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On Skepticism about Case-Specific Intuitions

James McBain

Moral theorizing is often characterized as beginning from our intuitions about ethical cases. Yet, while many applaud, and even demand, this methodology, there are those who reject such a methodology on the grounds that we cannot treat people's intuitions about ethical cases as evidence for or against moral theories. Recently, Shelly Kagan has argued that the reliance upon case-specific intuitions in moral theorizing is problematic.¹ Specifically, he maintains that the practice of using intuitions about cases lacks justification and, hence, we ought to be skeptical about the evidential weight of moral intuitions. This leads Kagan to conclude that we ought to accept an error theory that maintains most of our moral intuitions are mistaken. In this paper, I will look at the arguments Kagan presents in support of such skepticism – the failure of the intuition/observation analogy, the problem of intuitive disagreement, and the problem of *kinds* of cases.² I will argue that each of these arguments is problematic given some features of the nature of intuitions and the nature of the analogy between intuition and observation. Thus, I hope to show that these arguments fail to support Kagan's skepticism about the use of case-specific intuitions in moral theorizing.

The Failure of the Intuition/Observation Analogy

The first argument begins by considering the "standard" way in which to justify the practice of using moral intuitions as evidence – arguing by analogy from the justification of empirical observation.³ Since we typically characterize intuitive judgments as 'seeings', we can appeal to the fact that we are very inclined to accept our intuitions just as we are very inclined to accept our observations. Specifically, when arguing for or against an empirical theory, our observations have substantial evidential weight. We appeal to observations to provide support for or against a theory and treat any theory that does not

coincide with our observations as *prima facie* unjustified. Moral intuitions would hence seem to have the same sort of unique weight. We treat moral theories that do not coincide with our moral intuitions as *prima facie* unjustified. And, furthermore, we sometimes build a theory to capture our intuitions. Thus, any adequate moral theory is going to have to accommodate our intuitions.

As Kagan points out, this analogy is initially appealing. But when we analyze the analogy in detail it starts to break down. First, the reason we attempt to make our empirical theories fit our observations is because our observations are in general reliable just as we come to the table assuming our observations are reliable. It is this reliability that forces us to make our theories fit them. Yet, if we are to maintain the analogy, then we must come to the table already assuming that our moral intuitions are reliable. But what justifies this assumption? The analogy *presupposes* the reliability of moral intuitions when that is what is at issue. Furthermore, consider exactly what makes our observations reliable – the fact that we are strongly inclined to believe our empirical observations and that we can offer an overall theory of the empirical world that endorses the correctness of observational claims. It is these two facts that warrant our belief in the production of an account that will explain the non-accidental connection between observation and fact.⁴

The second claim – that we must be able to provide an overall theory of the empirical world that endorses the correctness of observational claims – is what leads to the biggest problem with the analogy. If we are to maintain the analogy, then, in order to warrant our reliance on moral intuitions, we must be able to produce an account of the non-accidental connection between moral intuition and the underlying moral realities. Hence, since we are inclined to accept our moral intuitions and given the existence of an overall moral theory that accounts for those moral intuitions, we are justified in believing that a required account of the “moral sense” may be forthcoming. Only then

would we have the analogy between intuition and observation strengthened.

What the analogy is left in need of is a theory that offers at least a basis of an explanation of the moral phenomena that are the subject matter of our intuitions. It is this that Kagan takes to be the most problematic. Such a task would require (a) determining the precise content of the moral intuitions that we are trying to accommodate and (b) determining the standards we impose concerning what will constitute an explanatorily adequate moral theory.⁵ Both of these tasks are daunting. Yet, what is more to Kagan's point is that he does not believe that we can ever satisfy (b).⁶ And, if we are to accept this point, then we are lead to skepticism about the use of moral intuitions. The general form of the argument is:

1. If we are to be justified in accepting the use of moral intuitions, then there must be an explanatorily adequate moral theory that endorses most of our moral intuitions, just as we take ourselves to be justified in accepting our observations by virtue of having an explanatorily adequate theory that endorses most of our observations.

2. Theories that attempt to accommodate our moral intuitions fail at (a) or (b) and hence are not plausible.

3. \ We are not justified in accepting the use of moral intuitions as evidence for moral theories.

This, in outline, is Kagan's argument for his skepticism about taking moral intuitions as evidence. And it is this skepticism that leads him to accepting an error theory which maintains that most of our moral intuitions are mistaken.

Response the Kagan's First Argument

The problem with Kagan's first argument stems from a misconception about the proposed analogy. There is a very important dissimilarity between observation and intuition; namely, one is a sensory awareness and one is a propositional attitude. Intuitions are more like beliefs than like raw phenomenal seemings. This is not to say that

intuitions' *are* beliefs, rather they are *like* beliefs in that they are propositional attitudes.⁷ If this is the case, then the analogy should be between intuitions and beliefs formed on the basis of observations. Hence, the justification of our use of moral intuitions is going to be akin to the justification of beliefs about our observations. Despite this, throughout the literature on intuition there has been a tendency to characterize intuitions as perceptions. That is, we treat intuitions as a *seeing* of the truth of some proposition just as we treat our perceptual *seeing* of some state of affairs. As Robin M. Hogarth points, there are several reasons for this analogy.⁸ First, intuition, like perception, is covert in that we do not have access to the process by which you are able to see/intuit what you do. Second, in both cases, you cannot justify what you see/intuit in terms of a conscious, logically formulated process. Next, both processes occur automatically and quickly. Finally, in both cases, the resulting process leaves the agent attending to various "cues or pieces of information."

While the analogy between intuition and perception may be tempting, I believe that it is a mistaken to fully characterize intuitions in this way.⁹ The first reason for rejecting this analogy is obvious, and perhaps trivial – when people intuit various cases, they are not constrained by the physical world. As George Bealer points out,—"most things that can seem intellectually to be so cannot seem sensorily to be so."¹⁰ Moreover, when one intuits something, any logically and/or metaphysically possible world can be entertained. Perception only shows what is actually the case, but, as many claim, intuition shows what is necessarily or possibly the case. In this way, intuition is not constrained like perception is.

We must notice a further fact here. In comparing intuitions and observations, there is a dissimilarity between them in that intuitions need not be about observables.¹¹ Rightness, justice, etc., are all going to be unobservables, but we definitely have intuitions about what cases fit the concept. So, if we can (and do) have intuitions about

unobservables, then we cannot *demand* the production of an adequate theory that endorses most of our intuitions since we cannot *demand* an adequate empirical theory account for unobservables. We may *allow* adequate empirical theories to account for unobservables, but we need not *demand* that they do so since, as some (such as Bas van Fraassen) have pointed out, it is epistemically suspect to do so.¹²

These two points lead us to a slightly different analogy. In order to justify our use of moral intuitions we need to compare it with our account of justifying our use of our beliefs about unobservables for empirical theories. This analogy puts the justificatory status of moral intuitions in the same arena as the justificatory status of general beliefs about unobservables or other theoretical entities. That is, it is outside the arena of the justificatory status of our empirical observations about observables. Thus, we are able to deny the first premise of Kagan's argument. This is not to say that there may not be further problems with attempting to support the analogy as I have presented it, but merely to say that Kagan's argument fails due to its misconceptions about the nature of the analogy.

The Problem of Intuitive Disagreement

The problem of intuitive disagreement starts from the true claim that people's intuitions differ on particular cases. Kagan claims that when we have a case that leads various people to disagree, this result is surprising. It amazes us that others do not share the intuitions that are so compelling to us. The problem here is not that there is mere disagreement, rather that there is *systematic* and *patterned* disagreement. One individual may be responsive to features *f* and *g* of some case, while others may be completely indifferent to *f* and *g* or react to them in quite different ways. Thus, it would seem that moral "senses" fall into distinct types. Furthermore, if it is the case that different people have different moral senses even when thinking about the same case, then surely not everyone's intuitions are going to be reliable. Thus, we have further reason to be skeptical about the use of moral

intuitions.

Response to Kagan's Second Argument

In order to address Kagan's second argument, I must first make a few remarks about how I am conceiving of intuitions. As I stated above, I take intuitions to be propositional attitudes. The content of the propositional attitude is thus going to be a singular classificational proposition of the form "this case, C, is (or is not) an instance of ____". That proposition is going to be about the classification of a natural kind, concept, or predicate. Intuitions must also have certain features. First, intuitions must be non-inferential in that they must not be explicitly reasoned to by argumentation. In this sense, intuitions are spontaneous. Second, they must be held as convictions. Intuitions cannot be mere hunches or guesses. Third, one must have sufficient understanding of the kind, concept, or predicate involved. If one does not understand what the content of the intuition is, then she would not be convinced that the content is being satisfied or the proposition is true. Fourth, I take it that intuitions are fallible.¹³ Finally, intuitions are neither memories nor perceptions (as discussed in the last section). I take these to be some basic, uncontroversial features of intuitions.¹⁴ Thus, the account of intuition that I am using is that an intuition is a spontaneous propositional attitude which classifies some case as one of a kind, concept, or predicate.

Given this characterization of intuitions, we see that at bottom there is a classificational scheme at work. That is, since every intuition classifies a case as one of (or not of) x, one must have the requisite concepts and theories involved in making a classification that C is x. In other words, intuitions are theory-laden. The degree to which intuitions are theory-laden is controversial, but I believe we can maintain there is going to be some degree of theory-ladenness.¹⁵ I take it to be an open question still as to whether intuitions are laden with tacit or explicit theories. I believe that it suffices for our purpose here to merely take the theory-ladenness of intuitions as being of the tacit

variety. Thus, we do not have any initial problems of intuitions being merely the reporting of held beliefs.

Yet, why does the theory-ladenness of intuitions matter to the problem of intuitive disagreement? The answer here is two-fold. First, the problem of intuitive disagreement relies on there being a sort of blank slate from which people's intuitions spring. Yet, this does not seem to be the case. People's moral intuitions stem from their background theories or at least from their held classificational schemes. And different people are going to have different classificational schemes at work in the same case. If this is true, then we should not be surprised (as I think we are not surprised, contra Kagan) when people's moral intuitions differ with regard to the same case. Hence, we can explain why there is intuitive disagreement.

Second, we can explain away the problem by noting a further feature about this theory-ladenness. If we accept the theory-ladenness of intuitions, then we should recognize that there should be more evidential weight given to those intuitions of experts in the particular field. In other words, the person who knows more about the relevant background theories and is better able to apply the kinds, concepts, or predicates involved in the case, is going to have more reliable intuitions. That is not to say that normal inquirers' intuitions count for nothing, rather they count for very little. As knowledge increases in the area in question, the reliability of the intuitions increases. Hence, we can further see why there would be wide-scale disagreement and that it would seem systematic and patterned. Not only do different people come to the table operating with different classificational schemes, but those who are experts in the field come to the table with a better ability to classify altogether. And, when different people are presented with a case and it results in disagreement, we ought to put the evidential weight on the intuitions of the experts and move from there. That is, normal inquirers provide a low degree of justification while experts provide a high degree of justification. When there is

disagreement at one level, say among the experts, we can explain it away by noting that different classificational schemes are being employed. The fact that there is intuitive disagreement is not a problem; rather, it is just a feature of intuitions themselves and our use of them.

Now Kagan does have a response to this line of reasoning. He claims that it is dubious that there are these explicit theoretical underpinnings at work in intuitive judgments. He points out that, for many moral cases, such as the Trolley Problem, we are never taught anything like this during our childhood, thus we have no background theory from which to draw.¹⁶ As he claims, "the simple fact of the matter is that most of our case specific intuitions cannot be plausibly explained in this way."¹⁷ Hence, Kagan believes that we cannot appeal to the ladenness of moral intuitions as a way out of the problem.

Kagan's point here is too strong and hence mistaken. It is not the case that every possible scenario is engrained in people in such a way as to be usable in intuitive judgments. What Kagan is referring to are the specifics of the case – the circumstances, goals, actions, and concepts. Yet, this is too strong. When we say that intuitions are laden, we are saying that the kind, concept, or predicate involved is theory-laden with theoretical and conceptual information that the agent has. That is, the agent needs the theoretical and conceptual information in order to be able to apply the content of the intuition. So, in Trolley cases, what is theory-laden is the concept 'rightness', not the whole scenario. Kagan mistakenly assumes that the theory-ladenness claim amounts to something stronger than was intended. Thus, I maintain, given this characterization of intuitions, we ought not to be convinced by Kagan's second argument.

The Problem of *Kinds* of Cases

Throughout this discussion, the question of the justificatory status of intuitions has surrounded, what Kagan refers to as, *case-specific* intuitions; i.e., intuitions about *particular* cases. It is our case-specific intuitions that we treat as having the most evidential

weight, even over our intuitions about general moral principles. The problem is that our reaction to particular cases is really just a reaction to cases of a certain *type*. That is, when we claim that our intuition says that *this case* is, say morally permissible, what we really are saying is that *this kind of case* is one of moral permissibility. Kagan argues that this poses a problem in that we no longer can account for the fact that we give priority to our case-specific intuitions. We can no longer maintain that our case-specific intuitions are more reliable than our case-type intuitions. Thus, we ought to remain skeptical about our reliance on moral intuitions.

Response to Kagan's Third Argument

The problem with Kagan's third argument stems from a problem mentioned earlier. Kagan relies on intuitions being case-specific in the sense that they involve all the *particulars* of the case in question. This requirement is too strong. What we mean by 'case-specific' is that the agent is able to classify the case as failing or not failing to meet the criteria for natural kind, concept, or predicate application. Now, each case will be different, but the kind, concept, or predicate is going to be the same. So, Kagan's distinction between case-specific and case-type intuitions dissolves. Our intuitive judgments involve both the specific circumstances of some case and the general natural kind, concept, or predicate that is in question. This content is general in nature and hence intuitions are both case-specific and case-type. Thus, we should reject Kagan's third argument.

Concluding Remarks

What I hope I have shown here is that we should not be convinced by Kagan's three arguments for skepticism about our use of moral intuitions in moral theory confirmation. Once we look at some basic features of intuitions, we see that the criticisms examined here fail. This is not to say that I think I have provided the justification for taking moral intuitions to count as evidence for moral theories. Rather, I have only attempted to show that Kagan's skepticism is

unwarranted. There may be other problems with justifying the practice of giving evidential status to our moral intuitions, but I maintain that Kagan has not provided good arguments to that end.

Notes

1. Shelly Kagan, "Thinking about Cases", *Social Philosophy and Policy*, 18, 2 (2001), pp. 44-63.
2. Just to note, these are my names for these arguments, not Kagan's.
3. It is Kagan that takes this analogy to be the standard way to justify the use of moral intuitions, though this is, I believe, highly questionable.
4. Kagan (2001), 50.
5. Kagan (2001), p. 53.
6. The arguments for this are in his *The Limits of Morality* (Oxford: Oxford University Press, 1989). I will not lay out these arguments in detail because they are not immediately relevant to my concerns. I will be addressing how Kagan sets up the use of intuitions and not address the issue of whether we need an overall moral theory in order to justify the practice of using intuitions as evidence.
7. Due to the scope of this paper, I will not attempt to provide a full account of the cognitive structure of intuitions. Suffice it to say, I believe it is fairly uncontroversial that intuitions are propositional attitude states while not being a subclass of beliefs. In any event, I believe it stands that they are more like beliefs than observations to warrant my claim.
8. Robert M. Hogarth, *Educating Intuitions* (Chicago: University of Chicago Press, 2001), p. 8.
9. This is not to say that we should not use perceptual *talk* in discussing intuitions, just that an adequate account of the nature of intuition will not treat them as perceptual states.
10. George Bealer, "Intuition and the Autonomy of Philosophy, in *Rethinking Intuition: The Psychology of Intuition and Its Role in Philosophical Inquiry* (New York: Rowman & Littlefield Publishers, Inc., 1998), p. 208.
11. Robert Audi makes this point in *Moral Knowledge and Ethical Character* (Oxford: Oxford University Press, 1997, p 42.). This is not to say that I am endorsing Audi's intuitionism here. I have no intention to defend any version of intuitionism here, merely to provide some justification for the use of intuitions in moral theorizing.
12. I have no intention to enter into the debate concerning the justificatory status of unobservables. I mention this merely to indicate that it is an open question as to whether we are justified in believing in unobservable entities. And, since the

analogy I am drawing is with unobservables, rather than observables, it is an open question as the justificatory status of the practice of moral intuitions.

13. A quick argument for this requirement is that if intuitions were infallible, then all the metaphysical claims that have been claimed to be true throughout the history of philosophy would be true since they all were "intuitive". Yet, this would lead to obvious contradiction since many of the claims that have been made (particularly about rationalist metaphysics) contradict one another. Hence, we have *prima facie* reason to accept the fallibility of intuitions. For sake of space, I will refrain from a more detailed argument here.

14. I include only the uncontroversial features due to space considerations. I recognize that there are questions of whether intuitions include some apparent necessity. I am avoiding these questions for sake of scope, not for sake of importance.

15. There are those that would contest this claim (namely, George Bealer and John Rawls (in "Outline for a Decision Procedure in Ethics", 1951), claiming that moral intuitions need to be free from any explicit reliance upon moral theories. Yet, this claim has been contested by many. Recently, Hilary Kornblith ("The Role of Intuition in Philosophical Inquiry") and Robert Cummins ("Reflection on Reflective Equilibrium" both in *Rethinking Intuition: The Psychology of Intuition and Its Role in Philosophical Inquiry* edited by Michael R. DePaul and William Ramsey (New York: Rowman & Littlefield Publishers, Inc., 1998)) have provided arguments to both the explicit and tacit theory-ladenness of intuitions. I do not take these views as the final word on the matter, but for my purposes in this paper, I take them to have left the question open (and in my opinion, on the side of theory-ladenness).

16. The Trolley problem is a case where there is a runaway trolley that will hit and kill five children unless you push a button that will make the trolley change tracks; hence saving the five children. Yet, by pushing the button you kill a sixth child who is on the track that you are switching the trolley to (who would not be harmed if you were not to push the button).

17. Kagan (2001), p. 58.