

Integrity in *Law’s Empire*

Andrei Marmor

This lecture focuses on one chapter in R.M. Dworkin’s *Law’s Empire*, chapter 6, where Dworkin aims to establish the distinct political value of integrity.¹ This chapter is so rich in ideas, arguments, and subtle observations, that it certainly merits more attention than one can give it in one lecture. But I will focus my observations even more, questioning the core idea in this chapter, namely, the idea that integrity, as Dworkin understands this ideal, is morally valuable in and of itself. My conclusion will be the opposite of Dworkin’s, but I hope that regardless of the conclusion, we will have learned a few lessons along the way. *Law’s Empire* was written a long time ago. Judging its political ideals by the current political climate, however, would not be advisable. It might be tempting to think that in the face of the extreme political and ideological polarization in American society these days, as in many other places around the globe, talking about the value of political integrity is like a yearning to raise Atlantis from the bottom of the sea. This is not going to be the thrust of my comments. Rather, my argument is going to be that the case for Atlantis has never been made, there is no lost ideal that needs salvaging.

Integrity, Dworkin claims, is a distinct political ideal, that is, distinct from justice, fairness, equality, and such, but only in the framework of a non-ideal theory. “Integrity would not be needed as a distinct political virtue in a utopian state” (p. 177), Dworkin says, because moral coherence would be guaranteed by full compliance with everything that is just and fair. In other words, an ideal theory of justice has no need for the value of integrity. Integrity is a political virtue only in the real world, where compliance with justice is far from complete, and partly because people actually disagree about what justice requires. We live in a world in which people have very different and often deeply conflicting conceptions of the good and the just. Thus, integrity comes into play directly confronting the fact of pluralism and political fragmentation. This is very important, at least for the purposes of mapping Dworkin’s view

¹ R. M. Dworkin, *Law’s Empire*, (Fontana Press London 1986). Henceforth page numbers in brackets without further details are all references to this text.

within the larger picture of liberal theories of justice. When confronting the fact of pluralism, the fact that different segments of society actually have deeply conflicting and irreconcilable conceptions of the good and the just, liberal political philosophy opted for two main kinds of views. According to perfectionist liberalism, pluralism should be celebrated as morally valuable, something that makes both our communal and personal lives richer and more valuable, even if, practically speaking, difficult to manage.² According to a *political liberalism*, justice should stay out of conceptions of the good, focusing on how to manage our communal lives justly and fairly without endorsing any controversial moral conceptions.³ Needless to say, both versions of liberalism face difficult challenges. The former view faces difficult questions about the possibility of reconciling perfectionism with value pluralism; the political version of liberalism faces difficult questions about whether justice can have robust enough foundations without morality. Be this as it may, Dworkin's ideas about integrity position him as advocating a third option, at least in the realm of non-ideal theory. Facing the fact of pluralism, and without denying potential valuable aspects of it, Dworkin asks us to construct and interpret our political institutions *as if* they speak with one voice, as if the rights and policies political institutions promote and protect all stem from a coherent set of principles, a set of principles that can be endorsed by a single moral agent.

To be sure, integrity is not a substitute for justice and fairness. Ideally, society should be just and fair. In the non-ideal world, integrity is an additional, though distinct value, and as such, it may compete with justice and presumably other moral requirements. In other words, Dworkin does not deny that integrity may lose out to competing values under particular circumstances. But he does insist that integrity is an important political virtue in and of itself. What role can integrity play in politics? Dworkin mentions two main domains: adjudication and legislation. The most obvious practical role of integrity is in the domain of common law adjudication, where judges are required to interpret the law in ways that would strive to make the law as morally coherent as possible. But the value of integrity also applies to law making, that is, to considerations of policy and promotion of the good. Political action should be based on reasons that take the overall moral coherence of existing laws and policies as a serious consideration that may council in favor or against particular decisions. In other words, integrity has a role to play

² See, for example, J. Raz, *The Morality of Freedom*, (Oxford 1986).

³ J. Rawls, *Political Liberalism*, (Columbia Univ Press, 1993). For an excellent account of the conflict between these two approaches, see for example, J. Quong, *Liberalism Without Perfection* (Oxford, 2010).

not only in the interpretation of existing law, but also in creating new laws and policies; it is a broad political virtue, applying to legal and political decisions across the board.

So what is this political virtue of integrity? A simple answer is that integrity is moral coherence or, rather, the coherence of the fundamental moral principles that justify the relevant moral, political and legal past decisions in a given domain. Political decisions comply with the value of integrity when they flow from the best overall justification of the relevant practical domain. A decision would violate integrity in case it cannot be subsumed under a morally coherent world view given the best interpretation of prior decisions and commitments. I say that this is the simple answer because it's only part of Dworkin's overall theory of integrity. If all there was to the virtue of integrity is the value of moral coherence, few would have serious qualms about it. Surely anything that is more coherent than its alternative has something going for it. It is difficult to envision our ways of thinking about the world, be it in the moral domain or any other, without acknowledging that coherence is valuable. At the very least, we would should concede that incoherence is a sign of trouble, indicating that something is not quite right. But this minimalist conception of integrity doesn't capture Dworkin's view. In his view the value of integrity is much more foundational, and one that is closely tied to political legitimacy. And this is where things get really complicated and, I should say, rather controversial. According to Dworkin, integrity is the glue holding together ideals of a true political community, where people have genuine associative obligations, and the legitimacy of political authority. So integrity is doing a lot of work for Dworkin, and in ways that are complicated, sometimes difficult to follow, and certainly controversial.

I will try to approach Dworkin's complex argument in two main steps, following, roughly, Dworkin's two main arguments for the distinct value of integrity. The first, and more direct argument, is based on what Dworkin takes to be the grounds for rejecting "checkerboard laws". The second argument is the one that ties the value of integrity to political legitimacy by way of articulating the value of integrity in light of its affinity with Fraternity, the idea of a "true community", and the associative obligations such communities engender.

1. Checkerboard laws.

Dworkin's first main argument for the distinct value of integrity goes by way of answering the question of how can we possibly explain our instinctive objection to

“checkerboard laws”, unless we assume that what’s wrong with them is that they violate integrity? (pp. 178-184) Let us follow Dworkin’s famous example of a hypothetical checkerboard law. American society is deeply divided about the permissibility of abortions. Roughly about half of the population believes that women have a right to decide what to do with their bodies and with their own lives, and thus they have a right to decide whether to carry on with a pregnancy or whether to terminate it. The other half believe that abortion is murder, and since nobody has a right to commit murder, women have no right to abortion. There is, clearly, no easy compromise between these two opposing views, but it is one of those areas in which some public authoritative decision has to be made. So let us assume that a law is passed whereby women who were born on even days of the month get to have a right to abortion, and women born on uneven days are denied this right. This would be a paradigm of a checkerboard law, Dworkin says. Even if we understand this law as a painful compromise, it is the kind of compromise that nobody can live with, we would all find it outrageous and unacceptable. And of course we can generate similar hypotheticals of checkerboard laws about almost any morally controversial issue. But how does it support the idea that integrity is valuable? Dworkin claims that the best explanation for our instinctive objection to such checkerboard laws consists in their patent violation of our commitment to integrity. No moral agent can possibly think of this solution as one that would reflect her own views about the appropriate way of solving the moral conflict. (pp. 183-4)

But this is far from obvious, as Dworkin himself seems to admit. Some checkerboard-looking solutions to tough choices are quite acceptable, even morally required. As an example, Dworkin gives the choice between saving some people from a catastrophe, selected at random, or saving none. (p. 181) Surely, we would think, saving some, even if randomly chosen, is better than saving none, perhaps even morally obligatory. And this teaches us at least one thing: that what makes checkerboard laws bad is not simply the arbitrary distinctions they are based on. Many sensible laws and policies are based on choices that are morally arbitrary, but for reasons that are not themselves arbitrary in any sense. We need to make a decision about the right voting age, and for various reasons of practicality and law enforcement, the voting age is better set at a precise age, say, exactly 18. The date is arbitrary and bound to result in some over and some under inclusiveness relative to its underlying rationale. But there is nothing amiss here, it’s a

perfectly sensible solution to a problem of vagueness.⁴ So the issue here is not about the arbitrary nature of the factor that makes the distinction between having a right to something and not having it. Clearly Dworkin is aware of this. What we find objectionable about the right to abortion hypothetical has something to do with the fact that it incorporates a compromise between conflicting principles in a way that seems to be profoundly incoherent, morally speaking. Rescuing some rather than none is a compromise, but one that a single moral agent would find coherent with her views about the relevant values in play. Granting abortion rights to women on the basis of their accidental birth date does not seem to be such a compromise; it cannot be endorsed by a single moral agent in ways that would be coherent with her deeply held values.

But this is actually far from clear. Is it necessarily morally incoherent to compromise with your own deeply held values in order to secure some partial implementation of other values you that you hold even more important or urgent? Consider the real life example of the draft lottery during certain phases of the Vietnam war. It is very similar to Dworkin's checkerboard law; people were drafted to fight in a bloody war on the basis of a lottery. I am not suggesting that the draft lottery was justified at the time, or that it is generally a good idea. But think about it from the point of view of someone who thought that the Vietnam war was an unjust war and should not be fought. Suppose that person is given a choice between universal conscription and the lottery draft; wouldn't she be morally justified in thinking that saving some from the draft – chosen at random -- is better than saving none? And if that is so, wouldn't we think that a lottery system is, at least *prima facie*, fair? If you think that this is a coherent position, you would be hard pressed to explain the difference between the draft lottery and the abortion checkerboard law. Suppose you hold the view that women should have a right to abortion, but your view is not going to be implemented. So you are given a choice: either prohibition of abortions across the board, or have something like Dworkin's checkerboard law. It does not strike me as morally incoherent to prefer the latter; saving some might be better than saving none. And the same goes for the opposing view; it is not morally incoherent to think that prohibiting some murders is better than prohibiting none. In both case, there is some sense that if you cannot have it all, saving some people from serious rights' violations or harm is better than saving none. Needless

⁴ For a detailed explanation of the arbitrariness involved here and its relation to vagueness, see my *The Language of Law* (Oxford 2014), ch 4.

to say, in both cases there might be better ways to make the choices, even if arbitrary; so I'm not suggesting that these checkerboard laws are good or overall justified. But I am suggesting that it is far from clear what makes them violate integrity. It is often the case that if a choice between opposing positions has to be made and a compromise needs to be reached, compromises based on some lottery system are not morally incoherent.⁵

I would certainly agree with Dworkin, however, that certain compromises on moral issues are extremely problematic. In some matters of utmost moral importance, it may be rational to lose it all instead of compromising, hoping to win another day.⁶ Or, perhaps in some extreme cases, it might be morally impermissible to compromise, no matter what. I am not suggesting this as a general principle, for sure, nor would Dworkin for all I know, but it is the case that some moral compromises are very difficult to live with. These are always very tough decisions, often involving tragic choices; and part of what makes them tragic is the fact that choosing the lesser evil is not always the morally right thing to do. If presented with the tragic choice of either killing one innocent person myself or letting two innocent people die, I am not sure what choice I would make. But I am sure that whatever choice I made, I would feel deeply troubled by it. Either way, I don't see how the value of integrity, as Dworkin understands it, is really in play here. There is nothing morally incoherent in compromising with your own deeply held moral values for the sake of securing a greater or more pressing moral good. And if you face a tragic choice, where all feasible options are morally impermissible, including the choice of the lesser evil, integrity (in Dworkin's sense⁷) is not going to help you.

So if it is not the violation of integrity, what makes a checkerboard law wrong, if and when it is? There are quite a few options, actually, depending on the circumstances of the law and the kind of checkerboard solution it implements. In some cases, as I indicated, it is morally better to refuse a compromise, hoping to win at some later stage, even if the refusal to compromise involves serious moral sacrifice. In other cases, much more sensible compromises

⁵ It is quite possible that we tend to be more receptive to choices made by lottery if the lottery is actually conducted after the decision to have it, than lotteries based on past events (as in the case of the abortion example). But there is no principled distinction between the two.

⁶ This would seem to be particularly apt when the sacrifice is self-imposed to the benefit of others.

⁷ B Williams famously argued that some notion of personal integrity is in play here, when you are forced to choose the lesser evil in spite of your own moral convictions, but that's a very different conception of integrity. What Williams calls integrity is very different from the value Dworkin argues for here. See Smart & Williams, *Utilitarianism for and against*, (Cambridge U Press, 1973, at 108ff)

can be reached. Lottery is a very crude option, and other, more reason-sensitive solutions might be available. In the abortion case, for example, if some compromise is absolutely necessary, it might make much more sense to compromise on allowing abortions under certain conditions and forbidding them in others, taking into account such factors as age, socio-economic background, the availability of family support, and things like that. It would still be a compromise, for sure, and one which both sides would have strong reasons to resist, but surely such solutions are better, in this case, than a lottery systems. In other words, it seems to me that our reasons to oppose checkerboard laws have a lot to do with the availability of better solutions and very little, if anything, with the value of integrity.

2. Fraternity

Dworkin's second argument for the value of integrity is much more complex. It is based on the idea that a commitment to integrity is constitutive of a "true community", which in turn is constitutive of associative obligations, and in the case of a political community, the relevant associative obligations are constitutive of or, at least necessary condition for, political legitimacy. So there are many moving parts here and we need to proceed with caution, and some patience.

Let me start by an attempt to reconstruct the argument somewhat formally. So here's how it goes, as far as I can tell:

- (1). A society that accepts integrity as a political virtue thereby becomes a "true community" (p. 188)
- (2). Under some additional conditions, members of a true community incur associative obligations towards each other. (p.196)

The additional conditions are (pp. 199-201):

- a. Members regard the associative obligations as special, holding distinctly within the group.
- b. Members of the group accept these responsibilities as personal, owing to other members of the community.
- c. Members regard their responsibilities to other members as flowing from a general concern for the well-being of others in the group.

d. The concern for other members of the group is equal concern, nobody is regarded as inherently less worthy than others.⁸

(3). In a political true community one of the most important associative obligations is the obligation to obey the law. (p. 208)

(4). State authority is legitimate if its citizens have a general obligation to obey its coercive decisions. (p. 191)

(5). Therefore, integrity plays a crucial role in legitimizing the use of coercive force in political communities.

As one can see, this is a very ambitious argument, and one that puts the value of integrity front and center in the age old debates about political obligation and the legitimacy of political authority. Before we move on to unpack this argument and focus on some of its crucial steps, let me say that there is, initially, something odd about the idea that integrity would have this major role to play in legitimizing political authority. As we noted earlier, Dworkin explicitly admits that integrity is a distinct political value only within non-ideal theory. An ideal theory of justice has no need for the virtue of integrity. But if political legitimacy depends, as Dworkin claims, on commitment to integrity, it means that an ideal theory of justice has either no need, or else no tools, for justifying political legitimacy. Which is a bit odd, if you think about it. Even ideal theories of justice, such as Rawls's *A Theory of Justice*,⁹ would need to include some account of what makes political authority legitimate, when it is, and under what conditions. But if those conditions need not refer to integrity, as ex hypothesis in an ideal theory they need not, then integrity cannot have the kind of foundational role in legitimizing political authority as Dworkin alleges here. Or else, we would have to say that an ideal theory of justice cannot account for political legitimacy, it does not have the essential tools for it. The latter option does not sound plausible to me. But I will let this pass, and move on to discuss some of the details of Dworkin's argument, assuming as Dworkin does, that we are working within the framework of a non-ideal theory.

⁸ I must admit that I find this equality condition somewhat ad hoc. If it is meant to impose a necessary condition on the moral permissibility of communal associations, something that constrains the kind of associations worthy of moral respect, then a condition of equal concern should only be one of those constraints, not the only one. A neo-fascist organization might be very egalitarian with respect to its members but hardly the kind of association worthy of moral respect.

⁹ (Oxford, 1971).

It is undeniably true that in numerous contexts and to various degrees, we incur associative obligations. Certain things we are obliged to do (or to refrain from doing) in virtue of the fact that we happen to belong to some group or association, be it family, friendship, profession, neighborhood we live in, social groups we associate with, and yes, perhaps even a nation or a state. Furthermore, Dworkin, I believe, is quite right to argue that associative obligations of this sort do not necessarily depend on choice or consent. Associative obligations can be genuine and binding even if one had no choice in joining the association or consent to its demands. In fact, as Dworkin rightly notes, our associative obligations to members of our family, that many of us would take to be rather important, are matters of the least choice or initial consent. (p. 198)

Associative obligations ought to depend, however, on one's ability to leave the association or detach from it in the relevant sense, without having to incur unreasonable costs.¹⁰ I don't see how without this crucial caveat one could reconcile the force of associative obligations with the fundamental importance we attach to personal autonomy and, more generally, the ideal of freedom. Consider, for example, the idea of friendship. Dworkin gives this example to demonstrate that even friendship, which might be thought to emerge by choice, is not necessarily like that. We end up with friendships and similar attachments often very gradually, almost accidentally sometimes, and find ourselves bound by obligations of friendship regardless of some choices we had made, or not, long time prior. I agree with this; but we would not think that obligations emerging from friendship are binding unless we also thought that one is always free to end such relationships or detach from them at will, without having to incur unreasonable costs.¹¹

If I am right about this, it creates a serious problem for associative obligations in the political context. Most people have very limited abilities to leave the state in which they live, and even less of an ability to move to a place where no such associative obligations are presumed. Notice that I am talking about the practical ability to immigrate, not its formal availability.

¹⁰ Obligations to one's children might be thought to be an exception; but I doubt that a caregiver's obligations to a child in their care is an example of associative obligation, so I'm not sure that this is really an exception.

¹¹ Notice that I am referring to *unreasonable* costs. Some personal costs are often involved in detachment from a long held association, including friendship, of course, but these costs can be reasonable, given the circumstances and other relevant factors. It is only when the cost is unreasonable relative to what is at stake that a right to exit is violated.

Dworkin seems to hint at the idea that something like a right to emigrate may be regarded as a condition for the existence of associative obligations in the political context (p. 207), but even if we read such a condition into his views, it would not solve the problem. A right to emigrate does not guarantee one's actual ability to immigrate, to move to a different political community. For the vast majority of people in the world, immigration is not a real option, and for many it is a life-threatening ordeal that often fails. Sadly, more and more so in the present global political climate. In other words, the crucial question here becomes whether people can be assumed to have genuine associative obligations in the political context without having any meaningful right to exit. Dworkin seems to think that the answer is yes, but I suspect that many would deny this. I would, for sure; I think that any set of associative obligation, deriving from membership in a given association, is morally conditioned on the practical availability of a reasonable exit option.

Now of course things are often complicated and various subtleties need to be acknowledged. It may happen, for example, that as a member of an association you participate in its activities, you share the burden and reap the benefits for a while, and over time, your life becomes deeply entangled with the association, so much so, that you reach a point where it would no longer make any sense for you to contemplate departure or exit. I think that many of us feel that way about our academic careers. At some point it is just what your life is about, and no longer makes much sense for you to think that you can become something else. Would it mean that when you reach a point where exit is no longer a practical option, you lose your associative obligations? That would make no sense. The right answer here, I think, is that the continuing voluntary participation in the association over the years makes a moral difference; commitments that are assumed over the years in a voluntary manner may negate the condition of availability of exit. At some point, when you find yourself no longer able to leave, it is right to say that you have only yourself to blame, so to speak. But it is crucial to notice that even in these types of cases, the availability of exit would have had to be a real option for a while. Which is not the case in the political context.

I can see a possible objection here. Think of a miserably poor farming community, say in rural India, where nobody has any real options of living a different life, or doing anything other than what they, and generations of their ancestors, have been doing, that is, living the life of subsistence farmers. Still, one might think, the farmers have associative obligations to their farming community and fellow farmers. They may need to respect the traditions and practices of

the community that allow them to make a living, miserable as it is, to sustain, even if barely, their livelihood and communal life, and things like that. So perhaps a meaningful right to exit is not a condition for associative obligations. But I don't think that such examples disprove my point. On the contrary, I think that they teach us the lesson that we should be very careful with ascribing associative obligations to people just because they happen to be in a community, even if the communal life is beneficial under the circumstances. I am not denying that the poor farmers in my example have moral obligations to their fellow farmers and perhaps to their village and farming community. But it is not an associative obligation. People often have an obligation to help each other, particularly in dire need, but it doesn't mean that the source of the obligation is association with the relevant community. To have an associative obligation one needs to attach some value to the association itself, to take some pride in belonging, to regard the features that make up the community for what it is to be something positive, something that they have reasons to appreciate. When the community is made up of miserable necessity, and not much more, then talk of associative obligation seems to me totally misplaced. An obligation to help your fellow passengers in a capsized ship to board the lifeboat is not an associative obligation; it's just an obligation to help your fellow humans to survive.

You might think that it is too far fetched to deny that any associative obligations arise in the political context only because most people have no real option of leaving it, it might strike you as too radically cosmopolitan, perhaps. After all, most people who live in nation states tend to take pride in their national identity, they care more about members of their political community than they care about outsiders and members of other nations, and things like that. Needless to say, I would not want to deny the facts. Many, perhaps most, people in the world feel special attachments and special concern for members of their political communities. That's a fact. Perhaps it is also a fact that without these attitudes of special concern for one's political community, nation states would be much more difficult to sustain in a just and orderly fashion. Some minimal level of national solidarity may be conducive to all sorts of political goods, perhaps even to justice and fairness.¹² I am willing to assume all of this (well, up to a point, but that's not part of my argument here). My disagreement with Dworkin's views on these matters concern two main issues: first, it is very unclear to me why would these associative obligations in the political context or elsewhere depend on a commitment to integrity. Consequently, I also

¹² See, for example, D. Miller, *On Nationality* (Oxford, 1995) & *Strangers in Our Midst* (Oxford, 2016).

want to deny the very close ties Dworkin forges between political legitimacy and political obligations.

Let us proceed, assuming that I am wrong to claim that associative obligations are conditioned on a robust right to exit; suppose there is no particular difficulty in accepting Dworkin's idea that membership in a state comes with a whole bunch of associative obligations, at least when the four conditions he lists are fully satisfied.¹³ Still, that would not explain the role of integrity in rendering these associative obligations morally significant. In fact, the role of integrity here seems particularly puzzling. Suppose that by the fact that I am a US citizen, reside and work here, I incur some obligations to my fellow Americans, associative obligations I do not owe to members of other political communities. Why would these obligations, whatever exactly they are, depend on some general commitment of American society to be guided by laws and political principles that are morally coherent? They would depend, presumably, on commitment to justice and fairness; If American society was profoundly unjust or morally corrupt then perhaps any putative associative obligations I might have had would be undercut. But why would I have to think that my associative obligations to fellow Americans depend on a commitment to integrity?

The question about the connection between associative obligations and integrity is not confined to political communities. In fact, I could not think of any example where this connection might hold. Think about our academic communities, for example. Surely we have a bunch of associative obligations to the university we work in, and to the wider academic community in our respective fields, perhaps even to academia generally. We have obligations to academic honesty, to the pursuit of truth and innovation, to freedom of expression, to mentoring our students, and all sorts of things like that. Why would any of these obligations depend on an aspiration to see our academic institutions as if they speak with one voice, subsumable under a morally coherent world view? I just fail to see the connection here. And I fail to see it in the political context. People can feel that they have special associative obligations to their fellow Americans even if they have very different and deeply irreconcilable views about that it means to be an American or why it matters to them. I am writing this lecture in Israel, where questions of

¹³ Or, alternatively, we can construe Dworkin's argument here in a modal version: assume that there is a world in which residents of states have an adequate right of exit; and assume that in this possible world, people would have associative obligations arising from their commitment to integrity; ergo, integrity is valuable. As I try to demonstrate in the text, even this possible world argument won't work, because there is no such tight connection between integrity and associative obligations.

national identity loom large and in ways that are very closely tied to the political legitimacy of the state of Israel, its laws and policies. Jews in this country are deeply divided about what it means to be a Jew, or a Zionist, and why it matters to them. A significant segment of the population regards their Jewish identity in religious terms, and cannot conceive of any other; another significant segment of the population rejects the religious grounding of their identity and regards it as a matter of ethnicity; others see it as shared history, and still others, as no more than coincidence of birth, language, and personal attachments. These different views imply very different conclusions about laws and policies; but there is no integrity here. There is no morally coherent view that can subsume these deeply divided views about Jewish identity under anything that one moral agent could possibly endorse. And yet, I don't see how this lack of integrity undermines the associative obligations of Jewish Israelis, as such. They all care about their country (perhaps a bit too much sometimes), they care about their fellow (Jewish!) citizens and they certainly acknowledge that they have associative obligations as Israelis. And whatever holds about these fundamental issue of identity also holds about other matters of principle and value. I picked the example of national identity because it would seem to have something to do with the kind of things that make a political community distinct. If you think that on matters of product liability or compensation for emotional damages in tort law the connection between associative obligations and integrity is somehow more obvious, I must admit that I just fail to see that.

Dworkin says that a commitment to integrity makes for a true community. Perhaps, but calling it "true" does not make it morally attractive. The main moral concern with the value of integrity is that it is very difficult to reconcile with the value of pluralism. Consider, again, our academic community. I think that I am very committed to my academic community, and I take pride in this association, but the last thing that I would want is for the community to speak with one voice. On the contrary, whenever I see a memorandum sent around by my university president, speaking as if she expresses the ethical voice of the entire "Cornell community", even if I agree with the content of what she says, I feel more discomfort than pride. You cannot say that you really value pluralism and reasonable disagreement and yet you speak on behalf of all us. Respect for genuine pluralism and reasonable disagreement does not sit comfortably with integrity; if a community purports to speak with one voice, broad and principled as it may be, inevitably some voices are going to be excluded or marginalized.

And this, of course, is much more important in the political context. Remember that Dworkin confines his claims about the virtue of integrity to non-ideal theory, to the world as it is, messy, fragmented, and often deeply divided on matters of principle and value. Integrity has to confront the fact of pluralism. It seems to me that integrity can only confront genuine pluralism by asking us to ignore it. It asks judges and other officials in charge of interpreting our laws to treat them as if they express a unified moral voice. But the truth is that there is no unified moral voice that can possibly incorporate the values that are fundamentally important to, say, devout Catholics and liberal atheists; or to Orthodox Jews and socialists; or to socialists and Neo-Liberal capitalists. Some world views are so deeply at odds that the idea of speaking with one voice between them is laughable. We inhabit a world in which these deeply conflicted views are held by significant segments of the population, which means that we need to get along somehow, despite the profound disagreements about matters of value. And we have to get along in ways that are just and fair, while respecting our differences as much as possible. It is very difficult to see how commitment to integrity is going to be helpful. Justice requires respect for pluralism, not speaking in one voice.

Since we are talking about justice here, let me pile on top of this another serious concern I have about the value of integrity. It is a concern about integrity's pull towards conservatism. Dworkin is quite clear and candid about it, suggesting that even when justice requires a departure from the past, maybe even a radical departure from long held communal values, integrity still weighs in, and has some moral significance. He gives the example of a traditional community (or rather, we should say, traditionally patriarchal and sexist) where a young woman needs the blessing of her father to choose her husband. Suppose we agree, Dworkin says, that all things considered, this tradition is not binding on the daughter, that she would be justified in defying her father's wishes. Still, Dworkin says, "a daughter who marries against her father's wishes in this version of the story¹⁴, has something to regret. She owes him at least an accounting, and perhaps apology,...." (p. 205). Oh well, let us be kind and assume that Dworkin would not have chosen this unfortunate example writing these days. The problem is, however, that the example doesn't matter, the idea remains. And the idea is that integrity is inherently conservative because it attaches considerable weight to the way things are, and have been for some time. We should

¹⁴ The version of the story Dworkin refers to here is that the community does not regard women, generally, as morally inferior. Nevertheless, paternalistic sexism is still sexism, and Dworkin does not deny this.

make our laws and policies coherent with past decisions and commitments, as best we can. Which is to say that one's obligations arising from considerations of integrity "arise from the historical fact that his community has adopted that scheme, which is then special to it, not the assumption that he would have chosen it were the choice entirely his." (p. 211) In other words, integrity is inherently titled towards the past, towards long held principles the community holds dear, even if those principles are far from ideal and not as just as they could have been.

I would not want to deny that many people feel the way Dworkin does about values of tradition and the importance of making social changes incremental, continuous, as much as possible, with past traditions. I do not share this sentiment, and if that makes me a radical, I am proud to be one. The past weighs on us too much anyway, without moral help; morally speaking, I think that the only relevant consideration here is the one that tells against frustrating *legitimate* expectations. If and when people's expectations against change are not quite legitimate to begin with, there is no moral cost to an abrupt or radical departure from the past.¹⁵ A sexist cannot complain that it's wrong to depart abruptly from past sexist practices because they were so deeply engrained in our cultures for centuries. To the extent that integrity councils against this, so much the worse for integrity.

If you are sympathetic to my critical points so far, you should be receptive to my next set of thoughts, concerning the connections between integrity and political legitimacy. Since we have already seen that the connection between integrity and associative obligations is rather tenuous, one would have thought that there are two separate issues to consider here. One question is whether political obligation can be grounded in associative obligations; the other question is whether a commitment to integrity is in any way necessary for political legitimacy. Dworkin is very clear, however, in explicitly rejecting a separation between these two issues. His argument is based on the premise that political legitimacy, by which he understands the justified use of coercive force, holds in virtue of the moral obligation to obey the laws. As he puts it: "A state is legitimate if its constitutional structure and practices are such that its citizens have a general obligation to obey political decisions that purport to impose duties on them." (p. 191)

¹⁵ I do not deny that there are many contexts in which there is a legitimate expectation to have things remain as they are. When I sit in a café that fills up, I can legitimately expect to keep sitting there for a while, even if somebody who needs my chair comes along. Similarly but much more importantly, of course, if you happen live somewhere you can legitimately expect to keep living there, regardless of others' needs or interests. So there are many context in which it's totally OK for people to expect things to continue as they are. But these expectations are morally relevant only when they are actually legitimate.

Once again, integrity is the glue holding these ideas together; “[P]olitical obligation is then not just a matter of obeying discrete political decisions of the community one by one, as political philosophers usually represent it. It becomes a more protestant idea: fidelity to a scheme of principle each citizen has a responsibility to identify, ultimately for himself, as his community’s scheme.” (p. 190). Dworkin’s point here is that we need to broaden our conception of political obligation in order to see its close affinity with political legitimacy. Political obligation is not simply the general pro tanto obligation to obey the laws of our country; it is the much broader obligation or, rather, moral commitment, to comply with the underlying scheme of principles that our laws purport to implement. And this is why Dworkin is able to claim that only what he calls a true community, that is, a community committed to integrity, acknowledging associative obligations that flow from it, satisfies all the conditions that render its political authority legitimate. Well, Dworkin is quite right to claim that this is a very protestant idea. It asks us to regard our laws not simply as decisions of various practical authorities on what ought to be done, but as reflecting an ongoing interpretative endeavor, by legislatures, courts and other political actors, aiming to implement the best coherent set of principles that the community is committed to by its past political decisions.

Obviously, this argument depends on the value of integrity and the great importance Dworkin attaches to it. Though I have to say that the argument would baffle many philosophers who work on political obligation, leaving them to wonder, for example, whether in political communities, perhaps democratic and otherwise just, which would not qualify as “true communities”, there is no general obligation to obey the law? But I will set these difficulties aside, and focus on one crucial question here, whether Dworkin is right to assume such a tight connection between political obligation and political legitimacy. The reason to be doubtful about it becomes clear if you think that it is quite possible, morally speaking, that we do not actually have a general moral obligation to obey all laws. Philosophical anarchism, as this view has been labeled, would not reject the possible legitimacy of political authority. On the contrary, philosophical anarchism is premised on the idea that political authority can be legitimate, and purports to show that even in legitimate regimes, our moral obligations to obey laws is not quite general, it does not apply to all laws or to all subjects of the law. Now of course you may reject philosophical anarchism, you may think that a general moral obligation to obey the law is possible, at least under certain conditions. Nevertheless, we have no reason to assume that the

philosophical anarchist is guilty of a conceptual error; it does not seem to be a conceptual confusion to think that the overall legitimacy of a political authority does not necessarily entail a moral obligation to obey all its directives, even pro tanto. Legitimate authorities can make mistaken decisions, sometimes even gravely mistaken. Sure, some mistaken directives we may still be morally obliged to follow, but not without special arguments to justify it, and not necessarily.

Dworkin would have responded that I am just missing the point; political obligation is not simply the moral obligation to obey the laws, it is the underlying commitment to the integrity of the system, the moral commitment to the idea of Fraternity that makes us all participants in a grand interpretative scheme, trying to work out the specific rights and duties that flow from the principles we are all committed to. Perhaps this is, indeed, just an alternative understanding of what political obligation is. But then regardless of anything else, Dworkin's conception of political obligation/legitimacy stands or falls with the attractiveness the value of political integrity. What I have tried to show here is that we have good reasons to doubt the virtue of integrity. For one, it is not needed in order to show what is wrong with checkerboard laws; secondly, integrity is not needed to ground plausible or genuine associative obligations. Thirdly, and perhaps most importantly, integrity is very difficult to reconcile with respect for pluralism; and, finally, integrity's inherent bias towards conservatism does not lend it much glory in my mind either. For all these reasons, and probably some others, I think that the case for the distinct and important virtue of integrity has not been made. If commitment to integrity is what constitutes a true community, I should think that it is better for our political communities not to be true. Instead of trying to speak with one voice, it would be much better if our legal and political institutions strive to let all voices be heard, even if the emergent cacophony is not so pleasant to the ears.¹⁶

¹⁶ I am grateful to my friend and colleague Emad Atiq for helpful comments on a previous draft.