they cannot explain theoretical disagreements. Raz[34] tells us that theoretical disagreements are about the grounds of law, which he considers to be disagreements about the truth-conditions of legal propositions. Additionally, Raz asserts that disagreements such as whether the cost of repair is the exclusive test of proportionality of harm, or whether proportionality of harm is a condition of a just war, are theoretical disagreements about just war, namely about the correct criteria for applying the concept of just war. Raz also states that Dworkin errs in overlooking that just war is a criterially explained concept.[35]

Instead, Raz informs us that the argument of the relative independence of interlinked concepts is a refutation of the semantic sting argument. This refutation is independent of its refutation by the argument that Dworkin's conception overlooks the opacity and complexity of criterial explanations.[36] Furthermore, Raz considers that there are two fundamental differences between the arguments. The first difference is that the opacity argument establishes the possibility of

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[33] Ibid.
[34] Ibid at 270.
[35] Ibid at 271.
[36] Ibid.

disagreement about the rules for the use of a concept, which shows that one of the speakers does not have a complete understanding of that concept. In contrast, the relative independence argument merely shows that even those who have a complete understanding of the concept might disagree with others about the truth conditions of the propositions. The second difference is that the opacity argument shows that there could be theoretical disagreements in the case of criterially explained concepts that are opaque. The relative independence argument establishes that Dworkin's semantic criticism does not apply to criterially explained concepts that are interlinked with other concepts producing theoretical disagreements.[37]

Raz's fourth argument is that theoretical criterial explanations are different from ordinary criterial explanations.[38] He claims that theoretical criterial explanations seek a more systematic understanding of a concept. Ordinary criterial explanations guide the correct use of a concept within a linguistic community and are addressed to the interests and purposes of the community. In contrast, theoretical criterial explanations aim to understand the nature of a concept and the fundamental interest is to improve this understanding. This latter feature does not however make theoretical explanations less criterial; they also follow the criterial model since their truth and adequacy is tested according to the rules that govern the use of the concept.[39]

The primary argument of this article uses Raz's interpretation to argue that if Dworkin's notion of theoretical disagreements is to elude Raz's semantic criticisms, then the distinction between theoretical and semantic disagreements should be based on a realist argument. Raz's challenge enables us to see the difficulties of Dworkin's idea of genuine theoretical disagreements. The question that then arises is whether or not the idea that there is a minimal ontological commitment, which is prior to our semantic views, would give a more accurate explanation of the distinction between genuine theoretical and semantic disagreements. The response is positive, and the approach avoids Raz's challenge that a wider version of criterial semantics may explain theoretical disagreements. The idea that the ontological issue should be settled prior to the semantic explanation of a concept[40] grounds Dworkin's defence of theoretical disagreements on a genuine concern for the nature of our moral and legal experiences, rather than on our linguistic or conceptual practices. Thus, Dworkin emphasizes our conviction that there are right answers about what the law is, that judges deliberate and make decisions according to this conviction, that moral and political principles constrain our interpretation of what the law is and that we have convictions about the moral soundness of legal judgements.[41] Realist strategies of argument assume that the best possible

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[37] Ibid.
[38] Ibid at 271–272.
[39] Ibid at 272.
[40] The explanation of realism has been developed in the first part of this article.
[41] Dworkin, *Law's Empire*, see n 2, chs 1–7.

explanation of our legal and moral phenomenology is that there is a minimal ontological aspect that determines, and should be settled prior to, our semantic explanations of concepts. The best interpretative theory to understand this minimal ontological aspect is a theory of constructive interpretation. The theory of constructive interpretation aims both to explain theoretical disagreements and to give the best possible interpretation according to the two criteria of fit and soundness of the nature of law. Disputes about pivotal cases cannot be explained merely by an *a priori* criterial semantics since the question is not what are the correct criteria for applying a concept but rather what the nature of law is. The key idea, that the ontological aspect should be settled prior to the semantic one, does not contradict the idea that we need concepts to understand the nature of things. On the contrary, we need to resort to our concepts to understand the realist elements of our interpretation, but the consequences are that we have disputes about our concepts and the different criteria for applying these concepts, and that these concepts and criteria refer to a realist element.

Once we understand that Dworkin's distinction between semantic and theoretical disagreements establishes that ontological aspects should be settled prior to semantic ones, Raz's other arguments fail. The argument that Dworkin overlooks the complexity and non-transparency of criterial semantic explanations fails within a realist interpretation. Dworkin may concede that criterially explained concepts are complex and opaque but this argument does not refute the idea that there are theoretical disagreements that cannot be explained by criterially explained concepts. Theoretical disagreements are about the truth-conditions of legal propositions or about the 'grounds of law'.

The first part of this article explained a particular kind of realism which assumed that metaphysical or ontological issues are not determined by our semantic view and established that realism is not constituted by any doctrine of truth such as criterial semantics, the correspondence theory or the deflationary theory of truth. This means that realism is a metaphysical or ontological claim that adumbrates a theory about the relationship between our symbols and the world and argues that it is necessary to establish the ontological issue prior to the semantic one. The justificatory strategy propounded is a coherence theory asserting that we have considered moral judgments, which enjoy a certain degree of reliability, and that our moral beliefs should cohere with these considered moral judgments. Neither the justificatory strategy nor the semantic task determine realism. They are subsidiary to science and metaphysics.

It is arguable that Dworkin aims to defend the priority of the ontological or metaphysical issues of law. This realist reconstruction enables us to understand that 'genuine' theoretical disagreements are about the nature of law or the main features constitutive of law. These features have two dimensions: the existential and the independent. A plausible strategy is to observe our common-sense moral

and legal knowledge,[42] to analyse the way we inquire into legal and moral matters and to study and observe the phenomenology of legal and moral experiences such as when we 'genuinely' disagree and believe that one party in a dispute is right. Practitioners of law dispute what features make a decision 'fair' or 'just' and genuinely disagree about the characteristics that constitute the underlying principles of law. Devitt and Brink defend the view that realism is the best possible explanation of our common-sense moral knowledge and common-sense observational and non-observational knowledge. The proposition that genocide or setting a cat alight is morally wrong is part of our common-sense moral knowledge. In law we can genuinely disagree on what features comprise 'fairness' or 'integrity'. We might conclude, following the realist arguments of Brink and Devitt, that the best possible explanation of these moral and legal phenomena is realism. The philosophical notion of 'the inference to the best explanation' enables us to reach this conclusion. The purpose of this notion is to show that alternative hypotheses do not have the explanatory force of realism.

In an imaginary example in which we witness the mass murder of children and women, one possible explanation of our feelings of disgust and moral outrage is that social and economic conditioning instils these feelings in us. Consequently, if we have had been brought up in different economic and social circumstances we would have not have similar convictions about the immorality of this act. However, it is possible to envisage difficulties with this alternative hypothesis. The primary question is whether or not under these new economic and social circumstances we would still understand ourselves as humans and as having the same features that we appreciate in any human being. An alternative hypothesis is that there is a demon that produces illusory feelings of rightness or wrongness. Nonetheless, the question remains why would this particular conviction of immorality arise within us? The reply might be that there is a second demon that makes the first demon display this particular kind of conviction. However this is an *ad hoc* explanation and it cannot really compete with the realist view.

In law it is arguable that we genuinely disagree and believe that one party is wrong and the other is right. Therefore according to Dworkin, legal practitioners do not believe that their disagreements are merely about the correct criteria for applying a concept. It is also arguable that realism is the best possible explanation of these 'genuine' disagreements. It could be objected that it is an illusion that these disagreements are 'genuine' and refer to a reality that is independent of our semantic views, mind, epistemic capacities or the way we interpret or think about things. The conviction that someone might be wrong could be just a reflection of different conflicting emotions or attitudes towards the dispute.

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[42] It is arguable that this common-sense legal knowledge is what Dworkin calls the 'pre-interpretative stage'. Dworkin uses three analytical categories to explain the different stages of interpretation. First, the pre-interpretative stage establishes the content of the practice. At the interpretative stage the interpreter settles a general justification for the main elements of the practice identified at the pre-interpretative stage, and at the post-interpretative stage, the interpreter adjusts his sense of what the practice really requires to serve the justification given at the interpretative stage. It is important however to emphasize that Dworkin argues that these are analytical categories that help us to understand the interpretative task, but that the process is not that structured. (See Dworkin, *Law's Empire* at 66–7).

Therefore, disagreements are not genuine in the sense that they refer to the same reality, rather they are just our expressions or emotions, which have no cognitive content. To overcome this objection a realist needs to show that a reality, which is independent of us, is the best possible explanation of the moral and legal phenomena of 'genuine' disagreements. Realists argue that once legal practitioners or moral disputants are aware that the conflict is just about mere emotions or expressions of disgust or approval, then they will abandon the legal or moral arena and attempt to focus on these emotions. It seems unlikely, therefore, that they will continue to disagree on what 'fairness' or 'integrity' really require. Consequently, realists argue that realism provides the best possible explanation for judges and lawyers to have 'genuine' legal disagreements. Dworkin might reply to Raz's challenge that they do not disagree on the correct criteria for applying their concepts because the criteria that should apply to these concepts are interlinked to other criteria or because our concepts are non-transparent or opaque. They disagree on the features that constitute 'fairness, 'integrity', 'goodness' and 'justice'. This is a metaphysical or ontological disagreement, which makes the disagreement a 'genuine' disagreement.

B. *A Positive Argument: A Realist Element Explains the Notion of 'Genuine' Theoretical Disagreements*

The central endeavour of Dworkin's legal programme is the explanation of both theoretical disagreements and of the way that judges and practitioners of law reach a correct answer.[43] The main feature of theoretical disagreements is the realist element, which presupposes that all theoretical disagreements have the same subject matter.

Dworkin[44] advocates the idea that propositions of law are true or false in virtue of other propositions. These other propositions are more basic or 'familiar'[45] and are called 'grounds of law'. Disagreements about the grounds of law are called theoretical disagreements.[46] The realist element of Dworkin's notion of theoretical disagreement is the outcome of a distinction between pivotal and borderline cases. The latter involves the idea that our language is vague and that people have general agreements about the standard usage of words but disagree about marginal cases. In contrast, a pivotal case involves the idea that a disagreement will occur over the use of the word on any occasion. Disagreements about pivotal cases involve the idea that all cases are controversial and, according to Dworkin, pivotal cases produce theoretical disagreements because the disputants do not agree on the grounds that make certain propositions true.

One illustration of the distinction between semantic and theoretical disagreements is the discussion as to whether or not photography should be considered an 'art'. In semantic disagreements art critics need to analyse standard

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[43] Dworkin, *Law's Empire* at 11.
[44] Ibid.
[45] Ibid.
[46] Ibid at 5.

cases of how we use the word 'art' and to determine whether photography should be considered as similar to or different from these standard cases. In this case we determine the uses of the word 'art' and scrutinize standard cases such as painting and sculpture. Consequently, we disagree about the criteria to determine whether photography is an art or not because it is a borderline or marginal case. In theoretical disagreements, art critics disagree about the nature of both art and the standards forms of art such as painting and sculpture. In this way, our disagreement about whether photography is a form of art or not is due to a disagreement about the nature of art itself. These disagreements are about pivotal cases and yield theoretical disagreements.[47] We might assert that sculpture and painting are uncontroversial examples because the use of the language of art makes them standard cases of art. However, if we consider a more controversial matter such as the real nature of art the usage of the language of art cannot help to settle the dispute and all instances of art such as painting and sculpture are potentially controversial.

The realist element of Dworkin's notion of theoretical disagreements is similar to the realist conception defended in the first part of this article. In order to have intelligible theoretical disagreements, which are not semantic disagreements, we need to presuppose that opponents agree on the ontological issue that there is a common subject matter. In this way there can be consensus that disagreements are not about language and the different conflicting meanings of terms but more specifically the different uses of these terms. Consequently, the nature of the subject matter has to be independent of our language.

There is a possible objection to this realist interpretation of the notion of theoretical disagreements. Some might object that the characteristics of the nature of the subject matter do not determine a reality independent of how we think about it. Thus there are theoretical disagreements that are not semantic disagreements and we do not need to advocate 'ontological' commitments, such as the notion of a common subject matter. The objection continues that we do not need to advocate an ontological or metaphysical perspective prior to our semantic view in order to make intelligible the idea of theoretical disagreements. Instead, there are conceptions or 'interpretative attitudes' about what our subject matter is. These conceptions attribute certain features to the subject matter, but do not refer to something independent of our conventions or methods of interpretation.

Dworkin's constructive programme establishes that law is a practice and should be analysed from an internal point of view.[48] The notion of common subject matter in law is constituted by the set of practices that need to be interpreted in terms of its purposes. A defence of Dworkin's constructive programme might involve the argument that common subject matter is guaranteed by common

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[47] Ibid at 42.
[48] Ibid at 11–15.

practices. Disputes arise as to the outcome of interpretative attitudes or conceptions that are imposed on these practices and such conceptions require a minimal acceptance of common practices.

A scientist might consider that there are no 'genuine' disagreements about different physical theories but rather that there are semantic disagreements about scientific practices. He or she might also assume that the different scientific physical theories are mere discussions about concepts such as gravity or mass. Supposing that two scientists advocate different theories, the Newtonian model and Einstein's model of relativity, and as a consequence, appear to have genuine disagreements about the properties of gravity and mass of physical objects. One scientist argues that these disagreements are not genuine in the sense that they aim to explain the nature of an independent reality; in fact the disagreement is about 'interpretative attitudes' that aim to explain our common practices. Thus these disagreements are not about features that constitute 'real' properties. In contrast, a third scientist might think that the two scientists disagree because they have different convictions about the nature and properties of both gravity and mass. The question that then arises is whether mass and gravity are merely linguistic and scientific practices, or whether they correspond to some state of affairs or facts. In order to adhere to the idea that there are 'genuine' disagreements, our second scientist needs to argue that mass and gravity are real properties. However suppose that somebody else argues that what makes the disagreements 'genuine' between the two models are their scientific practice. This would mean that the scientific community agrees on the fact that there are properties such as mass and gravity and it is scientific practices that make the disagreements 'genuine'. Although mass and gravity do not correspond to anything in the world, scientists argue about mass and gravity producing books and materials that utilize and discuss these concepts as 'real'. The semantic theorist will see no difference between his view and the latter explanation. He might even modify his weak semantic disagreement thesis for a more robust one. He merely needs an additional element, which is the idea that the participants have strong convictions about their own practices and that they think it is a genuine disagreement. A problem arises in that if our scientists advocate this latter thesis, then they might also advocate the idea that gravity and mass do not refer to real properties in the world. It might subsequently seem as if there is no reason to maintain that there is genuine disagreement and this lack of correspondence would undermine our own convictions.

Extending this analysis to the domain of legal practice, Dworkin tells us that there are genuine disagreements in law and that this disagreement is not about the criteria to determine what law is but rather about the nature of law itself. He then introduces his constructive legal theory of interpretation that aims to construct the best possible interpretation of the different conceptions of law according to the two criteria of fit and soundness.

Participants in legal practice develop an 'interpretative attitude' and attempt to find the point or purpose of legal practice. Legal practitioners develop different conceptions about the nature of law, which produce genuine disagreements. This article aims to show that these 'genuine' disagreements involve a realist element. An objector might argue that common legal practice provides the necessary elements to consider these disagreements as 'genuine' but let us suppose that we have three different interpretations of the purpose of legal practice. One might argue that the purpose of the legal practice is to guarantee the co-ordination of our social activities, another might argue that the purpose of legal practice is to reach a balance between flexibility and reliability and the third that the question is interpretative and that the answer dwells in the way we conceive of our ideal community. The third participant then considers that the best interpretation of our model of community is according to the political principle of integrity, and that the purpose of law should also follow the conception of law as integrity.

Dworkin insists that we resort to our political and moral convictions to find the best possible interpretation of this genuine disagreement. So the question that arises is whether our moral convictions correspond to something independent of how we think about it. Our convictions are beliefs that might correspond to moral or political principles, whose nature is independent of what we think about it. I have claimed that Dworkin needs to assume a realist element in order to make intelligible his notion of 'genuine' disagreements but an objector might reply that legal practice is already sufficiently 'dense' or 'thick' to provide this realist element. The objector might argue that legal texts, legislative acts, constitutions, lectures are forms of political and moral practices that give us the necessary elements to consider our disagreements as 'genuine'. In response we might reply that semantic theorists will accept this latter conception since they will argue that all our practices are embedded in our linguistic practices, and that we require a more robust version to incorporate theoretical disagreements. Therefore it is arguable that Raz's criterial semantic explanation of 'genuine' theoretical disagreements is the best candidate for a sophisticated semantic view of these disagreements. Furthermore according to semantic theorists the nature of principles such as 'justice', 'integrity' or 'fairness' depend on the way that legal practice conceives of such concepts. Will legal participants maintain their genuine disagreements once they discover that their convictions refer only to their own practice? If the answer is positive, I envisage fundamental difficulties.

In conclusion, the realist interpretation of the notion of 'genuine' theoretical disagreements is incompatible with Dworkin's ametaphysical view. Dworkin's criticism of metaethics is explained in 'Truth and Objectivity: You'd Better Believe It',[49] where he argues that metaethical judgments about morality might either be reduced to substantive moral claims or are rendered unintelligible.

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[49] Above n 2.

Dworkin denies that metaethical considerations such as a realist interpretation could play a role in understanding the objectivity of moral and legal judgments. Should Dworkin's legal programme revise its ametaphsyical view to mitigate this latter tension? Important issues may arise from such a revision. A realist interpretation of Dworkin's notion of 'genuine' theoretical disagreements might commit Dworkin's legal theory to a natural law conception, and a revision of Dworkin's notion of theoretical disagreements might require a revision of his criticism of both legal positivism and semantic disagreements.