Anachronism of the Moral Sentiments?
Integrity, Postmodernism, and Justice

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After all, what is self-restraint but hypocrisy? If you despise Jews the most honest thing is to burn them up. And the fact that it costs money, and uses up trains and personnel—this only guarantees the integrity, the purity, the existence of their feelings. They would even tell you that only a Jew would think of the cost.¹

This is an article about the relationship between postmodernism and justice. My topic is the apparent disjunction between postmodernists' moral and political intuitions on the one hand and their philosophical views and cultural leanings on the other. Crudely put, the article asks what we can learn from the fact that someone who rejects the notion of "integrity" as either a psychological, moral, or textual quality nevertheless condemns the dean or the senator for having "no integrity," and admires the display of principled consistency in public life or the interpretation of the Constitution. To put it differently, can you be a postmodernist and still believe that the laudable difference between, say, Nelson Mandela and Bill Clinton, is the difference between a principled ascetic who would go to jail for his beliefs and a pack of cut-out caricatures, reshuffled at every shift in public opinion, held together only by an expensive suit and a set of selfish appetites?

We appeal to integrity so often in part because of the way that it fits into our moral world and our political culture. The claim of moral certainty, of

¹ ARTHUR MILLER, INCIDENT AT VICHY 40 (1965) (former emphasis in original; latter emphasis added).
objective goodness, is seen as “illiberal,” incredible, even repulsive. Integrity, with its connotation of principled coherence inside a single person, allows us to praise someone for moral virtue while bracketing the issue of whether or not we actually agree with the principles he espouses. In many ways, integrity is the cardinal political virtue for a world of disputed moralities. Conversely, hypocrisy, inconsistency, cover-up, and perjury become the cardinal political sins. If I say that you are a bad person because you knowingly adopted policies that would throw children into poverty, I am seen as making a contentious claim, outside the narrow world of consensus normativity in which journalists or commentators feel comfortable. If I say that you are a bad person because you violated your own announced principles, or because you declared a particular course of conduct reprehensible but then lied about your own history, I am seen as merely holding you to a standard you have set yourself. As a quality, moral integrity seems to escape relativism by bringing ethics back home, inside the walls of a particular subject and a particular life-plan. Similarly, when we talk about the integrity of a text or an artistic work, we offer a view that promises meaning without hermeneutic dogma or aesthetic imperialism. In our most ambitious moments, when we speak of the integrity of law, when we personify the state and seek principled consistency in its norms, we hold out the prospect of noble legal determinacy without illiberal moral faith. Integrity, then, fulfills a need; yet its ability to do so is profoundly challenged by postmodernism, by the skepticism that continues pursuit even inside the walls of the individual subject, inside the tenets of an individual faith or aesthetic tradition, inside the covers of the apparently harmonious text.

I want to stress the magnitude of the apparent clash between the spirit of postmodernity and the idea of integrity. When we think of personal integrity, we think of psychological “oneness” and principled moral consistency.  

2. Of course, this is not the only vision of integrity. In a lucid study, Stephen Carter characterizes integrity as “requ[ir[ing] three steps: (1) discerning what is right and what is wrong; (2) acting on what you have discerned, even at personal cost; and (3) saying openly that you are acting on your understanding of right from wrong.” Stephen L. Carter, Integrity 7 (1996) (emphasis omitted). Obviously, there are many possible definitions of integrity. And I agree with Carter that the notion of acting on a moral belief even at personal cost seems somehow central. The concept I develop here differs from his in three ways. First, I want to talk about a vision of integrity that stretches beyond the personal moral characteristics to which Carter is referring, to a series of related ideas: textual integrity, psychological integrity, and so on. It remains to be seen whether the similarities between these various concepts are more than mere nominalism. Second, in the specific case of morality, the vision of integrity I outline here has as one of its central components the notion of universalizable principle. Carter, by contrast, uses the more straightforward notion of “discerning what is right and what is wrong.” As some of his case studies demonstrate, “discerning what is right and what is wrong” could require merely a prudential or utilitarian analysis of consequences, just “following the rules” or perhaps even doing some things that we don’t normally class under the heading of morality. Thus, for example, though Carter discusses some time-honored instances of integrity, such as Antigone’s defiance of Creon, he also includes less familiar and more tongue-in-cheek examples, such as the demise of “new Coke” and the return of “classic Coke.”
But to the extent that postmodernism has any philosophical content at all, it is its hospitality to a series of arguments—some of them very old indeed—that point out the insoluble difficulties in postulating a coherent, unitary self, text, or set of moral principles. In persona, hermeneutics, and deontological argument, integrity is all that postmodernism tells us is impossible, indeed undesirable. And yet the moral intuition in favor of integrity remains. For some, this the final proof that postmodernism is just wrong. For those who are more convinced of the philosophical and aesthetic strictures of a postmodernist, anti-foundationalist worldview, however, the answer must be something else. Is it that we believe postmodernists but we wouldn’t want to be one, or marry one? Is it that principled integrity, with its Kantian overtones, is just another way of thwarting the justice claims made by various subordinated groups, abstracting norms to some level of “consistency” at which point they lose their force—replacing “black equality” with color-blindness, the actual oppressed person with some universal stick figure? (Yet to equate all claims made by particular subordinated groups and to oppose them to all universalist norms makes it sound as though postmodernism is marred by the same combination of sanctimonious ineptitude and moral tunnel vision that made political correctness such an easy target.)

Alternatively, is the problem fundamentally a philosophical one? Are our intuitions about public morality, or legal justice, dependent on assumptions that we would reject as a philosophical matter? Is it simply that “integrity” doesn’t mean anything anymore? Is this feeling for integrity the coela-
canth of our moral sentiments, a creature that has outlived its own epoch and now lives on as a grotesque anachronism, a living fossil?

My answer to these puzzles is unsatisfactory. (Do not mistake this confession of failure for a rhetorical flourish. You will soon find out its truth.) I picked this issue because I have sympathy for some but not all of the postmodernists' beliefs and because I think that these stubborn intuitions about integrity present the hardest questions for postmodernists to deal with. In other words, this is not the usual performance piece in which the writer first carefully constructs the top hat before removing the bunny from it. It is more like the exploration of a nagging toothache, painful but impossible to leave alone. There is a lot to be said for confronting the areas where one secretly thinks one's ideas are the weakest. It is, however, a virtue much more comfortably urged on others than practiced oneself.

On the other hand, the trouble with confronting really hard problems is that you probably won't be able to solve them. As different drafts of this article accumulated, I revised my aspirations downward to meet my performance so many times that I began to feel like a defense contractor. The final version attempts merely to move the debate forward a little, to clarify some of our assumptions about integrity, morality, and postmodernism. The clash between moral intuition and postmodern practice does not disappear, but it does change, I think. From a discussion of Ronald Dworkin's idea of "integrity" in law and of the idea of principle in public life, I argue that many of our moral assumptions are constructed reasonably, but incompletely, around a binary opposition between self-interest and morality. From a comparison of the effect of Hume's guillotine on the one hand and Hume's critique of induction on the other, I develop an argument that celebrates, rather than laments, the conflicts within both our moral and legal traditions. Finally, and least satisfactorily, by introducing the notion of "practice" into moral and legal argument, I explore the apparent tension between postmodernism and tradition, be it moral or legal tradition.

I. DEFINITIONS

A. Postmodernism: What?

Given the topic, it seems magnificently inappropriate to begin with a set of definitions. Accordingly . . .

What do we mean when we talk about postmodernism? I am going to avoid the term "postmodernity" because I don't believe in "postmodernity": an epochal label strangely at odds with the protean discourse it purports to
represent. It conjures up for me the image of a New Yorker cartoon in which characters muse to each other that, now that they are in the Enlightenment, things will be easier to understand.

Instead, it seems useful to distinguish between postmodernism as a kind of arch cultural schtick and postmodernism as an earnest epistemology whose natural habitat is the Modern Languages Association annual conference. The cultural form, which I shall refer to as “pomo,” is built on kitsch quotation and the flight from ponderous sincerity, on the juxtaposition of contradictory styles and modes so that each impliedly mocks the other with-

4. I am not sure whether this puts me in the camp of the facile repudiators or the facile celebrators. See Fredric Jameson, Postmodernism, or, The Cultural Logic of Late Capitalism 62 (1991) (“[W]e are within the culture of postmodernism to the point where its facile repudiation is as impossible as any equally facile celebration of it is complacent and corrupt.”) (emphasis omitted).

5. See also the following account of “stages of history,” taken from sentences culled from undergraduate history papers: 

The Middle Ages limped to a halt. The Renaissance bolted in from the blue. Life reeked with joy. Italy became robust, and more individuals felt the value of their human being. Italy, of course, was much closer to the rest of the world, thanks to northern Europe. . . .

. . . .

The enlightenment was a reasonable time. Voltaire wrote a book called Candy that got him into trouble with Frederick the Great. Philosophers were unknown yet, and the fundamental stake was one of religious toleration slightly confused with defeatism. France was in a very serious state. Taxation was a great drain on the state budget.

Anders Henriksson, A History of the Past: ‘Life Reeked with Joy,’ Wilson Q., Spring 1983, at 169-70. Barring the spelling and the economics, I am not sure that contemporary sweeping statements about the condition of postmodernity are any less determinist or any more accurate.

6. There are certainly other ways to divide up the issue, though most of them end up with a relatively similar set of lines. Jack Balkin describes postmodernism as the intersection of a historical period, the cultural forms produced within that period, and a set of critical claims about art, philosophy, and culture. See J.M. Balkin, What is a Postmodern Constitutionality?, 90 Mich. L. Rev. 1966, 1967-72 (1992). Balkin also makes an interesting argument about the economic and material bases of postmodernism: “[W]hile modernity is often associated with the Industrial Revolution and mass production of material goods, postmodernism is better identified with the rise of mass forms of communication and the commodification of intellectual products and symbolic forms.” Id. at 1968. Though I don’t think the more general claim can be sustained, the analysis seems to be right on point when applied to at least some postmodern art forms. Indeed, for many appropriationist artists, the commodity form of mass entertainment, intellectual property, is the real form that art should subvert. The appropriationist band Negativeland puts it this way:

[A]lso from the copyright deterrence factor which now prevails throughout our law-bound art industries, we can find nothing intrinsically wrong with an artist deciding to incorporate existing art “samples” into their own work. The fact that we have economically motivated laws against it does not necessarily make it an undesirable artistic move. . . .

. . . .

Artists have always perceived the environment around them as both inspiration to act and as raw material to mold and remold. However, this particular century has presented us with a new kind of influence in the human environment. We are now all immersed in an ever-growing media environment—an environment just as real and just as affecting as the natural one from which it somehow sprang.

out any assistance from the "speaker," on the use of tension and internal inconsistency to make a point. Pomo celebrates the co-optation of '50s soap operas as markers for forms of sexuality sternly denied during the '50s. It glorifies the parodic personality and the sardonic aside, or the incongruity between the three-piece suit and the eyebrow ring. Above all, pomo is the world of irony, irony, irony.

Postmodernism is an altogether different kind of beast, more serious altogether. Pomo would jokingly conjure up a seminar on "Sexuality on Gilligan's Island"; postmodernism would hold it. At length.

Much philosophy described as postmodernist actually consists of the re-treading of ideas that were first described as poststructuralist, deconstructionist, social constructivist, pragmatist, Wittgensteinian, or simply relativist. (Since many of these ideas are interesting and useful, postmodernism has much to recommend it.) The recycled ideas are then linked to an aesthetic of irony and juxtaposition that, while not required by the philosophical structure, nevertheless seems to fit. Thus, in practice, to call some piece of work postmodernist normally means something like "anti-foundationalist with a twist" or "not mainstream and with an aspiration to campy outrage." It is hard to be more precise than this; we are not in the world of analytical philosophy. But if postmodernism does have a central catechism, it revolves around a belief in two ideas, both of which are at odds with a notion of textual or personal integrity:

- The fractured subject: the splintered self. The subject dissolves "upward" into the structures that constrain it and "downward" into the discsourses that constitute it or the roles that shape it. Little is left other than a gummy biological and geographical residue (itself already under siege from Science Page biology on the one hand and popularized quantum physics on the other). To the postmodernist, the "I" is just a place

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7. Admittedly, postmodernists will sometimes decorate their work with baroque analytical filigree, although its relationship to the epistemology of the remainder of the work is generally left obscure. An example might be Jean-François Lyotard's analysis of denotative and performative utterances, JEAN-FRANÇOIS LYOTARD, THE POSTMODERN CONDITION: A REPORT ON KNOWLEDGE 9-10 (Geoff Bennington & Brian Massumi trans., 1984), in a book which concludes with the following sentence: "Let us wage a war on totality; let us be witnesses to the unpresentable; let us activate the differences and save the honor of the name." ID. AT 82. The analytic philosopher heartened by the familiar sound of the former analysis will surely be mystified by the latter.

8. See, e.g., Karl Marx, Economic and Philosophic Manuscripts of 1844, THE MARX-ENGELS READER 66, 73 (Robert C. Tucker ed., 2d ed. 1978) ("T]he worker becomes a slave of his object . . . . Therefore, it enables him to exist, first, as a worker; and, second, as a physical subject. The extremity of this bondage is that only as a worker that he continues to maintain himself as a physical subject, and that it is only as a physical subject that he is a worker.").


where things, and selves, happen. Reading some of the more lyrical passages describing this experience, one could be forgiven for believing that, for postmodernists, multiple personality disorder is a quotidian experience, not an entry in the psychologist’s taxonomy.

- Malthusian semantics: the uncheckable proliferation of interpretations—and interpreters—of texts. Michel Foucault described the notion of a single, unitary, sense-determining author as “the principle of thrift in the proliferation of meaning.”

If this is the heart of postmodernism, what is its connection with pomo culture and attitude? Much of the time, the answer is that there isn’t any. A lot of the momentum generated by the term “postmodernism” occurs because of a rapid oscillation between pomo culture and postmodern philosophy in which energy is acquired by both—the theoretical equivalent of a particle accelerator. Thus, at the end of the ’80s, Madonna’s videos could be used to demonstrate the triumph of Saussure, or Afro PoMo HoMo inserted between Derrida and Baudrillard. I am all for rapid oscillation, but it is at least possible that arch playfulness and a tendency towards kitsch “quotation” of other cultural elements have different implications for “Justice” than would a painstaking assault on the concept of the coherent subject. Hence, I will try to disaggregate pomo and postmodernism when I come to my main discussion.

But despite what I have said about the differences between pomo and postmodernism, there is one important common theme that I want to point out now. Both find freedom, or fulfillment, or meaning to lie in the tensions between and within traditions, rather than in the correct working out of those traditions or in their wholesale rejection. The conventionalist wishes to instantiate the tradition in as coherent a way as possible. The modernist wishes to burst through, to go beyond the last form, the last convention, into some bright new future where art, or writing, or human potential is not stifled by

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11. Michel Foucault, *What Is an Author?*, in TEXTUAL STRATEGIES: PERSPECTIVES IN POST-SPECIALIST CRITICISM 141, 159 (Josué V. Harari ed., 1979). Foucault makes the point in characteristic language:

How can one reduce the great peril, the great danger with which fiction threatens our world? The answer is: One can reduce it with the author. The author allows a limitation of the cancerous and dangerous proliferation of significations within a world where one is thrifty not only with one’s resources and riches, but also with one’s discourses and their significations. The author is the principle of thrift in the proliferation of meaning.

Id. at 158-59.

12. The (very modernist) implicit suggestion was that the philosophical ideas received historicist verification from the evolution of the *Volksgeist* and the movements of the World Spirit. If Napoleon was Reason on horseback for Hegel, then Madonna was postmodernity on . . . ? The figure doesn’t bear completion.
yesterday’s boundaries, traditions, or constraints. In the end, the bursting of
the last form becomes the heart of modernism.13

The postmodernist rejects both conventionalism and modernism as bad
fantasies—neither possible nor desirable. Pomo style is probably best de-
scribed as “ironic conformity,” turning traditions against themselves and
finding both freedom and art in the space between the conflicting tugs of op-
posing ideas. It is as if the postmodern subject were one of Giacometti’s
stick figures, grotesquely thinned out, emaciated, and able to move only
when the ponderous gravity of one life-world or tradition is almost perfectly
balanced by the ponderous gravity of another. Astronomers use the term
“Lagrange points” (after the eighteenth-century French mathematician) to
describe those spots in space where the gravitational attractions of two or
more bodies cancel each other out. One way of seeing postmodernism is as
the art, politics, and culture of the Lagrange point. In an alternative and
probably more accurate picture, postmodernism sees truth, justice, and free-
dom as always constituted by the clash, the simultaneous embrace, of contra-
dictory traditions.

B. Justice: What?

I realize that, throughout history, a couple of people have taken a crack
at this question; I mean it only to signify three broad lines of inquiry: the
emancipatory, the deontological and—for want of a better phrase—the novel-
istically personal. (Again, what could be better in this context than to sepa-
rate the political from the moral from the private?) As an observed fact,
though, there are those of us who seem mainly concerned with the question
of what postmodernism means for [history as the struggle of a particular op-
pressed group for] Justice, those who care mainly about what postmodernism
means for [the moral philosophy of the public sphere and] Justice, and those
who care most about postmodernism and what it means for [their personal
attempts within their own lives to achieve some modicum of] Justice. Each
of these concerns impinges on the other two, of course . . . pace Martha
Nussbaum.14

13. As Daniel Bell describes it, “[T]he modern hubris is the refusal to accept limits, the insis-
tence on continually reaching out; and the modern world proposes a destiny that is always beyond:

14. Nussbaum deals with each of these questions of justice in her Aristotelian inquiry into
ethics, which has three “distinct” yet “closely interwoven” dimensions: “an attack on the claim that
all valuable things are commensurable; an argument for the priority of particular judgments to uni-
versonals; and a defense of the emotions and the imagination as essential to rational choice.”
The themes I will discuss here—public and private integrity—fit more easily in the second two categories, but I want in passing to note that there is a rich and appropriately obscure literature on the first topic. Laclau and Mouffe, for example, have interesting and vaguely Gramscian things to say about the impact of postmodernism on the idea of a coherent emancipatory subject\textsuperscript{15}—such as the working class, or the worldwide women’s movement—whose historical role was as both the agent and the beneficiary of the movement of history and the struggle for justice. Here, as elsewhere, postmodernism’s contribution is to challenge most of the fixed terms in which the theory is worked out, particularly the notion of stages to history, of definite relations between material structures and ideologies, and of a coherent oppressed group whose common interest will automatically yield the emancipatory lock-pick to the shackles of false consciousness. As is fitting for an academic philosophy, postmodernism tilted towards the conclusion that everything was much more complicated; pomo, on the other hand, seemed to offer only a kind of smirking playfulness that was a poor trade for the high seriousness of grand theory.

Postmodernism’s critics decried it as a threat to theoretical determinacy (and often to rigor); pomo culture was condemned as a threat to commitment. No one seemed to be deterred by the fact that this little morality play was a very old one, one that was being staged thirty years before anyone talked about postmodernism, with a distinguished sequence of cast members in the leading roles: Existentialism, neo-Marxism, and feminism have successively been cast as the villains who imperiled theoretical determinacy while, on the cultural side, Yippies, the New Left, and a variety of others have posed as the moustache-twirling enemies of seriousness. That the accusations are old, of course, doesn’t mean they are wrong. Still, the unacknowledged repetitions of this little drama shed some doubt on the particular cultural and theoretical villainies attributed to postmodernism. Grand theory and high moral seriousness were tied to the tracks long before postmodernism appeared on the scene. If there is something particular about the threat that postmodernism poses to our familiar languages of justice, we will find it only by looking more closely.

\textsuperscript{15} See generally \textsc{Ernesto Laclau \& Chantal Mouffe}, \textsc{Hegemony and Socialist Strategy: Towards a Radical Democratic Politics} (Winston Moore \& Paul Cammack trans., 1985).
II. PUBLIC AND PRIVATE INTEGRITY

I am going to turn now to a fuller development of the notion of integrity. My analysis starts with Ronald Dworkin’s defense of “integrity” in law and moves from there to a discussion of a set of intuitions—widely shared intuitions, I would claim—about integrity as both a public and a private ideal.

A. Law and Integrity

In Law’s Empire,16 Ronald Dworkin makes a fascinating argument that combines—indeed melds—a claim about interpretation and a claim about justice. Both areas are, to some extent, the same, he argues.17 Judges should seek an interpretation of the law that makes it “the best it can be”18—a process that combines pulling interpretive coherence out of the received materials with the process of producing a universalized moral coherence in society’s commands.19 Mere coherence is not enough; the norms that underlie that coherence have to be defensibly universal.20 Thus, for example, Dworkin believes that any vision of the equal protection clause which allowed legal discrimination against gays would be judged insufficiently universalized and hence indefensible.21 The fact that it would be consistent with a flat-footed reading of most of the existing case law is irrelevant. The final goal of this process is a set of norms which could coherently and justifiably be held by a single person,22 the community personified.23 Kant’s Leviathan.

16. RONALD DWORIN, LAW’S EMPIRE (1986).
17. See id. at 73 ("[J]ustice is an institution we interpret.").
18. Id. at 229.
19. See id. at 218 ("[Litigants] 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.").
20. See id. at 219.
22. See generally DWORKIN, supra note 16, at 167-75.
23. See id. at 248 ("Judicial opinions formally announced in law reports . . . are themselves acts of the community personified that . . . must be taken into the embrace of integrity.") (emphasis added).
calls the goal of this process “integrity,” and I want to stress that integrity is a concept that is both interpretive and deontological.

I suspect the thought that I am now going to offer some vaguely post-modern critique of this notion has already produced a premonitory flutter of boredom. From within the dominant set of epistemological beliefs in the academy, nothing could be easier. The assumption of a coherent and unitary personality for the state, indeed the notion of coherent personality at all; the idea of texts in which a best interpretation rises, like cream, to the surface; the notion that normative universalization carries with it an account of its own limits (so that we can know why, for example, the Equal Protection Clause protects gay love, but not public flashing)—these are familiar targets, even if one might occasionally doubt the quality of the arrows that are shot at them.

Nevertheless, it would again be idle to deny that Dworkin’s idea of integrity resonates with a powerful set of moral and political intuitions. That appeal is at its strongest in Dworkin’s account of the checkerboard abortion statute. Say that you have a deeply held belief on abortion, be it pro-choice or pro-life. Imagine that you knew, absolutely knew, that your belief would lose as both a constitutional and a legislative matter, and lose totally. Instead, I offer you a compromise: women born on even-numbered years will be able to have abortions; those born on odd-numbered years will not.24 In terms of results, this deal is better than the alternative. At least fifty percent of women will be living under the regime that you think has right on its side. Depending on your belief, you have either preserved the liberty of fifty percent of the women in America, or saved fifty percent of the unborn children from the risk of murder. Dworkin suggests that most people would nevertheless refuse the deal. Though it has obvious “pragmatic” advantages, they will reject it, indeed be disgusted by it. Why? Using a lovely planetary trope, Dworkin analogizes our search for reasons to the astronomer’s search for Neptune, the missing planet which their calculations told them must be there. “Integrity is our Neptune,” he declares.25

The checkerboard statute, the compromise solution, fails both the interpretive side and the Kantian side of Dworkin’s principle. On the interpretive side, Dworkin would argue that no single author could create a text containing such contradictory instructions. On the moral side, there is no principle that could support both the prohibition of and the freedom to have abortions based merely on the question of whether the number at the end of a woman’s birthday is divisible by two. Dworkin’s point is that by rejecting the checkerboard statute we have rejected a merely pragmatic or, for that matter, utili-

24. See id. at 178-84.
25. Id. at 183.
tarian account of law and justice. Indeed, many would be willing to sacrifice pragmatic gain in order to preserve the principled consistency of integrity.26

This attention to principle is consistent with Dworkin’s earlier work. In all of his books Dworkin argues against a particular style of decisionmaking, a style that one could describe as means-ends reasoning, pragmatic reasoning, or utilitarian reasoning. In an earlier incarnation of his thesis he tells us simply that we should avoid recourse to “policy” in hard cases.27 Instead, he argues for a style of reasoning perhaps best described as principled. Why?

Over time, Dworkin’s answers have varied, reflecting—I think—the multiplicity of reasons we have for finding “integrity” attractive. Sometimes it has seemed that he advocated this method of reasoning because it was required by the very nature of law, or morality;28 at other times, because only thus could we give effect to the determinate political rights on which the legal system rested.29 Sometimes Dworkin implies that only principle can give the citizen an adequate trump to play against the potentially oppressive interests of the state and other citizens; utilitarianism, we are supposed to believe, will forge bars inadequate to cage Leviathan and the Hobbesian brute.30 At still other times, Dworkin develops an interesting moral anthropology in which he claims that his theory explains his readers’ normative beliefs better than they can themselves and thus should be accepted because it accounts for data otherwise inexplicable.31 “Integrity is our Neptune,”32 he says, leaving me to wonder whether he would consider the theory to be falsified if his readers did not in fact hold the moral beliefs that he asserts they possess, or whether he would tell them that they should hold such views, basing this argument on some other normative ground.33

26. See id.
27. See Ronald Dworkin, Hard Cases, 88 HARV. L. REV. 1057, 1060 (1975) (“I propose . . . the thesis that judicial decisions in civil cases, even in hard cases . . . , characteristically are and should be generated by principle not policy.”).
28. See generally id. at 1058-1109.
29. See id. at 1067 (“Arguments of principle are arguments intended to establish an individual right; arguments of utility are arguments intended to establish a collective goal.”).
30. See, e.g., RONALD DWORKIN, A MATTER OF PRINCIPLE 370 (1985) (discussing when rights can “trump” utility).
32. Id. at 183.
33. Dworkin believes that his Hercules form of integrity is faithful to the concept in ways that a consequentialist analysis of the legal system could never be. He is not alone in believing that integrity is irreconcilable with utilitarian argument. Bernard Williams counts as a powerful argument against utilitarian moral discourse that it is powerless to explain—or even to comprehend—the attraction of integrity. See Bernard Williams, A Critique of Utilitarianism, in UTILITARIANISM: FOR AND AGAINST 77 (J.C. Smart & Bernard Williams eds., 1973). Integrity, in his view, is linked to the idea that both identity and morality start from one’s own principled commitments and actions, not from one’s calculation of their consequentialist benefits or detriments for other people:

It is often suspected that utilitarianism, at least in its direct forms, makes integrity as a value more or less unintelligible. I shall try to show that this suspicion is correct. Of course, even if
In *Law's Empire* his justification seems elegantly recursive, perhaps to the point of circularity; the method of reasoning Dworkin suggests is both an example of and a justification for the interpretive search for integrity. Integrity allows law with a capital “L” to be the best that it can be, taking all that is most noble about Law as a practical human activity and using consistency with that nobility as a guide to discover the best method of interpretation. Meanwhile, each contending interpretation produces using this method tries to take the best principled interpretation of the particular legal materials at hand, law with a little “l,” and to make consistency with the principles revealed by that interpretation its guide. Thus, on both the level of metatheory and the level of concrete interpretive practice, the notion of integrity pushes us towards Kant rather than Bentham, towards principle rather than policy, and—when push comes to shove—even towards rule-utilitarianism rather than act-utilitarianism.

Now that we have disaggregated at least some of integrity’s attractions, what problems appear?

B. *Integrity’s Limits*

The first problem, familiar to all who have studied interpretation and moral philosophy, is that principles do not lay out their own boundaries. Many of those who believe in a principle, or a right, of free speech—rather than merely some strong, declared interest in free speech—do so because they think that a mere interest in speech would not be enough to withstand the forces of censorship at times of high political passion. The presumption is that principles are more solid than policies. Fair enough, but how is the ambit of this principle of free speech to be defined? How do we know whether flag burning,\(^{34}\) slogan-bearing jackets,\(^{35}\) cryptographic source

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that is correct, it would not necessarily follow that we should reject utilitarianism; perhaps, as utilitarians sometimes suggest, we should just forget about integrity, in favour of such things as a concern for the general good. However, if I am right, we cannot merely do that, since the reason why utilitarianism cannot understand integrity is that it cannot coherently describe the relations between a man’s projects and his actions.

*Id.* at 99-100. Bruce Ackerman has suggested to me that the concept of integrity can just as easily be associated with Benthamite utilitarianism as with Kantian principle. Though I agree that a Benthamite could be as “selfless” as a Kantian, and though we clearly could use integrity to mean “consistent commitment to a single utilitarian goal,” I think that both ordinary speechways and theoretical reflection counsel otherwise. Dworkin and Williams may be right or wrong in their larger moral projects, but I believe that both are correct to think that the idea of self, the idea of justice and the idea of interpretation that the concept of integrity suggests are distinctively nonutilitarian and nonconsequentialist. Imagine a rigorously utilitarian version of Antigone: “On balance, Creon, it turns out that the felicific calculus tilts towards burying one’s relatives, so I am afraid you’ll have to walk me up.” Something seems to be missing in the translation. Indeed, Dworkin’s argument about the congruence between integrity as a principled theory of justice and integrity as a hermeneutic method would be almost impossible to understand if his audience did not, to some extent, already see the two concepts as linked.


or political contributions are "speech"? The answer, of course, is that we have to look to some set of interests, goals, or utilitarian calculations, to look outside the charmed circle of the self-defining, free-standing right and ask ourselves whether "the freedom of speech" is intended to serve democratic debate, protect iconoclastic dissenters, supply the march of truth, or what-you-will. In fact, as Fred Schauer has shown, the way we define the "speech" protected by the principle oscillates between a reified ordinary language notion of "speech" (so that we implicitly both over- and under-protect according to any of the goals of "the freedom of speech") and a sporadic recourse to different assumed goals that the principle serves. Schauer has also argued that we underemphasize the benefits of reification in the interpretation of rules, but Dworkin would have to come a long way to incorporate such an argument into his defense of integrity.

When Dworkin describes the abortion checkerboard statute, he sidesteps this boundary problem in two ways—both of them apparently reasonable. First, Dworkin assumes that all his readers will share a certain definition of the class of people to whom either the prohibition of abortion or the right of abortion should apply. The right, or prohibition, would presumably apply to all women—or, if one takes seriously Justice Rehnquist’s logic, to all people, though it will have a particular significance only for those who can actually get pregnant. (This seems fair enough, although a little thought might suggest some problems. Does either principle apply to minors, rape victims, foreigners, foreigners dependent on American aid, those passing through the country?)

Second, because Dworkin has neatly bracketed the issue by setting up the problem so that one can be either pro-life or pro-choice, he gets to rely on a naturalistic assumption about those to whom the appropriate moral principle applies. He does so even though the defining feature of the broader abortion debate is precisely a fundamental disagreement about the scope of the identified principles. To put it in the language of bumper stickers, is it a child or a choice? Which is the discrete and insular minority to be protected by the courts, the class of women or of fetuses? Each side of the debate is

37. See Buckley v. Valeo, 424 U.S. 1 (1976)
39. See FREDERICK SCHAUER, PLAYING BY THE RULES: A PHILOSOPHICAL EXAMINATION OF RULE-BASED DECISION-MAKING IN LAW AND LIFE 202-06, 229-33 (1991). "It is not just that these virtues of rules are frequently unnoticed and are thus silent. Rather, it is the very silence itself, the ability to take things off the agenda as well as to put them on, that explains much of what is valuable about rules." Id. at 233.
40. See Geduldig v. Aiello, 417 U.S. 484, 497 n.20 (1974) (refusing to find a disability plan's failure to cover pregnancy violative of equal protection since it distinguished between "pregnant women and nonpregnant persons" rather than between women and men).
certain about the scope of the principle vindicated by rejecting the checkerboard statute. Thus, by allowing them to set up the tension between integrity and pragmatism, Dworkin can bootstrap his way out of the problem. His achievement should not be understated. Through this ingenious thought experiment, he actually ends up using a situation of moral incommensurability to defend the idea of “principle-not-policy.” What’s more, he does so without getting into the difficulty that principles cannot define the scope of their own applicability and that most of the attempts to draw such boundaries lead either into the forbidden realm of consequentialist argument or into a claim of free-standing natural rights.

When one turns to other checkerboard statutes, however, the problem becomes more obvious and Dworkin’s responses to it become markedly weaker. Their weakness reveals something about the concept of integrity itself. Consider, for example, the question of whether we should have a regime of strict liability or negligence in our tort system. At present, of course, we have a (highly limited and qualified) regime of strict liability for manufacturers and sellers of products and a regime of negligence for providers of services. When Dworkin sets up the checkerboard statute dilemma here, he simply assumes the validity of the line between goods and services as the boundary line for the principle that he is discussing. If one manufacturer of goods is held strictly liable, all must be: “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.”

Unless I am missing something fundamental (Plato’s lost defense of the Maytag/Mercedes distinction, say), this is complacent nominalism coupled to bad tort law. Dworkin acts as if the goods/services distinction were a philosophical given. He is creating a set of natural legal classes, thus obviating the need to provide the limits of the principle or to justify the conventional classification rather than merely apply it. “Subject all goods to the same liability system” has been made a monadic concept as unchallengeable as “Treat all persons with equal concern and respect.” But such a method doesn’t pass muster.

Take Dworkin’s example. At the moment, American tort law jaggedly divides liability regimes by the line between sellers of goods and providers of services. Yet one can think of many other lines that could be drawn; there are, for example, eminently defensible classifications that would justify subjecting cars but not washing machines to strict liability. Strict liability could be applied to high-value goods, to goods that cause many deaths a year, or to goods that, if defective, could easily injure others outside the circle of the buyers friends and family. One could follow the logic of MacPherson v.

41. DWORKIN, supra note 16, at 182.
and use it as a guide to the imposition of strict liability rather than to the curtailing of the privity limitation. In fact, one might go further and say that the goods/services distinction is a very crude way to implement a set of judgments about who should be subject to strict liability—namely, that strict liability should be applied to those who are the best loss avoiders, those who are best cost spreaders, those who are in systemically superior positions to judge risk and to inspect for dangers, and so on and so on. If one thought that in general manufacturers and sellers of products fit the bill here, and that providers of service in general did not, one might draw the boundary line along the ordinary language meaning of “good” or “product,” acknowledging that the line would inevitably be over- or under-inclusive.

Subsequently, one might choose to hold a provider of services who had all the characteristics of the seller of goods liable under a de facto or de jure strict liability standard and, conversely, to say that a person who appeared to be a seller of goods actually was a provider of services and thus should be held to a negligence standard. In practice, this is what the tort system often does.

This dynamic oscillation between classifications and their (presumed) goals, with frequent revisions of both, is a fundamental part of legal discourse. Yet, Dworkin’s claims to the contrary notwithstanding, it appears in only the most bland and sanitized form in Law’s Empire. Similarly, the hermeneutic side of integrity demands that the law be analogized to a chain novel in which an interpretation of the received materials is ruled out if “no single author who set out to write a novel with the various readings of character, plot, theme, and point that interpretation describes could have written substantially the text [that the judge] has been given.” This quest to analogize law to a text produced by a single author writing a premodernist novel is defended partly as capturing the internal experience of legal argument. To me, however, it seems to ignore an important component of the experience of those involved in legal discourse.

One defining characteristic of the “internal perspective” is that legal fields are frequently (and beneficially) shaped by contradictory and abutting

42. 111 N.E. 1050 (N.Y. 1916). Thus we could decide, for example, to impose strict liability on products wherever “the nature of a thing is such that it is reasonably certain to place life and limb in peril,” id. at 1053, when defectively made. In other words, the likelihood that the product would cause extreme harm becomes the rationale for imposing strict liability.

43. See Colmenares Vivas v. Sun Alliance Insurance Co., 807 F.2d 1102 (1st Cir. 1986) (holding that a service provider running an international airport has a nondelegable duty to maintain safety and may be presumed negligent where injury was caused by a malfunctioning escalator).

44. See Murphy v. E.R. Squibb & Sons, 710 P.2d 247 (Cal. 1985) (holding that a pharmacist who sells prescription drugs should not be seen as a seller of goods, subject to strict liability, but rather as a service provider and seller of goods, subject to negligence).

45. DWORKIN, supra note 16, at 230.
normative ideals, whose continued conflict produces one unstable cease-fire line after another. When it comes to dealing with this particular aspect of legal practice, poststructuralism's epistemological fascination with the return of the repressed term, the dangerous supplement, seems better than Dworkin's integrity. Integrity certainly speaks to a particular impulse and moment in legal practice, but it stumbles when it comes to offering a convincing account of the movement of legal doctrine between, say, the will theory of contract and the reliance theory of contract, strict liability and negligence, formal equality and substantive equality. In contrast, the postmodernist or poststructuralist sees conceptual tension as the motive force, the mainspring of legal development—an unduly idealistic picture to be sure, but one which seems to capture an undeniable aspect of one legal culture. For Dworkin, conceptual tension is simply a close call with a right answer: just another opportunity for his ideal judge Hercules to strut his stuff. What the lawyer experiences as continually productive antinomy or dialectic between contradictory visions of the good, Dworkin sees as an error to be resolved. This is a point to which I shall return later.

In sum, then, integrity sounds best when one represses the knowledge that both the principles to be applied and the boundaries within which they are applied are constantly being remade, and remade in a way that turns to policy, to utilitarian calculation, to pragmatic consideration of effects. Put crudely, postmodernism's concentration on fluidity, contradiction, internal tension, and the social construction of identity and text seems as much a part of law's empire as Dworkin's Herculean Kantianism.

There is also a further implication. Even for Dworkin, principles only matter once they start to have some specificity. Barring a cultural practice of extraordinary formalist classification (a world, say, in which goods and services seem naturally so different from each other as to cry out for different legal standards, in which everyone "knows" that money is speech and T-shirts are not), they cannot get this level of specificity without the recourse to utilitarian or consequentialist argument. If one's proposition is that principle constrains in a way that mere policy never could, one has to make it an historical claim rooted in a particular culture and practice, not an epistemological or deontological claim rooted in the nature of language or morals.

46. See id. at 239.
47. To be fair to Dworkin, in the case of his stronger examples—abortion, gay rights and so on—he offers vaguely Kantian reasons why the principle must stop where it does. RONALD DWORFIN, LIFE'S DOMINION 236 (1993) (claiming that his theory "provides a useful reading" of Kant's Golden Rule). I would argue, however, that even in Dworkin's best examples, the ones where we are dealing with "fundamental human rights," it is precisely the historical and practical consequences of excluding some person or group from the classification of "human" that makes us shrink away from the idea, and that in turn has helped to create the world in which the universality of the concept seems "natural." Acceptance of this point, however, is not needed for my argument here to succeed.
Integrity in law and public life continues to seem attractive, but its attraction cannot be based on the qualitative distinction between uniquely binding principle and manipulable utilitarian policy argument.

C. Integrity's Antonym

There is a second aspect to the attraction of integrity and the rejection of utilitarian argument. It lies, I believe, in the idea that morality is the antonym of selfishness, in the notion that the true mark of a moral decision is that it makes you do something you do not want to, something that is actually against interest. Ask someone to come up with an example of a truly principled position and the odds are that they will use the example of Voltaire despising what you say but being willing to die for your right to say it, the ACLU defending the Klan, the Israeli Jew supporting the rights of the Israeli Arab, the conservative libertarian sticking up for the gay activist, and even, on a more trivial level, the co-worker who doesn’t relinquish his beliefs even when they come out against his own interests.

In the last part I discussed the idea that only principles can tie the hands of Leviathan or constrain potentially brutish fellow citizens. Integrity, in this view, is the hallmark of the only metal strong enough to imprison contrary desire. The flip side to this idea is that principles are only real when they are forcing us to do something we do not want to do. On some level, we are aware that we do not leave the openness of moral reasoning behind when we plump for principle rather than policy, and so—in practice—it is the sight of someone doing something he dislikes that is the ultimate proof of actual principle, real integrity. This sounds like a very crude idea, yet I think that it represents a cluster of beliefs that exercise a powerful force over popular and to some extent academic discourse about morality. “Talk is bullshit,” goes the assumption; “there is always a way to rationalize one’s position.” Utilitarian arguments may be manipulable, but principle can be spun, too. Under these conditions, the proof of—indeed, the warrant for—integrity is action against self-interest. Morality is constructed as the antonym of selfishness.

If I am right about this, part of the attraction of principled integrity depends on a contrast that would be very hard to defend as a philosophical matter and that, ironically, adopts attitudes towards language and moral argument that have something of the cynicism often attributed to postmodernism itself. Postmodernists are sometimes attacked as nihilistic for their claims about the openness and indeterminacy of language, the limitations on the power of reason, and the extent to which purportedly universal moral positions (colorblindness, say) actually are constructed around the perspectives and interests of a particular person or group. These claims are seen as controversial and worrying. The intuition that morality is “that which goes against self-interest,” on the other hand, is decidedly noncontroversial. But
why? Doesn't it implicitly accept many of the same postmodernist arguments? If we truly felt that language constrained, reason reached unique solutions to moral problems and subject-position did not affect moral conclusions, would we believe in such a strong, even constitutive, opposition between self-interest and morality? The whole point of demanding action against self-interest as the ultimate warrant of morality, and often of integrity, is that people believe that words and rules do not really bind us, that rationalizations can always be produced, and that purportedly neutral principles may actually be crafted, consciously or not, around the interests and experiences of the person offering them. We demand “pure” and thus self-revealing actions rather than manipulable words and reasons. Admittedly, the postmodernist would reject the idea that we can escape from such a problem by shifting from the domain of words to that of actions. But the reasons why we demand noble sacrifice are built in part on a hip-pocket skepticism that takes the side of postmodernism in its critique of rationality. Far from rejecting postmodernism, the search for self-sacrificing integrity is, in part, built on an implicit embrace of postmodern critiques.

So far, I have argued that any distinction between the binding power of principle as opposed to policy must be sought in the actual history and context of some community and some project—the advantages of “principled integrity” would rest on historical claims about a practice, not on epistemological claims about a form of argument. Second, I have argued that there is a profound irony in our stock image of the way that principle constrains as the image of a person forced by an overarching principle to act against self-interest. For most of us, certainly for me, this image exemplifies the idea of integrity—both personal and principled. Yet our stock image of integrity also seems to rest on a tacit skepticism about the purity of language, the power of reason and the irrelevance of subject position—to depend, that is, on a tacit skepticism about the ideas central to integrity.

Assume for the sake of argument that there is something to the points I have made so far. So what? Even if intuitions about the superior binding force of principle are dubious, even if arguments about the advantages of principle rather than policy should be contextual rather than epistemological, and even if our notions of principled integrity are constructed around an indefensible opposition between self-interest on the one side and principled integrity on the other, so what? Don’t these moral intuitions actually work well enough in most cases? Particularly in the last case, isn’t the idea that morality is most clearly marked by action against self-interest a pretty good benchmark for everyday life? The answer, I think, is both yes and no. Let’s start with the “no.”

48. Many of these arguments are, as I pointed out earlier, recycled versions of much more traditional philosophical skepticism. See notes 6-7 supra and accompanying text.
The antonym of morality and self-interest is a crude notion that causes us systematically to undervalue the threats posed by certain kinds of belief systems. It is, to be more precise, an ahistorical generalization built on a particular experience of "normal politics." There is no better example of its dangers than Arthur Miller's play Incident at Vichy. In this play, a group of detainees sits in a "place of detention," waiting to be interviewed by the German authorities. As the play proceeds, the detainees nervously seek to reassure themselves that nothing is going to happen to them. To do so, they must walk a narrow path, discussing in the abstract what the Nazis might be doing without ever admitting that they, themselves, might be targets of Nazi persecution. The word "Jew" cannot, at first, be spoken. "Listen," says one character to another, "you are . . . Peruvian, aren't you?"

As time goes on, the pressure builds, and the efforts at reassurance become all the more blatant. Increasingly, the inhabitants of the waiting room are willing to accept that horrible things might be done to them. They discuss the possibility of imprisonment, even forced labor, all in the attempt to show that the outcome will not be the one they fear: genocide. They point out how crazy it would be, as a matter of self-interest, for the Nazis to be exterminating people in the middle of a war when every soldier, every piece of rolling stock is desperately needed. Even the most ruthless of totalitarian societies would at least use its enemies as forced labor. It would be irrational to do otherwise. Finally, Von Berg can contain himself no longer. He crushes his fellows' hopes with words that offer a striking commentary on the opposition between principled integrity on one hand and cold-hearted calculations of self-interest on the other:

After all, what is self-restraint but hypocrisy? If you despise Jews the most honest thing is to burn them up. And the fact that it costs money, and uses up trains and personnel—this only guarantees the integrity, the purity, the existence of their feelings. They would even tell you that only a Jew would think of the cost.

The horrified recognition produced by Von Berg's words marks the weakness, indeed the dangerous blindness, of the way of thinking I have described. Not all evil is venal, or even pragmatic for that matter; the genocidal zealot can join the noble liberal in scoffing at utilitarian calculation. The idea that we have found morality where we see action against self-

49. MILLER, supra note 1.
50. Id. at 1.
51. For example, the detainees attempt to explain their detainment as a "document check," id. at 4, enslavement to corporate monopolies, see id. at 6, investigation of a theft, see id. at 9, and forced labor, see id. at 16.
52. Id. at 5.
53. See id. at 39 ("But what good are dead Jews to them? They want free labor. . . . [T]he Germans are not illogical; there's no conceivable advantage for them in such a thing.").
54. Id. at 40.
interest is a generalization drawn from a particular kind of normal politics in a life-world with a particular, narrow set of goals and constraints. The repeated experiences on which it relies to be convincing are the experiences of the pork-barrel statute and the car showroom, as well as the experiences of the Franciscan renunciate or the nobly uncompromising civil libertarian. They are not the experiences of the evil fighting faith, of the zealots happy to act against immediate self-interest, precisely to "guarantee[] the integrity . . . of their feelings."

Fundamentally, the moral intuition I describe may rest on the fact that, in the world of the United States in the 1990s, the greatest moral danger is likely to be venality rather than passionate devotion to an abstract set of destructive ideals. The moral dangers to which this intuition is attentive are those of materialist rapacity and self-interested indifference to the plight of others rather than missionary zeal or fascistic fury—Dalkon Shield rather than Dachau, mugging rather than racial purification. Such a concept of morality falters when it comes to explaining the Ayatollah's jihadic passion or the Führer's vision; in comparison, the murderous greed of a strongman dictator is almost reassuring. My point is that, within its context, the opposition between morality and self-interest works well enough but, like the claim that principle is more constraining than policy, its virtues are those of the historically limited rule of thumb, not the timeless truth deduced from the meaning of morality itself. The sting of the lash guarantees neither insight nor virtue; the assumption that it does relies ironically on a strange combination of cynicism and naïveté: a cynical skepticism about the power of reason and the constraint of moral discourse—"give us painful deeds not noble words"—and a naive generalization of the characteristics of one set of moral conflicts into a constitutive rule for all.

On the other hand, the notion of moral integrity as "that which is not self-interest" is an idea that works. The intuition that tells us

\[ \text{Self-interest} \neq \text{moral integrity} \]
\[ \therefore \text{moral integrity} = \text{(self-interest)} \]

may be, as I have argued here, one that is as wrong in premise and deontology as it is in simple logic. However, as a rule of thumb, as a way of saving time and thought, as a quick way of estimating the bullshit quotient of the moral position being expressed, it has its own pragmatic virtues. In a lovely twist, some of the moral intuitions which tilt us toward integrity may rely on the very pragmatic instrumentalism that integrity, in and outside the pages of Law's Empire, is supposed to refute.

If our image of integrity is this everyday cameo rather than Dworkin's Kantian Leviathan, then we could say that integrity needs both more and less postmodernism. Its skepticism about discourse and subject position should be a little less crude, its complacency about the universality of its particular
experiences a little less naive. Again, the advantages of "principled integrity" would rest on contextual and historical claims about a practice, not epistemological claims about a form of argument.

III. INTEGRITY AND CONFLICT IN MORAL TRADITION

I once saw a magazine cartoon that neatly summed up a particular idea of the relationship of morality and moral philosophy to science and scientific reasoning. In two parallel strips, the cartoonist depicted "the Ascent of Man." In the top strip, marked "Scientific Evolution," a series of figures is depicted in the classic evolutionary style: first an apish hominid clasping a club, then a caveman with a spear, then a knight with a sword, a soldier with a gun, and, finally, a scientist clutching a representation of an atom, set against the backdrop of a ghostly mushroom cloud. The lower strip was titled "Moral Evolution." In the first frame, the same club-carrying hominid was shown, again in the second, and in the third . . . As Science marched forward to the domination of the atom, Morality failed to progress at all, both in practice and as a form of knowledge.

This vision of the relationship of science to morality is an interesting one. It depends in part, I think, on assumptions about the epistemological foundations of science and morality. The assumptions run something like this: Science can, and does, produce reliable knowledge. In morality, our castles are always built on sand; every moral theory rests on a leap of faith, a leap of faith that is always implicitly challenged as we look out and see others who hold beliefs very different to our own. The job of the moral philosopher or the normative theorist such as Dworkin is to dispel this moral conflict: to show that there is a right answer even to the hard moral and legal questions, to hold moral conflict at bay. There are more and less ambitious versions of this idea. For some, integrity is attractive because we have given up on the notion of objectively correct moral positions and seek only consistency within a single person.55 Thus, integrity may flourish in a relativistic world precisely because it seems to require only that each person be consistent to her own values. Other visions of integrity are more ambitious. To return for a moment to Dworkin's notion of integrity: Law must be interpreted so that it reflects a coherent set of moral views that could be held by a single person, the community personified. Hercules' idea of integrity is to produce answers that are not merely "right for him," but right.56 In both the

55. This idea can often be seen in the contemporary media where it is assumed that values are relative and actual assessments of good and evil impossible. In such a world the only way to sin is to fall short of a standard that one has set oneself; thus hypocrisy and cover-up become the ultimate sins.

56. Although "right" here means something like the best interpretation within the boundaries of the practice as seen through a particular Kantian lens. It does not mean "objectively" right; Dworkin has consistently argued that the notion of external objectivity is "a fake." See DWORKIN,
modest and the ambitious versions, however, moral conflict is the problem. Integrity is the solution.

I want to use the work of David Hume to explore the idea of integrity as a solution, even a partial solution, to a world full of moral conflict. Hume and the other writers of his generation have had a profound effect on this article, particularly in terms of the importance of an analysis of the moral sentiments, but the aspect of his work on which I want to focus here is rather different. Hume is particularly well known to modern philosophers because of two powerful, skeptical ideas. The first, known to many as Hume's Guillotine, is the argument that it is impossible to infer any normative statement from a statement of fact (or vice versa). The world of facts and the world of norms are separate domains, and only a leap of faith, the expression of some preference—itself logically ungrounded—can carry us across the border. For modern philosophers, this simple point sounded the death knell of moral philosophy. Exiled forever to a world of faith and fuzzy conflict, what was moral philosophy but a peculiar, highly formalized form of religion? For philosophers at least, Hume's Guillotine is an important part of the explanation of the lack of evolution of the moral sciences as compared to the physical sciences.

Interestingly, Hume is also known as the originator of another argument vital to modern philosophy, the argument generally known as "the problem of induction." (The term is a little confusing because Hume himself never used the word "induction," but his discussion of causation offers a devastatingly skeptical account of the worth and validity of inductive arguments.) The heart of Hume's argument is simple. Regular repetition of a sequence of events in the past does not prove that future events will occur in that sequence, still less that event A "causes" event B. We can stare as hard as we

supra note 30, at 174 ("I think that the problem of objectivity ... is a fake because the distinction that might give it meaning, the distinction between substantive arguments within and skeptical arguments about social practices, is itself a fake.").


In every system of morality, which I have hitherto met with, I have always remark'd, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpris'd to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change is imperceptible; but is, however, of the last consequence. For as this ought, or ought not, expresses some new relation or affirmation, 'tis necessary that it should be observ'd and explain'd; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. But as authors do not commonly use this precaution, I shall presume to recommend it to the readers; and am persuaded, that this small attention would subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceiv'd by reason.

Id. (emphasis omitted).
like at the space between the colliding billiard balls, but we will find no lurking "necessary connection" on which to build an inexorable science of causation. "The scenes of the universe are continually shifting, and one object follows another in an uninterrupted succession; but the power or force, which actuates the whole machine is entirely concealed from us, and never discovers itself in any of the sensible qualities of body." Even on empirical grounds, how can we distinguish between law-governed regularity and mere accidental conjunction except by reference to still other law-like statements which must, themselves, have been built on the shifting sand of inductive argument?

The alert reader will have realized that the Humean problem of induction merely does to statements about facts, and thus apparently for the sciences, what Hume's Guillotine did to statements about norms, and thus for moral philosophy. More precisely, the problem of induction tells us that the leap from observed facts to statements of lawlike regularity about facts is as philosophically perilous as the leap from observed facts to statements of lawlike normativity. One could in fact apply to both conclusions Hume's comment about the origins of our particular ideas about causation: "This connexion, therefore, which we feel in the mind, this customary transition of the imagination from one object to its usual attendent, is the sentiment or impression from which we form the idea of power or necessary connexion."

Yet despite the apparent similarity in both form and result between the problem of induction and Hume's Guillotine, the effects of the two arguments on their respective practices have been very different. For every moral philosopher, the initial leap from fact to norm is a vital (and often the only distinguishing) part of the argument. Some use teleological arguments, implying norms from a purpose attributed to factual schemes. Some create hypothetical situations of free choice—either small or large—and try to get the audience to agree that if the design of the initial situation is acceptable, the norms emerging from that situation will also be good. Some aggregate many individual value choices through the market, the democracy, or some felicific calculus and argue that the factual pattern revealed has a normative power. There are many other strategies. More commonly, the problem pointed out by Hume's Guillotine has caused moral philosophers to resign from their task, which they have done frequently and somewhat dramatically under the name of such movements as emotivism and moral relativism.

The problem of induction certainly caused philosophers of science a great deal of anguish. Bertrand Russell argued that we must bend from the

59. Id. § VII, pt. II, at 75.
paths of logic just at this one place, because "without [induction] science is impossible." But he also wondered aloud how this made him any different from the devout religious believer. Any good philosopher, allowed one leap of faith—given one epistemological "get out of jail free" card—can build you pretty much any philosophy you want. After Russell, other philosophers attempted to specify the essence of science without either falling afoul of the problem of induction or, on the other hand, writing into canonical and timeless method that which was really this year's scientific practice. Falsification, Bayesian empiricism, the views of scientific micro-communities—each has its own attractions as the solution to the problem. And, as in moral philosophy, there are those who have dramatically resigned from the task or lapsed into a kind of Oliver Wendell Holmes/Andy Warhol definitionalism: science is what scientists do and thus whatever you can get away with. Feyerabend is probably the best example.

On this level, then, if we are comparing the work of the philosophers of science and the moral philosophers, there is a superficial resemblance between the way that Hume's arguments have been received. The difference comes when we move down one step to the level of actual practice. There is the philosopher of science, and then there is the scientist. There is the moral philosopher and then there is . . . us. Now most people, if pressed, could come up with some version of the point that there are multiple moral systems and that it seems impossible to prove that one of them is superior to all the others. Not everyone believes this, to be sure—indeed, there are probably places and moments when all of us feel it to be wrong—but it is hardly an unfamiliar idea. Going further, a lot of people with no training in moral philosophy could point out the difficulties in moving from some state of facts (our absence of wings) to some moral norm (it is wrong to fly). The problem of induction however, is one that is unfamiliar, both to many scientists and engineers and to the general public. Why? Unfortunately for my argument, there are clearly a lot of reasons. One of them, however, strikes me as particularly important in this context.

Crudely put, the reason is that it is a daily occurrence for us to confront basic conflicts between different moral systems, each of which we hold as true. The same is not true of science. Conflicts between systems of scientific explanation certainly happen. Light is both a particle and a wave; the Newtonian laws we have softwired into our reactions as we jump for a header or run to catch a fly ball don't work very well in the particle accelerator. But these are conflicts that appear mainly in the range of the very small, the very big, the very fast, the very old, and the very far away—con-

60. Bertrand Russell, A History of Western Philosophy 674 (1972).
licts that happen where we do not live. Our everyday perceptions of chains of causation in the physical world are singularly free from this kind of incommensurability. We do not look upon the colliding billiard balls believing both that the angle of incidence will equal the angle of reflection, and that the balls long to throw themselves around the table and will do so as soon as they are woken by a tap. Conflicts between systems of moral prescription, on the other hand, are a quotidian experience. The moral side of Hume’s argument flourishes on the rich soup of our experience of daily life, while the problem of induction must live upon the thin gruel of abstract thought and indirect perception.

We have all had the experience of knowing that from the perspective of a certain moral system, a moral system that we ourselves subscribe to, our conduct is wrong, yet from the perspective of another moral system it is acceptable, perhaps even admirable. I am speaking here not of the occasions when we are guiltily aware of our own moral failings. Rather, I am referring to those occasions when we believe we have done the right thing and yet know that the set of ideas which vindicates our action is in conflict with another set of ideas we also believe in. We all shuttle between systems of formal and substantive justice, between iron-clad rules and utilitarian expedients, between systems that see morality as absolute and systems that see morality as contextual and relative. We have all cried, “Let justice be done though the heavens fall,” or “This is a matter of principle, goddamit,” and we have all told little white lies and believed that in this case the ends did justify the means, that there was no point making a federal case about it, and that losing is not a moral virtue. We have all acted as though liberty, equality, and democracy were absolute virtues and seen each of them as merely a temporary instantiation of a larger substantive good. In moral terms, we have all been Walt Whitman: “Do I contradict myself? Very well then, I contradict myself. I am large, I contain multitudes.”

Integrity sees this feature of our lives as a flaw—a moral flaw as well as a flaw of personality—and seeks to eradicate it. But what if it is instead a virtue—personal, moral, legal, social? What if moral conflict, incommensurability, and internal contradiction are not bugs, but features? First, I think this would explain better the tension between, on the one hand, our feelings about the difficulties of moral reasoning and, on the other hand, the feeling that moral action in the world does not depend on a deduction from Kantian premises. Second, I think this view of morality would actually

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62. In recent years a number of authors have been attracted to the conclusion that various forms of “incommensurability” are not fatal to moral reasoning. See generally ELIZABETH ANDERSON, VALUE IN ETHICS AND ECONOMICS (1993); INCOMMENSURABILITY, INCOMPARABILITY, AND PRACTICAL REASON (Ruth Chang ed., 1997). Most of these discussions, however, are centered on the question of whether rational moral choice requires a single scale on which all moral preferences can be ranked. The idea of moral conflict that I develop here is both wider and looser.
explain more about our practice of moral theorizing. If the task of a moral theory is to transcend the fact/norm dichotomy, to guarantee the agreement of all intellectually honest persons, then all moral theories are "failures." Yet we have the sense that even the "failed" moral theory has some use, and that it is useful as more than the evidence of a noble nature. The idea that the availability—and the use—of developed, conflicting moral systems is itself valuable seems to me to explain our feelings better even than beautiful passages like the following one from Wittgenstein:

My whole tendency and I believe the tendency of all men who ever tried to write or talk Ethics or Religion was to run against the boundaries of language. This running against the walls of our cage is perfectly, absolutely hopeless. Ethics so far as it springs from the desire to say something about the ultimate meaning of life, the absolute good, the absolute valuable, can be no science. What it says does not add to our knowledge in any sense. But it is a document of a tendency in the human mind which I personally cannot help respecting deeply and I would not for my life ridicule it.63

"[D]oes not add to our knowledge in any sense?" Might ethical theories, even ones that "spring[] from the desire to say something about the . . . absolute good," add to our knowledge even when they fail? A pessimistic conclusion is what the wrong question begets.

I have argued that both our everyday moral practice and our attitudes toward moral theory indicate that the qualities of contradiction and conflict are not the flaws which integrity portrays them to be. The most powerful argument for my position, however, is a different one. We know that, throughout history, people have demonstrated amazing abilities to provide rationalizations for existing arrangements. This tendency seems particularly strong in those who benefited from those arrangements (one of the reasons that it seems plausible to see morality as the antonym of self-interest), but it has often found expression even in those who have suffered under a particular regime. Given everything we know about the tendency of "what is" to seem natural, inevitable and just, how is it that we ever come to criticize at all? As I put it in another work, why is it that norm does not come to follow fact, like a slip-cover following the contours of a chair? The question is not "How one human being can ever come to enslave another?" but, rather, "How is it that some members of one race come to believe passionately that the common practice of enslaving members of another race is wrong, to the point that they are willing to lay down their own lives to end the practice?" How is it that the disenfranchisement of women or the bombing of people in a faraway country comes to seem anything other than the natural course of events? "Through struggle," comes the response, and of course this is true. But where do the intellectual and moral resources for that struggle come, both

inside and outside the community of the oppressed? How do we ever break the anesthetic grip of the normal?

It is no answer to say that the mere experience of oppression will always provide the intellectual keys to unlock that oppression; historically, that claim turns out to be false. It certainly doesn’t explain that even some members of those who benefit from a certain state of affairs and who grew up with it as the assumed background of their lives nevertheless come to experience it as unacceptable. “Natural sympathy” is certainly part of the process, but another part, I think, is that we do not live in a morally univocal culture, we do not live inside a single moral master narrative. Our beings, our persons, are constructed against the conflicting pulls of many different moral schemata. This point is understood even by those who take a different position on morality. Consider the following lines by William Gass:

Our characters congeal around our choices, and our moralities make the best of it. So some of us grow up small boys, arrogant and imperious, inclined to throw tantrums when our wills are thwarted; others of us feast on renunciation, fattening our spirits until they poke from our bodies as our bones do; still others go about kowtowing to circumstances, crying that “what will be, will be,” like the reassuring chirp of birds; or we sing instead the song the sirens sang, make an art of our passivity, prepare our bodies to be drawn on as banks, and open our legs there like a purse.64

Gass’s argument assumes the existence of a society, a life-world, where there are multiple modes of moral being, each well enough known that they, and their supporting rhetorics, can be conjured up by a few words. In other words, even when morality is seen only as a kind of spin doctor whose job it is to put the best possible construction on the things we have already decided to do, it is the existence of multiple contending moral systems that makes the task conceivable. In my view, however, the significance of multiple moralities goes much further.

Integrity sees moral conflict as something to be solved or eliminated: individually when we speak of personal integrity, theoretically when we speak of a moral theory, legally when we speak of the integrity of the state’s value judgments. Earlier I argued that one aspect of legal practice was the feeling that areas of legal doctrine are constituted by contradictory and potentially imperial ideals whose continued conflict generates one temporary ceasefire line after another. Dworkin, on the other hand, indeed theorists of integrity in general, seeks to eliminate the conflict, to resolve it. This instinct may be right or wrong, but it misses the fact that the ability to produce and understand conflicting moral systems actually helps us to work our way free of the anesthetic grip of the normal. Like a climber levering his way up a rock chimney, our ability to see the world as both rights thinkers and utilitarians, integrationists and nationalists, libertarians and egalitarians, allows

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us to brace ourselves and progress despite the absence of an obvious hand-
hold. Moral incommensurability, in this view, is not a tragedy of the gap
between hard science and fuzzy morals but a cultural and personal resource
of enormous value.65 And this brings me back to postmodernism.

Earlier in this article, I described postmodernism as the theory and art of
the Lagrange point: a practice built on setting traditions against each other,
simultaneously affirming and undermining each, finding the space to work
in the gravitational pulls between two life-worlds. Obviously (to me at least),
this is not the only kind of moral, aesthetic, or legal activity we engage in.
The idea of totalized postmodernism is both unattractive and silly. But it is a
kind of moral, political, and aesthetic activity, and an important one at that. I
cannot prove this point, of course, though I hope the account I have given
here helps to make the idea plausible. If confirmation of this notion is possi-
ble, it would lie only in introspection and cultural examination. Think of
your own moral decisions—not the sanitized version you present to the out-
side world, but the internal Joycean stream of notions, emotions, reasoning,
and ideas. Look at legal development in a particular area or study the rhetor-
ic and moral discourse of a particular historical moment. I believe you will
find something of what I have described here, and that you will find it good.
Which leads to an obvious question. Is it beneficial, then, to have as our
model of moral reasoning, or legal analysis, or personal development, a way
of thinking that seeks completely to eliminate or resolve such tensions? The
question is not whether the goal can be achieved, though I have argued, here
and elsewhere, that it cannot. The question is how much of our scarce en-
ergies should we expend in the task, how much of the architecture of our prac-

65. It may be worth emphasizing that this argument goes beyond that of the pragmatists and
common-sense moralists. A pragmatist might say that there are conflicts inside and between moral
systems and scales of value but that we should not allow the absence of grounding or internal con-
stancy to paralyze us, or to send us off on a worthless search for metaphysical answers. Elizabeth
Anderson, for example, puts it this way: "We criticize practices not by consulting some metaphys-
ical theory of value, but by seeing if we can reflectively endorse them. The sources and structure of
value are to be found not in a mysterious external realm but inside ourselves, in our own self-
understandings." Elizabeth Anderson, *Practical Reason and Incommensurable Goods*, in
INCOMMENSURABILITY, INCOMPARABILITY, AND PRACTICAL REASON, supra note 62, at 90, 109. I
agree that actual moral practice should not so easily be convinced of its worthlessness by the de-
mands of external theory, but I would also stress what one might think of as the social theory point;
it is actually quite surprising that moral criticism of dominant practice ever comes into being in the
first place. The existence of a rich and contradictory life-world of incommensurable moralities is
surely not the cause of such criticism, but its role is sufficiently important that it should make us
reassess the commonplace assessment that moral conflict is a problem to be solved. Would we be
better off in a world where legions of Herculean judges and moralists had worked on public dis-
course, bringing all our moral and legal norms into a final glowing synthesis? I think not. The
actual history of our normative systems reveal the worth (and danger) in both the search for coher-
ence and the embrace of contradiction. Cf Raz, supra note 20, at 282 (arguing against the position
that "coherence provides the key to the justification of belief"); see also NEIL MACCORMICK,
LEGAL REASONING AND LEGAL THEORY 106-08 (1978).
IV. INTEGRITY, POSTMODERNISM, AND PRACTICE

In the last part, I tried to sketch out the idea that contradiction and incommensurability should not be seen as proof of the debased state of moral reasoning, of our inability to "get it right." Instead, I argued, they have a positive and theoretically neglected role to play in explaining our ability to be morally critical of practices in which we ourselves are embedded. The single biggest, and single best, argument against this position is that it would give license to all of our worst instincts, both individually and as a society. The judge who wanted to ignore some revered line of First Amendment or Equal Protection authority could simply quote the tag line from Walt Whitman and point out that conflict and contradiction have a positive role to play in judicial decisionmaking. The person who wants to act in bad faith could assuage his conscience with thoughts of postmodern complexity.

This criticism wouldn't feel so powerful if it didn't have some truth to it. I have certainly seen obscurantism and deconstruction used by the poststructuralist intelligentsia as an epistemological "get-out-of-jail-free" card to evade responsibility for words or actions later regretted. (To be fair, academics have always had survival habits similar to the squid; when threatened they tend to emit a billow of ink and flee. Poststructuralism simply provides a particularly impenetrable cloud to cover their escape.)

Fundamentally, though, I think the image of Marcel Duchamp as the Article III judge misstates or misunderstands both the points that are being made here and the practices in which they are situated.

First, no theory of our moral or legal practices can either cause, or save us from, our damnation; such theories have neither the level of interpretive determinacy nor the operative binding power to drag us from, or into, the pit. A theory of original intent in constitutional interpretation does not require Dred Scott, and a process theory aimed at protecting discrete and insular

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons [African Americans] described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their
minorities will not preclude Korematsu. When it comes to personal moral decisionmaking, I have tried to argue here that the actual process by which we make moral decisions does not resemble the neat logic of the moral theorist, and that this is no bad thing. Theories do, however, make the terrain more hospitable to a particular line of thought; they matter, but not in the exaggeratedly determinist sense we often impute to them.

Second, it is fallacious to imagine that theories are being offered and debated outside of a practice and a history. For example, in conventional American legal practice, one could argue that the constitutionally mandated period of years between elections should not be seen as crude numbers, but rather as judgments, based on the facts of the late eighteenth century, about electoral convenience and legislative capture. True fidelity to the Constitution, in this view, would require that we revisit these numbers in the light of the different facts of our own time. “Four years” might mean three or six or ten.

Now this kind of argument is actually accepted elsewhere in the legal system, and views have certainly changed about the irreducible meanings inherent in words. The First Restatement of Contracts, for example, says that private parties can set up particular codes which change the meanings of words. I can tell you to buy five bushels and, if it can be established that we had set up a code whereby numbers should be multiplied by ten, be held to have contracted for fifty bushels. There are limits however. “Buy” can never mean “sell.” The Second Restatement gives up such limits, declaring, along with the Red Queen, that words mean whatever we choose them to mean. “Buy” can mean “Sell.”

All of this notwithstanding, a judge who made such an argument in support of the proposition that senatorial elections should be every eight years would be appealed, overruled, and perhaps committed. Practices constrain, though the limits of their constraints often cannot be identified in advance; the formal availability of a gambit within a discursive system tells you little about whether or not it would be seen as persuasive, irrelevant, or completely ludicrous.

It is in this context that discussions about integrity and postmodernism must be understood. Theoretical arguments about moral, legal, and literary practices can neither free the devils of self-dealing nor guarantee the triumph

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authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

_id_. at 404.


68. _Restatement (First) of Contracts_ § 231, illus. 2 (1932).

of the angels of our better natures. The effects of such arguments are on the margins—which is not to say they are unimportant. And what are those effects? My arguments indicate that we should pay more attention to a certain class of moral danger, cherish rather than revile the messiness of our moral reasoning, acknowledge that we unjustifiably turn historical rules of thumb into supposed philosophical absolutes, perhaps even to allow a little more of the actual way we make moral and legal decisions to be reflected in our theorizing.

**Conclusion**

I began this article with the puzzle of the postmodernist who rejects every philosophical and psychological idea on which the notion of integrity depends, and yet cherishes integrity nonetheless. Is the postmodernist right, are all of us right, to value integrity? The answer, I think, is "yes," but "yes" with some important qualifications.

Integrity is many things. In part, it is a moral sea-anchor—a line cast out into the past that seeks to tie together our present actions and our past commitments, to compel us to contemplate the tension between the two. But integrity, at least as I have described it, is more than a search for coherence; it is also a search for universalizable principle. The two dimensions of the activity parallel one another. Just as the process of universalization makes us generalize synchronically, forcing us to extend our principles to people we might have found it convenient to ignore, the move towards coherence forces us to generalize diachronically, stretching out our actions and principles on the examining table of time.

Of course, the postmodernist would respond that this is altogether too mechanistic a description. In fact, principles do not define the zones of their own application; factual issues do not come readily classified into types; identity is mutable; and moral systems contain antinomies and paradoxes. And yet as a practical matter, the attempt to generalize across time and normative classification clearly is one of the ways that people try to "bring to mind" the problems, double standards, and inconsistencies in their moral thinking. Integrity in this sense is—literally—a mnemonic device for justice. How ironic it would be if postmodernists were to claim that, for epistemological reasons, this practical activity could not work, could not even be attempted! Though our theories may tell us this, our theorized practices tell another story. Just as I have claimed that the Kantian moral theorist actu-

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70. This is the truth at the heart of Stanley Fish's writing. See generally STANLEY FISH, Dennis Martinez and the Uses of Theory, in DOING WHAT COMES NATURALLY 372 (1989).

71. I am indebted to my colleagues Jed Rubenfeld and Bruce Ackerman for helping to focus my attention on the temporal component of morality, though both would probably disavow my analysis here.
ally—and appropriately—“does morality” in an altogether more complex, shifting, and contradictory way than his theory might suggest, so the postmodernist actually relies on integrity, even while denying the psychological, moral, and textual premises on which it seems to rest.

On the level of local practice, then, integrity often “works”—by whatever criterion we use to measure moral success. But, like moral theory in the hands of a convinced Kantian, integrity has imperial ambitions, ambitions that this article has tried both to chart and to circumscribe. I have tried to show that integrity is a concept that helps to guard us against certain moral risks, in the process blinding us to others. It is at the moment when we switch from the notion of integrity as one of the mnemonic devices of justice, to the notion of integrity as a master metric for justice, that the problems begin. The more ambitious version of integrity leads us far astray, reflexively producing the hypertrophied attributes demanded by the role: the grandiose claims of conceptual determinacy, the high-theory filigree woven over opposition between morality and self-interest, the rendition of our rich and contradictory moral and legal culture as “a problem to be solved.”

I have no illusions about being able to defend my arguments here against all possible attacks, but there is one criticism of my efforts here that I think would be misplaced. It comes from the person who has always thought that postmodernism was “the kind of bullshit that gives bullshit a bad name” and finds further evidence of this view in my halting attempts to deal with a tension that, for him, doesn’t exist. I will call this person the Critic. “This article is a confirmation of my worst fears,” says the Critic. “So low has our intellectual tradition sunk, that the author practically apologizes for having some residual attachment to integrity. On second thought, perhaps this is a good thing. It was my impression that postmodernists had completely abandoned integrity on every front—ethical, artistic, intellectual and personal. This article at least shows that some of them regret it.”

This comment has the sting we often associate with insight, but I have to say that I think the Critic just wasn’t listening. I am all for giving postmodernists a hard time; pomo, at least, is literally asking for ridicule. That’s its point. Yet if one is going to defend the concept of integrity in any sphere, to see whether it actually possesses the virtues claimed for it, one can only do so from the inside, and that is what this article has tried to do. I have tried to make three specific arguments that bear on the apparent conflict between an

72. I am reminded of Felix Cohen’s critique of conceptualism in jurisprudence. “A definition of law is useful or useless. It is not true or false, any more than a New Year’s resolution or an insurance policy. A definition is in fact a type of insurance against certain risks of confusion. It cannot, any more than can a commercial insurance policy, eliminate all risks.” Felix S. Cohen, Transcendental Nonsense and the Functional Approach, 35 Colum. L. Rev. 809, 835-36 (1935) (emphasis omitted).
idea of principled integrity on the one hand and postmodernist thought and pomo practice on the other.

First, our image of the superior binding power of principled arguments rather than policy arguments is at best an historical claim rather than an epistemological one. Dworkin’s idea of integrity, which in many ways is the most ambitious version of the concept, brings this point out particularly well. Notions of principled integrity start to rely on decisions and divisions that are either so arbitrary as to command no respect (the idea of the Platonic goods and services distinction) or so obviously based on pragmatic and utilitarian considerations as to undermine the claim to a *cordon sanitaire* between principle and policy.

Second, our image of principle and integrity in personal practice and public life is constructed around a misleading constitutive opposition between selfishness and morality. This way of seeing the world erects into a philosophic tenet something that is actually a result of a relatively narrow set of experiences—namely, that what we have to fear is venality rather than evil purity of purpose. Von Berg’s words from *Incident at Vichy* help us to see the blindness in integrity’s construction of the Other.

Third, the idea of “integrity” is based in part on the belief that moral conflict, tension, and contradiction are bad things and should be eradicated or solved—solved for the individual person in the more modest versions of integrity and solved in a way that is “right” for the whole society in the more imperial Dworkinian version. This belief is a mistake, I argued, a mistake which leads us to ignore the positive roles that continuing and ineradicable moral conflict and tension play, both in the high theory of the legal system and the secret movements of the heart. Postmodernism captures an important element of this point with its insistence that we can only proceed by playing traditions against each other. The idea that work is always done in the tension between traditions may actually work better for morality than it does for pink, pedimented office buildings. Above all, I tried to show that it is our quotidian experience of conflicting moral systems that gives our philosophical arguments their bite—a point made clear to me by the different effects of Hume’s Guillotine and the problem of induction on their respective practices.

My response to the Critic, then, is that each of my arguments may be wrong but, regardless of one’s position on postmodernism, I do not think that they can be disproved *except from within*.

All of this leads back to the question I posed at the beginning of the piece. Is integrity merely a living fossil, a form of words used to describe a set of moral attitudes that we now realize are impossible as well as undesirable? I have answered *no*, both on the level of moral sentiment and felt experience and on the level of déontology and moral practice. Admittedly, I
did try to show that “integrity” is not always what we think it is, that the idea of unswerving and self-sacrificing consistency is built in part on skepticism about the power of moral reasoning and the effects of “subject position” on moral argument, and, finally, that we should not count our profusion of contradictory moral ideas as tragic evidence of failure but, rather, as one tool that enables moral criticism in the first place. I hope that these points are useful and that they help to move the debate forward a little.

To argue all of this, however, is not to depose integrity and crown postmodern ethics in its stead. Indeed, beyond the pragmatic moral points I made at the beginning of the conclusion, to depose integrity would be to put postmodernism outside the charmed circle of its own skepticism. Postmodernists claim that postmodernism exists within the aesthetic practices it describes, within the pomo culture that spawned both. If there is any impact of postmodernism on ethics, it cannot be to exterminate the idea of integrity, the way that Dworkin’s Hercules disposes of contrary principles. Rather, it would be to make integrity a richer and more contextualized idea, an idea with a history, an idea that strengthens one of our visions of the good at the cost of making us minimize much that is valuable about our moral traditions, an idea rooted in personal and social experience, with the specific and dangerous blind-spots that those experiences produce, an idea always in productive tension with other traditions in our moral and legal practices. Integrity is no fossil, even if—as I have tried to show here—our anatomy of it is rather inaccurate. It is that task of anatomical exploration that I have tried to begin in this article, but I am distressingly aware of how far I am from completing it.

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73. Take the area where the pull of integrity is the strongest—the idea of a person of integrity, a person who is centered, who does not let the changing opinions of others or the changing contexts around him buffet him to and fro. Turn up the contrast on your mental model and soon you are describing a bombastic dogmatist to whom a particular vision of himself and his ideas is so important that it makes the rest of the world invisible: a kind of monomaniacal solipsism. “The man who never alters his opinion is like standing water, & breeds reptiles of the mind.” William Blake, The Marriage of Heaven and Hell, in 1 William Blake’s Writings 74, 92 (G. E. Bentley, Jr. ed., 1978). The question whether being true to one’s self and one’s ideas in this situation is noble consistency, cranky obstinacy, or simple self-delusion will always be an open question; theory cannot solve it for us, just as theory cannot—postmodern declarations to the contrary notwithstanding—tell us that the dilemma does not exist or that the notions of coherence, consistency, and principle are fallacies, errors, or delusions.