to follow only those ontological status. There is no independently existing “concept” of utilitarianism sitting in some ontological warehouse waiting for someone to come along and refer to it.

My view, then, is that the one possibility that is open is that when lawmakers use a moralized term like “freedom of speech” or “equal protection,” they are either enacting a determinate rule that is fixed by the specific criteria they have in mind, or they are referring to and incorporating actual moral principles. Legal principles, in other words, could just be actual moral principles referred to by laws.

It might be objected that if we ignored legal rules and decisions that were morally infelicitous, various bad things would happen. People who relied on infelicitous rules and decisions would have their expectations, on which they may have relied in costly ways, dashed. Coordination with others would become more difficult and costly. And so on.

But notice that if those costs are morally cognizable, which is plausible, then application of correct moral principles will have taken those costs into account. Put differently, if a morally incorrect legal rule or decision is enacted, its enactment changes the facts in the world to which correct moral principles apply. So it may be morally correct to follow a legal rule that it would have been morally better not to have enacted ab initio.

Therefore, the moral acceptability axis will always dictate a threshold of fit that is precisely what following correct moral principles would produce. That means that unless the threshold of fit is determined independently of moral acceptability, legal principles will turn out to be identical to moral principles.

The alternative of the threshold’s being independent of moral acceptability is quite unattractive, however. Any threshold of fit less than one hundred percent looks arbitrary. More importantly, however, if the threshold is independent of moral acceptability, legal principles will be normatively unattractive. For on this accounting, legal principles will lack the determinacy virtue of legal rules and decisions —they will have all of the indeterminacy of moral principles (because they can be ascertained only by recourse to morality and will therefore be as controversial as morality) — and they will lack, as well, the moral correctness virtue of moral principles (because they must fit morally incorrect legal rules and decisions). Legal principles will be neither determinate and predictable nor morally correct. They will have nothing to recommend them as norms, and thus there will never be any reason to consult them.

If a norm is not a norm of morality, and if it is not determinate and cannot coordinate behavior, then it has no normative virtues. And if a norm lacks normative virtues, then I would argue it does not exist as a norm. Indirectly enacted Dworkinian legal principles do not satisfy this existence condition.

Robert Alexy’s conception of legal principles is very similar to that of Dworkin. On Alexy’s conception, principles have no specific canonical form, and they have the dimension of weight. When they conflict, one principle can outweigh the other in the circumstances of the case at hand, but the outweighed principle continues to exist and may outweigh the other principle in different circumstances. (When rules conflict, however, one rule is either invalid altogether or at a minimum invalid in the circumstances of conflict and thus modified.) Alexy conceives of legal principles as values to be optimized —realized to the greatest extent possible consistent with their weight vis-à-