Dworkin on External Skepticism and Moral Permissions

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This article discusses Ronald Dworkin’s first objection against what he calls *external moral skepticism*, the view that denies truth-value to moral judgments. According to that objection, an external skeptic denies that substantive moral judgments can be true. But, at the same time, the objection goes, what follows from the skeptical view is that all actions are morally permissible, which is in itself a substantive moral judgment. We call this “the self-defeating argument”. We argue that the objection’s success depends on how we interpret the idea of moral permission, an issue Dworkin does not clearly resolve. Against his objection, we advance two different arguments. First, once we learn what role the idea of moral permission plays in morality we can see that any plausible view of some agent’s moral permission must acknowledge its complex character, and that the existence of a moral permission must have some impact on the balance of moral reasons for other agents. On this understanding, it is false that it follows solely from external skepticism that everything is permissible. Second, we argue that even if permissions have a simple character, not a complex one, they are plausible only when framed within a moral constellation of rights and obligations. So understood, it is, again, false that it follows from external skepticism that everything is permissible.

**Keywords:** Ronald Dworkin, moral permissions, autonomy, moral skepticism, external skepticism

In memory of Ronald Dworkin (1931-2013)

**Introduction**

In *Justice for Hedgehogs* (Dworkin 2011),¹ Ronald Dworkin formulated different arguments against a view he calls *external skepticism about morality*. This view, according to Dworkin, embraces two types of moral skepticism: *error skepticism*, like that represented by John Mackie’s error theory, and *status skepticism*, including other well-known versions of metaethical skepticism: Ayer’s emotivism, Gibbard’s expressivism, and Blackburn’s quasi-realism (Dworkin 2011, pp. 32-33; 52-68). We agree with Dworkin that external skepticism is unsound. However, we disagree regarding the plausibility of what seems to be his central objection: that external skepticism is self-contradictory, that it “defeats itself” (Dworkin 2011, p. 40). According to Dworkin’s argument, external skepticism denies that substantive moral judgments can be true. At the same time, so Dworkin argues, the objection implies that what follows from the sceptical view is that all actions are morally permissible, which is itself a substantive moral judgment. Because of this incoherence, we call this “the self-defeating argument”.

In memory of Ronald Dworkin (1931-2013)
The self-defeating argument — at least Dworkin’s version — seems quite compelling at first sight. As we will try to show, however, the argument is at best incomplete, and at worst misguided. The reason lies in a fundamental ambiguity in Dworkin’s use of the idea of moral permission. Despite the important role it plays in his argument, Dworkin is not very clear about what such an idea really involves, and in what sense external skepticism might imply that everything is “morally permissible”. We will distinguish between several conceptions of substantive moral permissibility, and we will argue that external skeptics need not endorse any of them. External skeptics are instead committed simply to judgements about non-substantive (non-moral) permissibility, which do not conflict with other views about morality. In other words, external skeptics need not believe that everything is morally permissible. If they do claim that “everything is permissible”, the conception of permission they then use does not, contrary to Dworkin, commit them to judgements about moral permission used in substantive moral judgments, and thus their position is not self-defeating.

In developing our criticism of Dworkin, we act as a devil’s advocate and join a list of critics (Shafer-Landau 2010; Smith 2010; Star 2010; Pettit 2011) who have defended external skepticism from Dworkin’s attack without themselves being moral skeptics. We are not interested in rescuing moral skepticism from all counter-arguments. We attempt to show only that moral skepticism cannot be rejected solely on the basis of the self-defeating argument.

In the next section we reconstruct Dworkin’s characterization of external skepticism in its two varieties: error skepticism and status skepticism. We then present his main objection to both views, namely the self-defeating argument. In the subsequent sections we explain how Dworkin changed his presentation of the argument after receiving some early criticism. We then show that the plausibility of the argument depends on how we understand the idea of a moral permission, and we explore various understandings. We will extensively analyze what we consider to be the most plausible notion of moral permissibility, one aimed at protecting moral autonomy. We discuss how, on such a view, moral permissions must be complex in nature, something that conceptually connects the absence of moral reasons for or against certain conduct by one agent with the presence of certain moral reasons that apply to others. We will then describe a possible reply on Dworkin’s behalf that vindicates a simpler idea of moral permissions that conceives them in minimalist terms, with no commitment to the existence of reasons for others. Finally, we will consider this alternative account of
moral permissions, and we will argue that those who affirm that something is morally permitted, even in this minimalist view, are in fact taking for granted certain presuppositions that are incompatible with external skepticism. Altogether, we aim to make sense of a fundamental conceptual distinction between the notion that ‘everything is permissible because all substantive moral judgments are untrue’ and the notion that ‘something is morally permissible’.

**External Skepticism**

Ronald Dworkin characterizes external skepticism, in contrast with internal skepticism, in the following way:

“Internal skepticism about morality is a first-order, substantive moral judgment. It appeals to more abstract judgments about morality in order to deny that certain more concrete or applied judgments are true. External skepticism, on the contrary, purports to rely entirely on second-order, external statements about morality…[I]nternal skepticism stands within first-order, substantive morality while external skepticism is supposedly Archimedean: it stands above morality and judges it from outside. Internal skeptics cannot be skeptical about morality all the way down, because they must assume the truth of some very general moral claim in order to establish their skepticism about other moral claims. They rely on morality to denigrate morality. External skeptics do claim to be skeptical about morality all the way down. They are able to denigrate moral truth, they say, without relying on it.” (Dworkin 2011, p. 32)

External skepticism, therefore, is a metaethical position that presumably does not advance any particular first-order substantive moral judgment. That is precisely why Dworkin called it “external”. According to Dworkin, there are two types of external skepticism: error skepticism and status skepticism. Again, it is worth quoting at length Dworkin’s own words:

“Error skeptics hold that all moral judgments are false. An error skeptic might read the ordinary view as assuming that moral entities exist (…). He might then declare that because there are no moral particles, it is a mistake to say that torturing babies is wrong or that invading Iraq was immoral (…). It is external skepticism because it purports to rely only on value-neutral metaphysics: it relies only on the metaphysical claim that there are no moral particles (…). Status skeptics disagree: they are skeptical of the ordinary view in a different way. The ordinary view treats moral judgments as descriptions of how things actually are: they are claims of moral fact. Status skeptics deny moral judgment that status: they believe it is a mistake to treat them as descriptions of anything. They distinguish between description and other activities like coughing, expressing
emotion, issuing a command, or embracing a commitment, and they hold that expressing a moral opinion is not describing but something that belongs in the latter group of activities.” (Dworkin 2011, p. 32)

Error skepticism and status skepticism are forms of external skepticism in the sense that they both aspire to “…denigrate moral truth (…) without relying on it.” The error skeptic does so when she affirms that all first-order moral judgments are false because they affirm the existence of moral entities that do not actually exist. The status skeptic does so when she holds that all first-order moral judgments are not truth-apt, for they are just expressions of preference, desire or taste that cannot be true or false.

The two varieties of external skepticism, therefore, have two claims in common. First, both share a claim about first order moral judgments, namely, that all substantive moral judgments are “not true”. The error skeptic affirms this because she takes them all to be false. The status skeptic does it because she denies that any of them are truth-apt. In any case, they are taken to be not true. This is why both varieties “denigrate moral truth”. The second claim concerns the premise on which such a conclusion is based. Both positions aspire to use non-moral premises, that is, premises that do not constitute moral judgments. This is what makes them forms of external skepticism, which aspires to denigrate moral truth “without relying on it”. In other words, they aspire to adopt an Archimedean or metaethical perspective, supposedly external to morality, and derive from that standpoint the conclusion that all first-order moral judgments are untrue. But can they achieve what they aspire? For reasons now to be examined, Dworkin believes they cannot.

**The self-defeating argument**

Dworkin provides two general arguments against external skepticism that correspond to the two elements outlined in the previous section. The aim of both arguments is to challenge its external character; that is, to show that external skepticism, contrary to its explicit claims, is necessarily committed to affirming the truth of some first-order moral judgment. Dworkin’s first argument consists in showing that the conclusion raised by the two varieties of external skepticism, that no first order moral judgment is true, is self-contradictory, for it actually implies the truth of some moral judgment. Dworkin’s second argument starts by qualifying such a conclusion as evaluative. He then shows that by virtue of what he calls Hume’s principle, some of the premises used in both types of moral skepticism to reach such a conclusion must be moral judgments since no
evaluative conclusion can be established on the basis of mere factual claims. In his own words, “(...) no series of propositions about how the world is, as a matter of scientific or metaphysical fact, can provide a successful case on its own – without some value judgment hidden in the interstices – for any conclusion about what ought to be the case (...)” (Dworkin 2011, p. 44).

Both arguments try to show that an external Archimedean metaethic is not possible. To be sure, Dworkin accepted the possibility of descriptive ethics, which studies “morality as a social and psychological phenomenon” (Dworkin 2011, p. 45) from an external point of view but does not respond to the question “which moral opinions are true?” (Dworkin 2011, p. 46). Skeptical metaethics, in contrast, claims, as we have seen, that no moral judgments are true, and this implies an evaluative, and not just descriptive, claim about morality, one that is self-contradictory. The reason such a conclusion is self-contradictory is, however, the same reason why Dworkin conceived it as an evaluative claim. Thus, the two general objections against external skepticism are not independent. If, and only if, the conclusion of the self-defeating argument is sound, does external skepticism entail a substantive moral claim that, according to Hume’s principle, must be based on some moral premise.

Dworkin used an example to demonstrate his argument. Imagine a debate between four individuals – A, B, C, and D – holding the following respective views on a particular substantive moral issue:

“A: Abortion is morally wicked: we always in all circumstances have a categorical reason – a reason that does not depend on what anyone wants or thinks – to prevent and condemn it.
B: On the contrary. In some circumstances abortion is morally required. Single teenage mothers with no resources have a categorical reason to abort.
C: You are both wrong. Abortion is never either morally required or morally forbidden. No one has a categorical reason either way. It is always permissible and never mandatory, like cutting your fingernails.
D: You are all three wrong. Abortion is never either morally forbidden or morally required or morally permissible.” (Dworkin 2011, p. 42)

The first three individuals are certainly making first-order moral judgments. The first, A, states that abortion is forbidden. B insists that abortion is required, at least in some circumstances. And the third, C, says that abortion is permissible. These three positions can thus be expressed in prescriptive or deontic terms. However, we can also characterize them, as Dworkin did, as statements about the existence or non-existence of
categorical reasons for action. A affirms that categorical reasons exist to prevent and to condemn abortion. B, in contrast, states that at least under certain circumstances it is possible to find categorical reasons not only not to prevent or refrain from abortion but to require it. Finally, C responds that there are no categorical reasons either to abort or refrain from it, and therefore abortion is permissible.

If all these claims are first-order moral judgments, by the same argument D must also be asserting a judgment of this kind, or at least implying it. D is, in Dworkin’s characterization, an external skeptic. He is someone who affirms that no moral reasons exist at all. Therefore, his claim entails the same first-order moral judgment claimed by C. In Dworkin’s words, “He makes a much more general claim than C does, but his claim includes C’s. He has taken a position on a moral issue: he has taken a substantive, first-order, moral stance” (Dworkin 2011, p. 43). The skeptic’s claim that everything is permissible would entail that abortion is also permissible. Thus, the conclusion raised by external skepticism is evaluative – it contains or entails evaluative claims – and that is why external skepticism is self-contradictory.

**First criticisms and Dworkin’s new terms**

At one point Dworkin circulated a draft of several parts of the book, including Chapter 3, and discussed it in several places. One venue was a symposium held at Boston University in 2009 involving the participation of several philosophers and lawyers who subjected Dworkin’s ideas to criticism and commentary. Interestingly, Dworkin’s first presentation of the debate on abortion outlined in the previous section included only three positions – A, B and C – and it was presented exclusively in deontic terms, that is, using the three traditional deontic operators, prohibition, obligation and permission, with no reference to the idea of categorical reasons for action. The three critics who commented on metaethical issues – Russ Shafer-Landau, Daniel Star and Michael Smith – discussed Dworkin’s general argument against external skepticism. But Smith focused particularly on the example of the debate on abortion. According to his understanding of external skepticism,

“(…) if someone says that an act is obligatory, forbidden, or permissible, then the truth of what they say presupposes – falsely – that there is something that it would be for actions to be one of these ways when in fact there is not anything that it would be for them to be any of these ways. There is not anything that it would be because the world contains no moral features at all: not the feature of being obligatory, not the feature of being forbidden, and not the feature of being
permissible either. This is all to say that external error skeptics deny that any moral qualities exist, including the quality of permissiveness” (Smith 2010, 512).

If the parties in the moral debate are discussing whether action \( x \) possesses the property of being forbidden, required or permissible, and if such properties are independent, then it should be logically possible to reject all three positions in a substantive debate by simply affirming that action \( x \) possesses none of these three properties without entailing that it actually has one of these properties, that is, with no self-contradiction.\(^7\)

Perhaps it was in resistance to Smith’s criticism that Dworkin changed the terms of the debate in the example of the final, published version of the book. Dworkin translated the four positions expressed in deontic terms into positions about the existence or non-existence of categorical reasons for action. As in the previous paragraph, when someone maintains that action \( x \) is morally required, she means to say that there are categorical, moral reasons to do \( x \). When another person says that such an action is forbidden, she means that there are decisive moral reasons to refrain from carrying it out. Finally, when a third person states that \( x \) is simply permissible, she is affirming that there are no decisive categorical reasons to either do or refrain from doing \( x \). This translation is apparently innocuous, since nothing should be lost by using these new terms.

This new way of presenting the debate, however, makes Dworkin’s argument appear immune to Smith’s objection. If the parties are debating the existence of categorical reasons to carry out \( x \) or for refraining from \( x \), it would not be logically possible to deny all three positions in a substantive debate without any contradiction. The reason for this is that one of these positions – one that affirms that \( x \) is permissible – states that there are no categorical reasons to carry out \( x \) or to refrain from \( x \). This is exactly what the external skeptic needs to affirm.

Another virtue of Dworkin’s new presentation of the self-defeating argument is that it possesses a clear and transparent core. This core is the idea that an action \( x \) is permissible when there are no categorical reasons to carry out or refrain from \( x \), in other words, when \( x \) is neither morally required nor forbidden. This argument makes it clear that the truth values of the moral judgments of permission, obligation and prohibition are not independent. Therefore, when a person states that first-order moral judgments of obligation and prohibition are untrue since there are no categorical moral reasons for or
against $x$, she is committed to affirming that the first-order moral judgment stating that $x$ is permissible is true. Consequently, this person – the external skeptic – tries to deny that there are any true first-order moral judgments at all and inevitably self-contradicts. The claim that there are no categorical moral reasons entails that all actions are morally permissible. The plausibility of Dworkin’s self-defeating argument, however, depends on the notion of moral permission, as we will show in the following sections.

**The idea of moral permissions in the structure of Dworkin’s argument**

Dworkin’s self-defeating argument assumes that there are at least three different normative positions in the debate on abortion – A, B and C – and affirms that an external skeptic’s position – D – logically entails one of them; more specifically, it entails the claim made by C. Thus, all four positions come to make “a claim about what reasons of a certain kind - categorical reasons - people do or do not have” (Dworkin 2011, p. 43). Dworkin’s argument is structured by two parts. First, he takes for granted that C’s claim that abortion is morally permissible is a first-order substantive moral judgment. Second, he holds that D is making a more general claim than C, one that includes C’s claim, since D affirms that there are no categorical reasons at all. The conclusion is that D’s position entails there is no reason to abort or not to abort, and thus abortion is morally permissible.

Let us assume that C’s statement that abortion is “always permissible and never mandatory” constitutes a first-order moral judgment. What needs to be proven, then, is that D’s claim truly entails the claim made by C. This depends entirely on how exactly C’s claim is understood. In other words, in order to see whether the statement that “there are no categorical reasons at all” entails the claim that “everything is morally permissible”, we need to first understand what morally permissible means. Dworkin was not very precise in characterizing the idea of moral permission. He states only that $x$ is morally permissible when there are no categorical reasons for or against carrying out $x$.

How do we understand a judgment regarding moral permissions? How should we understand C’s claim in the debate on abortion? We will now examine different interpretations of moral permission that could be espoused by C, and we will show that none are in fact entailed by external skepticism, that is, by D’s position. Consequently, we conclude that the self-defeating argument does not succeed, and we cannot reject external skepticism on this basis alone.
Autonomy and the complex character of moral permissions

Why should morality establish certain conduct as morally permissible? What is the rationale for leaving certain actions up to the free choice of moral agents, instead of regarding all possible conduct either as morally required or forbidden? Most moral theories acknowledge the existence of morally permitted actions, with perhaps the qualified exception of some forms of consequentialism. Although many different interpretations of moral permission have been proposed, almost all rely, in one way or another, on the value of moral autonomy. The only plausible notion of moral permission, we believe, is one that justifies spheres of free choice on the basis of this value of moral autonomy. This is the reason why it is often thought that if there are no moral permissions, as some forms of consequentialism appear to assume, individual autonomy would be compromised.

Admittedly, several types of moral permission may exist -- however, every one of them somehow refers to autonomy. What varies from one type to another is the sphere of autonomy that is being protected. Permissions can protect, for example, the autonomy of an agent in deciding not to act in accordance with the conclusive moral reasons that apply to the case. Let us call these permissions as second-order reasons. Alternatively, they can protect the autonomy involved in acting without interference from others. Let us call these permissions as rights. Permissions can also protect autonomy in acting without being hindered by obstacles other than third parties’ interference. Let us call these permissions as enablements.

The link between moral permissions of any type and moral autonomy helps to explain why anyone who claims that a course of action is morally permissible is formulating a substantive moral judgment. The reason is twofold. First, what underlies any permission is a substantive moral value: moral autonomy. Second, if something is permissible, moral reasons must exist to protect a certain sphere of personal autonomy. If moral permissions act as barriers that protect or preserve spheres of individual autonomy, when something is morally permissible there must be reasons to act that would otherwise not exist; in other words, if the conduct was not permissible, such reasons to act would be nonexistent. Based on these two reasons, the claim that $x$ is morally permissible constitutes a substantive moral judgment because it affirms that there are reasons for action, the function of which is to protect a substantive moral value.
When someone affirms that abortion is permissible, she may use the notion of permission as a second-order reason, meaning that although there are categorical first-order reasons to abort or not to abort, there is also a negative second-order, or exclusionary, reason to refrain from being guided by certain first-order reasons, that is, allowing not to act because of those first-order reasons (Raz 1990, pp. 178-199). Alternatively, she may use permission as a right, maintaining that although there are no categorical reasons to either abort or refrain from it, there are reasons not to interfere with the decisions of others to either abort or refrain from it. Furthermore, there are also reasons not to criticize or praise others for their decisions, whatever they may be. In another instance, she may use the notion of permission as enablement, and then affirm that although there are no categorical reasons to either abort or refrain from it, everyone has reasons to enable or make it possible for those who have decided to either abort or refrain from it to put their decisions into practice. In all three cases, some form of moral autonomy is being protected.

Judgments of moral permission, in any of these types, are undoubtedly substantive first-order moral judgments and possess a complex character. Observe, for instance, how Dworkin characterizes the position of individuals A and B in the debate on abortion. Both are making substantive first-order moral judgments. When A affirms that abortion is forbidden, she is not only saying that a pregnant woman has “always and in all circumstances” a categorical reason to refrain from aborting, but also, as Dworkin points out, that the rest of us also have a reason “to prevent and condemn it”. The same implication can be derived from B’s claim, although Dworkin did not mention it: if abortion is morally required under particular circumstances, it means that a pregnant woman under these particular circumstances has a categorical reason to abort, and furthermore the rest of us, in the absence of excusing conditions, have a categorical reason to at least condemn or blame her for not aborting.

Clearly, we are not claiming that if abortion is forbidden for a particular agent, that is, if the agent has categorical reasons not to undergo an abortion, the rest of us must in all circumstances perform the duty of stopping this agent from aborting. Special circumstances may apply that relieve us of such a duty. Perhaps there are second-order exclusionary reasons that make the action morally permissible for the agent, despite the fact that the agent has categorical reasons to refrain from aborting, and therefore we should not interfere with her decision to abort. However, when morality forbids a particular conduct, it does so because this conduct produces or constitutes a moral
disvalue that is typically not agent-relative. If aborting constitutes a moral disvalue, it is a moral disvalue for both the agent and the rest of us. This must have practical implications, again, not only for the agent but to all of us as members of the same moral community. Thus, substantive first-order moral judgments possess a complex character. They affirm the existence or absence of certain reasons for the agent to carry out \( x \), but they also imply other reasons for other actions that apply to the rest of the moral community.

These implications – the other reasons for other actions that apply to the rest of us – may be of a different nature depending on the value or disvalue at stake, the conduct in question, and other circumstances. Occasionally, the moral prohibition on \( x \) may impose on the rest of us the duty to prevent other agents from performing \( x \). In many circumstances this is what happens, for instance, with the moral prohibition of murder. At other times, it may simply impose on the rest of us the duty not to promote or encourage, let alone influence or determine, others performing \( x \). At the very least, the fact that an agent performs an action despite having decisive categorical reasons not to do it – and therefore acts wrongly – gives us reason morally to condemn this person for her action, and certainly not to praise her, with the exception of cases with permission as a second-order reason, as we discuss below.

In the same vein, moral permissions, given that they are also substantive first-order moral judgments, must have a complex character. They cannot simply affirm that the agent has no moral reason to either act or refrain although that is obviously at the core of their meaning. Moral permissions must imply something more in terms of reasons for action that apply to the rest of us qua members of the political community. This “something” depends, again, not only on the conduct that is permissible and the circumstances of the case, but also, most importantly, on the value being served or protected by the moral permission in question.

As we have argued, all plausible types of moral permission protect one form – or one instantiation – of moral autonomy. At the same time, they trigger different implications for others. Starting with the strongest, a moral permission as an enablement imposes on the rest of us the duty to make it possible for the agent to decide freely on the relevant conduct, as occurs with the idea of positive freedom. A moral permission as a right, however, imposes on us only the duty not to interfere in the agent’s action to carry out or refrain from \( x \), as occurs with the idea of negative freedom. Finally, a moral permission as a second-order reason may allow us to use certain means to try to prevent
the agent from carrying out $x$, given that the agent may have first-order categorical reasons to refrain from acting. In any case, it imposes on us the duty not to morally condemn the agent for choosing the action, since she was morally permitted to do it. In other words, morality ultimately gives the agent the opportunity to choose freely to act or not, and thus it protects this freedom. Any form of interference or criticism would therefore undermine the value of this weaker form of moral autonomy.

If the above is true, then C’s claim in the debate on abortion described by Dworkin, which is certainly a substantive first-order moral judgment, must also have a complex character, and therefore must have certain implications in terms of reasons for action that apply to the rest of the moral community. What these implications are depends again on what notion of moral permission C is using. Justice for Hedgehogs does not describe those implications but they exist nonetheless. Therefore, it cannot be true, as Dworkin supposed, that D’s position entails or includes C’s judgment. D may agree with C about the absence of categorical reasons to abort or not to abort, but they still disagree about the practical implications for the rest of us, specifically about the existence of categorical reasons for us to behave in a certain way. In other words, acknowledging the absence of categorical reasons for carrying out $x$ still does not represent a substantive first-order moral judgment. Making such a judgment also entails affirming the existence of certain reasons for action that apply to the rest of us qua members of the moral community. This is something that external skeptics, of course, cannot accept under any circumstances.

D affirms that “abortion is not mandatory” because there are no categorical moral reasons to abort. She also affirms that “abortion is not prohibited” because there are no categorical reasons to refrain from aborting. Finally, she affirms that “abortion is not permitted” because there are no categorical reasons for others to not impede, enable, or not condemn the decision to abort. Thus, it is perfectly possible for D to affirm that what A, B and C affirm is false, and D’s position does not entail or include C’s.

Another way to illustrate the same point is by using the distinction between strong and weak negation employed by Von Wright (Von Wright 1959, pp. 6-7). A strong negation affirms something and denies another thing at the same time. If one strongly negates that S is P, one is i) affirming the existence of S and ii) negating that the predicate P applies to S. If, alternatively, one weakly negates that S is P, one is simply denying that S is P, but one is not committed to saying that S actually exists. Thus, strongly negating that there are categorical reasons to abort or not abort – as C
does – is the equivalent to affirming that there are categorical reasons that prescribe certain conducts while denying that any of these reasons prescribe aborting or not aborting. Moral permissions are necessarily strong negations because they entail that there are moral reasons, for instance, not to interfere with or enable the decision to abort. However, D does not do this, but rather negates the existence of categorical reasons prescribing conduct, in addition to negating that there are moral reasons to abort or not abort. D is therefore negating the existence of moral reasons that prescribe abortion or refraining from abortion in a weak sense only. C and D negate moral reasons in different ways: C in a strong way and D in a weak one. Consequently, D does not in fact make a more general judgment that entails the truth of C’s more specific one, as Dworkin argued.

When external skeptics affirm that all substantive first-order moral judgments are untrue, they do not mean – nor does it follow – that everything is morally permissible. If they held that everything is permissible, they would only be loosely restating that moral reasons do not exist at all. In any case, such a position would never entail that everything is morally permissible. Therefore, the external skeptic’s conclusion that all substantive first-order moral judgments are untrue is neither self-contradictory nor an evaluative conclusion. This, then, is how Dworkin’s self-defeating argument is unsuccessful.

Dworkin’s reply and the idea of simple moral permissions
Were he alive, Dworkin might be tempted to criticise in the following way the last section’s argumentative strategy, which appealed to the complex character of moral permissions and their connection with the value of moral autonomy. He might respond that it is not true that all substantive first-order moral judgments possess this complex character and, more concretely, that moral permissions need not have any kind of implications in terms of reasons for action that apply to the rest of the moral community. In fact, this was his response to our paper during the symposium on Justice for Hedgehogs at Pompeu Fabra University in 2011.

As Dworkin argued on that occasion, there are situations in which affirming that “it is permitted for an agent to do x” does not imply that others have certain reasons for action. At that point, he gave a concrete example: in American football, he said, it is perfectly acceptable to say that players are permitted to try to reach the opposite end zone to score a touchdown without implying that the other players have reasons not to
impede or even less to enable that action. They are actually permitted to prevent the player to score, by certain means. He concluded that it is not true that every time someone affirms that something is permitted her statement means that others must have reasons not to interfere with or enable the permissible action. Similarly, Dworkin argued, C could coherently say that abortion is morally permitted, although the attempts to prevent abortion could be permitted too. In this case, admittedly, C would regard abortion as comparable to competitive sports. Dworkin recognized that such a position would be an unusual one but for his purposes what is relevant is that it would be perfectly coherent.

On the other hand, Dworkin conceded that when something is permissible, others may have reasons not to criticize a person who carries out the permissible conduct. These are however reasons of a different nature, he said. If others criticize a permissible conduct, their critical moral judgment is wrong but they will not be doing anything morally wrong. They will have made a theoretical mistake – mis-evaluating a certain action – but not a practical mistake. In other words, the reasons that apply to the rest of the moral community are not practical reasons, reasons for action, but rather theoretical reasons. In any case, no inconsistency exists in conceiving of the idea of moral permission as possessing a simple character, not a complex one, and therefore it has no implications in terms of reasons for action that apply to others.

Was Dworkin’s response correct? In the next section we will concede, arguendo, that moral permissions with a simple character may exist and have an intrinsic connection with the value of moral autonomy. We will then argue that even in that much weaker sense external skepticism does not imply that everything is morally permissible. Before that, however, let us say something in response to Dworkin’s response at the symposium.13

First, the example of American football seems insufficient to rebut our argument. We were not claiming that the notion of permission in general, as it applies in the different contexts of sport or even the law, necessarily possesses a complex character. Therefore, we do not need to deny that the example of American football makes sense. We were in fact claiming that substantive first-order moral judgments are complex because they always presuppose a moral value or disvalue is at stake when describing a particular action as mandatory, forbidden or permissible. In the case of moral permissions, we assumed, this value is moral autonomy. When morality protects free choice by treating an action as permissible it does so because the value of
autonomy is at stake. This must have implications for other agents’ reasons for action. Therefore, saying that something is morally permissible must imply recognizing that these other reasons exist and apply to the rest of the moral community. What Dworkin should have shown is not that there are examples of permission out of the moral domain in which the permission is not connected with other reasons for other actions that apply to others but rather that there are cases of moral permission in which the value of autonomy does not impose any other requirement to others, or even that moral permission is not intrinsically related to moral autonomy. We will explore this possibility in the next section.

Dworkin himself acknowledged that conceiving C’s position as affirming a sort of permission with a simple character, like those in competitive sports, would be unusual. The reason why it is unusual, we contend, is that we do not conceive of our moral practice as a mere set of rules, disconnected from each other and from underlying axiological considerations. We concede that a “sports-based view of morality” could be conceptually coherent. As we said, there is nothing wrong in having a concept of permission with a simple character – with no implications in terms of reasons for action that apply to others – in other fields, such as competitive sports. Therefore, we could extend this use to the field of morality. It is only that this new understanding of morality would not fit with our actual practice of morality as Dworkin conceived and interpreted it. Moreover, perhaps an external skeptic would be willing to endorse the claim that everything is permissible in that sports-like sense, one that is compatible with saying that “abortion is permissible”, “preventing those who want to abort from aborting is permissible”, “killing those who want to abort as well as those who want to prevent them from aborting is permissible”, and so forth. But they would certainly resist the idea that such statements constitute or imply an evaluative judgment, since no single normative implication or consequence is derived from them, neither for the actors involved nor for the remaining members of the moral community.

Our second response has to do with the nature of the reasons that are implied by the idea of moral permission and that apply to others. Dworkin claimed that other agents’ reasons not to criticize someone who has performed a morally permissible action are theoretical, that is, they are reasons to qualify such an action precisely as permissible and not as forbidden. If one criticizes an actor, one will be making a theoretical mistake, not a practical one. However, we do not believe this to be a plausible account of moral criticism. Criticizing someone certainly involves action and
not merely recognition of some failure. Misevaluating a permissible action as forbidden does involve a theoretical mistake, an epistemic failure. But criticizing a person for having performed such an action when it was actually permissible is a practical mistake, a wrongful action. Undoubtedly, a previous theoretical mistake – viewing the action as forbidden – may also be involved. But it combines with a wrongful action, and this is especially serious since the way in which morality is supposed to punish or sanction those who violate its requirements is precisely through the public censorship of the moral community. Thus, when an agent carries out an action that is forbidden, others have reason not only to regard that action as contravening a requirement but also to censor the agent as part of a form of diffused punishment. Similarly, when someone performs an action that is morally permissible, others have reason to refrain from morally blaming the agent or censoring her. Consequently, when someone claims that a certain conduct is morally permissible, this claim also entails recognizing the existence of other such reasons for action that apply to others.

Two types of simple moral permission

The previous two sections argued that the idea of moral permission present in our moral practice is conceptually connected with the value of autonomy and possesses a complex character that implies certain consequences regarding the reasons for action of agents other than the permission holder. In the last section we rejected Dworkin’s argument defending the role of simple permissions in morality. But let us concede now, arguendo, that something resembling a simple permission – that is, a permission from which no normative consequences follow in terms of reasons for actions that apply to others – might have some place, at least in certain contexts, in our morality. More concretely, let us suppose that claiming that something is morally permissible in that simple form merely means that there are no moral categorical reasons for or against carrying out the action. Would it not then be true that the external skeptic’s claim that there are no moral categorical reasons at all imply that everything is morally permissible, including abortion? In this sense, would D’s claim entail or include C’s claim, and therefore would the self-defeating argument succeed?

To understand what justifies a negative answer, consider first another discussion. The idea of moral permissibility has been extensively discussed by those engaged in the ongoing debate on consequentialism (Sheffler 1982; Slote 1985; Kagan 1989; Shiffrin 1991). Consequentialism assumes that moral agents have in every case the moral
obligation to maximize the good. Critics have argued that since consequentialism implies that any behavior is required or forbidden, the doctrine is unable to account for certain kinds of moral options or permissions, and therefore is incapable of preserving individual autonomy. This line of argument, advanced by Michael Slote, tries to show that if consequentialism were correct, there would be at least one kind of autonomy that morality fails to preserve. When the argument functions as a reductio of consequentialism, its proponents claim the possibility of this kind of autonomy is sufficiently plausible to justify rejecting consequentialism. What is relevant about Slote’s argument to our position is that it presupposes a type of moral permission that differs from permissions as rights and permissions as enablements but protects certain types of autonomy and yet nevertheless has no complex character. Seana Shiffrin has also provided an account of this type of permission and the kind of autonomy it protects (Shiffrin 1991). It is worth paying attention to her argument as it is the most promising candidate to make sense of Dworkin’s idea of simple moral permissions.

According to Shiffrin, we may distinguish between two kinds of moral autonomy that are implicit when we talk about moral permissions. Distinguishing between moral autonomy\textsubscript{1} and moral autonomy\textsubscript{2}, Shiffrin writes that

“…moral autonomy\textsubscript{1} involves the capacity and opportunity to exercise one's own moral judgment and to live one's life in accordance with one's own understanding of what morality requires, free from the interference or coercion of others…moral autonomy\textsubscript{2}, refers to an individual's ability to exercise her more general autonomy in a morally acceptable fashion and more precisely, to have the ability to make an autonomous choice from a range of morally permissible options. If one has moral autonomy\textsubscript{2}, then one has the opportunity to make a decision between at least two alternatives where whichever choice one makes, one will not be acting impermissibly.” (Shiffrin 1991, p. 246)

These two types of moral autonomy may overlap in many cases, and both are important and valuable. Moral autonomy\textsubscript{1} is important because it reinforces an individual’s power to avoid having her decisions or actions “dictated or enforced by another person or institution” (Shiffrin, 1991: 246). It also protects an individual’s capacity for “doing the moral or the immoral”, that is, for “moral choice” (Shiffrin 1991, p. 248). Moral autonomy\textsubscript{2} “emphasizes the value to individuals of the opportunity to make choices free from moral pressure. It might be suggested, for instance, that agents must be able to formulate their own projects and goals without fear of interference, guilt or wrongdoing, in order to flourish as individuals and to establish
zones of meaning and purpose within their lives” (Shiffrin, 1991: 249). Neglecting this second kind of autonomy would result in “an overly narrow appreciation of the value of freedom as well as of the depth and richness of the human capacity for farther-ranging autonomy and independent choice” (Shiffrin 1991, p. 249).

These two kinds of autonomy must be protected by moral permissions but the type of moral permission required in each case may be different. Moral autonomy1 can be protected by moral permissions as rights or as enablements, and it is ultimately compatible with a fully directive morality and consequentialism. Moral autonomy2, in contrast, cannot be preserved by a fully directive morality because such a view would leave no space for individuals to formulate their own projects free from moral pressure or interference. Individuals would not have the possibility of living without fear of moral interference, guilt or wrongdoing. As Shiffrin says,

“…the advocate of moral autonomy2may additionally claim that the sort of freedom associated with moral autonomy2, and the exercise of individuals' essential capacities that it allows for, has deep moral value and is crucial to individual well-being and flourishing. It may plausibly be argued that an agent's life could not be fully human or complete, and could not be rendered fully valuable to her, unless it involved substantial exercise of her capacity for moral autonomy2. Without its exercise, the moral agent's life would not feel like her own, but would rather be entirely guided from the outside by the determinate demands of a fully directive morality…” (Shiffrin 1991, p. 251-252).

Some courses of action are not directed by morality. They constitute certain areas of behavior where individuals are protected from moral interference itself, and within those areas they enjoy autonomy2. The mere absence of moral duties or prohibitions is sufficient for individuals to enjoy this kind of autonomy. Although these areas could also be preserved by moral permissions as rights or as enablements, it would therefore be sufficient to involve a weaker form of moral permission in order to protect them, a permission in which an action is morally permissible if, and only if, it is not morally required or forbidden.16 This weaker type of moral permission would generate a space in which morality is not directive, thus preserving autonomy2, but does not generate reasons for action that apply to others. It would therefore have a simple character.

This weaker type of permission seems to fit well with the kind of permission Dworkin may have had in mind when describing C’s position. Let us refer a view employing this weaker idea as the position of C1, and distinguish it from C’s position,
which construes moral permissions as rights, enablements, secondary reasons, or some other alternative with a complex character. C1 claims that abortion is neither morally required nor prohibited, and therefore she argues that an agent may abort or not abort without moral pressure. Opposing consequentialism, C1 claims that morality is not full directive. Interestingly, this is a notion of moral permission that still connects with moral autonomy, a requirement we assumed in the previous two sections. Nevertheless, the notion makes room for the self-defeating argument. D claims that there are no moral requirements, and that therefore all is permissible in this weak sense. This makes D’s position more general and it includes C1’s claim.

To be clear: we do not believe simple moral permissions suffice to adequately protect moral autonomy. On the contrary, an agent’s opportunity to make choices free from moral pressure can be protected only if others have moral reasons to refrain from morally censoring or criticizing the agent’s decisions. If others do not have reason to refrain from criticizing the agent’s decisions, then her autonomy is not being protected in any sense. Everyone is able to place moral pressure on her decision. Moral autonomy can be adequately protected only by complex permissions involving rights. Shiffrin is correct to highlight the relevance of the idea of simple moral permission for any type of autonomy. We agree that moral autonomy is also a value in the sense that it protects one from the interference of morality. This occurs with all the cases in which moral considerations are irrelevant. Dworkin himself outlines some examples that fall into this category, with one involving cutting one’s fingernails. In the absence of further qualification, morality irrelevant to this action and it is certainly good that morality leaves actions like this to our own judgment with no guidance whatsoever.

Morality’s irrelevance is also good because it protects such actions from interference by others. If morality is irrelevant to a choice, others have no moral reason to interfere with it. If personal autonomy is valued, the community should acknowledge that an actor should be left alone to decide whether to carry out the action or not. A right based on our personal autonomy to do what we prefer to do should be recognized. We all have a moral right to cut our fingernails if we want to. We are not saying that this right is absolute, or that it cannot be undermined or overridden by countervailing considerations, nor are we saying that one should have permission as enablement, and others would have reason to make it possible for one to cut his or her fingernails. Quite simply, it is precisely because we morally value our personal autonomy that others who stop one for no reason from cutting her fingernails are acting impermissibly. They may
have good reason in some contexts to do so but those cases no longer involve morality’s irrelevance. At the very least, it should be acknowledged that when one acts within a space free of morality’s demands others have moral reasons to refrain from morally censoring, criticizing or punishing her for such action. If morality does not protect someone from such intervention, at the very least, how could we say that her autonomy is adequately protected? This question leads us again to the argument we made in the previous two sections.

Let us for a moment concede that a weak and simple notion of moral permission is plausible. This type of permission is simply negating the existence of reasons to carry out or refrain from a certain action. It can therefore be described as a weak negation. It negates something without further implications. It is not even necessary to presuppose that moral permission in this sense is conceptually related to the protection of moral autonomy. Let us also concede, then, that D’s claim entails this kind of weak negation. Does it mean that D’s claim entails or includes C1’s claim? We do not think so. The argument is simple: C1’s claim – even if understood in this very weak sense – and D’s claim are different because they presuppose incompatible propositions.

In the debate on abortion, C1 makes a first-order moral judgment. She wants to claim that abortion is morally permissible because she finds no moral, categorical reason to either have an abortion or refrain from doing so. To be sure, C1 is not an external skeptic. She believes that there are categorical reasons that apply to other actions and circumstances. However, they do not apply to the case of abortion. This, for C1, would be a case where morality is not relevant. Obviously, D does not share such beliefs about categorical reasons applying to other cases. However, it is not only that C1 has contrasting beliefs that differ from those of D; that, per se, is insubstantial. What is substantial is that C1 is making a first-order moral judgment because she presupposes that there are categorical reasons that apply to other cases, and therefore abortion is morally permissible in the context of morality. The notion of moral permission being used by C is one which is grounded in and framed by morality. For that reason alone, it counts as a first-order substantive moral judgment, capable of engaging in the substantive moral debate on abortion on par with A and B.

To illustrate this point, we need to pay attention to the nature of the debate in moral discourse. What exactly are A, B and C1 debating? They clearly disagree on what is the best response to the question what does morality prescribe in relation to
They disagree on the content of morality. We can reconstruct these three positions in this light as follows:

A) Morality, or the set of categorical reasons for action, prescribes not having an abortion under any circumstances.

B) Morality, or the set of categorical reasons for action, prescribes having an abortion under certain circumstances.

C1) Morality, or the set of categorical reasons for action, does not prescribe either undertaking or refraining from abortion.

What this reconstruction clearly uncovers, as compared to Dworkin’s version in *Justice for Hedgehogs*, is that all three positions in the debate presuppose the same thing: that morality exists, or that there are categorical reasons. Although C1 denies that such reasons apply to the case of abortion, she presupposes that there are categorical reasons that apply to other cases in which this first-order moral judgment is framed. This judgment of moral permission is *grounded* and *framed*.

D, in turn, denies all that A, B, and C presuppose. D denies that there are categorical reasons for action at all. This is an *ungrounded, unframed* notion of permission according to which an action is permissible if, and only if, there is no categorical reasons that apply to this or any other case. It is precisely for this reason that D makes no first-order moral judgment. D challenges all three positions without embracing or including position C1. A, B and C1 disagree on what morality prescribes or permits, but they all presuppose that morality, namely categorical reasons for action, exists. D denies this presupposition: morality or categorical reasons for action do not exist. Thus, D is committed to denying the position not only of A and B but also of C1. Both C1’s and D’s claims may well be weak negations, but this is their only common ground. C1’s claim is a presupposing negation, while D’s is non-presupposing. More importantly, D denies what C1 – as well as A and B – presuppose, and for that reason D’s is not a first-order, substantive moral judgment.

Debates on moral permissions are in fact analogous with those in the context of the law, something that would not surprise Dworkin; *Justice for Hedgehogs* traces analogies between the law and morality on several occasions. In the legal debates about the deontic status of a certain conduct, the notion of an unframed permission has no place at all. Imagine a lawyer who claims that abortion is legally permissible. This lawyer is presupposing that a legal system exists and his claim is in fact relative to such a framing legal system. This judgment of legal permission is *grounded* and *framed*. 
Such a system, the lawyer has to presuppose, must contain some requirement or prohibition — otherwise, what would be the point of permitting something? The claim that abortion is legally permissible, understood in this way, is certainly different and not implied by the claim of, say, an anarchist who rejects the idea of the legal system as a whole. This anarchist may well share a claim with the lawyer, and both may be in disagreement with other lawyers, in terms of the belief that “abortion is neither legally required nor prohibited”. However, it would be quite inconsistent to consider that the anarchist is therefore implying that abortion is legally permissible, thus making a first-order legal judgment about the conduct of abortion, or, even worse, that anarchism is self-contradictory for that reason.

In conclusion, even if we understand C1’s claim of moral permission as a weak negation, a permission with no conceptual implications in terms of reasons for action that apply to others derived from this permission, the only plausible way of making sense of the debate between A, B and C1 is to understand C1’s claim to be a presupposing negation. More concretely, what this judgment presupposes is the existence of morality – categorical moral reasons that apply to other cases – in which this permission is grounded, and by which it is framed. It is actually this presupposition, shared with A and B, that makes C1’s claim a first-order substantive moral judgment. D’s position, however, even if understood to be a weak negation as well, is not a presupposing negation and in fact it denies what A, B, and C1 presuppose. It is precisely for that reason that it does not constitute a substantive first-order moral judgment.

Let us end this section with a metaphor. Grounded and framed permissions act like a gap in a network of moral requirements and prohibitions not unlike the hole in a doughnut. As Dworkin once affirmed regarding discretion, “it does not exist except as an area left open by a surrounding belt of restriction” (Dworkin 1978, 31). Debating whether abortion is morally prohibited, required or permissible is like debating whether or not the doughnut has a hole. C1 believes that it exists, while A and B do not. D meanwhile rejects the entire idea of a doughnut. For D, the doughnut does not exist, and therefore neither does the hole: D does not agree with C1 that a hole exists, and disagree with her about its size. She does not affirm that the hole has an infinite size and everything is inside it. D denies that the hole exists because there is no doughnut around. Nothing is forbidden, required or permissible.
Conclusion

In this article we have shown that Dworkin’s self-defeating argument against external skepticism depends on how we interpret the idea of moral permission. According to Dworkin, when external skepticism rejects the existence of categorical reasons, it is equivalent to saying that everything is permissible, including, for instance, morally permitting abortion. He characterizes the notion of moral permission as precisely the absence of categorical reasons for action. Thus, the external skeptic is making – or implying – a first-order moral judgment, and consequently her position is self-contradictory. We hold, however, that this conclusion is not correct.

To determine whether external skepticism entails the claim of a participant in moral discourse about the permissibility of a certain conduct, such as having an abortion, is morally permitted, we must analyze what this participant means when affirming that a conduct is morally permissible. We have argued that judgments of moral permission possess a complex character derived from the role that permissions play in protecting the moral value of autonomy. Permissions protect this value by creating different reasons for action that apply to others: reasons not to interfere, reasons to help or enable, and reasons not to censor, criticize, or condemn those who carry out the permissible conduct.

Judgments that describe these moral permissions must have a complex character. When someone judges that abortion is permissible, she must not only deny there categorical reasons to abort or not abort but also affirm that others have reasons not to interfere in, enable, or at least not condemn or criticize, the conduct of those who perform the permissible action. This is what makes her judgement a substantive first-order moral judgment. However, some of these claims are clearly not implied but are in fact denied by external skepticism.

Dworkin responded by saying that that permissions do not always possess such a complex character. Unusual though it may be, there is no contradiction when a person judges that some agent’s conduct is permissible without affirming related additional judgments about other agents’ reasons for actions. In the final part of this paper, we also criticized this response. Even if we conceded, arguendo, that this notion of permission is conceptually possible, to make this judgment plausible and part of the moral discourse, we must presuppose that morality – or categorical reasons applying to other cases – grounds and frames such a moral permission. This is something that external
skepticism cannot presuppose but in fact denies. If skepticism implies some permissibility judgments they must be based on a non-presupposing negation, one that certainly does not include the presupposing weak negation held by the non-skeptic. Thus, the external skeptic makes no first-order substantive moral judgment; she does not engage in the debate on abortion at the same level the participants do. It is therefore false that her position is self-contradictory or defeats itself.

In sum, Dworkin’s first argument against external skepticism is flawed. Given that his second argument depends on the first, we can conclude that the second is compromised too. This does not mean, of course, that Dworkin’s conclusion is unsound or that moral skepticism is defensible. Dworkin was a tireless fighter against skepticism and his work has left an indelible trail we simply try to follow. However, the best service we can render to his anti-skeptical cause is to show where the strengths and the weaknesses of his arguments lie.

Acknowledgements
A previous version of this work was presented at a symposium on Ronald Dworkin’s Justice for Hedgehogs on May 6, 2011 at the Pompeu Fabra University in Barcelona. We are very grateful, first and foremost, to the late Ronald Dworkin, who read it carefully and was kind enough to respond to and discuss — and, of course, entirely reject — our arguments. All this took place in the middle of a very long, intense, exhausting, yet extremely fruitful day-long session. We admired him and his work. It has been a rather odd experience for us to continue working on this paper knowing that Dworkin will not be able to read it, let alone reply to it. We conceived the first version of the paper with the idea that it would be discussed with him and by him. In any case, we could not think of a better tribute to his memory than this continued discussion of his always powerful ideas. We also want to thank Andrew Williams, who endlessly participated with us in the arguments contained in this paper and tried unsuccessfully to show us the many mistakes we may have incurred. Subsequent versions of this paper were also presented at talks that took place respectively at the Universidad Torcuato Di Tella and the Sociedad Argentina de Filosofía Analítica (SADAF), both in Buenos Aires, in August 2011. These two active audiences were very helpful in significantly improving the paper, and we sincerely thank them. Our thanks also go to Marcelo
Alegre, Roberto Gargarella, Horacio Spéctor, and Martín Hevia for their kind invitations. We also want to thank Sabrina Voss for her editing work on the manuscript.

Notes

1 In this book, he mainly elaborates on his previous criticisms to moral skepticism, which appeared in Law’s Empire (1986) and the article “Objectivity and Truth” (1996).

2 Dworkin explicitly associates error skepticism with John Mackie’s view and status skepticism with the views advocated by Allan Gibbard and Simon Blackburn. His characterizations of both types of external skepticism may seem controversial, however, to those authors, and they will not be discussed in the present chapter.

3 He also makes other objections specifically oriented to each type of external skepticism, but we will not address them here.

4 At the very beginning of the section entitled “Hume’s principle” in Chapter 3, and after having introduced what we have called his first general arguments, Dworkin states, “if, as I argue, any moral skepticism is itself a substantive moral claim, then external moral skepticism contradicts itself in the way I said. It also violates the principle of moral epistemology I called Hume’s principle” (Dworkin 2011, p. 44; emphasis added). It seems clear, from this passage, that Dworkin takes them to be two different objections. Star and Shafer-Landau seem to interpret the passage in a similar vein (Star 2010; Shafer-Landau 2010).

5 In order to make a normative conclusion, at least one of the premises must have normative status as well or the argument commits the fallacy of irrelevant premise. According to Edward Damer, this fallacy consists in “attempting to support a claim with reasons other than the reasons appropriate to the claim.” (Damer 2009, p. 99) However, once the normative premise becomes explicit, the external skeptical argument falls prey to another fallacy, namely, the fallacy of contradiction between the premises and the conclusion (Damer 2009, p. 74).

6 The contributions to that conference are still available in Internet at http://www.bu.edu/law/events/audio-video/hedgehogs.shtml (last access: June 2014). They were later published at the Boston University Law Review, vol. 90, 2010.

7 Smith interprets Dworkin’s example of the debate on abortion as basically oriented against error skepticism. That is why his own criticism of this example is intended to defend Mackie’s error theory. The argument against status skepticism, in contrast, would be the one based on the Humean Principle. The reason for this separation of arguments seems to be that the example of the debate on abortion is intended to show that external skepticism necessarily implies a substantive moral judgment, and that is something that a status skeptic might accept. She would only dispute the idea that such a moral judgment could be true or false. However, we find reason to believe that the argument based on abortion as an example can also be directed toward status skepticism. First, merely as an exegetical observation, Dworkin himself seems to believe so. Both the self-contradiction argument and that based on the Humean Principle are pursued in the general part of the chapter just before advancing his specific arguments addressed to error skepticism and status skepticism in their respective sections. He refers at all times to external skepticism in general, not to any particular type of it. But even if Dworkin’s intention was to challenge only error skepticism with self-contradiction, status skepticism seems to be equally vulnerable to the argument. Those who state that moral judgments are mere expressions of preferences are committed to affirming the non-existence of categorical moral reasons. These judgments – including those which refer to moral reasons – are mere expressions of feelings and, consequently, do not refer to the external world. According to Dworkin, this entails the same first-order moral judgment, one that affirms that all actions are morally permitted, which is obviously in contradiction to both the claim that no first-order moral judgment can be true and its aspiration of remaining neutral on substantive, first-order positions from a purely metaethical level of discourse.

8 We have reasons to believe that Dworkin himself also personally conceived of the idea of moral permission in that way: how else could he connect the distinctive holistic approach defended in his book with all the other claims he made about morality?
This is not incompatible with the Kantian idea of moral autonomy, the proper exercise of which actually produces the content of the moral law that the agent gives to herself. Regarding the consequentialist challenge, we will return to it subsequently in the text.

According to Joseph Raz’s characterization of moral permissions, they are excluding reasons. A particular conduct, \( \phi \), is permitted for agent A when moral – or even categorical – reasons to perform \( \phi \) exist, but there is also a second-order excluding reason allowing the agent A not to take into account the balance of first-order reasons. The action is, in some sense, still morally required, but it is permissible for the agent not to perform it. Raz holds that “[a] person may be permitted to \( \phi \), despite the existence of an overriding reason for not \( \phi \)-ing, if there are reasons which entitle him to disregard the reasons for not \( \phi \)-ing, or at least to disregard some of them so that those not excluded do not outweigh the reasons for \( \phi \)-ing” (Raz 1975, p. 163). In other words, the agent may autonomously decide to fulfill such a requirement, but it would be a supererogatory action. The first kind of autonomy, therefore, consists in the capacity of moral agents to choose between performing supererogatory actions or not.

Von Wright calls this kind of permission “rights”. These permissions are equivalent to a “‘… prohibition to hinder or prevent the holder of the permission from doing the permitted thing” (Von Wright 1959, p. 91). The kind of autonomy preserved by permissions as rights is close to the idea of negative prohibition to hinder or prevent the holder of the permission from doing the permitted thing” (Von Wright 1959, pp. 91-92). The kind of autonomy preserved by permissions as rights is close to the idea of negative freedom. If others are allowed to “hinder or prevent” an agent from doing \( x \), then she is not free to do \( x \), and thus in a sense she is not permitted to do it.

These permissions are referred to as “enablements” by Von Wright, who stated that it is necessary to distinguish “…between not making an act impossible (for someone to perform) and making an act possible. The second is also called enabling (someone to do something). It is the stronger notion. Enabling entails not-hindering, but not-hindering does not necessarily amount to enabling. (…). If a permission to do something is combined with a command to enable the holder of the permission to do the permitted thing, then we shall say that the subject of the permissive norm has a claim relatively to the subjects of the command. It is understood that any claim in this sense is also a right, but not conversely.” (Von Wright 1959, pp. 91-92) The kind of autonomy presupposed by permissions as enablements is close to the idea of positive freedom. Carrying out \( x \) is not really permissible for the agent – that is, she is not really free to do \( x \) – unless others have the duty not only to refrain from preventing her to do \( x \) but also to make her capable of doing \( x \). The distinction between “rights” and “enablements” was made by Von Wright in relation to legal permissions. However, as Mary Forrester (1975) has shown, it is possible to apply the distinction to the moral domain.

Unfortunately, Dworkin passed away before the contributions to the symposium were published, and his responses to our papers will never be known. His reply at the time nevertheless deserves a response from us. It is regrettable that he is unable to respond, and it would be dishonest on our part not to acknowledge that he had already replied. We feel we must try to give an argument against this great reply, and only hope to do justice to it.

However, it is not entirely clear to us that the permissive rule in American football that allows players to score a touchdown is a case of simple permission. It is true that this permission is compatible with the permission of other players to prevent the other team from scoring. This does not mean however that all those permissions produce no consequences for others at all. It is precisely because the players are allowed to prevent the other team from scoring that no one can object to their action, and the referee cannot punish them for it.

Permissions as rights and enablements are not a threat to consequentialism. A fully directive morality may provide a proper account of these types of permissions.

Autonomy can be threatened by the interference of others as well as by the interference of morality itself. Permissions as rights and as enablements protect autonomy from both kinds of threat. They certainly preserve it from the interferences of other persons and other kind of obstacles. Additionally, they preserve it from the interference of morality: when an agent has a right or an enablement there is no moral reason either to act or to refrain. However, as Shiffrin points out, it is possible to conceive of moral permissions in a weaker sense as only protecting autonomy from the interference of morality.

A response to this could be that we have mischaracterized moral pressure. Moral pressure, the critic might say, is not a kind of social pressure that others exercise on the agent but a kind of pressure agents exercise on themselves. According to this alternative reconstruction, moral pressure would not be exercised through social criticism but through self-inflicted guilt. An agent’s opportunity to choose free from moral pressure would be protected even if other agents had no reason to refrain from exercising social pressure through criticism. It seems to us, however, that the distinction between social pressure and self-inflicted guilt is wrong. Guilt itself is a type of social pressure: people who belong to different societies feel guilty for different reasons, while people who are members of the same society feel guilty for similar reasons. This point is stressed by Herbert Hart, who distinguishes among several kinds of
social pressures: “...the social pressure may take only the form of a general diffused hostile or critical reaction which may stop short of physical sanctions. It may be limited to verbal manifestations of disapproval or of appeals to the individual’s respect for the rule violated; it may depend heavily on the operation of feelings of shame, remorse, and guilt…” (Hart 1961, p. 86) If this is the case, autonomy2 is protected only if others have reason to refrain from exercising any kind of social pressure, including guilt.

In this way, the objection against Shiffrin developed in the last two paragraphs would not hold. Shiffrin would be wrong in either case, because this weak notion of moral permission would then not be justified in terms of protecting any kind of autonomy. It would be sufficient for Dworkin, however, and he might have been happy to concede that point, if only to show that such a concept is consistent.

The idea of presupposing negations was developed some time ago by Strawson (Strawson 1950). Moral judgments of permission, like that formulated by C1, which deny that certain conduct is required or forbidden, would fit into this category. Strawson acknowledges the marginal existence of non-presupposing negations as those that, like D, claim that no categorical reasons exist. In Strawson’s view, the possibility of these non-presupposing negations shows that the opposition between an affirmative judgment and its negation is one of “contrariness”, not of “contradiction” (Strawson 1952, p. 18). Affirmative judgments like “morality prescribes abortion” or “morality prescribes refraining from abortion” are opposed as contrary to the negative judgment that “morality does not prescribe anything, neither abortion nor refraining from abortion”. This is shown by a third kind of judgment, which is contradictory to all of them: the non-presupposing negation that “morality does not exist”. The fact that the affirmative judgments oppose negative judgments as “contrary”, and not as “contradictory”, shows that it is not sufficient to corroborate that these affirmative judgments are not true and conclude that their presupposing negation is true. If what affirmative judgments and their presupposing negation presuppose is false, then none are true. Someone who denies what affirmative judgments presuppose, as D does, is claiming that such judgments, as well as their presupposing negation, are not true (nor are they false). Strawson’s central idea in this argument is that “negation, normally or invariably, leaves the subject ‘unimpaired’…” (Horton 2001, p. 109). Therefore, if the subject of a moral debate is the content of categorical reasons for action, those like C1, who deny that such reasons apply to the case of abortion, are leaving “unimpaired” the idea that such reasons exist.

This also applies to any other normative system, including those in games and sports, such as the American football example. The idea of certain actions being permitted by the system makes sense only in the context of other obligations and prohibitions.

If we see C1’s claim as only a weak negation, then the error theory is wrong if it affirms that C1’s claim is false because D’s claim is true. At the same time, Dworkin was incorrect when he affirmed that what follows from the truth of D’s claim is that C1’s claim is true: what in fact follows from the truth of D’s claim is that C1’s claim is neither true nor false.

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