ASSOCIATIVE OBLIGATIONS AND THE OBLIGATION TO OBEY THE LAW[1]

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I. Political Obligation

One of the strands woven into the complex fabric of Law's Empire is an argument that there exists, under certain conditions, a general moral obligation to obey the law. Whether or not there can ever be such an obligation is an age-old problem in political philosophy, and Dworkin's argument is offered, in part, as a contribution to that particular philosophical tradition. But it is more than that, because the argument also constitutes an integral part of Dworkin's general theory of law. That is why I say it is one strand of a complex fabric; for Dworkin, political and legal philosophy are inextricably connected. For many of the philosophers who have addressed the question of political obligation, as I shall call it, there is no such inevitable connection. Notice, to begin, that no respectable theory of political obligation ever claimed that a person is obligated no matter what to obey the laws of a legal system to which he or she is subject. Every minimally plausible theory sets out certain conditions under which such an obligation is said to arise, and Dworkin's is no exception. Many such theories have, however, regarded these conditions as ones that do not figure in any essential way in the concept of law itself. They assume that law constitutes a system of norms the existence and

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content of which can be established by, say, looking to certain kinds of social facts, and then asking whether or not a given legal system meets a set of independently specifiable conditions; if these conditions are met, then a general obligation to obey is said to exist. Arguments based on consent are often (although not necessarily) of that form; they look to an independently specifiable condition that asks whether or not everyone who is subject to a legal system has validly consented to obey its laws, whatever they are. The argument from fair play is also of this form; it looks to an independently specifiable set of conditions that asks, first, whether the content of the norms of the system show it to be a mutually beneficial scheme of cooperation, and, second, whether or not those subject to the system have "accepted" its benefits.[2] There are, as Dworkin points out, well-known problems with both arguments if they are regarded as the basis of a general obligation to obey the law, since it is never the case that everyone subject to any given legal system has validly consented to obey it or has accepted, in the appropriate sense, certain benefits it happens to provide (LE at 192-95).[3] My present point, however, is that these arguments treat the philosophical problem of political obligation as for the most part independent of the philosophical problem about the nature of law.

Dworkin's theory, as I noted, is not like this. Before I say anything about the specifics of his view, however, let me first say a little more about the question of political obligation itself.[4]

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[2] See H.L.A. Hart, "Are there any Natural Rights," 64 Philosophical Review 185 (1955); John Rawls, A Theory of Justice 301-08 (2nd ed., 1999).

[3] See A John Simmons, Moral Principles and Political Obligations (1979), especially chs. 3-5.

[4] In this and the following paragraph I draw on material from my article "Law and

A general obligation to obey the law exists only if every person who is subject to a given legal system has a moral obligation to obey each and every law of the system because it is a law of the system. In saying that one has an obligation to obey the law because it is the law I do not mean that one's reason for action in doing as the law requires must be that the law requires it; for the most part, the law is indifferent to why one complies with the law so long as one does so. To say that one has an obligation to obey the law because it is the law means, rather, that at least one sufficient ground or basis of the obligation is the fact that the law exists. The law need not be the only basis of the obligation. We clearly have independent moral obligations not to assault and murder people, for example. However, if one has a moral obligation to obey the law then the law must be a basis of obligation in addition to one's independent moral obligations. Often, of course, the law modifies (or at least purports to modify) independent moral obligations, or to make them more precise where they are indeterminate, and there would not be much point to law if it was not capable of at least sometimes doing this. But it will not suffice to establish a general moral obligation to obey the law to show that the law has had some effect on one's moral obligations or, more generally, on one's moral situation. It is, as I said, necessary to show that one has an obligation to obey each and every law because it is the law. This challenge must be met not just where the law reproduces independent moral obligations, but also where the law makes moral mistakes, for example mistakes about what justice requires. Theories of political obligation almost always place limits on the extent to which the law can make moral mistakes

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Obligation," forthcoming in the American Journal of Jurisprudence. For very helpful (albeit skeptical) discussions of political obligation, see Simmons, supra note [3]; Leslie Green, The Authority of the State (1990), particularly ch.8; and Joseph Raz, Ethics in the Public Domain (1994), ch. 14.

and still give rise to a general obligation to obey the law, but it is nonetheless no easy matter to show that there is ever an obligation to obey an unjust law. And since no legal system is ever perfectly just, a theory of political obligation would not have shown very much if it failed to show that the general obligation to obey is not capable of encompassing at least some unjust laws. Dworkin's theory acknowledges this point. A general obligation to obey the law can, of course, be prima facie and defeasible by other moral considerations; it is possible that an obligation to obey an unjust law can exist, but be overridden by the independent obligations of justice itself. Dworkin's theory acknowledges this point as well.

Here it will be helpful to bring in a distinction that Dworkin draws between the grounds and the force of law (LE at 108-13). Dworkin does not employ the following formulation, but we can say that the grounds of law are the truth conditions of propositions of the form "It is the law (of some specified jurisdiction) that A," where A is a normative proposition that states that some person or group of persons has some normative status, for example that they have an obligation, right, permission, liability, or power. The paradigmatic case is a proposition specifying an obligation, and I will continue to concentrate on that case. (The properly generalized version of the problem of political obligation asks whether the law systematically affects persons' normative status in all the various ways that it claims to do; for present purposes, we can ignore this complication.) For the sake of ease of expression I will from now on omit the reference to a specific jurisdiction, although it should always be understood as present. Suppose the proposition "It is the law that everyone has an obligation to do X" is true.[5]

[5] "Everyone" can be understood as referring to all persons who are subject to the

The force of law is its normative force, which means its moral force.[6] The concern when we are speaking about force, in other words, is with the truth or falsity of normative propositions such as "Everyone has an obligation to do X" when they figure in true propositions such as "It is the law that everyone has an obligation to do X." To say that a legal system has general normative force is simply to say that it gives rise to a general obligation to obey. Force, as a general concept in legal philosophy, is concerned with the connection between the truth of propositions of the form "It is the law that A" and the truth of "A." For the reasons given in the preceding paragraph, it will not suffice to establish that there is a general obligation to obey the law to show that for all propositions of the form "It is the law that ___," both "It is the law that A" and "A" are true. One must show, in addition, that at least one sufficient basis for the truth of "A" is the truth of "It is the law that A." Stated more precisely, one must show that the various facts, whether social, moral, or both, that serve to establish the truth of "It is the law that A" also serve to establish the truth of "A." A theory of political obligation is a theory about the conditions that must obtain in order for this connection to hold in a systematic way for all the laws of a legal system.

This brings me back to the observation that Dworkin's theory of political obligation does

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particular legal system; it does not matter for present purposes what, exactly, that means.

[6] It is of course true that not all normativity is moral, but Dworkin assumes that legal normativity, if it exists at all, is a type of moral normativity. Thus legal obligations (if they exist) are moral obligations, legal permissions (if they exist) are moral permissions, and so on. In my view this assumption is correct, but I cannot discuss the point here. I will limit myself to the observation that it is not an assumption that is in conflict with positivism, although not all positivists accept it. Kelsen and Raz do, but Hart does not.

not treat the question of whether there is ever a general obligation to obey the law as independent from the philosophical problem about the nature of law. Dworkin says that a theory of law is a theory about the grounds of law, which means that it is a theory about the truth conditions of propositions of the form "It is the law that A." He is not always entirely clear about whether such a theory applies only to the law of particular jurisdictions or whether it is meant to be more general, but I think it is ultimately clear that it is meant to be more general: a theory about the grounds of law is (part of) a theory about the nature of law understood as a general kind of social phenomenon. To say that a theory of law is about the grounds of law is very vague, but I hope the formulation will suffice for present purposes. It is meant to cover, for example, such theoretical views as Dworkin's own theory of law as integrity, Hart's theory of the rule of recognition, and various versions of the social sources thesis. I will say something about the specifics of law as integrity in a moment. The point to be noticed for present purposes, however, is that the theory holds that the grounds of law depend, in part, on considerations having to do with the (potential) force of law. Dworkin does not put the point in the following way, but I believe the essence of his view is this: law as integrity, which is a substantive theory about the grounds of law, presupposes the truth of a particular theory of political obligation, and it does so in such a way that the truth of propositions of the form "It is the law that A" depends, in part and to a limited extent, on whether or not "A" is capable of being made true by that theory of political obligation.[7] This is very abstract, and I will begin to fill in the details of the view later

[7] Notice that the truth of propositions of the form "It is the law that A" is said to depend in part not on the independent truth of the normative proposition "A," in which case we would be dealing with a certain radical kind of natural law theory, but rather on whether or not "A" is capable of being made true by the theory of political obligation. In other words, the truth of "It is the law that A" partly depends on whether or not "A" is capable of being made true by

in this section and in section III. But the abstract formulation suffices to show us that, on Dworkin's view, the theory of political obligation does not take the content of law as given and then ask whether or not there is a general obligation to obey; it is, rather, an integral part of the theory of the grounds of law, and therefore itself has an effect on the content of law. This is, as I said, a claim that Dworkin makes about law as integrity. But earlier in Law's Empire he makes an even more ambitious, methodological claim, which holds, in effect, that any general theory about the grounds of law must presuppose some theory of political obligation in much the same way as his own theory of law as integrity does.[8] Dworkin summarizes the point by saying that "[a] general theory of law . . . proposes a solution to a complex set of simultaneous equations"

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the truth of "It is the law that A." As we shall see, Dworkin's own theory of law as integrity makes this determination holistically, by looking to how "A" fits into the content of the law taken as a whole. There is no vicious or unavoidable circularity here. It should also be emphasized that the truth of propositions of the form "It is the law that A" is said to depend only partly on the theory of political obligation. The most important determinant of the truth of such propositions is, of course, social practice, such as facts about what legislatures and courts have done. This is the crucial dimension of "fit" in Dworkin's general theory of interpretation.

[8] "In much the same way" is deliberately vague. It is beyond the scope of this paper to explore Dworkin's general methodological claims about legal philosophy in any detail. I discuss these matters in Perry, "Interpretation as Methodology," in Ronald Dworkin (A.

having to do with both the grounds and the force of law (LE at 110). Different theories of law presuppose different theories of political obligation (or else deny that there can be such a theory). To determine which theory of law is correct we must, therefore, at some point address the general question of political obligation, and this necessarily takes us deep into issues of substantive political morality. This is, I believe, the nerve of Dworkin's general theory of interpretation, understood as a methodology for doing philosophy of law.

I cannot discuss the general theory of interpretation here, except to make the following brief observations. Although the truth conditions of propositions like "It is the law that A" are affected by moral considerations having to do with the capacity of the law to obligate us, they also depend crucially and unavoidably on social facts, and in particular on facts about what legislatures and courts have done. Given that social practice is, necessarily, the starting-point of interpretation, I do not think that Dworkin should be understood as saying that propositions of the form "It is the law that A" can never be true unless some theory of political obligation is true (although he is clearly more optimistic on this latter score than most other contemporary theorists). What I believe he is saying, rather, is that the practice of law with which we are familiar presupposes that there is a true theory of political obligation. The practice is built on the assumption that certain kinds of social facts serve as a systematic basis or ground for obligations.

Ripstein, ed., forthcoming).

But this presupposition might be mistaken. It is possible that, as a general moral matter, the truth of a proposition of the form "It is the law that A" can never be a sufficient basis for the truth of "A" – i.e., the truth of such a proposition can never be a sufficient basis for the existence of an obligation – in which case law as a general kind of social practice would not make sense; complete skepticism about it would be justified. It is also possible that, whether or not a general theory of political obligation is true, a particular legal system is so unjust or evil that, within that system, the truth of a proposition of the form "It is the law that A" is never, or almost never, a sufficient ground for the truth of "A;" skepticism about the particular legal system would then be justified. In both of these cases, Dworkin need not and should not deny that propositions of the form "It is the law that A" could still be true just by virtue of facts about social practice. In making this acknowledgment, however, we would also have to acknowledge that, in the first case, the general practice was by its own lights a radically defective one, and, in the second case, that we were dealing with a degenerate instance of a legal system. (Cf. LE at 101-108.)

There is one more preliminary matter that needs to be mentioned before we consider the specifics of Dworkin's substantive views about political obligation. Dworkin holds, in keeping with a long and respectable tradition in political philosophy, that the question of whether or not there is a general obligation to obey the law is unavoidably connected to the question of when, if ever, the state is morally legitimate: "A state is legitimate if its constitutional structure and practices are such that its citizens have a general obligation to obey political decisions that purport to impose duties on them" (LE at 191). Given that the state, by means of law, "purports to impose duties," Dworkin is surely right that it is appropriate, and indeed inevitable, to judge its

moral legitimacy by reference to the standard of whether or not it succeeds in creating those duties.[9] This is particularly true given that the state claims the authority not just to impose duties but to enforce them by coercive means. As Dworkin notes, there may well be circumstances in which a state is justified in the use of coercion even though there is no duty on the part of those coerced to acquiesce, but these are exceptional (LE at 191). He is also appropriately cautious in describing the relationship between obligation and the justification of coercion: obligation is "close to" a necessary condition for coercion, but it is not sufficient. Although he is sometimes misunderstood in this regard, Dworkin claims no more than the following: "[N]o general policy of upholding the law with steel could be justified if the law were not, in general, a source of genuine obligations" (LE at 191).

This brings me, finally, to Dworkin's particular substantive theory of law as integrity. As the above remarks make clear, Dworkin uses this term to refer both to a theory of law, meaning a theory about the truth conditions of propositions of the form "It is the law that A," and to a related theory of political obligation. Context should generally make clear to which I am referring, although for the most part I shall be focusing on the theory of political obligation. Dworkin's basic approach to the problem of political obligation is interesting and original. He argues that the general obligation to obey the law is an associative obligation, meaning an obligation that

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[9] This is also Raz's view.

arises within certain kinds of limited human associations. The paradigms are friendship and family. Dworkin describes a number of conditions that he maintains are characteristic of associative obligations in general, and then argues that law, when it meets versions of those conditions that are appropriate to its character as a form of human association, likewise gives rise to obligations. I will discuss the general conditions of associative obligation in some detail in the following section, and accordingly will not set them out here. So far as political obligation is concerned, Dworkin's central claim is that it arises when a legal system exhibits the distinct political ideal of integrity. Integrity, which is to be distinguished from the other political ideals of fairness, justice, and procedural due process, "requires government to speak with one voice, to act in a principled and coherent manner towards all its citizens, to extend to everyone the substantive standards of justice or fairness it uses for some" (LE at 165). The content of the law depends, according to Dworkin, on interpretation, and the law should be interpreted as a whole so as to exhibit integrity, to the extent that this is possible. (This is the upshot of the abstract idea that the truth conditions of propositions of the form "It is the law that A" depend, in part, on whether or not "A" is capable of being made true by the truth of "It is the law that A.") If the content of the law does exhibit integrity, then what would otherwise just be a "bare" community becomes what Dworkin calls a "genuine" political community, and those who belong to it have a general moral obligation to obey the law. This obligation is an associative obligation similar to the obligations that hold between friends and among members of a family.

In the following sections I shall discuss this argument for political obligation in some detail. Here let me just sketch my main conclusions. In section II I examine Dworkin's general

analysis of associative obligations. I conclude that, while there are some difficulties with the analysis, Dworkin has pointed to a genuine and distinct type of obligation that arises within certain kinds of limited relationships among persons. I further suggest that the justification for these obligations, and the reason for their distinctiveness, is that these relationships are ones of intrinsic value. If that is so, then Dworkin's strategy for establishing a general political obligation requires us to show that a genuine political community – one whose law exhibits integrity – has intrinsic value for its members. Properly understood, this is, I believe, precisely Dworkin's argument. In section III I discuss this idea in more detail and try to show that, despite the obvious differences between personal relationships like friendship and family, on the one hand, and a political community of the kind exemplified by modern states on the other, this line of argument is a promising one. It may well be the only kind of argument for a general political obligation to obey the law that has any chance of success.

II. Associative Obligations

Associative obligations are, very roughly, obligations that arise in connection with certain limited human associations, like friendships and families. Such obligations are, as Dworkin notes, special, which means that they are owed only to certain persons and not universally. Are all special obligations also associative? This is not a question that can be definitively answered before we have in hand an analysis of associative obligations, but as an intuitive matter there does not seem to be any good reason to think that they are. Suppose there is a general moral duty of easy rescue, meaning a duty to assist another person who is in serious danger if one can do so at

no great cost to oneself. If you fall into a raging river and I am in a position to throw you a life ring, then it is quite plausible to think that the duty I have in those circumstances is a special one; I owe a duty to you that I do not owe to other people. No doubt there is some formal sense in which the two of us are in association with one another, but this does not look like what people typically have in mind in speaking of associative obligations. Or think of the obligations that arise when we exercise powers of promise or consent. If I promise to read a manuscript of yours, then I come under a special obligation to you to do as I have promised. Again, there is clearly a sense in which we are in association with one another, and yet promissory obligations are often contrasted with, rather than treated as a species of, associative obligations.

What is special, then, about associative obligations? Dworkin, who sometimes uses the term "fraternal" instead of "associative," offers the following general analysis of the concept:

> [T]he members of a group must by and large hold certain attitudes about the responsibilities they owe one another if these obligations are to count as genuine fraternal obligations. First, they must regard the group's responsibilities as <u>special</u>, holding distinctly within the group, rather than as general duties its members owe equally to persons outside it. Second, they must accept that these responsibilities are <u>personal</u>: that they run directly from each member to each other member, not just to the group as a whole in some collective sense. . . . Third, members must see these responsibilities as flowing from a more general responsibility each has of <u>concern</u> for the well-being of others in the group; they must treat discrete obligations that arise only under special

> circumstances, like the obligation to help a friend who is in great financial need, as derivative from and expressing a more general responsibility that is active throughout the association in different ways. . . . Fourth, members must suppose that the group's practices show not only concern but equal concern for all members. Fraternal obligations are in that sense conceptually egalitarian. They may be structured, even hierarchical, in the way a family is, but the structure and hierarchy must reflect the group's assumption that its roles and rules are equally in the interests of all, that no one's life is more important than anyone else's. Armies may be fraternal obligations if that condition is met. (199-201)

Dworkin summarizes the four conditions in the following way: "The responsibilities a true community deploys are special and individualized and display a pervasive mutual concern that fits a plausible conception of equal concern" (201). He adds that "[t]he concern [these conditions] require is an interpretive property of the group's practices of asserting and acknowledging responsibilities – these must be practices that people with the right level of concern would adopt – not a psychological property of some fixed number of the actual members" (201).

There is much about this analysis that rings true. All four conditions appear to hold for friendship, for example, which is surely a paradigm of a type of human relationship that gives rise to associative obligations. I have some doubts, however, about whether the same can be said of every associative obligation, or at least every example of an associative obligation that Dworkin

offers us. Clearly, as already noted, the first condition is a necessary one; associative obligations are special, in the sense that they are owed only to certain persons. The third condition, that associative obligations express a general concern for the other person or persons with whom one is associated, is probably a necessary one as well. But are all associative obligations personal, in the sense defined by Dworkin's second condition? Certainly the obligations that exist in the paradigm cases of friendship and family are personal in this sense. Recall, however, that Dworkin wishes to show that political obligation is a type of associative obligation. If a general political obligation ever exists, it is far from clear that it is personal. In form, at least, it is not. A general obligation to obey the law is usually thought to be owed, if to anyone, to the community or state itself rather than to one's fellow citizens considered one by one. If the obligation is owed to the community it must of course be true that the community is, or is capable of being treated as, a moral agent in some appropriate sense, but this is far from being an obstacle for Dworkin; he insists that a proper understanding of political and legal practice in fact requires moral personification of the community. When it comes time to argue that the model of principle, which is Dworkin's preferred model of political community, meets the four stated conditions, he writes with respect to the second condition that the model makes the responsibilities of the relevant community "fully personal" because "it commands that no one be left out, that we are all in politics for better or worse, that no one may be sacrificed, like wounded left on the battlefield, to the crusade for justice overall" (213). But this is not the sense of the second condition as Dworkin originally defined it. He is not here arguing that the responsibilities in question "run directly from each member to each other member." The idea that the model of principle "commands that no one be left out" sounds, rather, like a restatement of the fourth condition,

which holds that the concern expressed by the responsibilities of an associative relationship must be an equal concern.

Turning directly to that fourth condition, what does it mean to say that the concern expressed by the responsibilities of an associative relationship must be an equal concern? Consider friendship. In this context the condition presumably means that the obligations that two friends reciprocally owe to one another must express a more or less equal level of concern. This is what Dworkin seems to have in mind when he says that friends ought to have "roughly the same concern" for one another even if they do not share exactly the same understanding of the responsibilities of friendship (199). In the family context, however, the equality condition seems to mean something different. Dworkin discusses the example of a culture that gives parents the power to choose spouses for their daughters but not for their sons. The culture accepts "in good faith" the equality of the sexes but thinks, mistakenly, that equality of concern requires a paternalism for daughters that it does not require for sons. Dworkin argues that, despite this moral mistake, it is possible that daughters in this culture owe their parents a genuine obligation of obedience, although it is also possible that the obligation might ultimately be overridden by other moral considerations (204-205). I am not at present concerned with the question of whether or not Dworkin is correct in making this claim. I mean only to point out that the notion of "equal concern" must in this context have a quite different sense from the one it has in the context of friendship. Here, it seems to mean something like the following: the moral powers that one holds over others within an associative relationship may only be exercised in a way that manifests equal concern for all those over whom the powers are held. Dworkin claims, controversially, that

children can come under an obligation to obey their parents even if parental power is not so exercised, so long as it is exercised in accordance with a conception of equal concern that is plausible and sincerely held. Whether or not this claim is true, "equal concern" does not here refer, as it does in the case of friendship, to an equal level of reciprocal concern that the members of an associative relationship owe to one another. To make this clear, imagine the case of a single parent raising a single child. The parent has an obligation to care for the child, and associated with this obligation is a power to command obedience. The child has an obligation to do as the parent requires. These two obligations – the obligation on the part of the parent to care for the child, and the obligation on the part of the child to obey the parent – are not reciprocal obligations like those that hold between two friends. Both obligations are most plausibly understood as being grounded in the wellbeing of the child alone. It is of course true that the child may eventually come under an obligation to care for the parent in the latter's old age, but this is not an obligation that is reciprocal to the parent's obligation to care for the child when the child is young. This is not because the two obligations cannot exist at the same time. It is because neither obligation is conditioned on the existence – past, present or future – of the other. The parent of a child with a fatal illness has no less a duty to care for the child – and arguably has a greater one – than the parent of a child with a normal life expectancy, and a person close to adulthood who is adopted or becomes a step-child may still come under an obligation to care for his or her new parent in old age.

The main point I was concerned to establish in the last paragraph is that there does not seem to be a single conception of equal concern that informs even the paradigmatic associative

relationships of family and friendship. The equality of concern that must hold between friends, which is a form of reciprocity, need not hold between parent and child. (Relations between siblings is a more complicated case, which I do not discuss here.) Nor does there seem to be, in the case of friendship, an analogue to the obligation to exercise parental powers over a number of different children so as to manifest equal concern for each. (We do not, for example, owe the same level of concern to all our different friends, and that is true even within a group of mutual friends; the appropriate level of concern varies with the closeness of the particular friendship.) It does not help to say that there is a more abstract conception of equality underlying the specific conceptions that inform friendship and family, because at a sufficiently abstract level all moral principles, and not just those that underpin associative obligations, are, in Dworkin's phrase, "conceptually egalitarian." None of this calls into question the obligatoriness of true associative obligations, but it suggests, particularly when considered with the point made earlier that some associative obligations might not be personal in character, that the attempt to find a comprehensive set of attributes that hold for all associative relationships is unlikely to succeed. The problem is compounded when one considers the many kinds of social practice that Dworkin regards as being, at least potentially, associative in character: in addition to family, friendship, and political community, he mentions academic colleagueship, union membership, and membership in an army, and he clearly thinks there are others as well. Once we have failed to find common ground even among the paradigm cases, how can we be sure that these apparently quite different kinds of human association are, from a moral point of view, properly grouped together? Relatedly, how can we be sure that <u>other</u> features that seem to be essential to the paradigm cases of friendship and family – for example, true emotional bonds of love, affection,

or respect – are not essential features of associative obligations in general, thereby ruling out such associations as political community and (I would imagine) academic colleagueship?

Dworkin's response to the above concerns might well be that the four conditions are the basis of an "abstract interpretation of the yet more general practice of associative obligation itself" (LE at 197), and that it is this more general practice that reveals the underlying unity of friendship, family, union membership, and so on. Even if the proffered four conditions fall short as an interpretation of the more general practice – they are, after all, only advanced by Dworkin as a first run at the problem – the very existence of the general practice gives us reason to think, the response would continue, that some satisfactory interpretation can be found. It is, however, far from clear that any such general practice of associative obligation exists, at least in the sense of a practice that self-consciously and reflectively manifests the interpretive attitude. There could only be such a practice if people generally regarded the relevant patterns of behavior as a distinct practice, thought the practice had value, and took the requirements of the practice to be sensitive to what its value was taken to be (LE at 47).[10] Even if friendship, family, political community, and so on all exhibit the interpretive attitude within themselves, there does not appear to be a

[10] I take it that the existence of the interpretive attitude is a psychological or sociological matter. If it were not, there would a danger that the term "interpretive" would simply be a label applied to practices that might, for whatever reason, be capable of being a source of obligation. The general account of interpretation would lose its distinctiveness.

comprehensive practice of associative practices, so to speak, of which that is also true.

There is another kind of objection to Dworkin's account of associative obligations that should be mentioned here. If it has merit it applies even if, contrary to what I have suggested, the four conditions succeed in capturing common features of the paradigm cases of associative relationships. An initial version of the objection runs as follows. Insofar as the analysis based on the four conditions simply identifies certain attitudes held by the members of a group about their responsibilities to one another, it is not clear why those attitudes should give rise to, or be taken to be markers of, actual responsibilities within the group, as opposed to mere beliefs about responsibilities. Denise Réaume has argued, for example, that Dworkin's analysis is ultimately no more than a variation on Hart's practice theory of rules, and as such it falls prey to Dworkin's own critique of that theory.[11] According to Dworkin's critique, the fact that a group treats certain of its practices as obligatory cannot, in and of itself, make them obligatory; something more in the way of normative argument is required.[12] As it stands Réaume's objection skips too quickly over a crucial point, which is that the four conditions are expressly stated by Dworkin to be interpretive properties of a group's practices rather than "psychological propert[ies] of some fixed number of actual members" (LE at 201).[13] The third condition, for example, requires that these

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[11] Denise Réaume, "Is Integrity a Virtue? Dworkin's Theory of Legal Obligation" 39 U. of Tor. L.J. 380, 402 (1989).

[12] Dworkin, Taking Rights Seriously (1978) ch. 3.

[13] This does not call into question the point that the existence of the interpretive attitude, and hence the character of a practice as an interpretive practice, is itself a psychological or sociological matter. See further note [10] above.

practices be ones that "people with the right level of concern would adopt" rather than ones in which some minimum proportion of members actually manifest concern for their fellows (LE at 201).[14] The four conditions together are meant to be an interpretation of what Dworkin takes to be a general practice of associative obligation, and interpretations always have a dimension of justification or value. Dworkin's analysis thus cannot be regarded as a mere variant of Hart's practice theory. That having been said, however, we still run up against the question mentioned in the previous paragraph of whether or not there is, in fact, a general interpretive practice of associative obligation. We also run up against the related problem of what the value associated with such a practice might be. Although Dworkin is not entirely clear about this point, he seems simply to invoke a single general value of community or fraternity. But just as it is not clear that

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[14] It should, however, be borne in mind that the paradigmatic associative obligations of family and friendship cannot exist unless each friend or family member actually feels certain emotions for, and holds certain attitudes toward, the other person or persons in the relationship. I discuss this point further below. Holding an attitude towards another person is different from holding an attitude about the nature of the duties that you owe to that person, and the four conditions for the most part express attitudes of the latter rather than the former kind. But in the case of the third condition the two types of attitude converge; the mutual concern required by that condition must, in the case of friendship and family, exist in a psychological sense. We must therefore take seriously the possibility mentioned earlier that all associative obligations similarly require actual concern among the relevant persons. This would obviously pose problems for treating political obligation as a type of associative obligation.

there is, in fact, a general interpretive practice of associative obligation, it is similarly not clear that there is a single value that can be regarded as accompanying such diverse forms of human association as friendship, political community, union membership, and so on. If I am right that the four conditions fail to capture common features of even the paradigmatic instances of associative obligation, then we have at least some reason to doubt the existence of both a general practice and a single value that underlies every instance of such a practice.

In the preceding discussion I have tried to raise some doubts about Dworkin's analysis of associative relationships, but I have not called into question his basic strategy for showing that a general moral obligation to obey the law can exist. He begins, it will be recalled, with the premise that certain limited forms of human association are generally and plausibly regarded as giving rise to obligations, and then argues that political communities are associations of that same kind and therefore they, too, are capable of giving rise to obligations. I believe this strategy is a promising one, but if we are to give effect to it we must characterize associative obligations in a somewhat different way from Dworkin's analysis based on the four conditions. (As I will suggest later, the appropriate characterization turns out to be an important, if perhaps implicit, strand in Dworkin's own discussion of associative obligations.) My approach will be to focus, in the first instance, on the paradigm associative relationship of friendship. Why do friends have obligations towards one another? It seems almost misplaced to ask this question, and it is tempting to answer it by saying that friends have obligations because that's part of what friendship is. So far as it goes this answer is completely correct, but it must be understood as part of a deeper truth. As

Aristotle and many others since have observed, friendship has intrinsic value. It may also have instrumental value, of course, but if a relationship between two persons was not intrinsically valuable – and if its intrinsic value did not dominate its instrumental value for each of them – then it would not be friendship. It is partly constitutive of friendship that friends hold certain characteristic attitudes towards one another, the most important of which are affection and respect. But the obligations of friendship -- primarily duties of loyalty and mutual assistance – are themselves partly constitutive of the relationship.[15] The attitudes, obviously, evolve over time, and the potential friends must each make choices that permit the friendship to develop. At a certain point, however, they just become friends, and the duties exist. This is not a matter of exercising a power of promise or consent. As Dworkin says, it would be perverse to describe friendship as a matter of assuming obligations; the shared history by virtue of which friends come to owe obligations is, on the contrary, "a history of events that attract obligations" (197). This seems exactly right. But the reason this happens is that the relationship of friendship, constituted in part by certain mutual duties, is intrinsically valuable. It might be objected that this is moral bootstrapping. Doesn't it amount to saying that the duties exist because it is good that they exist? Yes, it does. But this kind of bootstrapping is pervasive and unavoidable in morality. Duties are justified either instrumentally or non-instrumentally, but in both cases the existence of the duty turns on its relationship to value. Instrumental duties exist because they promote or contribute to the creation of independently valuable states of affairs, or are likely to do so. Non-instrumental duties exist because they are valuable in themselves, or partly constitutive of a relationship that is valuable in itself. In each case, it is part of the argument for the existence of the duty that it is

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[15] Cf. Raz supra note [4], at 337.

good that it exist.

Dworkin is of course aware of the relationship between duty and value. One of the two dimensions of interpretation is success in justifying a normative practice – the other is success in fitting the practice – and justifications cannot help but invoke value. There is an interesting question about the relationship between associative obligations and interpretive practices in general. Dworkin clearly expresses the view in Law's Empire that all associative relationships are either interpretive practices themselves or are formed within broader interpretive practices, but does he also think that all interpretive practices are (potential) associative relationships? It is not entirely clear. Whatever Dworkin's view on this question might have been at the time that he wrote Law's Empire, I wish to suggest that associative relationships are a narrower category than interpretive practices generally.[16] Taking friendship as a paradigm, the suggestion is that we can identify a distinctive type of obligation that arises because it is partly constitutive of some form of limited human relationship that possesses intrinsic value. The further suggestion is that Dworkin's strategy for establishing the possibility of political obligation requires one to argue that genuine political community -- the term is Dworkin's (LE at 211) -- is an intrinsically

[16] It is also at least conceivable that associative relationships need not necessarily be, or be formed within the context of, interpretive practices in Dworkin's strong sense. For example, is it only possible for two persons to be friends within a broader interpretive practice of friendship? It is almost impossible to imagine a human world in which most persons did not have ties of respect and affection with others, but the interpretive attitude requires a certain self-consciousness about the general practice of friendship, and, in particular, about what is taken to be its point or value, that might nonetheless be absent from a particular culture. It is at least arguable that so long as individuals hold the appropriate attitudes towards one another an intrinsically valuable relationship, together with its associated duties, comes into being, regardless of whether these or any other persons hold views about the point or value of friendship. I will not, however, pursue this line of thought further here.

valuable form of human association. Properly understood, I believe that this is exactly Dworkin's argument. Before defending that conclusion, however, let me say a bit more about associative obligations in general.

Notice, to begin, that this account of associative obligations does not presuppose a general interpretive practice of associative obligation, although it is consistent with the existence of such a practice. The account is, in the first instance, simply a first-order moral claim about the way in which certain kinds of human relationships may give rise to obligations. Whether or not there is a general interpretive practice of associative obligation is not, therefore, a question that needs to be answered definitively for present purposes. I earlier argued that the four conditions that Dworkin advances as characteristic of such a general practice are not found together in every associative relationship. But it is important to emphasize that those conditions are nonetheless likely to figure prominently in most such relationships, although no doubt in different ways and configurations. A further, related point to notice about the account I have offered is that just as it does not require that there be a general interpretive practice of associative obligation, neither does it require that there be a single intrinsic value that all such obligations share. The claim is simply that we can identify certain kinds of obligations that are in an important sense similar to one another, for the reason that they are partly constitutive of relationships that are intrinsically valuable. The account is consistent with the idea that a single value underlies all associative obligations, but it is probably more plausible to think that we are dealing with a plurality of values; the intrinsic value of friendship would thus be different from the intrinsic value of family, and different again from the intrinsic value, if any, of political community.

As has already been noted, it follows from the account of associative obligation I have offered – that these are obligations that are partly constitutive of some intrinsically valuable form of human relationship – that not all interpretive practices are, either in fact or potentially, associative relationships. There is nothing in Dworkin's general account of interpretation that rules out the possibility that the value or point of some interpretive practices is instrumental, just as nothing rules out the possibility that the value of some is non-instrumental. If the general characterization is right, moreover, then Dworkin casts the net of associative obligation too widely: it seems unlikely, for example, that either union membership or academic colleagueship is an intrinsically valuable form of human relationship. This general account of associative obligation also makes clear that not all special obligations are associative. Earlier I pointed to the example of a general duty of easy rescue that is capable of generating special duties owed to particular individuals. Although I shall not argue the point here, it seems plausible to think that both the general and the special duties are justifiable solely on instrumental, consequentialist grounds. The special duty is thus not an associative one. What about special obligations that arise from the exercise of powers of promise and consent? This is an interesting case. The power to promise is a power deliberately to place oneself under new obligations to others, and the power to consent is, roughly, a power deliberately or knowingly to change one's normative situation in a broader sense. (In addition to consenting to assume an obligation, one can, for example, consent to waive one's rights.) It would be very implausible to think that every relationship that arises from the exercise of such powers is one of intrinsic value – consider commercial contracts, for

example – although their exercise can clearly contribute to, or deepen, relationships that have such value independently; the best example is probably the vows of marriage. If the relationships are not intrinsically valuable then neither are the special obligations that constitute them; these obligations are not, or at least are not necessarily, associative obligations. Even if this is true, however, it is quite possible that the powers themselves are intrinsically valuable. Joseph Raz, for example, has argued very persuasively that an important justification for such powers, although not the only one, lies in the intrinsic value of being able to create special bonds with others and, more generally, being able to fashion the shape of one's own moral world.[17] (Notice that this is another example of the kind of bootstrapping that I said earlier was unavoidable in morality; these powers exist because it is good that they do so.) If this is correct then there is an important affinity between assumed obligations and associative obligations, even though the former are not necessarily instances of the latter.

I will offer, as a final general observation about associative obligations, a pair of related points that were implicit in the discussion of the preceding paragraph. There is no reason why

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[17] Raz, "Promises and Obligations," in Law, Morality, and Society: Essays in Honour of H.L.A. Hart 210, 226-28 (P.M.S. Hacker and J. Raz., eds, 1977); Raz, The Morality of Freedom 86-87 (1986).

associative obligations cannot coexist with instrumental obligations within a single kind of relationship, and, indeed, no reason why the same obligation cannot be justified on both instrumental and non-instrumental grounds. The second point seems to hold true of families, for example, and possibly the first does as well. If there is love between a parent and a child then the relationship between them is intrinsically valuable, and both the parent's obligation to care for the child and the child's obligation to obey the parent are partly constitutive of that relationship. Both obligations undoubtedly have an important instrumental justification as well, however, since both are necessary to ensure the wellbeing and proper development of the child. The parent-child relationship is one that by its nature is intrinsically valuable but that has, in addition, an important instrumental dimension. It also seems quite possible that certain relationships that do not necessarily have intrinsic value, such as those created by contract, may come to have an element of such value, and thus to give rise to associative obligations that would not otherwise exist, because of the development of trust and respect between the parties. Dworkin gives the interesting example of commercial partnerships (LE at 200). While I do not think that every such partnership necessarily gives rise to associative obligations, it is quite plausible to think that at least some do. It does not follow, of course, that associative obligations that exist within the context of an essentially commercial relationship either are or should be enforceable as a matter of law. Within the legal systems we are generally familiar with they are not so enforceable, and probably should not be. But that does not mean that they do not exist.

III. Political Obligation and Integrity

It is time to return to the issue of political obligation. As was noted earlier, Dworkin argues that a general obligation to obey the law arises when a legal system possesses the special political virtue of integrity. Integrity, we are told, "requires government to speak with one voice, to act in a principled and coherent manner towards all its citizens, to extend to everyone the substantive standards of justice or fairness it uses for some" (LE at 165). As this characterization makes clear, integrity is a complex ideal which contains a number of different strands. The core idea, however, is easily enough discerned: the state, acting through its various institutions and officials, must always strive to ensure that both its laws and the actions it takes to enforce those laws "express a single and comprehensive vision of justice" (LE at 134). This idea is, in my view, properly treated by Dworkin as central because it is connected in two distinct but related ways to the concept of equality. First, if the state gives effect to a single conception of justice, then its various officials will be acting, to put the point deliberately vaguely, in an appropriately similar fashion: litigants can be assured, for example, that their case will be handled in accordance with the same general principles whether they end up in courtroom A or in courtroom B. In that sense government will, in Dworkin's phrase, "be speaking with one voice." But equality in this sense is consistent with great substantive inequality: members of one race, for example, might consistently be treated very differently from members of another race, even though any given individual would be treated exactly the same way in courtroom A as he or she would have been treated in courtroom B. Integrity is connected to substantive equality because it requires not just that the state act in accordance with a single set of logically consistent standards, but that it act in accordance with a single conception of justice. In Dworkin's words, the government must "extend to everyone the substantive standards of justice or fairness it uses for

some." This is a tricky matter, because integrity is distinct from justice and hence does not require that citizens be treated as justice in fact requires. Dworkin is assuming, I believe, that while true justice necessarily entails equality of concern, equality of concern does not necessarily entail true justice. This is a strong assumption, but it has a great deal of plausibility. Dworkin at times speaks somewhat loosely of integrity as requiring a plausible or coherent conception of equal concern (213). I think the better way to put the point, however, is to say that integrity requires actual equal concern, which will take the form of a plausible or coherent (but perhaps false) conception of justice. Integrity, in other words, is not just a matter of sincerity or plausibility or coherence, but has genuine moral content. That content is provided by the concept of equal concern, which occupies a moral middle ground between simple consistency on the one hand, and true justice, on the other. At any rate this will be my working assumption for present purposes.

When a legal system has integrity, Dworkin suggests, a "bare" political community is transformed into a "genuine" political community, and its members come under a general obligation to obey the law. Integrity, I have suggested, is a matter of true equal concern. Equal concern is, in turn, the bridge between Dworkin's general analysis of associative obligations and his particular argument for political obligation. While I have argued in the preceding section that Dworkin's general analysis, based on the four conditions, cannot be expected to apply to associative obligations across the board, it is nonetheless very plausible to think that the idea of equal concern would play a central role in justifying an associative political obligation.
The concern in question would be expressed by the state, through its laws and governing actions, towards all its citizens. The state is not, of course, a real person, from which two points

immediately follow. First, equal concern cannot in this context be a psychological matter; in the case of political obligation, it must be an interpretive property (LE at 201). Second, as Dworkin explicitly recognizes, the account requires that the state be morally personified (LE at 167-75). (Recall that it is because political obligation runs between the state and its citizens, rather than between citizens individually, that political obligation cannot be personal in the sense defined by Dworkin.) Why, then, might integrity make a moral difference of the kind to which Dworkin points? The reason, I wish to suggest, is that when integrity is present, the relationship between each individual citizen and the state – the state being understood as an abstract moral personification of the general political community – becomes, according to Dworkin's argument, one that is intrinsically valuable. He writes that "a political society that accepts integrity as a political virtue thereby becomes a special form of community, special in a way that promotes its moral authority to assume and deploy a monopoly of coercive force" (LE at 188). Dworkin goes on to describe other justifications for integrity that are purely instrumental, such as the fact that it provides protection against partiality, deceit, and corruption. The distinction between the two types of justification suggests that he regards genuine political community as special precisely because it has non-instrumental value. But whether or not I am correct in attributing such a specific view to him, I believe that this idea is the basis of the most compelling philosophical understanding of his argument for political obligation.

In order to defend that claim, however, this interpretation of the argument must be spelled out in greater detail. Why might it be thought that political community, even when it meets

certain conditions pertaining to equal concern, could be intrinsically valuable? It may well be the case that simply belonging to or identifying with certain kinds of communities is an intrinsic good for individuals. But the good of belonging or identification seems unlikely to be enough to support an obligation to obey. There are, after all, many kinds of communities other than political ones – for example, ethnic, national, or religious communities – that seem just as likely to provide such a good, and yet it is far from clear that this fact can serve as the basis of an obligation to obey the relevant community's norms.[18] (This is not to deny that there might be other reasons to obey.) The claim must therefore be, I think, that political community is a unique good, and one which is necessary for individuals to live complete lives or to be completely fulfilled as human or rational beings; there is intrinsic value for such beings in governing themselves as a community by means of norms that they create for themselves. Perhaps one might try to fill out this claim by

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[18] Joseph Raz has argued that the law can have intrinsic value because it is one kind of standard of conduct that a community can have, and "our perception of ourselves, of who we are, depends among other things on our ability to identify with communities we live in, on our ability to belong to these communities in the full sense of the word." Raz, "On the Nature of Law," 82 Archiv für Rechts und Sozialphilosophie 1, 10 (1996). (Notice that he does not claim that political community is unique in this regard.) But Raz also thinks that there is a voluntary aspect to identification and belonging: "Identification with a community depends on our ability and willingness accept the standards which these communities endorse as our own. This ability . . . depends [among other things] on one's moral judgement giving basic approval to those standards." Ibid. At 12. Elsewhere he has similarly argued that respect for law, which is an attitude expressing identification with one's political community, can ground an obligation to obey that is, like the obligations of friendship, "semi-voluntary": "Such an attitude, if directed to a community which deserves it, is intrinsically valuable. It is not, however, obligatory. One does not have a moral duty to feel a sense of belonging in a community." Raz, supra note [4], at 338. The attitude of respect for law is, in Raz's view, not consent-based but nonetheless semi-voluntary because, like friendship, it grows and develops over time. There are obvious affinities between this view and Dworkin's understanding of political obligation. But Dworkin does not think that there is a voluntary or semi-voluntary aspect to political obligation, and that is why he must make the stronger assumption about the value of political community that is identified in the text.

drawing on the enlightenment ideal of self-legislation, which Dworkin mentions in passing in Law's Empire but does not elaborate upon (LE at 189). I am not sure whether or not this claim is true, although it has a certain intuitive plausibility. I will not, however, explore the issue in detail here. The main point I want to make for present purposes is that it seems that something like the claim I have identified must hold if political community is ever to have intrinsic value of a kind that does not depend on consent or otherwise have some voluntary aspect. Of course, the argument cannot be that political community fulfills or completes human lives no matter what form it takes, if only for the reason that governments can be thoroughly iniquitous or evil. It is only genuine political community that can play this role, and that is where integrity comes in. The basic idea, which again has much intuitive appeal, would appear to be something like this. A political community, morally personified through the state, only has intrinsic value for its citizens when it can be understood as treating each citizen, considered individually, with equal dignity, concern, and respect. It can only have intrinsic value, in other words, when it meets the demands of integrity. A legal system without integrity might still have instrumental value – even a deeply inegalitarian political order might, for example, be morally preferable to social chaos – but it can only make an intrinsically valuable contribution to human flourishing when integrity is present.

Even if it is true that a genuine political community has intrinsic value for its citizens, however, we must still ask why it should be the case that citizens have a general obligation to obey their community's law.[19] Even if the state treats everyone with equal concern, and for that

[19] Leslie Green raises a related question when he argues that "integrity [in

reason makes a certain kind of contribution to human flourishing, why should citizens have an obligation to obey each and every law, including in particular any laws that are unjust? The response to this questions is, I believe, unnervingly straightforward. Political community is in part constituted by norms that have been created by, or otherwise have their source in, a certain structure of authority within the relevant society. Norms can be said to exist in various ways; there is, for example, a clear sense in which a norm exists simply because the members of a legislature enacted a law. But the argument for political obligation that I am attempting to explicate holds that the relationship between a political community and its citizens is, under certain conditions, intrinsically valuable. It seems to me to be implausible in the extreme to think that this relationship could be morally valuable in that way unless the norms that are partially constitutive of the relationship existed not just in a social or conventional sense, but in the stronger sense of having the normative force that they purport to have. They must, in other words, be valid norms, which in this context means morally valid norms,[20] and the obligations they purport to impose must be real obligations. This is moral bootstrapping, but bootstrapping is

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individuals] creates no duty to obey those who display the virtue,"and this does not change in the case of a personified community. Leslie Green, "Associative Obligations and the State," in Law and the Community: The End of Individualism? 93, 106 (Allan Hutchinson and Leslie Green, eds., 1989). Green's argument is much more plausible if one assumes, as he at least implicitly does, that integrity cannot confer intrinsic value on a political community. The analogy with integrity in an individual, which Dworkin himself makes, is in fact quite misleading: the integrity of an individual cannot be a source of value for others in the way that the integrity of a political community can, at least conceivably, make that community intrinsically valuable for its citizens. If I am right that the essence of integrity in the political context is a concept of equal concern, then there is no analogue with the virtue of integrity in individuals; integrity in the former sense is a creature of political morality alone. However, even it is true that political integrity can be a source of value in the way that I have suggested, it does not automatically follow that citizens have a general moral obligation to obey the law.

[20] See note [6] above.

no more problematic here than it is in the case of friendship. Legal norms (and their attendant obligations) are partially constitutive of the relationship between the state and the citizen in exactly the same way that the obligations of friendship are partially constitutive of friendship. It is in this claim, I believe, that the true power of Dworkin's argument's for political obligation resides. Given the non-instrumental nature of the argument, there is no basis for picking and choosing among laws in the way that attempted instrumental justifications of a general obligation to obey almost invariably permit.[21] It seems to me that not even non-instrumental considerations of a different kind, such as considerations of justice, can negate the obligation, in the sense of justifying the conclusion that it does not exist. (They can defeat or override the obligation, as I will discuss further below, but that is quite a different matter.) We are assuming, it should be recalled, that the state treats all of its citizens with equal concern – since otherwise the law would not have integrity – and we are also assuming that equal concern is a concept that has genuine moral content. If the argument up to this point is correct, then equal concern is the only moral property that the law must have if political community is to have intrinsic value. Political

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[21] Cf. Raz supra note [4]; Green supra note [4]. Both Raz and Green view the value of law almost entirely in instrumental terms, although Raz thinks that law can also have a non-instrumental dimension: see supra note [18]. But both cheerfully concede that, precisely because the value of law is (mainly) instrumental, there can be no general obligation to obey. As Raz puts the point, "much of the good that the law can do does not presuppose any obligation to obey." Raz, supra note [4], at 328.

community could not have such value unless the norms that constitute it are morally valid and hence binding. No other moral considerations are relevant to the existence of the obligation, although they may defeat or override it.

The point that other moral considerations may defeat or override the general obligation to obey the law is an absolutely crucial one, since otherwise the conclusion that such an obligation exists will be unacceptable on its face. The point is not, in fact, a controversial one; almost every contemporary theorist who discusses this issue assumes that if there is a general obligation to obey the law, which most deny, it is only prima facie in character. It is perhaps less obvious that the obligation, if it exists, need not be particularly strong. It is completely consistent with the argument of the preceding paragraph that the obligation is routinely overridden by considerations of justice, or even by instrumental considerations. A related point is that a general obligation to obey the law need not, by itself, be strong enough to justify the use of coercion by the state. As was noted in section I, Dworkin is careful to note that while obligation is close to a necessary condition for coercion, it is not by itself sufficient (LE at 191). It should be borne in mind in this regard that not all laws are enforceable by coercive means, or even enforceable in any legal sense at all; the laws that govern the relations among different branches of government are only the most obvious example. It is, again, completely consistent with the argument of the preceding paragraph that even if there is a general obligation to obey, the coercive enforcement of any given law can only be justified by reference to instrumental considerations, such as deterrence, or different non-instrumental considerations, such as retribution. Finally, the claim that there is a general non-instrumental obligation to obey the law is completely consistent with the possibility

that the obligation to obey many individual laws can also be justified on instrumental grounds, such as the need for coordination. As was remarked in section II, there is no reason why an obligation cannot be justified both instrumentally and non-instrumentally.

There is one aspect of Dworkin's discussion of integrity that I have not mentioned up to this point, which is captured by the following passage:

> Members of a society of principle accept that their political rights and duties are not exhausted by the particular decisions their political institutions have reached, but depend, more generally, on the scheme of principles those decisions presuppose and endorse. So each member accepts that others have rights and that he has duties flowing from that scheme, even though these have never been formally identified or declared. (LE at 211)

Elsewhere Dworkin goes beyond this claim, arguing that integrity may in fact require the rejection of certain past political decisions as mistakes; despite appearances, those decisions never contributed to the content of the law. The general point that the content of the law may extend beyond past political decisions, or to some extent depart from them altogether, flows from the role that interpretation plays in Dworkin's substantive theory of the grounds of law;[22] it is a consequence of the claim that there is a tradeoff between fit and justification, which are the two

[22] Interpretation plays a separate but related role in Dworkin's arguments about methodology in legal philosophy. See the brief discussion of this issue in section I above.

dimensions of interpretation, rather than a lexical ordering. It is because interpretation figures in this way in Dworkin's substantive theory that considerations of force can have an effect on the grounds of law. As was noted in section I, within Dworkin's substantive theory the truth of "It is the law that A" depends, in part, on whether or not the normative proposition "A" is capable of being made true by the truth of "It is the law that A." The theory makes this determination holistically, by looking to how "A" fits into the content of the law taken as a whole.[23] The upshot of all this is the following. The answer to the question of whether or not there is a general obligation to obey the law of a particular legal system depends on whether or not the content of the law, considered as a whole, has integrity, while the question of what is the content of the law depends, in part, on whether or not law understood as having this content rather than that would have integrity (and hence would give rise to a general obligation to obey). This is complicated but not circular, or at least not viciously so. The only comment that I will make here on the interpretive aspect of Dworkin's theory of the grounds of law is that, while it fits naturally with the claim that the existence of political obligation depends on whether nor not the law has integrity, it is logically independent of that claim. One could make the claim that political obligation depends on integrity even if one thought that the content of law was determined solely by social facts. One could make the claim, in other words, as a matter of pure political philosophy, and hence even if one held views about the relationship between political and legal philosophy that were quite different from Dworkin's own.

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[23] See note [7] above.

Dworkin's argument that there is a general obligation to obey the law is, at least in the version I have presented here, obviously controversial. It depends on a number of strong assumptions. One is the claim that the concept of equal concern has independent moral content; another is the claim that political community can have intrinsic value; and yet another is the claim that political community is a unique good which is necessary for human beings to live complete or completely fulfilled lives. Any of these assumptions might be wrong. It is also possible that even if the argument is correct, it does not establish very much of interest because the conditions it requires will rarely, if ever, be met: it may be, for example, that the moral property of equal concern cannot be comprehensively attributed to any existing legal system any more than true justice can. The argument seems to me to be an important one even so, if only because there is no other plausible route besides a non-instrumentalist one for establishing the existence of a general obligation to obey the law. Enthusiasts of a predominantly instrumental approach to the value of law have, for the most part, embraced the conclusion that there can be no purely instrumental argument for the existence of such an obligation,[24] and in this I think they are right. They believe that a general obligation to obey the law is a chimera, and in any event cannot have any moral

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[24] See note [21] above. John Finnis offers an argument for a general obligation to obey the law that is, I believe, best regarded as combining both instrumental and non-instrumental aspects. See, e.g. Finnis, "The Authority of Law in the Predicament of Contemporary Social Theory" 1 Notre Dame Journal of Law, Ethics, & Public Policy 115 (1984). While Finnis' theory of political obligation is in detail quite different from Dworkin's, its non-instrumentalist dimension suggests a possible route to a general obligation to obey the law that has a certain degree of plausibility; in this very general sense, Dworkin's and Finnis' theories resemble one another. Unfortunately I cannot consider Finnis' theory in detail here.

Not everyone (including, perhaps, Finnis) will agree that he is an instrumentalist about law. But that is not a conclusion that I can defend here.

significance; whatever the law achieves that is of moral value, they argue, it does so whether there is such an obligation or not. The instrumentalists may be correct. But perhaps it is not entirely irrelevant that so many judges, legislators and ordinary citizens believe that they really do have an obligation to obey the law. If the instrumentalists were right, wouldn't the news have filtered down by now? Perhaps the tenacity of the belief in an obligation to obey the law should give them, and the rest of us, some pause. One of the many merits of Dworkin's argument is that it gives us a way of thinking about the matter that helps to illuminate why that belief is as tenacious as it is.