

SIX

INTEGRITY

AGENDA

We have two principles of political integrity: a legislative principle, which asks lawmakers to try to make the total set of laws morally coherent, and an adjudicative principle, which instructs that the law be seen as coherent in that way, so far as possible. Our main concern is with the adjudicative principle, but not yet. In this chapter I argue that the legislative principle is so much part of our political practice that no competent interpretation of that practice can ignore it. We measure that claim on the two dimensions now familiar. We ask whether the assumption, that integrity is a distinct ideal of politics, fits our politics, and then whether it honors our politics. If the legislative principle of integrity is impressive on both these dimensions, then the case for the adjudicative principle, and for the conception of law it supports, will already be well begun.

DOES INTEGRITY FIT?

Integrity and Compromise

Integrity would not be needed as a distinct political virtue in a utopian state. Coherence would be guaranteed because officials would always do what was perfectly just and fair. In ordinary politics, however, we must treat integrity as an independent ideal if we accept it at all, because it can conflict with these other ideals. It can require us to support legislation we believe would be inappropriate in the perfectly just

and fair society and to recognize rights we do not believe people would have there. We saw an example of this conflict in the last chapter. A judge deciding *McLoughlin* might think it unjust to require compensation for any emotional injury. But if he accepts integrity and knows that some victims of emotional injury have already been given a right to compensation, he will have a reason for deciding in favor of Mrs. McLoughlin nevertheless.

Conflicts among ideals are common in politics. Even if we rejected integrity and based our political activity only on fairness, justice, and procedural due process, we would find the first two virtues sometimes pulling in opposite directions. Some philosophers deny the possibility of any fundamental conflict between justice and fairness because they believe that one of these virtues in the end derives from the other. Some say that justice has no meaning apart from fairness, that in politics, as in roulette, whatever happens through fair procedures is just. That is the extreme of the idea called justice as fairness.¹ Others think that the only test of fairness in politics is the test of result, that no procedure is fair unless it is likely to produce political decisions that meet some independent test of justice. That is the opposite extreme, of fairness as justice.² Most political philosophers—and I think most people—take the intermediate view that fairness and justice are to some degree independent of one another, so that fair institutions sometimes produce unjust decisions and unfair institutions just ones.

If that is so, then in ordinary politics we must sometimes choose between the two virtues in deciding which political programs to support. We might think that majority rule is the fairest workable decision procedure in politics, but we know that the majority will sometimes, perhaps often, make unjust decisions about the rights of individuals.³ Should we tamper with majority rule by giving special voting strength to one economic group, beyond what its numbers would justify, because we fear that straight majority rule would assign it less than its just share?⁴ Should we accept constitutional

constraints on democratic power to prevent the majority from limiting freedom of speech or other important liberties.⁵ These difficult questions arise because fairness and justice sometimes conflict. If we believe that integrity is a third and independent ideal, at least when people disagree about one of the first two, then we may well think that fairness or justice must sometimes be sacrificed to integrity.

Internal Compromises

I shall try to show that our political practices accept integrity as a distinct virtue, and I begin with what I hope will strike you as a puzzle. Here are my background assumptions. We all believe in political fairness: we accept that each person or group in the community should have a roughly equal share of control over the decisions made by Parliament or Congress or the state legislature. We know that different people hold different views about moral issues that they all treat as of great importance. It would seem to follow from our convictions about fairness that legislation on these moral issues should be a matter not just of enforcing the will of the numerical majority, as if its view were unanimous, but of trades and compromises so that each body of opinion is represented, to a degree that matches its numbers, in the final result. We could achieve this compromise in a Solomonic way. Do the people of North Dakota disagree whether justice requires compensation for product defects that manufacturers could not reasonably have prevented? Then why should their legislature not impose this "strict" liability on manufacturers of automobiles but not on manufacturers of washing machines? Do the people of Alabama disagree about the morality of racial discrimination? Why should their legislature not forbid racial discrimination on buses but permit it in restaurants? Do the British divide on the morality of abortion? Why should Parliament not make abortion criminal for pregnant women who were born in even years but not for those born in odd ones? This Solomonic model treats a com-

munity's public order as a kind of commodity to be distributed in accordance with distributive justice, a cake to be divided fairly by assigning each group a proper slice.

Most of us, I think, would be dismayed by "checkerboard" laws that treat similar accidents or occasions of racial discrimination or abortion differently on arbitrary grounds.⁶ Of course we do accept arbitrary distinctions about some matters: zoning, for example. We accept that shops or factories be forbidden in some zones and not others and that parking be prohibited on alternate sides of the same street on alternate days. But we reject a division between parties of opinion when matters of principle are at stake. We follow a different model: that each point of view must be allowed a voice in the process of deliberation but that the collective decision must nevertheless aim to settle on some coherent principle whose influence then extends to the natural limits of its authority.⁷ If there must be compromise because people are divided about justice, then the compromise must be external, not internal; it must be compromise about which scheme of justice to adopt rather than a compromised scheme of justice.

But there lies the puzzle. Why should we turn our back on checkerboard solutions as we do? Why should we not embrace them as a general strategy for legislation whenever the community is divided over some issue of principle? Why is this strategy not fair and reasonable, reflecting political maturity and a finer sense of the political art than other communities have managed to achieve? What is the special defect we find in checkerboard solutions? It cannot be a failure in fairness (in our sense of a fair distribution of political power) because checkerboard laws are by hypothesis fairer than either of the two alternatives. Allowing each of two groups to choose some part of the law of abortion, in proportion to their numbers, is fairer (in our sense) than the winner-take-all scheme our instincts prefer, which denies many people any influence at all over an issue they think desperately important.

Can we defend these instincts on grounds of justice? Justice is a matter of outcomes: a political decision causes injustice, however fair the procedures that produced it, when it denies people some resource, liberty, or opportunity that the best theories of justice entitle them to have. Can we oppose the checkerboard strategy on the ground that it would produce more instances of injustice than it would prevent? We must be careful not to confuse two issues here. Of course any single checkerboard solution of an important issue will produce more instances of injustice than one of the alternatives and fewer than the other. The community can unite over that proposition while disagreeing about which alternative would be more and which less just. Someone who believes that abortion is murder will think that the checkerboard abortion statute produces more injustice than outright prohibition and less than outright license; someone who believes women have a right to abortion reverses these judgments. So both have a reason of justice for preferring some other solution to the checkerboard one. Our question is whether we collectively have a reason of justice for not agreeing, in *advance* of these particular disagreements, to the checkerboard strategy for resolving them. We have a reason of fairness, as we just noticed, for that checkerboard strategy, and if we have no reason of justice against it, our present practice needs a justification we have not yet secured.

We are looking for a reason of justice we all share for rejecting the checkerboard strategy in advance even if we would each prefer a checkerboard solution on some occasions to the one that will be imposed if the strategy is rejected. Shall we just say that a checkerboard solution is unjust by definition because it treats different people differently for no good reason, and justice requires treating like cases alike? This suggestion seems in the right neighborhood, for if checkerboard solutions do have a defect, it must lie in their distinctive feature, that they treat people differently when no principle can justify the distinction. But we cannot explain why this is always objectionable, so long as we re-

main on the plane of justice as I have defined it. For in the circumstances of ordinary politics the checkerboard strategy will prevent instances of injustice that would otherwise occur, and we cannot say that justice requires not eliminating any injustice unless we can eliminate all.

Suppose we can rescue only some prisoners of tyranny; justice hardly requires rescuing none even when only luck, not any principle, will decide whom we save and whom we leave to torture. Rejecting a checkerboard solution seems perverse in the same way when the alternative will be the general triumph of the principle we oppose. The internal compromise would have rescued some, chosen arbitrarily, from an injustice that others will be left to suffer, but the alternative would have been to rescue none. Someone may now say: nevertheless, though checkerboard solutions may be desirable for that reason on some occasions, we do better to reject their use out of hand in advance, because we have reason to think that in the long run more discrete injustice will be created than avoided through these solutions. But that would be a plausible prediction only for members of a constant and self-conscious majority of opinion, and if such a majority existed so would a self-conscious minority that would have the opposite opinion. So we have no hope of finding here a common reason for rejecting checkerboard solutions.

But perhaps we are looking in the wrong direction. Perhaps our common reason is not any prediction about the number of cases of injustice that the checkerboard strategy would produce or prevent, but our conviction that no one should actively engage in producing what he believes to be injustice. We might say: no checkerboard statute could be enacted unless a majority of the legislators voted for provisions they thought unjust. But this objection begs the main question. If each member of the legislature who votes for a checkerboard compromise does so not because he himself has no principles but because he wants to give the maximum possible effect to the principles he thinks right, then how has

anyone behaved irresponsibly? Even if we were to accept that no legislator should vote for the compromise, this would not explain why we should reject the compromise as an *outcome*. For we can easily imagine a legislative structure that would produce compromise statutes mechanically, as a function of the different opinions about strict liability or racial discrimination or abortion among the various legislators, without any legislator being asked or required to vote for the compromise as a package. It might be understood in advance that the proportion of women who would be permitted an abortion would be fixed by the ratio of votes for permitting all abortions to total votes. If we still object, then our objection cannot be based on the principle that no individual should vote against his conscience.

So it seems we have no reason of justice for rejecting the checkerboard strategy in advance, and strong reasons of fairness for endorsing it. Yet our instincts condemn it. Indeed many of us, to different degrees in different situations, would reject the checkerboard solution not only in general and in advance, but even in particular cases if it were available as a possibility. We would prefer either of the alternative solutions to the checkerboard compromise. Even if I thought strict liability for accidents wrong in principle, I would prefer that manufacturers of both washing machines and automobiles be held to that standard than that only one of them be. I would rank the checkerboard solution not intermediate between the other two but third, below both, and so would many other people. In some cases this instinct might be explained as reflecting the unworkability or inefficiency of a particular checkerboard solution. But many of those we can imagine, like the abortion solution, are not particularly inefficient, and in any case our instinct suggests that these compromises are wrong, not merely impractical.

Not everyone would condemn every checkerboard solution. People who believe very strongly that abortion is always murder, for example, may indeed think that the checkerboard abortion statute is better than a wholly per-

missive law. They think that fewer murders are better than more no matter how incoherent the compromise that produces fewer. If they rank the checkerboard solution last in other circumstances, in the case of strict liability for manufacturers, for example, they nevertheless believe that internal compromise is wrong, though for reasons that yield when the substantive issue is very grave. So they share the instinct that needs explaining. This instinct is likely to be at work, moreover, in other, more complicated rankings they might make. Suppose you think abortion is murder and that it makes no difference whether the pregnancy is the result of rape. Would you not think a statute prohibiting abortion except in the case of rape distinctly better than a statute prohibiting abortion except to women born in one specified decade each century? At least if you had no reason to think either would in fact allow more abortions? You see the first of these statutes as a solution that gives effect to two recognizable principles of justice, ordered in a certain way, even though you reject one of the principles.⁸ You cannot treat the second that way; it simply affirms for some people a principle it denies to others. So for many of us, our preferences in particular cases pose the same puzzle as our more comprehensive rejection of the checkerboard solution as a general strategy for resolving differences over principle. We cannot explain our hostility to internal compromise by appeal to principles of either fairness or justice as we have defined those virtues.

Astronomers postulated Neptune before they discovered it. They knew that only another planet, whose orbit lay beyond those already recognized, could explain the behavior of the nearer planets. Our instincts about internal compromise suggest another political ideal standing beside justice and fairness. Integrity is our Neptune. The most natural explanation of why we oppose checkerboard statutes appeals to that ideal: we say that a state that adopts these internal compromises is acting in an unprincipled way, even though no single official who voted for or enforces the compromise has done anything which, judging his individual actions by the

ordinary standards of personal morality, he ought not to have done. The state lacks integrity because it must endorse principles to justify part of what it has done that it must reject to justify the rest. That explanation distinguishes integrity from the perverse consistency of someone who refuses to rescue some prisoners because he cannot save all. If he had saved some, selected arbitrarily, he would not have violated any principle he needs to justify other acts. But a state does act that way when it accepts a Solomonic checkerboard solution; it is inconsistency in principle among the acts of the state personified that integrity condemns.

Integrity and the Constitution

Checkerboard statutes are the most dramatic violations of the ideal of integrity, and they are not unknown to our political history. The United States Constitution contained at its birth particularly hideous examples: the problem of slavery was compromised by counting three-fifths of a state's slaves in determining the state's representation in Congress and forbidding Congress to limit the original states' power to import slaves, but only before 1808.⁹ Integrity is flouted not only in specific compromises of that character, however, but whenever a community enacts and enforces different laws each of which is coherent in itself, but which cannot be defended together as expressing a coherent ranking of different principles of justice or fairness or procedural due process. We know that our own legal structure constantly violates integrity in this less dramatic way. We cannot bring all the various statutory and common-law rules our judges enforce under a single coherent scheme of principle. (I discuss some consequences of that fact in Chapter 11.) But we nevertheless accept integrity as a political ideal. It is part of our collective political morality that such compromises are wrong, that the community as a whole and not just individual officials one by one must act in a principled way.

In the United States this ideal is to some extent a matter

of constitutional law, for the equal protection clause of the Fourteenth Amendment is now understood to outlaw internal compromises over important matters of principle. The Supreme Court relies on the language of equal protection to strike down state legislation that recognizes fundamental rights for some and not others. The Constitution requires states to extend to all citizens certain rights—the right to free speech, for example—but leaves them free to recognize other, nonconstitutionally required rights if they wish. If a state accepts one of these nonconstitutionally required rights for one class of citizens, however, it must do so for all.¹⁰ The Supreme Court's controversial 1973 abortion ruling, for example, allows states to prohibit abortions altogether in the last trimester of pregnancy.¹¹ But the Court would not allow a state to prohibit an abortion in the last trimester only to women born in even years.

This connection between integrity and the rhetoric of equal protection is revealing. We insist on integrity because we believe that internal compromises would deny what is often called "equality before the law" and sometimes "formal equality." It has become fashionable to say that this kind of equality is unimportant because it offers little protection against tyranny. This denigration assumes, however, that formal equality is only a matter of enforcing the rules, whatever they are, that have been laid down in legislation, in the spirit of conventionalism. The equal protection cases show how important formal equality becomes when it is understood to require integrity as well as bare logical consistency, when it demands fidelity not just to rules but to the theories of fairness and justice that these rules presuppose by way of justification.

We can find another lesson about the dimensions of integrity in the constitutional system of the United States, a lesson that will prove important later in this chapter. Integrity holds within political communities, not among them, so any opinion we have about the scope of the requirement of coherence makes assumptions about the size and character of

these communities. The American Constitution provides a federal system: it recognizes states as distinct political communities and assigns them sovereignty over many issues of principle. So there is no violation of political integrity in the fact that the tort laws of some states differ from those of others even over matters of principle. Each sovereign speaks with a single voice, though not in harmony with other sovereigns. But in a federal system integrity makes demands on the higher-order decisions, taken at the constitutional level, about the division of power between the national and the more local levels. Some scholars and politicians opposed to the Supreme Court's 1973 abortion decision now argue that the Constitution should be understood to leave decisions about abortion to the various states, so that some could permit abortion on demand, others prohibit it in all circumstances, and others adopt intermediate regimes.¹² That suggestion is not itself a checkerboard solution: each state would retain a constitutional duty that its own abortion statute be coherent in principle, and the suggestion offers itself as recognizing independent sovereigns rather than speaking for all together. But a question of integrity remains: whether leaving the abortion issue to individual states to decide differently if they wish is coherent in principle with the rest of the American constitutional scheme, which makes other important rights national in scope and enforcement.

IS INTEGRITY ATTRACTIVE?

I shall offer no further argument for my claim that our political life recognizes integrity as a political virtue. The case is now strong enough for the weight of interest to shift to the other dimension of interpretation. Do we do well to interpret our politics that way? Is our political culture more attractive if seen as accepting that virtue? I have already described, in Chapter 5, an obvious challenge to integrity. A pragmatist anxious to reject integrity would attack the deep, working

personification we use to define the ideal. We say that the state as a whole does wrong in accepting an internal compromise because "it" then compromises "its" principles. The pragmatist will insist that the state is not an entity that can have principles to compromise. Neither the state nor its government is a person; they are collections of people, and if none of these separate people has acted in any way inconsistently with his or her own principles, what sense can it make to say that the state they represent has done this?

The pragmatist who makes this argument tries to build political responsibility out of ordinary, nonpolitical principles of morality. He proceeds in the fashion of our first argument, in Chapter 5, about the responsibility of shareholders for defective automobiles, applying ordinary principles about the responsibility of one person for injury to another. He asks what each legislator might do, in the position he happens to occupy, to reduce the total number of incidents of injustice or unfairness according to his own views of what justice and fairness require. If we follow the pragmatist in this order of argument—if we begin with individual official responsibility—we will reach his conclusion because we will then lack any appropriate explanation of why a vote for a checkerboard solution is wrong, any explanation of why a particular official should regard the compromise as a worse outcome than the outcome he regards as more uniformly unjust. If, on the other hand, we insist on treating internally compromised statutes as the acts of a single distinct moral agent, then we can condemn them as unprincipled, and we then have a reason for arguing that no official should contribute to his state's unprincipled acts. In order to defend the legislative principle of integrity, therefore, we must defend the general style of argument that takes the community itself as a moral agent.

Our argument must be drawn from political virtue, not, so far as this is supposed to be different, from metaphysics. We must not say that integrity is a special virtue of politics because the state or community is a distinct entity, but that the

community should be seen as a distinct moral agent because the social and intellectual practices that treat community in this way should be protected. Now we confront an obvious and deep difficulty. We have grown accustomed in political life to arguing about social and political institutions in a certain way: by attacking or defending them on grounds of justice or fairness. But we cannot hope to defend integrity in this normal way because we know that integrity will sometimes conflict with what fairness and justice recommend. We must expand the breadth of political argument if we are to claim political integrity as a distinct ideal on its own. But how? Here is one suggestion, though not the only possibility. French revolutionary rhetoric recognized a political ideal we have not yet considered. We should look for our defense of integrity in the neighborhood of fraternity¹³ or, to use its more fashionable name, community.

I shall argue that a political society that accepts integrity as a political virtue thereby becomes a special form of community, special in a way that promotes its moral authority to assume and deploy a monopoly of coercive force. This is not the only argument for integrity, or the only consequence of recognizing it that citizens might value. Integrity provides protection against partiality or deceit or other forms of official corruption, for example. There is more room for favoritism or vindictiveness in a system that permits manufacturers of automobiles and of washing machines to be governed by different and contradictory principles of liability. Integrity also contributes to the efficiency of law in the way we noticed earlier. If people accept that they are governed not only by explicit rules laid down in past political decisions but by whatever other standards flow from the principles these decisions assume, then the set of recognized public standards can expand and contract organically, as people become more sophisticated in sensing and exploring what these principles require in new circumstances, without the need for detailed legislation or adjudication on each possible point of conflict. This process works less effectively, to be

sure, when people disagree, as inevitably they sometimes will, about which principles are in fact assumed by the explicit rules and other standards of their community. But a community that accepts integrity has a vehicle for organic change, even if it is not always wholly effective, that it would not otherwise have at all.

These consequences of integrity are practical. Others are moral and expressive. We noticed in our initial, cursory discussion of integrity in the last chapter that many of our political attitudes, collected in our instinct of group responsibility, assume that we are in some sense the authors of the political decisions made by our governors, or at least that we have reason to think of ourselves that way. Kant and Rousseau based their conceptions of freedom on this ideal of self-legislation.¹⁴ The ideal needs integrity, however, for a citizen cannot treat himself as the author of a collection of laws that are inconsistent in principle, nor can he see that collection as sponsored by any Rousseauian general will.

The ideal of self-government has a special aspect that integrity promotes directly, and noticing this will lead us into our main discussion of legitimacy and political obligation. Integrity expands and deepens the role individual citizens can play in developing the public standards of their community because it requires them to treat relations among themselves as characteristically, not just spasmodically, governed by these standards. If people understood formal legislation as only a matter of negotiated solutions to discrete problems, with no underlying commitment to any more fundamental public conception of justice, they would draw a sharp distinction between two kinds of encounters with fellow citizens: those that fall within and those that fall outside the scope of some past political decision. Integrity, in contrast, insists that each citizen must accept demands on him, and may make demands on others, that share and extend the moral dimension of any explicit political decisions. Integrity therefore fuses citizens' moral and political lives: it asks the good citizen, deciding how to treat his neighbor when their

interests conflict, to interpret the common scheme of justice to which they are both committed just in virtue of citizenship.¹⁵

Integrity infuses political and private occasions each with the spirit of the other to the benefit of both. This continuity has practical as well as expressive value, because it facilitates the organic style of change I mentioned a moment ago as a practical advantage. But its expressive value is not exhausted, as its practical value might be, when citizens disagree about which scheme of justice is in fact embedded in the community's explicit political decisions. For the expressive value is confirmed when people in good faith try to treat one another in a way appropriate to common membership in a community governed by political integrity and to see each other as making this attempt, even when they disagree about exactly what integrity requires in particular circumstances. Political obligation is then not just a matter of obeying the 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.

THE PUZZLE OF LEGITIMACY

We now turn to the direct connection between integrity and the moral authority of the law, and this bends our study back toward the main argument of the book. I said that the concept of law—the plateau where argument among conceptions is most useful—connects law with the justification of official coercion. A conception of law must explain how what it takes to be law provides a general justification for the exercise of coercive power by the state, a justification that holds except in special cases when some competing argument is specially powerful. Each conception's organizing center is the explanation it offers of this justifying force.

Every conception therefore faces the same threshold problem. How can *anything* provide even that general form of justification for coercion in ordinary politics? What can ever give anyone the kind of authorized power over another that politics supposes governors have over the governed? Why does the fact that a majority elects a particular regime, for example, give that regime legitimate power over those who voted against it?

This is the classical problem of the legitimacy of coercive power. It rides on the back of another classical problem: that of political obligation. Do citizens have genuine moral obligations just in virtue of law? Does the fact that a legislature has enacted some requirement in itself give citizens a moral as well as a practical reason to obey? Does that moral reason hold even for those citizens who disapprove of the legislation or think it wrong in principle? If citizens do not have moral obligations of that character, then the state's warrant for coercion is seriously, perhaps fatally, undermined. These two issues—whether the state is morally legitimate, in the sense that it is justified in using force against its citizens, and whether the state's decisions impose genuine obligations on them—are not identical. No state should enforce all of a citizen's obligations. But though obligation is not a sufficient condition for coercion, it is close to a necessary one. A state may have good grounds in some special circumstances for coercing those who have no duty to obey. But no general policy of upholding the law with steel could be justified if the law were not, in general, a source of genuine obligations.

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. An argument for legitimacy need only provide reasons for that general situation. It need not show that a government, legitimate in that sense, therefore has moral authority to do anything it wants to its citizens, or that they are obligated to obey every decision it makes. I shall argue that a state that accepts integrity as a political ideal has a better

case for legitimacy than one that does not. If that is so, it provides a strong reason of the sort we have just now been seeking, a reason why we would do well to see our political practices as grounded in that virtue. It provides, in particular, a strong argument for a conception of law that takes integrity to be fundamental, because any conception must explain why law is legitimate authority for coercion. Our claims for integrity are thus tied into our main project of finding an attractive conception of law.

Tacit Consent

Philosophers make several kinds of arguments for the legitimacy of modern democracies. One argument uses the idea of a social contract, but we must not confuse it with arguments that use that idea to establish the character or content of justice. John Rawls, for example, proposes an imaginary social contract as a device for selecting the best conception of justice in the circumstances of utopian political theory. He argues that under specified conditions of uncertainty everyone would choose certain principles of justice as in his interests, properly understood, and he says that these principles are therefore the right principles for us.¹⁶ Whatever we may think of his suggestion, it has no direct connection to our present problem of legitimacy in the circumstances of ordinary politics where Rawls's principles of justice are very far from dominion. It would be very different, of course, if every citizen were a party to an actual, historical agreement to accept and obey political decisions taken in the way his community's political decisions are in fact taken. Then the historical fact of agreement would provide at least a good *prima facie* case for coercion even in ordinary politics. So some political philosophers have been tempted to say that we have in fact agreed to a social contract of that kind tacitly, by just not emigrating when we reach the age of consent. But no one can argue that very long with a straight face. Consent cannot be binding on people, in the way this

argument requires, unless it is given more freely, and with more genuine alternate choice, than just by declining to build a life from nothing under a foreign flag. And even if the consent were genuine, the argument would fail as an argument for legitimacy, because a person leaves one sovereign only to join another; he has no choice to be free from sovereigns altogether.

The Duty to Be Just

Rawls argues that people in his original position would recognize a natural duty to support institutions that meet the tests of abstract justice and that they would extend this duty to the support of institutions not perfectly just, at least when the sporadic injustice lay in decisions reached by fair, majoritarian institutions.¹⁷ Even those who reject Rawls's general method might accept the duty to support just or nearly just institutions. That duty, however, does not provide a good explanation of legitimacy, because it does not tie political obligation sufficiently tightly to the particular community to which those who have the obligation belong; it does not show why Britons have any special duty to support the institutions of Britain. We can construct a practical, contingent argument for the special duty. Britons have more opportunity to aid British institutions than those of other nations whose institutions they also think mainly just. But this practical argument fails to capture the intimacy of the special duty. It fails to show how legitimacy flows from and defines citizenship. This objection points away from justice, which is conceptually universalistic, and toward integrity, which is already more personal in its different demands on different communities, as the parent of legitimacy.

Fair Play

The most popular defense of legitimacy is the argument from fair play:¹⁸ if someone has received benefits under a

standing political organization, then he has an obligation to bear the burdens of that organization as well, including an obligation to accept its political decisions, whether or not he has solicited these benefits or has in any more active way consented to these burdens. This argument avoids the fantasy of the argument from consent and the universality and other defects of the argument from a natural duty of justice and might therefore seem a stronger rival to my suggestion that legitimacy is best grounded in integrity. But it is vulnerable to two counterarguments that have frequently been noticed. First, the fair play argument assumes that people can incur obligations simply by receiving what they do not seek and would reject if they had the chance. This seems unreasonable. Suppose a philosopher broadcasts a stunning and valuable lecture from a sound truck. Do all those who hear it—even all those who enjoy and profit by it—owe him a lecture fee?¹⁹

Second, the fair play argument is ambiguous in a crucial respect. In what sense does it suppose that people benefit from political organization? The most natural answer is this: someone benefits from a political organization if his overall situation—his “welfare” in the way economists use that phrase—is superior under that organization to what it would otherwise be. But everything then turns on the benchmark to be used, on what “otherwise” means, and when we try to specify the benchmark we reach a dead end. The principle is plainly too strong—it justifies nothing—if it requires showing that each citizen is better off under the standing political system than he would be under any other system that might have developed in its place. For that can never be shown for all the citizens the principle is meant to embrace. And it is plainly too weak—it is too easy to satisfy and therefore justifies too much—if it requires showing only that each citizen is better off under the standing organization than he would be with no social or political organization at all, that is, under a Hobbesian state of nature.

We can deflect this second objection if we reject the

“natural” interpretation I described of the crucial idea of benefit. Suppose we understand the argument in a different way: it assumes not that each citizen’s welfare, judged in some politically neutral way, has been improved *by* a particular social or political organization, but that each has received the benefits *of* that organization. That is, that he has actually received what is due him according to the standards of justice and fairness on which it is constructed. The principle of fair play, understood that way, states at least a condition necessary to legitimacy. If a community does not aim to treat someone as an equal, even according to its own lights, then its claim to his political obligation is fatally compromised. But it remains unclear how the negative fact that society has not discriminated against someone in this way, according to its own standards, could supply any positive reason why he should accept its laws as obligations. Indeed, the first objection I described becomes more powerful yet if we make this response to the second. For now the argument from fair play must be understood as claiming, not that someone incurs an obligation when his welfare is improved in a way he did not seek, but that he incurs an obligation by being treated in a way that might not even improve his welfare over any appropriate benchmark. For there is nothing in the fact that some individual has been treated fairly by his community according to its own standards that guarantees him any further, more material advantage.

OBLIGATIONS OF COMMUNITY

Circumstances and Conditions

Is it true that no one can be morally affected by being given what he does not ask for or choose to have? We will think so if we consider only cases of benefits thrust upon us by strangers like philosophers in sound trucks. Our convictions are quite different, however, when we have in mind obligations that are often called obligations of role but that I shall call,

generically, associative or communal obligations. I mean the special responsibilities social practice attaches to membership in some biological or social group, like the responsibilities of family or friends or neighbors. Most people think that they have associative obligations just by belonging to groups defined by social practice, which is not necessarily a matter of choice or consent, but that they can lose these obligations if other members of the group do not extend them the benefits of belonging to the group. These common assumptions about associative responsibilities suggest that political obligation might be counted among them, in which case the two objections to the argument from fair play would no longer be pertinent. On the whole, however, philosophers have ignored this possibility, I believe for two reasons. First, communal obligations are widely thought to depend upon emotional bonds that presuppose that each member of the group has personal acquaintance of all others, which of course cannot be true in large political communities. Second, the idea of special communal responsibilities holding within a large, anonymous community smacks of nationalism, or even racism, both of which have been sources of very great suffering and injustice.

We should therefore reflect on the character of familiar associative obligations to see how far these apparent objections actually hold. Associative obligations are complex, and much less studied by philosophers than the kinds of personal obligations we incur through discrete promises and other deliberate acts. But they are an important part of the moral landscape: for most people, responsibilities to family and lovers and friends and union or office colleagues are the most important, the most consequential obligations of all. The history of social practice defines the communal groups to which we belong and the obligations that attach to these. It defines what a family or a neighborhood or a professional colleague is, and what one member of these groups or holder of these titles owes to another. But social practice defines

groups and obligations not by the fiat of ritual, not through the explicit extension of conventions, but in the more complex way brought in with the interpretive attitude. The concepts we use to describe these groups and to claim or reject these obligations are interpretive concepts; people can sensibly argue in the interpretive way about what friendship really is and about what children really owe their parents in old age. The raw data of how friends typically treat one another are no more conclusive of an argument about the obligations of friendship than raw data were conclusive for arguments about courtesy in the community I imagined or for arguments about law for us.

Suppose we tried to compose, not just an interpretation of a single associative practice, like family or friendship or neighborhood, but a more abstract interpretation of the yet more general practice of associative obligation itself. I cannot carry that project very far here or develop any deep and thorough study of that abstract practice. But even a quick survey shows that we cannot account for the general practice if we accept the principle many philosophers have found so appealing, that no one can have special obligations to particular people except by choosing to accept these. The connection we recognize between communal obligation and choice is much more complex and more a matter of degree that varies from one form of communal association to another. Even associations we consider mainly consensual, like friendship, are not formed in one act of deliberate contractual commitment, the way one joins a club, but instead develop through a series of choices and events that are never seen, one by one, as carrying a commitment of that kind.

We have friends to whom we owe obligations in virtue of a shared history, but it would be perverse to describe this as a history of *assuming* obligations. On the contrary, it is a history of events and acts that *attract* obligations, and we are rarely even aware that we are entering upon any special status as the story unfolds. People become self-conscious about the

obligations of friendship in the normal case only when some situation requires them to honor these obligations, or when they have grown weary of or embarrassed by the friendship, and then it is too late to reject them without betrayal. Other forms of association that carry special responsibilities—of academic colleagueship, for example—are even less a matter of free choice: someone can become my colleague even though I voted against his appointment. And the obligations some members of a family owe to others, which many people count among the strongest fraternal obligations of all, are matters of the least choice.²⁰

We must therefore account for associative obligations, if we accept these at all, in the different way I suggested a moment ago in describing how most people think of them. We have a duty to honor our responsibilities under social practices that define groups and attach special responsibilities to membership, but this natural duty holds only when certain other conditions are met or sustained. Reciprocity is prominent among these other conditions. I have special responsibilities to my brother in virtue of our brotherhood, but these are sensitive to the degree to which he accepts such responsibilities toward me; my responsibilities to those who claim that we are friends or lovers or neighbors or colleagues or countrymen are equally contingent on reciprocity. But we must be careful here: if associative concepts are interpretive—if it can be an open question among friends what friendship requires—then the reciprocity we demand cannot be a matter of each doing for the other what the latter thinks friendship concretely requires. Then friendship would be possible only between people who shared a detailed conception of friendship and would become automatically more contractual and deliberative than it is, more a matter of people checking in advance to see whether their conceptions matched well enough to allow them to be friends.²¹

The reciprocity we require for associative obligations must be more abstract, more a question of accepting a kind of re-

sponsibility we need the companion ideas of integrity and interpretation to explain. Friends have a responsibility to treat one another as friends, and that means, put subjectively, that each must act out of a conception of friendship he is ready to recognize as vulnerable to an interpretive test, as open to the objection that this is not a plausible account of what friendship means in our culture. Friends or family or neighbors need not agree in detail about the responsibilities attached to these forms of organization. Associative obligations can be sustained among people who share a general and diffuse sense of members' special rights and responsibilities from or toward one another, a sense of what sort and level of sacrifice one may be expected to make for another. I may think friendship, properly understood, requires that I break promises to others to help a friend in need, and I will not refuse to do this for a friend just because he does not share this conviction and would not do it for me. But I will count him a friend and feel this obligation only if I believe he has roughly the same concern for me as I thereby show for him, that he would make important sacrifices for me of some other sort.

Nevertheless, the members of a group must by and large hold certain attitudes about the responsibilities they owe one another if these responsibilities are to count as genuine fraternal obligations. First, they must regard the group's obligations as *special*, holding distinctly within the group, rather than as general duties its members owe equally to persons outside it. Second, they must accept that these responsibilities are *personal*: that they run directly from each member to each other member, not just to the group as a whole in some collective sense. My brother or my colleague may think he has responsibilities to the reputation of the family or the university he best acquits by concentrating on his own career and thus denying me help when I need it or company when I want it. He may be right about the best use of his time overall from the standpoint of the general good of these particular communities. But his conduct does not form the

necessary basis for my continuing to recognize fraternal obligations toward him.

Third, members must see these responsibilities as flowing from a more general responsibility each has of *concern* for the well-being of others in the group; they must treat discrete obligations that arise only under special circumstances, like the obligation to help a friend who is in great financial need, as derivative from and expressing a more general responsibility active throughout the association in different ways. A commercial partnership or joint enterprise, conceived as a fraternal association, is in that way different from even a long-standing contractual relationship. The former has a life of its own: each partner is concerned not just to keep explicit agreements hammered out at arm's length but to approach each issue that arises in their joint commercial life in a manner reflecting special concern for his partner as partner. Different forms of association presuppose different kinds of general concern each member is assumed to have for others. The level of concern is different—I need not act toward my partner as if I thought his welfare as important as my son's—and also its range: my concern for my union "brother" is general across the economic and productive life we share but does not extend to his success in social life, as my concern for my biological brother does. (Of course my union colleague may be my friend as well, in which case my overall responsibilities to him will be aggregative and complex.) But within the form or mode of life constituted by a communal practice, the concern must be general and must provide the foundation for the more discrete responsibilities.

Fourth, members must suppose that the group's practices show not only concern but an *equal* concern for all members. Fraternal associations are in that sense conceptually egalitarian. They may be structured, even hierarchical, in the way a family is, but the structure and hierarchy must reflect the group's assumption that its roles and rules are equally in the interests of all, that no one's life is more important than

anyone else's. Armies may be fraternal organizations if that condition is met. But caste systems that count some members as inherently less worthy than others are not fraternal and yield no communal responsibilities.

We must be careful to distinguish, then, between a "bare" community, a community that meets the genetic or geographical or other historical conditions identified by social practice as capable of constituting a fraternal community, and a "true" community, a bare community whose practices of group responsibility meet the four conditions just identified. The responsibilities a true community deploys are special and individualized and display a pervasive mutual concern that fits a plausible conception of equal concern. These are not psychological conditions. Though a group will rarely meet or long sustain them unless its members by and large actually feel some emotional bond with one another, the conditions do not themselves demand this. The concern they require is an interpretive property of the group's practices of asserting and acknowledging responsibilities—these must be practices that people with the right level of concern would adopt—not a psychological property of some fixed number of the actual members. So, contrary to the assumption that seemed to argue against assimilating political to associative obligations, associative communities can be larger and more anonymous than they could be if it were a necessary condition that each member love all others, or even that they know them or know who they are.

Nor does anything in the four conditions contradict our initial premise that obligations of fraternity need not be fully voluntary. If the conditions are met, people in the bare community have the obligations of a true community whether or not they want them, though of course the conditions will not be met unless most members recognize and honor these obligations. It is therefore essential to insist that true communities must be bare communities as well. People cannot be made involuntary "honorary" members of a community to

which they do not even "barely" belong just because other members are disposed to treat them as such. I would not become a citizen of Fiji if people there decided for some reason to treat me as one of them. Nor am I the friend of a stranger sitting next to me on a plane just because he decides he is a friend of mine.

Conflicts with Justice

An important reservation must be made to the argument so far. Even genuine communities that meet the several conditions just described may be unjust or promote injustice and so produce the conflict we have already noticed in different ways, between the integrity and justice of an institution. Genuine communal obligations may be unjust in two ways. First, they may be unjust to the members of the group: the conception of equal concern they reflect, though sincere, may be defective. It may be a firm tradition of family organization in some community, for example, that equal concern for daughters and sons requires parents to exercise a kind of dominion over one relaxed for the other.²² Second, they may be unjust to people who are not members of the group. Social practice may define a racial or religious group as associative, and that group may require its members to discriminate against nonmembers socially or in employment or generally. If the consequences for strangers to the group are grave, as they will be if the discriminating group is large or powerful within a larger community, this will be unjust.²³ In many cases, requiring that sort of discrimination will conflict, not just with duties of abstract justice the group's members owe everyone else, but also with associative obligations they have because they belong to larger or different associative communities. For if those who do not belong to my race or religion are my neighbors or colleagues or (now I anticipate the argument to follow) my fellow citizens, the question arises whether I do not have responsibilities to them, flowing from those associations, that I ignore in defer-

ring to the responsibilities claimed by my racial or religious group.

We must not forget, in puzzling about these various conflicts, that associative responsibilities are subject to interpretation, and that justice will play its normal interpretive role in deciding for any person what his associative responsibilities, properly understood, really are. If the bare facts of social practice are indecisive, my belief that it is unjust for parents to exercise absolute dominion over their children will influence my convictions about whether the institution of family really has that feature, just as a citizen's beliefs about the justice of social rank influences his beliefs about courtesy in the imaginary community of Chapter 2. Even if the practice of dominion is settled and unquestioned, the interpretive attitude may isolate it as a mistake because it is condemned by principles necessary to justify the rest of the institution. There is no guarantee, however, that the interpretive attitude will always justify reading some apparently unjust feature of an associative institution out of it. We may have to concede that unjust dominion lies at the heart of some culture's practices of family, or that indefensible discrimination is at the heart of its practices of racial or religious cohesion. Then we will be aware of another possibility we have also noticed before, in other contexts. The best interpretation may be a deeply skeptical one: that no competent account of the institution can fail to show it as thoroughly and pervasively unjust, and that it should therefore be abandoned. Someone who reaches that conclusion will deny that the practice can impose genuine obligations at all. He thinks the obligations it purports to impose are wholly canceled by competing moral principle.

So our account of associative obligation now has the following rather complex structure. It combines matters of social practice and matters of critical interpretation in the following way. The question of communal obligation does not arise except for groups defined by practice as carrying such obligations: associative communities must be bare com-

munities first. But not every group established by social practice counts as associative: a bare community must meet the four conditions of a true community before the responsibilities it declares become genuine. Interpretation is needed at this stage, because the question whether the practice meets the conditions of genuine community depends on how the practice is properly understood, and that is an interpretive question. Since interpretation is in part a matter of justice, this stage may show that apparently unjust responsibilities are not really part of the practice after all, because they are condemned by principles needed to justify other responsibilities the practice imposes. But we cannot count on this: the best interpretation available may show that its unjust features are compatible with the rest of its structure. Then, though the obligations it imposes are *prima facie* genuine, the question arises whether the injustice is so severe and deep that these obligations are canceled. That is one possibility, and practices of racial unity and discrimination seem likely examples. But sometimes the injustice will not be that great; dilemmas are then posed because the unjust obligations the practice creates are not entirely erased.

I can illustrate this complex structure by expanding an example already used. Does a daughter have an obligation to defer to her father's wishes in cultures that give parents power to choose spouses for daughters but not sons? We ask first whether the four conditions are met that transform the bare institution of family, in the form this has taken there, into a true community, and that raises a nest of interpretive questions in which our convictions about justice will figure. Does the culture genuinely accept that women are as important as men? Does it see the special parental power over daughters as genuinely in the daughters' interest? If not, if the discriminatory treatment of daughters is grounded in some more general assumption that they are less worthy than sons, the association is not genuine, and not distinctly associative responsibilities, of any character, arise from it. If the culture does accept the equality of the sexes, on the other

hand, the discrimination against daughters may be so inconsistent with the rest of the institution of family that it may be seen as a mistake within it and so not a real requirement even if the institution is accepted. Then the conflict disappears for that reason.

But suppose the culture accepts the equality of sexes but in good faith thinks that equality of concern requires paternalistic protection for women in all aspects of family life, and that parental control over a daughter's marriage is consistent with the rest of the institution of family. If that institution is otherwise seriously unjust—if it forces family members to commit crimes in the interest of the family, for example—we will think it cannot be justified in any way that recommends continuing it. Our attitude is fully skeptical, and again we deny any genuine associative responsibilities and so deny any conflict. Suppose, on the other hand, that the institution's paternalism is the only feature we are disposed to regard as unjust. Now the conflict is genuine. The other responsibilities of family membership thrive as genuine responsibilities. So does the responsibility of a daughter to defer to parental choice in marriage, but this may be overridden by appeal to freedom or some other ground of rights. The difference is important: a daughter who marries against her father's wishes, in this version of the story, has something to regret. She owes him at least an accounting, and perhaps an apology, and should in other ways strive to continue her standing as a member of the community she otherwise has a duty to honor.

I have paid such great attention to the structure of associative obligation, and to the character and occasions of its conflict with other responsibilities and rights, because my aim is to show how political obligation can be seen as associative, and this can be plausible only if the general structure of associative obligations allows us to account for the conditions we feel must be met before political obligation arises, and the circumstances we believe must either defeat it or show it in conflict with other kinds of obligations. The dis-

cussion just concluded echoes our first discussion, in Chapter 3, about the kinds of conflict citizens and judges might discover between the law of their community and more abstract justice. We used, there, much the same structure and many of the same distinctions to disentangle the moral and legal issues posed by law in wicked places. That echo supports our present hypothesis that political obligation—including an obligation to obey the law—is a form of associative obligation. Our study of conflict within associative obligation is important, too, in responding to an objection to that hypothesis I noticed briefly earlier. The objection complains that treating political obligation as associative supports the more unattractive aspects of nationalism, including its strident approval of war for national self-interest. We can now reply that the best interpretation of our own political practices disavows that feature, which is anyway no longer explicitly endorsed even by bare practice. When and where it is endorsed any conflict between militant nationalism and standards of justice must be resolved in favor of the latter. Neither of these claims threatens the more wholesome ideals of national community and the special responsibilities these support, which we are about to consider.

FRATERNITY AND POLITICAL COMMUNITY

We are at last able to consider our hypothesis directly: that the best defense of political legitimacy—the right of a political community to treat its members as having obligations in virtue of collective community decisions—is to be found not in the hard terrain of contracts or duties of justice or obligations of fair play that might hold among strangers; where philosophers have hoped to find it, but in the more fertile ground of fraternity, community, and their attendant obligations. Political association, like family and friendship and other forms of association more local and intimate, is in itself pregnant of obligation. It is no objection to that claim that

most people do not choose their political communities but are born into them or brought there in childhood. If we arrange familiar fraternal communities along a spectrum ranging from full choice to no choice in membership, political communities fall somewhere in the center. Political obligations are less involuntary than many obligations of family, because political communities do allow people to emigrate, and though the practical value of this choice is often very small the choice itself is important, as we know when we contemplate tyrannies that deny it. So people who are members of bare political communities have political obligations, provided the other conditions necessary to obligations of fraternity, appropriately defined for a political community, are met.

We must therefore ask what account of these conditions is appropriate for a political community, but first we should pause to consider the following complaint about this “solution” of the problem of legitimacy. “It does not solve the problem but evades it by denying there is any problem at all.” There is some justice in this complaint, but not enough to be damaging here. The new approach, it is true, relocates the problem of legitimacy and so hopes to change the character of the argument. It asks those who challenge the very possibility of political legitimacy to broaden their attack and either deny all associative obligations or show why political obligation cannot be associative. It asks those who defend legitimacy to test their claims on a new and expanded field of argument. It invites political philosophers of either disposition to consider what a bare political community must be like before it can claim to be a true community where communal obligations flourish.

We have no difficulty finding in political practice the conditions of bare community. People disagree about the boundaries of political communities, particularly in colonial circumstances or when standing divisions among nations ignore important historical or ethnic or religious identities. But these can be treated as problems of interpretation, and

anyway they do not arise in the countries of our present main concern. Practice defines the boundaries of Great Britain²⁴ and of the several states of the United States well enough for these to be eligible as bare political communities. We have noticed this already: we noticed that our most widespread political convictions suppose the officials of these communities to have special responsibilities within and toward their distinct communities.²⁵ We also have no difficulty in describing the main obligations associated with political communities. The central obligation is that of general fidelity to law, the obligation political philosophy has found so problematic. So our main interest lies in the four conditions we identified. What form would these take in a political community? What must politics be like for a bare political society to become a true fraternal mode of association?

Three Models of Community

We are able to imagine political society as associative only because our ordinary political attitudes seem to satisfy the first of our four conditions. We suppose that we have special interests in and obligations toward other members of our own nation. Americans address their political appeals, their demands, visions, and ideals, in the first instance to other Americans; Britons to other Britons; and so forth. We treat community as prior to justice and fairness in the sense that questions of justice and fairness are regarded as questions of what would be fair or just within a particular political group. In that way we treat political communities as true associative communities. What further assumptions about the obligations and responsibilities that flow from citizenship could justify that attitude by satisfying its other conditions? This is not a question of descriptive sociology, though that discipline may have a part to play in answering it. We are not concerned, that is, with the empirical question of which attitudes or institutions or traditions are needed to create

and protect political stability, but with the interpretive question of what character of mutual concern and responsibility our political practices must express in order to justify the assumption of true community we seem to make.

A community's political practices might aim to express one of three general models of political association. Each model describes the attitudes members of a political community would self-consciously take toward one another if they held the view of community the model expresses. The first supposes that members of a community treat their association as only a *de facto* accident of history and geography, among other things, and so as not a true associative community at all. People who think of their community this way will not necessarily treat others only as means to their own personal ends. That is one possibility: imagine two strangers from nations that despise each other's morals and religion are washed up on a desert island after a naval battle between the two countries. The strangers are thrown together initially by circumstance and nothing more. Each may need the other and may refrain from killing him for that reason. They may work out some division of labor, and each may hold to the agreement so long as he thinks it is to his advantage to do so, but not beyond that point or for any other reason. But there are other possibilities for *de facto* association. People might regard their political community as merely *de facto*, not because they are selfish but because they are driven by a passion for justice in the world as a whole and see no distinction between their community and others. A political official who takes that view will think of his constituents as people he is in a position to help because he has special means—those of his office—for helping them that are not, regrettably, available for helping other groups. He will think his responsibilities to his own community special in no other way, and therefore not greater in principle. So when he can improve justice overall by subordinating the interests of his own constituents, he will think it right to do so.

I call the second model of community the "rulebook"

model. It supposes that members of a political community accept a general commitment to obey rules established in a certain way that is special to that community. Imagine self-interested but wholly honest people who are competitors in a game with fixed rules or who are parties to a limited and transient commercial arrangement. They obey the rules they have accepted or negotiated as a matter of obligation and not merely strategy, but they assume that the content of these rules exhausts their obligation. They have no sense that the rules were negotiated out of common commitment to underlying principles that are themselves a source of further obligation; on the contrary, they take these rules to represent a compromise between antagonistic interests or points of view. If the rules are the product of special negotiation, as in the contract case, each side has tried to give up as little in return for as much as possible, and it would therefore be unfair and not merely mistaken for either to claim that their agreement embraces anything not explicitly agreed.

The conventionalist's conception of law we considered in Chapter 4 is a natural mate to this rulebook model of community. Conventionalism suits people each trying to advance his or her own conception of justice and fairness in the right relation through negotiation and compromise, subject only to the single overriding stipulation that once a compromise has been reached in the appropriate way, the rules that form its content will be respected until they are changed by a fresh compromise. A conventionalist philosophy coupled to a rulebook model of community would accept the internal compromises of our checkerboard statutes, as compromises reached through negotiation that ought to be respected as much as any other bargain. The first two models of community—community as a matter of circumstance and as a matter of rules—agree in rejecting the only basis we might have for opposing checkerboard compromises, which is the idea of integrity, that the community must respect principles necessary to justify one part of the law in other parts as well.

The third model of community is the model of principle. It agrees with the rulebook model that political community requires a shared understanding, but it takes a more generous and comprehensive view of what that understanding is. It insists that people are members of a genuine political community only when they accept that their fates are linked in the following strong way: they accept that they are governed by common principles, not just by rules hammered out in political compromise. Politics has a different character for such people. It is a theater of debate about which principles the community should adopt as a system, which view it should take of justice, fairness, and due process, not the different story, appropriate to the other models, in which each person tries to plant the flag of his convictions over as large a domain of power or rules as possible. Members of a society of principle accept that their political rights and duties are not exhausted by the particular decisions their political institutions have reached, but depend, more generally, on the scheme of principles those decisions presuppose and endorse. So each member accepts that others have rights and that he has duties flowing from that scheme, even though these have never been formally identified or declared. Nor does he suppose that these further rights and duties are conditional on his wholehearted approval of that scheme; these obligations 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. In short, each accepts political integrity as a distinct political ideal and treats the general acceptance of that ideal, even among people who otherwise disagree about political morality, as constitutive of political community.

Now our stage is properly set (or rather managed) for the crucial question. Each of these three models of community describes a general attitude that members of a political community take toward one another. Would political practices expressing one or another of these attitudes satisfy the conditions of true associative community we identified? We

need not pause long over the de facto model of circumstance. It violates even the first condition: it adds nothing, by way of any special attitudes of concern, to the circumstances that define a bare political community. It admits community among people who have no interest in one another except as means to their own selfish ends. Even when this form of community holds among selfless people who act only to secure justice and fairness in the world as they understand these virtues, they have no special concern for justice and fairness toward fellow members of their own community. (Indeed, since their only concern is abstract justice, which is universalistic in its character, they can have no basis for special concern.)

The rulebook model of community might seem more promising. For its members do show a special concern for one another beyond each person's general concern that justice be done according to his lights, a special concern that each other person receive the full benefit of whatever political decisions have in fact been taken under the standing political arrangements. That concern has the necessary individualized character to satisfy the second condition: it runs separately from each person directly to everyone else. But it cannot satisfy the third, for the concern it displays is too shallow and attenuated to count as pervasive, indeed to count as genuine concern at all. People in a rulebook community are free to act in politics almost as selfishly as people in a community of circumstances can. Each one can use the standing political machinery to advance his own interests or ideals. True, once that machinery has generated a discrete decision in the form of a rule of law or a judicial decision, they will accept a special obligation to secure the enforcement of that decision for everyone whom it happens to benefit. But that commitment is too formal, too disconnected from the actual circumstances it will promote, to count as expressing much by way of genuine concern, and that is why it rings hollow as an expression of fraternity. It takes hold too late in the political process; it permits someone to act at the

crucial legislative stage with no sense of responsibility or concern for those whom he pretends, once every possible advantage has been secured at their expense, to count as brothers. The familiar version of the argument from fair play—these are the rules under which you have benefited and you must play by them—is particularly appropriate to a rulebook community, which takes politics, as I said, to be a kind of game. But that is the version of the argument most vulnerable to all the objections we began by noticing.

The model of principle satisfies all our conditions, at least as well as any model could in a morally pluralistic society. It makes the responsibilities of citizenship special: each citizen respects the principles of fairness and justice instinct in the standing political arrangement of his particular community, which may be different from those of other communities, whether or not he thinks these the best principles from a utopian standpoint. It makes these responsibilities fully personal: it commands that no one be left out, that we are all in politics together for better or worse, that no one may be sacrificed, like wounded left on the battlefield, to the crusade for justice overall. The concern it expresses is not shallow, like the crocodile concern of the rulebook model, but genuine and pervasive. It takes hold immediately politics begins and is sustained through legislation to adjudication and enforcement. Everyone's political acts express on every occasion, in arguing about what the rules should be as well as how they should be enforced, a deep and constant commitment commanding sacrifice, not just by losers but also by the powerful who would gain by the kind of logrolling and checkerboard solutions integrity forbids. Its rationale tends toward equality in the way our fourth condition requires: its command of integrity assumes that each person is as worthy as any other, that each must be treated with equal concern according to some coherent conception of what that means. An association of principle is not automatically a just community; its conception of equal concern may be defective or it may violate rights of its citizens or citizens of other nations

in the way we just saw any true associative community might. But the model of principle satisfies the conditions of true community better than any other model of community that it is possible for people who disagree about justice and fairness to adopt.

Here, then, is our case for integrity, our reason for striving to see, so far as we can, both its legislative and adjudicative principles vivid in our political life. A community of principle accepts integrity. It condemns checkerboard statutes and less dramatic violations of that ideal as violating the associative character of its deep organization. Internally compromised statutes cannot be seen as flowing from any single coherent scheme of principle; on the contrary, they serve the incompatible aim of a rulebook community, which is to compromise convictions along lines of power. They contradict rather than confirm the commitment necessary to make a large and diverse political society a genuine rather than a bare community: the promise that law will be chosen, changed, developed, and interpreted in an overall principled way. A community of principle, faithful to that promise, can claim the authority of a genuine associative community and can therefore claim moral legitimacy—that its collective decisions are matters of obligation and not bare power—in the name of fraternity. These claims may be defeated, for even genuine associative obligations may conflict with, and must sometimes yield to, demands of justice. But any other form of community, whose officials rejected that commitment, would from the outset forfeit any claim to legitimacy under a fraternal ideal.

The models of community used in this argument are ideal in several ways. We cannot suppose that most people in our own political societies self-consciously accept the attitudes of any of them. I constructed them so that we could decide which attitudes we should try to interpret our political practices to express, which is a different matter, and the exercise warrants the following conclusion. If we can understand our practices as appropriate to the model of principle, we can

support the legitimacy of our institutions, and the political obligations they assume, as a matter of fraternity, and we should therefore strive to improve our institutions in that direction. It bears repeating that nothing in this argument suggests that the citizens of a nation state, or even a smaller political community, either do or should feel for one another any emotion that can usefully be called love. Some theories of ideal community hold out that possibility: they yearn for each citizen to embrace all others in emotions as profound, and with an equivalent merger of personality, as those of lovers or the most intimate friends or the members of an intensely devoted family.²⁶ Of course we could not interpret the politics of any political community as expressing that level of mutual concern, nor is this ideal attractive. The general surrender of personality and autonomy it contemplates would leave people too little room for leading their own lives rather than being led along them; it would destroy the very emotions it celebrates. Our lives are rich because they are complex in the layers and character of the communities we inhabit. If we felt nothing more for lovers or friends or colleagues than the most intense concern we could possibly feel for all fellow citizens, this would mean the extinction not the universality of love.

Summary

It is time to collect the strands of a long argument. This chapter claims that any successful constructive interpretation of our political practices as a whole recognizes integrity as a distinct political ideal that sometimes calls for compromise with other ideals. Since this is an interpretive claim, it must be measured along two dimensions. Integrity as a political ideal fits and explains features of our constitutional structure and practice that are otherwise puzzling. So its standing as part of an overall successful interpretation of these practices hinges on whether interpreting them in this way helps show them in a better light. We noticed various

reasons, both practical and expressive, a community might have for accepting integrity as a political virtue. I emphasized one of these by constructing and contrasting three models of community. I argued that a community of principle, which takes integrity to be central to politics, provides a better defense of political legitimacy than the other models. It assimilates political obligations to the general class of associative obligations and supports them in that way. This defense is possible in such a community because a general commitment to integrity expresses a concern by each for all that is sufficiently special, personal, pervasive, and egalitarian to ground communal obligations according to standards for communal obligation we elsewhere accept.

Neither this argument nor the others we noticed more briefly provides any conclusive argument for integrity on first principles of political morality. I began by conceding that integrity would have no distinct role to play in a community that was understood by all its members to be perfectly just and fair. I am defending an interpretation of our own political culture, not an abstract and timeless political morality; I claim only that the case for integrity is powerful on the second, political dimension of interpretation, which reinforces its strong claims on the first dimension of fit.

UNTIDY ENDNOTES

In the next several chapters we shall study a narrower and more focused claim: that integrity is the key to the best constructive interpretation of our distinct legal practices and particularly of the way our judges decide hard cases at law. I shall argue that law as integrity provides a better interpretation of legal practice than the other two conceptions we have considered. I must first add some further points to our general account of integrity, however, points that could not conveniently have been noticed in the main argument. I can

do this most efficiently, I am afraid, by collecting observations in the untidy form of a list under two general headings.

Legislation and Adjudication

I do not claim, as part of my interpretive thesis, that our political practices enforce integrity perfectly. I conceded that it would not be possible to bring all the discrete rules and other standards enacted by our legislatures and still in force under any single, coherent scheme of principle. Our commitment to integrity means, however, that we must report this fact as a defect, not as the desirable result of a fair division of political power between different bodies of opinion, and that we must strive to remedy whatever inconsistencies in principle we are forced to confront. Even this weaker claim requires further qualification, or at least clarification.

I distinguished two branches or forms of integrity by listing two principles: integrity in legislation and integrity in adjudication. The first restricts what our legislators and other lawmakers may properly do in expanding or changing our public standards. The second requires our judges, so far as this is possible, to treat our present system of public standards as expressing and respecting a coherent set of principles, and, to that end, to interpret these standards to find implicit standards between and beneath the explicit ones. Integrity, for us, is a virtue beside justice and fairness and due process, but that does not mean that in either of the two forms just distinguished integrity is necessarily or always sovereign over the other virtues. The legislature should be guided by the legislative principle of integrity, and that explains why it must not enact checkerboard statutes just out of a concern for fairness. But checkerboard statutes are a flagrant and easily avoidable violation of integrity; it does not follow that the legislature must never, in any circumstances, make law more inconsistent in principle than it already is.

Suppose the legislature is persuaded that the standing

scheme of accident law, which allows people compensation for defective products only when the manufacturer is negligent, is unjust, and therefore it proposes to enact a scheme of strict liability for defective automobiles. Integrity would require it to enact strict liability for all other products as well. But preparing an adequate general statute for all products might take a great deal of legislative time that is needed for other matters. Or the manufacturers of some products might form a powerful lobby, making it politically impossible to pass a general statute yet. In that case the legislature, faced with a hard choice, might well be justified in enacting the automobile defect compensation statute alone, leaving other products to another day or other days. Integrity condemns the result, but justice recommends it over no change at all, and on balance half the loaf might be better than none. The legislature would abandon its general commitment to integrity, and so forfeit the argument for legitimacy we canvassed, if it made that choice in every case or even characteristically. But that does not mean it should never choose justice over integrity.

Nor is the adjudicative principle of integrity absolutely sovereign over what judges must do at the end of the day. That principle is decisive over what a judge recognizes as law. It is sovereign, that is, over the grounds of law, because it admits no other view of what "flows from" past political decisions. But we saw in Chapter 3 that any theory about the grounds of law abstracts from detailed issues about the force of law. A judge who accepts integrity will think that the law it defines sets out genuine rights litigants have to a decision before him. They are entitled, in principle, to have their acts and affairs judged in accordance with the best view of what the legal standards of the community required or permitted at the time they acted, and integrity demands that these standards be seen as coherent, as the state speaking with a single voice. But though this requirement honors the political virtue of procedural due process, which would at least *prima facie* be violated if people were judged against stan-

dards other than the legal standards of the day, other and more powerful aspects of political morality might outweigh this requirement in particular and unusual circumstances. Perhaps the law of the United States, properly interpreted in deference to integrity, did include the Fugitive Slave Act enacted by Congress before the Civil War.²⁷ If a judge's own sense of justice condemned that act as deeply immoral because it required citizens to help send escaped slaves back to their masters, he would have to consider whether he should actually enforce it on the demand of a slave owner, or whether he should lie and say that this was not the law after all, or whether he should resign. The principle of integrity in adjudication, therefore, does not necessarily have the last word about how the coercive power of the state should be used. But it does have the first word, and normally there is nothing to add to what it says.

Integrity and Consistency

Is integrity only consistency (deciding like cases alike) under a prouder name? That depends on what we mean by consistency or like cases. If a political institution is consistent only when it repeats its own past decisions most closely or precisely in point, then integrity is not consistency; it is something both more and less. Integrity demands that the public standards of the community be both made and seen, so far as this is possible, to express a single, coherent scheme of justice and fairness in the right relation. An institution that accepts that ideal will sometimes, for that reason, depart from a narrow line of past decisions in search of fidelity to principles conceived as more fundamental to the scheme as a whole.

The plainest examples come from adjudication, and I choose one that illustrates only a partial victory for integrity so far. For some time British judges declared that although members of other professions were liable for damage caused by their carelessness, barristers were immune from such

liability. Consistency, narrowly understood, would have required continuing that exception, but integrity condemns the special treatment of barristers unless it can be justified in principle, which seems unlikely. The House of Lords has now curtailed the exemption: to that extent it has preferred integrity to narrow consistency.²⁸ Integrity will not be satisfied, however, until the exemption is entirely erased.

That observation might help to quiet a suspicion encouraged by the discussion so far. Integrity might seem too conservative a basis for a conception of law, particularly in contrast to pragmatism, its most powerful rival. The judge who defers to integrity in deciding in favor of Mrs. McLoughlin, in spite of his opinion that it would be better to allow emotional damages to no one, seems timid beside his pragmatist brother who sees no obstacles to making the law better bit by bit. But once we grasp the difference between integrity and narrow consistency, this contrast becomes more complex. Integrity is a more dynamic and radical standard than it first seemed, because it encourages a judge to be wide-ranging and imaginative in his search for coherence with fundamental principle. In some cases, as in *McLoughlin* on the premises just assumed, the judge who takes integrity as his model will indeed seem more cautious than the pragmatist. But in other cases his decisions will seem more radical.

Consider, for example, the Supreme Court's decision in *Brown*. A pragmatist justice of a general utilitarian cast of mind would have asked himself whether a decision for the plaintiff schoolchildren, based on the illegality of all official segregation in schools, was really best for the future, all things considered. He might well have decided that it was, but he would have had to consider strong practical arguments to the contrary. It was perfectly sensible to think that such a dramatic change in the social structure of a large part of the country, ordered by a court that is not responsible to any electorate, would produce a backlash that would dam-

age rather than advance racial equality and make education more difficult for everyone for a generation. It was also sensible to think that the Court's order would never be fully obeyed, and that its failure would impair the power of the Court to protect minorities and enforce constitutional rights in the future.

Even if a pragmatist decided in the end that the decision the Court actually reached was the best, all things considered, he might well have paused before extending that decision in the dramatic way the Supreme Court did in subsequent years. The practical arguments against busing black children to white schools, and vice versa, were and remain very powerful, as the menace and hatred in several northern cities continue to make plain. A conception of law built on the interpretive principle of integrity provides much less room for practical arguments of that sort in establishing substantive constitutional rights.²⁹ It is therefore more demanding and much more radical in circumstances like those of *Brown*, when the plaintiff succeeds in showing that an important part of what has been thought to be law is inconsistent with more fundamental principles necessary to justify law as a whole.

Integrity is also narrower than consistency in a way we have already noticed, though it is sufficiently important to notice again. Integrity is about principle and does not require any simple form of consistency in policy.³⁰ The legislative principle of integrity demands that the legislature strive to protect for everyone what it takes to be their moral and political rights, so that public standards express a coherent scheme of justice and fairness. But the legislature makes many decisions that favor a particular group, not on the ground that the best conception of justice declares that that group has a right to that benefit, but only because benefiting that group happens to work for the general interest. If the legislature provides subsidies for farmers who grow wheat, for example, in order to ensure an adequate crop, or pays corn farmers not to plant because there is too much corn, it

does not recognize any right of the farmers to these payments. A blind form of consistency would require the legislature to offer subsidies or payments for not planting to all farmers, or at least to all farmers whose crops were essential or who produced crops now in oversupply. But there might be sound reasons of policy—perhaps of a very different sort—why the legislature should not generalize these policies in that way. Integrity is not violated just by accepting these reasons and refusing to make the policy of subsidy more general.

We shall notice in Chapter 8 an argument that might seem to threaten this distinction because it shows that integrity has force even in these decisions of policy. A government that accepts what I shall there call the abstract egalitarian principle, that it must treat its citizens as equals, needs a conception of equal concern, and integrity demands that the government settle on a single conception that it will not disavow in any decision, including those of policy. Many politicians, for example, think that treating people as equals means counting the welfare of each in some overall utilitarian calculation; an institution that used that conception of equal concern to justify some laws could not use a contradictory conception—that equal concern requires material equality among citizens, for instance—to justify other laws. But in ordinary politics legislators must take a long view of these requirements. They would be paralyzed if they undertook to ensure that each decision, one by one, left each citizen with exactly what the most sensitive utilitarian calculation, for example, would assign him. A working political theory must be more relaxed: it requires only that government pursue general strategies that promote the overall good as defined roughly and statistically to match what equal concern requires according to the conception in play. So a government committed to the utilitarian conception aims at legislative strategies that, as a whole and in the long run, improve average welfare better than alternate strategies would; a government committed to material equality adopts

programs that make sections and classes more equal in material wealth as groups, and so forth. Decisions in pursuit of these strategies, judged one by one, are matters of policy, not principle; they must be tested by asking whether they advance the overall goal, not whether they give each citizen what he is entitled to have as an individual. Subsidies to one set of farmers may be justified on that test, even though subsidies to a different set, as part of a different overall strategy, would also have improved the general welfare, perhaps just as much.

Most working political theories also recognize, however, distinct individual rights as trumps over these decisions of policy, rights that government *is* required to respect case by case, decision by decision. These may be grand political rights, like the right of each citizen to have his vote counted as equal to any other citizen's, or not to be denied freedom of speech or conscience, even when violating these rights would contribute to the general welfare. Or rights drawn more directly from personal morality, like the right to be compensated for injuries caused by another's carelessness. Integrity fixes its gaze on these matters of principle: government must speak with one voice about what these rights are and so not deny them to anyone at any time. Integrity's effect on decisions of policy is more diffuse. It requires, as I said, that government pursue some coherent conception of what treating people as equals means, but this is mainly a question of general strategies and rough statistical tests. It does not otherwise require narrow consistency within policies: it does not require that particular programs treat everyone the same way.³¹ Integrity's concern with rights and principle does, however, sometimes disqualify inconsistency of a certain special kind. An American legislature could not decide that no Catholic farmer should receive subsidies even if, incredibly, there were sound reasons of policy for this discrimination.

The distinction between policy and principle and the direct connection between integrity and principle are impor-

tant outside legislation as well. Consider prosecutor's discretion and other policy decisions in the criminal process. Consistency might be thought to argue that if some people who commit a particular crime have been and will be punished, all such people should be, and that punishments should be uniform, given an equal level of culpability. Integrity is more discriminating. If a prosecutor's reason for not prosecuting one person lies in policy—if the prosecution would be too expensive, for example, or would for some reason not contribute effectively to deterrence—integrity offers no reason why someone else should not be prosecuted when these reasons of policy are absent or reversed. But if the reasons that argue against prosecution in one case are reasons of principle—that the criminal statute did not give adequate notice, for example—then integrity demands that these reasons be respected for everyone else. Obviously integrity would also condemn prosecutors' decisions that discriminate, even for reasons of ostensible policy, on grounds that violate rights otherwise recognized, as if our prosecutors saved expense by prosecuting only blacks for a kind of crime that was particularly prevalent in mainly black communities.³²