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INTEGRITY AND EPISTEMIC PASSION

*Reed Elizabeth Loder**

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INTRODUCTION

I am delighted to contribute to this Issue in honor of Professor Thomas Shaffer, one of a few who have touched the heart of legal ethics. Professor Shaffer's work reflects the legal integrity that is the subject of this Essay.

Integrity is an idea that pervades everyday life while remaining elusive. People use the term to describe anything from a physical object like a bridge to a piece of literature. Even anti-virus computer software performs perfunctory "integrity checks." The idea also centrally captures a moral characteristic of persons. People judged to have integrity are those who withstand the ethical assaults of everyday living without yielding their morality to pressure.

The inner resources of a person have received ethical consideration of late. Virtue and character, subjects long out of fashion in moral philosophy and even ordinary life, have enjoyed a rather sparkling revival despite the longstanding preoccupation in ethics with

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principles to guide action.¹ The professions have joined the introspection, although the justness of institutional roles has dominated discussions of legal ethics. Attention to a lawyer's character resources has been more modest.² This focus on role is understandable because representing the interests and values of others before the law risks alienating lawyers from personal moral constraints.³ That American lawyers perform their role within an adversarial framework further opens them to the moral risk of inflicting harms on innocent bystanders. Some have posed this plight as inevitable and have struggled with some urgency to justify the overall concepts, systems, and institutions that define a lawyer's primary roles as advisor and advocate,⁴ While this scrutiny has been invaluable, it is important to consider lawyers' moral character more closely. The character trait of integrity as a moral and legal resource will be the concern of this Essay.

1 Dominant Western moral philosophy since the eighteenth century has focused on the morality of action (how a moral agent should decide what to do) as determined by principles of morality (for example, the principle that an agent should act to maximize the greatest good for the greatest number or, alternatively, that an agent should act from moral duty). A movement sometimes called "virtue ethics" considers the characteristics of a good person and makes these virtues or character traits the focus of analysis, on the assumption that one who is good is likely to do the right thing in most situations. This movement represents somewhat of a revival of classical Greek and medieval philosophy, although the relevant virtues may be described differently today. Notable philosophical work in the modern virtue ethics tradition includes the following examples: PHILIPPA FOOT, *VIRTUES AND VICES AND OTHER ESSAYS IN MORAL PHILOSOPHY* (1978); ALASDAIR C. MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* (1981); MARTHA C. NUSSBAUM, *THE FRAGILITY OF GOODNESS: LUCK AND ETHICS IN GREEK TRAGEDY AND PHILOSOPHY* (1986); GABRIELE TAYLOR, *PRIDE, SHAME AND GUILT: EMOTIONS OF SELF-ASSESSMENT* (1985); and BERNARD WILLIAMS, *MORAL LUCK: PHILOSOPHICAL PAPERS, 1973-1980* (1981).

2 Legal ethics literature that does somewhat address lawyers' personhood and particular risks to character and moral development includes the following: RAND JACK & DANA CROWLEY JACK, *MORAL VISION AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS* (1989); ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993); THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* (1994); and Gerald J. Postema, *Moral Responsibility in Professional Ethics*, 55 N.Y.U. L. REV. 63 (1980).

3 A small sampling of the body of literature addressing this separation of personal and professional morality includes the following: ALAN H. GOLDMAN, *THE MORAL FOUNDATIONS OF PROFESSIONAL ETHICS* (1980); Postema, *supra* note 2; and Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, HUM. RTS., Fall 1975, at 1.

4 See, e.g., Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L.J. 1060 (1976); David Luban, *The Adversary System Excuse, in THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS* 83 (David Luban ed., 1983); Stephen L. Pepper, *The Lawyer's Amoral Ethical Role: A Defense, a Problem, and Some Possibilities*, 1986 AM. B. FOUND. RES. J. 613.

Integrity is a key component of moral personality. The concept of moral integrity has no settled or unitary meaning despite being a pervasive and commonplace idea.⁵ I devote much preliminary attention to elaborating the general idea of integrity, although my specific purpose is to understand legal integrity. I am committed to the view that specialized roles do not immunize lawyers from general moral concerns. After exploring the richness of the idea generally, I consider the meaning and casualties of integrity for lawyers. Finally, I discuss some influences of legal institutions and workplace conditions on individual and collective integrity.

I draw upon my own theory of moral development and knowledge throughout, amplifying ideas introduced in other writings. I link moral integrity to intellectual integrity and virtuous habits of thought.⁶ I define epistemic integrity as a process of knowing or seeking wisdom in equipoise with persistent uncertainty.⁷ I identify particular epistemic virtues or traits that support this overall epistemic state. Contrary to the weight of philosophical authority, I argue that integrity has significant substantive constraints. Integrity is not simply consistency and sincerity about personal precepts, but it also implies normative ideals.

I insist that lawyers are bound to the substantive requirements for integrity and even face some extra demands. As moral integrity essentially involves active reflection, legal integrity involves relentless scru-

5 Some contemporary philosophical and other work does significantly address the idea of integrity. Only a sampling of that literature follows, but a total list of work with sustained attention to the idea of integrity would not be lengthy. See, e.g., JEFFREY BLUSTEIN, CARE AND COMMITMENT: TAKING THE PERSONAL POINT OF VIEW 69–141 (1991); STEPHEN L. CARTER, INTEGRITY (1996); MARK S. HALFON, INTEGRITY: A PHILOSOPHICAL INQUIRY (1989); WILLIAMS, *supra* note 1; Bernard Mayo, *Moral Integrity*, in HUMAN VALUES 27 (Godfrey Vesey ed., 1978); Lynne McFall, *Integrity*, 98 ETHICS 5 (1987); Gabriele Taylor, *Integrity*, in THE ARISTOTELIAN SOCIETY, THE SYMPOSIA READ AT THE JOINT SESSION OF THE ARISTOTELIAN SOCIETY AND THE MIND ASSOCIATION AT THE UNIVERSITY OF MANCHESTER 143, 143 (Supp. Vol. LV 1981).

6 For earlier partial explications of my theory of moral knowledge, see Reed Elizabeth Loder, *Moral Skepticism and Lawyers*, 1990 UTAH L. REV. 47, 73–82 [hereinafter Loder, *Moral Skepticism*]; Reed Elizabeth Loder, *Moral Truthseeking and the Virtuous Negotiator*, 8 GEO. J. LEGAL ETHICS 45, 94–102 (1994) [hereinafter Loder, *Moral Truthseeking*]; Reed Elizabeth Loder, *Out from Uncertainty: A Model of the Lawyer-Client Relationship*, 2 S. CAL. INTERDISC. L.J. 89, 107–30 (1993) [hereinafter Loder, *Out from Uncertainty*].

7 An earlier article of mine introduced and explained the related idea of epistemic virtues as character traits an agent acquires from being suspended between moral knowledge and skepticism. Loder, *Out from Uncertainty*, *supra* note 6, at 126–30. The specific traits identified were reflectiveness, understanding, compassion, tolerance, humility, courage, honesty, persistence, and care. See *id.*

tiny of ends and means. The widespread intuition that lawyers face special risks to their integrity is telling. I find that legal institutions tend not to nurture integrity, and I charge every lawyer with an obligation to reconstitute deficient institutional practices. While overt ethical wrongdoing may result from passivity, the most insidious problem is ethical barrenness, which I call "ethical winter." A lawyer in the depths of ethical winter has frozen the resources and motivation to sculpt her character toward a moral ideal.

I. VARIED MEANINGS OF INTEGRITY IN EVERYDAY LIFE

I offer a personal metaphor to begin. A majestic tree graced the entrance to my grandparents' place. Children swinging in the branches was an image that captured me from childhood through parenthood. A ring-necked pheasant circled the tree incessantly throughout the summer of my daughter's birth, then vanished with autumn chill, not to return. Yet, the tree stood solid and fair through the winters of its life.

When people imbue something like a tree with integrity, they might hold varied thoughts in mind. First, integrity implies wholeness. The tree retained identity despite seasonal fluctuations and external pressures. A musical piece with integrity has coherent structure overall, not reducible to the relationships of its parts. Environmental integrity belongs to stable systems of complex interrelationships.⁸ A kind of ecological integrity also applies to people. A person with maximum integrity lives life with overall direction, "as a whole," and avoids commitments and actions in moments of life that seriously conflict with these broad patterns. Someone can possess integrity only in specialized areas, as a musician whose artistic vision contrasts with wavering as a parent. A person might exhibit integrity on a single momentous occasion, but we usually think of integrity as an enduring tendency.⁹ Yet, sporadic lapses do not defeat reliable integrity or the meaning of integrity as wholeness.¹⁰ The well-integrated person has

8 For an application of the idea of integrity to environmental ethics, see LAURA WESTRA, *AN ENVIRONMENTAL PROPOSAL FOR ETHICS: THE PRINCIPLE OF INTEGRITY* (1994).

9 People sometimes marvel that a person not particularly known for strength of character rises to an occasion and exhibits integrity that is somewhat unexpected or "out of character." This is contrary to the typical sense of integrity as stable.

10 The idea of integrity as wholeness and constancy needs immediate qualification. Integrity does not require a fixed or perfectly coherent character. This demand for fixity would actually be antithetical to the notion of moral wisdom presented in this Essay.

coherent direction that pervades most practices important to that person.

The integrity of something also has to do with its distinctive and essential nature.¹¹ The tree had integrity through its grand bearing at the threshold of a uniquely meaningful place. Individuating qualities also define a person's integrity. Moral integrity is the ecology of values, beliefs, judgments, and traits that compose a person's unique ethical character. Not all individuating qualities and values constitute integrity, however. Only those defining features most central to core identity support integrity.¹²

Exhibiting strength is still another sign of integrity. The massive tree has survived the ages. A building with integrity can withstand an earthquake or flood. A superior athlete has integrity in performing her sport with stamina, as well as artistic and technical skill. Withstanding or overcoming odds is an important dimension of integrity and having the trait of strength facilitates this. People often think of integrity as structural soundness. They refer to the integrity of physical or natural objects, and even of processes and systems. The integrity of a computing system, for example, indicates successful fortification against virus penetration. Epidemiologists refer to the biological integrity of populations to withstand disease or the integrity of individual immune systems to fight infection.

Moral integrity is the fortitude to resist ethical invasions. Someone with moral integrity has the perseverance to follow an ethical path with commitment. Such a person will not easily or voluntarily "buckle" for prudent or practical reasons, if yielding does violence to her moral personality.¹³ Moral tests often emerge from external

11 The closest example of a philosophical theory of integrity associated with individual uniqueness or distinctiveness is probably that of Bernard Williams. Williams asserts that each person has "a *ground* project or set of projects which are closely related to his existence and which to a significant degree give a meaning to his life." Bernard Williams, *Persons, Character and Morality*, in *THE IDENTITIES OF PERSONS* 197, 209 (Amélie Oksenberg Rorty ed., 1976).

12 See McFall, *supra* note 5, at 10 (describing integrity as including only those commitments important to one's self-definition).

13 For some philosophers, however, the person of genuine integrity does not face such personal struggle because that person's disposition and happiness are linked only to moral acts. For Aristotle, being tempted to avoid fear and pain instead of naturally exhibiting courage could count against one's integrity, because the truly good person is disposed only toward the good. Aristotle was just as concerned with one's disposition "to feel delight and pain rightly or wrongly" as he was with the ultimate actions one took on one's feelings. ARISTOTLE, *THE NICOMACHEAN ETHICS* 33 (David Ross trans., Oxford ed. 1980); see also Taylor, *supra* note 5, at 157 (arguing that a person of integrity is not tempted by certain reasons for acting). Although this

forces like coercion and threats, or from inducements like bribery. Yet moral pressures can be more inward than situational, as an angry temperament that smothers an inchoate trait like patience. A person has moral integrity if she follows an impractical and difficult path rather than degrade her moral personality. The willingness of historical figures like Socrates to suffer rather than compromise character and moral commitment has marked them indelibly with integrity.

II. VIRTUES AND VICES SUPPORTING INTEGRITY

Integrity is an overall trait of wholeness, distinctiveness, and strength. Other character dispositions have less weight without a coherent moral identity or self. At the same time, moral integrity requires specific dispositions for support. Virtues dispose a person to act well and develop her character in fruitful ways. Specific vices, on the other hand, are characteristics that make a person prone to ethical deficiencies. Vices tend to diminish integrity.

Integrity often recruits the virtue of courage. Sometimes people use the words integrity and courage almost interchangeably, and at least courage is a particular virtue closely allied with integrity.¹⁴ This association is especially evident in the testing dimension of integrity. Withstanding pressure, even at some personal sacrifice, requires courage to support moral integrity.¹⁵ Courage is a particular background virtue for integrity.

Constancy is another specific virtue that facilitates integrity in its meaning as wholeness.¹⁶ Although a single defining moment can express personal integrity, most often, integrity describes a person who reliably exhibits characteristics over time, in a variety of situations.¹⁷ Integrity implies a stable and predictable character that narrates a person's life. The person of integrity "can be counted on" to behave in reliable ways. He is constant and "true to" himself. He feels compelled to explain significant departures from largely consistent behavior patterns. People tend not to see integrity in a person who is "different things to different people" or who too freely adapts to the

purist notion of perfect integrity is appealing because of the importance it places on cultivating good intentions as well as good acts, a more common sense and realistic view conceives integrity as successfully following one's good impulses and suppressing those bad or weaker.

14 See HALFON, *supra* note 5, at 44.

15 But see ARISTOTLE, *supra* note 13, at 63–72 and accompanying text.

16 John Kekes, *Constancy and Purity*, 92 MIND 499, 510 (1983) (defining constancy as adherence to coherent pattern despite challenges).

17 See BLUSTEIN, *supra* note 5, at 10 (referring to integrity as "unity of a life").

perceived demands of varied situations.¹⁸ Inconstancy is a specific vice that tends to be incompatible with integrity.

Although virtues characteristically belong to humans, non-anthropocentric analogies illuminate the virtue of constancy. The highway with constancy reliably supports heavy traffic over time. My grandparents' tree represented stability of place and generational continuity, despite absences and upheaval. A well-integrated literary work is fluid and coherent, not choppy or fragmented. Even legal analogies work here. Lawyers refer to the "integrity of evidence" to signify no contaminating interruptions, or "inconstancy," in the chain of custody that could suggest tampering.¹⁹ The ecological stability of a natural system also expresses the constancy of integrity.

Despite constancy, some philosophers rightly have insisted that integrity accommodates change.²⁰ An overly rigid person who sticks to convictions come-what-may is not someone typically admired for integrity. Indeed, doctrinaire attitudes belie integrity. A person of integrity clings only to those moral attitudes that survive conscientious critique. She must sometimes concede the errors of her ways and abandon notions that previously seemed secure. To live peaceably with others and to be capable of moral growth, some humility about even her deepest values is in order. Thus, humility is another particular virtue that supports integrity as dynamic stability.²¹ As I shall argue later, struggle and dynamism are essential features of epistemic integrity as a state of reflective balance. Integrity involves a dialectic of stability and flux.

Another specific virtue commonly identified with moral integrity is that of honesty. Many people view integrity as synonymous with honesty, as illustrated in the conviction that academic integrity pro-

18 Sociologists and psychologists call this phenomenon "self-monitoring." See generally Claudia J. Haferkamp, *Orientation to Conflict: Gender, Attributions, Resolution Strategies, and Self-Monitoring*, CURRENT PSYCHOL.: RES. & REV., Winter 1991-1992, at 227. A person with high self-monitoring alters his or her demeanor to fit different social contexts. *Id.* at 228. One with low self-monitoring tends to follow internal dispositions regardless of the social situation. *Id.*

19 The defense used this phrase in the O.J. Simpson trial. CourtTV Casefiles, Transcript of Lee's Testimony in O.J. Simpson Trial (Aug. 28, 1995), at <http://www.courtTV.com/trials/carruth/leetranscript.html> (last visited Jan. 17, 2002).

20 See, e.g., CARTER, *supra* note 5, at 59; HALFON, *supra* note 5, at 18; Taylor, *supra* note 5, at 150.

21 According to the philosopher Alasdair MacIntyre, the virtue of humility has distinctively Christian origins and is not counted among the virtues accepted in the classical Greek tradition. In fact, Aristotle treated humility as a deficiency or vice. See MACINTYRE, *supra* note 1, at 177, 182.

hibits cheating, for example.²² The philosopher, Gabriele Taylor, argues that hypocrisy and self-deception are specialized vices of dishonesty incompatible with integrity.²³ The hypocrite presents herself as standing for values and judgments that do not reflect her true inclinations.²⁴ She usually adopts this posture to obtain personal advantage and sometimes to disadvantage others.²⁵ The hypocrite may present a consistent public image. Yet, most people would revise a judgment of integrity if they discovered the duplicity beneath the veneer. This suggests that integrity is more than reliable behavior and constant outward presentation. What the hypocrite lacks related to honesty and essential to integrity is harmony between her authentic constitution and her external persona. We assess a person's integrity not only by the attitudes and values she espouses, but also by her willingness to express these in action. We refer to someone with integrity as "centered" or "having a moral center." Integrity essentially involves harmony and balance between public and private selves, and the hypocrite suffers a disqualifying schism. Integrity is closely bound to authenticity.

Self-deception is yet another vice of dishonesty that is an obstacle to integrity. While the hypocrite consciously projects a public image, she realizes she is inauthentic or "out of character"; a self-deceived person fools himself about his true commitments.²⁶ A college graduate who chooses professional over graduate school may lack integrity, not because of the substantive choice, but because he has not acknowledged and accepted the primacy of his motivation to repay educational debt. The employer who fires a worker out of personal animus lacks integrity if she rationalizes to herself that the employee deserved to be fired. The ability to assess one's own values and motivations candidly is a central feature of integrity. Integrity is a resource for appraising the moral personality and molding it toward an ever-evolving ideal.

22 See CARTER, *supra* note 5, at 52.

23 Taylor, *supra* note 5, at 144-47.

24 See *id.* at 144-45.

25 See *id.*; see also BLUSTEIN, *supra* note 5, at 109.

26 See, e.g., Taylor, *supra* note 5, at 146-47. On its face, the idea of self-deception seems self-contradictory. Deception involves intentionally trying to create a false impression about a state of affairs the deceiver believes is actually different. To deceive oneself would thus literally involve creating an impression in oneself that one already knows to be false—an apparent impossibility. Yet, the idea of self-deception is part of common understanding and seems to refer more broadly to a kind of inauthenticity created by a failure to see oneself as one truly is. It implies dissonance between one's self-image and the public presentation of oneself through one's actions in the world.

III. THE CONTENT OF INTEGRITY

The discussion of supporting virtues and detracting vices raises an important puzzle about integrity. Being honest, constant, courageous, and at the same time humble about central values and beliefs may seem to define integrity apart from substantive norms. Can a person of courage, constancy, honesty, and humility express integrity no matter what the content of underlying values and commitments? Perhaps it suffices for integrity that *some* coherent features of identity endure. On this view of integrity, authenticity is more important than content. Most philosophers who have broached the subject seem to favor the "empty" or content-neutral view.²⁷ Some have noted a chameleon-like nature of integrity, or its capacity to support most substantive values.²⁸

This content-blind view of integrity has normative appeal because it extends a bridge between cultures and disparate values. Those subscribing can avoid "value judgments," which they associate with unfounded prejudice and intolerance of moral diversity. This view has currency because dogmatism and intolerance rightly rank high among postmodern vices.²⁹ Moral attitudes should remain somewhat permeable even though they are among a person's firmest commitments. Plural expressions of values properly challenge static personal morality. Complex affiliations produce clashes of value even within relatively homogeneous groups, and diversity of age, gender, and class foment conditions for conflict. Yet, discovering integrity across these differences does not assure tolerance. A person can be fiercely committed to a lonely perspective. Dim opportunities for consensus may produce disregard rather than respect.

Relativism in matters of integrity also has an introspective source. Besides interpersonal friction, each person experiences inward conflicts of morality at least sometimes. When a person cannot uphold all of her important values in a particular situation, she feels the moral emotion of anguish as she realizes she must compromise some of her

27 See, e.g., HALFON, *supra* note 5, at 29–30, 56 (discussing integrity as supporting a wide diversity of commitments); JOHN RAWLS, *A THEORY OF JUSTICE* 519–20 (1971) (discussing integrity as among "virtues of form" supporting almost any content); Taylor, *supra* note 5, at 152 (arguing that integrity is not incompatible with ruthlessness).

28 See, e.g., HALFON, *supra* note 5, at 153–54 (discussing integrity as incomplete but contributing to personal value).

29 See ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* 25 (1987) (discussing the relativity of truth commonly accepted as "moral postulate"); see also Loder, *Moral Skepticism*, *supra* note 6, at 70–72 (discussing skepticism parasitically appealing to primary value of tolerance).

ideals.³⁰ Important values in intractable moral conflict cause a conflicted person to experience the emotion of regret, or even guilt, at having to sacrifice something important. She regrets the moral imperfection and also experiences guilt if she judges herself even partly responsible for producing the compromising circumstances.³¹ Forced compromise leaves some residual insecurity about priorities that previously seemed stable. Uncertainty infects a difficult decision and tends to linger once the decision is made. The decisionmaker might doubt the chosen course and wonder whether she had previously deceived herself about her authentic commitments.

Significant interpersonal clashes and internal conflict do justify some degree of moral skepticism. In excess, however, such tensions lead people to doubt whether moral disputes are soluble through reflection and rational discourse. Moral universes come to seem inherently self-contained. Blanket tolerance may then seem an antidote to violence, or at least an alternative to futile dialogue over incommensurable values that cannot fairly be compared and ranked in priority.³²

30 See Loder, *Out from Uncertainty*, *supra* note 6, at 121 (discussing complex moral decisionmaking marked simultaneously by anguish and confidence).

31 The philosopher Gabriele Taylor treats regret as an emotion of sorrow one feels at the passing of something. It need not be a moral emotion, however, because the agent can regret something for which she does not view herself responsible, as regretting summer's end. See TAYLOR, *supra* note 1, at 98. Guilt, on the other hand, is the moral emotion felt in accepting the wrongfulness of one's act and expecting punishment. See *id.* at 69, 85. Guilt necessarily involves accepting responsibility. See *id.* at 90-91. Applying these ideas to the current discussion, a moral decisionmaker might be anguished in making a decision because she fears she will not get the decision right, or because she sees the need to sacrifice something important. She will regret this sacrifice even if she does not believe the loss is within her control. She will feel guilt if she makes the sacrifice, even though she might have avoided it.

32 When values are incommensurate, their relative worth cannot be assessed effectively. In case of conflict, it might not be possible to determine which value has priority, and a choice between values may appear arbitrary. For example, in cross-cultural conflict, it might seem pointless to persuade a male head of family who accepts the subordinate role of women that girls in the family should attend school instead of rearing younger siblings. Such apparent impasse in dialogue might lead to acceptance of some version of relativism. One might reach relativist conclusions about the ability to discover or prove which value judgment should have priority (sometimes called "epistemological relativism" or relativism about the possibility of knowledge). Or, one might reach deeper relativist conclusions about the substantive relativity of value judgments themselves, concluding that two conflicting judgments can both simultaneously be right or wrong (sometimes called "metaphysical relativism" or relativism about the nature of things). The latter, deeper form of relativism, especially, can be criticized for involving an illicit leap of logic. It does not follow from the fact of ethical disagreement, no matter how pervasive, that contradictory judgments can both be true or that there are no ethical truths at all. See SAMUEL

Compromise and fluctuating priorities make any singular moral vision more fragile. The idea of co-existent, but incomparable, integrities then acquires salvaging appeal. Integrity within this framework is a regulative norm more than a concept of substance. Integrity can belong to opposing crusaders who have antagonistic priorities but pursue them steadfastly despite risk. While their core values and attitudes chafe, the antagonists share great seriousness of purpose over issues central to their respective moral identities.

This picture comports with some commonplace intuitions about integrity. We have all felt curious respect for an enemy, or “worthy opponent,” because of certain admirable traits the adversary exhibits. It is also fair to say, however, that such assessments have a straining point. Most people accept that some practices could not support integrity no matter how consistent, central, or defining. It would be dissonant, for example, to attribute integrity to a terrorist, who demonstrates singularity of purpose and commitment seldom replicated by others.

What are the substantive constraints on integrity, and how strong or constraining are they? The very moral conflict that tilts one toward skepticism also belies integrity as a purely regulative ideal devoid of normative content. The extent and intensity of moral disagreement in the world show how deeply the content of moral attitudes defines personal identity. Great sacrifice and commitment are not uncommon in the name of particular morality.³³ People think moral ideas are worth arguing about because moral attitudes are such defining strands of their personhood. Images of the kind of person one is, or aspires to be, can drive an entire life.³⁴ People develop self-respect, or

FLEISCHACKER, *INTEGRITY AND MORAL RELATIVISM* 29 (1992) (discussing the above fallacy of reasoning). The apparent incommensurability of values most commonly leads to doubt about the utility of ethical discourse in achieving reasoned cross-cultural consensus. Some philosophers have argued that such despair over dialogue is unfounded and that some foundations for shared discourse are possible. See, e.g., JEFFREY STOUT, *ETHICS AFTER BABEL: THE LANGUAGES OF MORALS AND THEIR DISCONTENTS* 19–21, 291–92 (1988); Martha C. Nussbaum, *Non-Relative Virtues: An Aristotelian Approach*, in *THE QUALITY OF LIFE* 242, 242–69 (Martha C. Nussbaum & Amartya Sen eds., 1993). I have also argued this position. See Loder, *Out from Uncertainty*, *supra* note 6, at 146.

33 See Loder, *Out from Uncertainty*, *supra* note 6, at 107.

34 See Harry G. Frankfurt, *Freedom of the Will and the Concept of a Person*, in *THE INNER CITADEL: ESSAYS ON INDIVIDUAL AUTONOMY* 63, 64 (John Christman ed., 1989) (arguing that humans are capable of forming “second-order desires” about preferences they want to have); Charles Taylor, *Responsibility for Self*, in *THE IDENTITIES OF PERSONS*, *supra* note 11, at 281, 281–83, 289, 296, 299 (finding people responsible for evaluating the values and desires that compose their identity).

not, because they evaluate their inclinations and conduct. If people were ultimately skeptical, their own moral aspirations and achievement would be less important to core identity than it tends to be for most. When people think it matters what kind of person they are and strive to become, they rely at least tacitly on some possibility of justifying their substantive ideals even as they acknowledge a somewhat self-contained frame of reference. Bolstering such faith is the recognition that much of everyday life does not present intractable moral conflicts. People respond ethically to most situations without careful reflection. They care for their children, honor their promises, and help elderly people cross the street.³⁵ Although they sometimes judge their moral impulses to be mistaken, they find no need to question their responses in ordinary circumstances.³⁶

Thus people approach their moral lives with considerable confidence alongside of doubt. Integrity thrives on this epistemic paradox. The push and pull between moral skepticism and truth seeking, humility and confidence, and dynamism and stability mark integrity in its essence. People seek equilibrium, and integrity is the stable but fluid balance of these moral tensions.

IV. A THEORY OF MORAL DEVELOPMENT

Integrity provides overall moral balance. It produces equipoise between skepticism and confidence in truth, a kind of epistemic suspension between these poles.³⁷ The proper tension between doubt and confidence is dynamic rather than a fixed split. The proportions adapt contextually, yet overall moral balance may be corrupted at either end of the spectrum. A dogmatic person regularly disregards even clear evidence of moral ambiguity and resists uncertainty. At the other extreme, a morally casual person can become cynical or glibly tolerant by too easily succumbing to the persistent uncertainties of moral experience. That many people incline generally toward one pole or the other does not defeat the idea of epistemic balance as a normative ideal. By favoring either truth or skepticism, a person overlooks some underbelly of moral life in favor of a cartoon picture. Extremists at both poles refuse to confront some significant moral

35 See John Kekes, *Moral Intuition*, 23 AM. PHIL. Q. 83, 84 (1986) (arguing for intuitive interpretations of events derived from cultural traditions).

36 See *id.* at 88.

37 Loder, *Moral Skepticism*, *supra* note 6, at 72–75, 79–80; Loder, *Out from Uncertainty*, *supra* note 6, at 114–16.

evidence and thus labor under the kind of self-deception that is inimical to integrity.³⁸

A deformed epistemic attitude damages the self-deceived person's moral potential. Morality is inherently social, and epistemic corruption infects interpersonal relationships. The dogmatist never permits diverse moral input to penetrate her insular world and treats differences as threatening conflict. The skeptic who holds little hope of finding common moral ground also baits isolation. Commonalities seem largely accidental, and the skeptic might banish diverse others to impenetrable worlds of their own.³⁹ While the dogmatist might actively instigate conflict, the skeptic also does not escape it. If reasoned discourse cannot settle disputed claims, a fight becomes one alternative to tolerance or quiescence.

Personal moral development is at risk at either extreme. The dogmatist lacks the willingness to reflect critically on his own moral preferences. With truth already on his side, self-scrutiny seems lame. Moral judgment requires experience and practice, and the dogmatist shuns challenges that might exercise reflective capacities. Closed to input from others and stunted in the skills of deliberating, the dogmatist lacks both fresh material and the personal equipment to enlarge moral perspectives. The skeptic is similarly impoverished in moral motivation, raw material, and skill. Striving to become a better person is a weak ideal if guiding norms are arbitrary and idiosyncratic. It makes little sense to investigate varied perspectives comparatively and critically if shared norms are in doubt. Although "live and let live" may be an alternative to disharmony, it also is not conducive to self-scrutiny or self-development.

Someone could conclude that this picture supports a content-neutral view of moral integrity. It remains to be seen that a person at either epistemic pole lacks moral integrity on substantive grounds. The "empty" view of integrity as allegiance to any set of core commitments actually describes both the true believer and the skeptic quite well, the observer might continue. A dogmatist clings to the moral apparatus she happens to have, no matter how isolating. Even a moral skeptic can have steadfast commitments despite the shaky objective

38 See Loder, *Moral Truthseeking*, *supra* note 6, at 94–95.

39 This view that ethical statements lack rationality was entrenched in philosophy from the 1930s into fairly recent times. "Non-cognitivism" was the view that ethical statements lack truth value because they are not subject to empirical confirmation or proof, and the concomitant "emotivist" view was that such statements function to evoke similar emotions in a listener. See, e.g., Hilary Putnam, *Objectivity and the Science-Ethics Distinction*, in *THE QUALITY OF LIFE*, *supra* note 32, at 143, 144–45.

foundations of moral knowledge.⁴⁰ An adequate reply should explain more fully why such constancy does not suffice for integrity.

The constancy that marks integrity is dynamic. Epistemic suspension is its constant feature. A fluctuating posture toward moral knowledge is key. This kind of positioning demands a reflective character. Although images of a reflective person may call up monastic quietude, the reflective disposition is inherently social. The person seeking moral improvement is sensitive to input of others in adjusting attitudes. This sensibility can lead to caring and respectful relationships in their own right. People of integrity share remarkably similar character traits. The virtues of courage, thoughtfulness, humility, openness, care, and respect operate in ecological balance to produce the overall systemic health that is integrity. The balance dissolves if the person becomes overly arrogant or modest about who he is and what he knows. This skewed attitude disintegrates its holder and thwarts moral wisdom. These are substantive constraints on moral integrity because they limit the treatment of other people in decided ways.

Respect for human dignity is one affirmative feature of moral integrity.⁴¹ Although the willingness to reconsider entrenched moral attitudes opens a person of integrity to divergent views, some stances are simply unacceptable because they belie respect for humanity. This ideal of openness surpasses tolerance. Other moral beings are more than resources for personal growth and are subjects intrinsically worthy of respect. The effort to understand, although not necessarily accept, antagonistic points of view can refresh moral outlook and heighten sensitivity. Although enhanced interpersonal respect does not necessarily emerge from receptivity, it tends to result from exposure to moral complexities.⁴² Such input becomes harder to disregard, attack, or glibly rationalize over time. Moral diversity is a potential pathway to personal betterment. This developmental stake helps to insure that changes in attitudes are not easy or arbitrary fluctuations, but well-examined steps toward a higher image of self. A personal search for moral wisdom drives the ideal process.

In linking moral knowledge to moral integrity, it helps to consider how people sometimes generally apply the idea of integrity to intellect. As an inanimate thing like a tree or highway can have integrity of structure and form, a person can have intellectual integrity tied

40 See Richard Rorty, *Solidarity or Objectivity?*, in *POST-ANALYTIC PHILOSOPHY* 3, 11–13 (John Rajchman & Cornel West eds., 1985) (arguing that contingent values are nonetheless mobilizing).

41 See BLOOM, *supra* note 29, at 25–26 (linking relativism as dogma with the normative value of tolerance).

42 See Lynn M. Sanders, *Against Deliberation*, 25 *POL. THEORY* 347, 360 (1997).

to habits and patterns of thought. At least in most cultures in the West, features like the following characterize integrity of intellect: being open to evidence that discredits ideas of personal and intersubjective currency; seeking a more impartial attitude despite the constraints of personal history, biology, and culture; and being aware that the processes and standards for evaluating ideas and judgments are themselves subject to criticism and change.⁴³ The intellect of merit is thus conscientiously critical in orientation despite inevitably exhibiting the influences that shaped it. Epistemic unsettlement also pervades moral character.⁴⁴ The struggle between moral certitude and skepticism affects decisions, actions, commitments, relationships, and evolving values, molding a stable but searching moral personality over time.

A critic might halt the discussion here and condemn this theory of moral development as uncritically, even romantically, progressive. The theory is flawed, so the objection would run, because it naively assumes that moral development involves a discernable telos, or end, rather than random and relativistic striving. That change produces improvement belies human history. In reply, the pathways and telos of moral development need not be uniform or progressive. Individual flourishing has varied manifestations and reflects a richness of values. The Scottish warrior, William Wallace, and the peacemaker, Mahatma Gandhi, express courage as a supporting virtue of integrity very differently, for example. Embracing diverse exemplars of integrity does not lead inexorably to relativism, however. The process of seeking moral wisdom has substantive shape and involves openness to diversity and connection.⁴⁵ If a person has an unshakable perspective, all the courage in the world will not foster integrity. Yet, openness does not always yield improvement. Mistakes and lapses accompany growth, and people can stagnate or degenerate morally. A person can embrace novel moral input too casually, for example. The developmental stream realizes character and moral wisdom potentially, but not necessarily. Moral motivation is one among a variety of inclinations. Its prominence is an ideal.

Striking balance between doubt and epistemic confidence demands some special skills and effort. The person who cultivates a battery of such skills patiently and habitually is on the way to integrity. Habits of reflection essential to integrity include regular critique of

43 For a discussion of the qualities of intellectual integrity divorced from morality, see James A. Montmarquet, *Epistemic Virtue*, 96 *MIND* 482, 484 (1987).

44 See *id.* at 482 (contrasting intellectual virtue with moral virtue).

45 See *supra* notes 20–21 and accompanying text.

moral assumptions. Spoken and written ideas betray bedrock positions. Alternatively, moral commitments might not emerge in language at all, but in actions of moral significance.⁴⁶ Moral character unfolds in everyday acts that display generosity of spirit, such as offering one's seat on a bus. A reflective person deciphers the richly varied clues to moral attitudes, whether in articulate or behavioral form. Identifying entrenched ideas is a first step toward critical assessment. It is also potentially a step toward more respectful relationships.

Divergent moral assumptions can propel discussions of morality toward an impasse that cannot be dislodged without tracing the disagreements to their roots.⁴⁷ Moral discourse often has the quality of "trains passing in the night." A conscientious participant in dialogue can extract basic moral assumptions and explore those critically to determine precise points of divergence, as well as any lurking common ground. Exploration will invoke logical criteria such as consistency, comprehensiveness, factual accuracy, and completeness and might expose specific fallacies like *ad hominem* reasoning or equivocation. On other occasions, inquiry might be more intuitive and holistic, for example, in receiving the "testimony" of others and comparing narratives. In this mode, a person can grasp overlooked insights or recognize the triviality of aggrandized points of view. Pragmatic screening can assess ideas for their potential to mitigate conflicts. Identifying shared values can lead to conciliation as long as commonalities do not suppress vital differences.

These exercises are not exclusively interpersonal. A dialogic approach also can be applied to oneself by engaging an imaginary "conversation." Sometimes self-exploration forces one to renounce central assumptions for new ideas that hold up better to scrutiny.⁴⁸

46 For example, a spontaneous act of moral resistance might emerge from powerful moral inclinations not linked to carefully considered morality. Such acts are not necessarily less rational because their theoretical foundations are unarticulated. Their emotional genesis is more akin to a perception or glimpse of a moral truth.

47 Arguments about the environment often have this quality. While one discussant might claim that increased protections for an endangered species are too costly to justify regulation, the other might insist that a species nonetheless deserves protection in its own right. The disputants begin with different criteria for making a moral claim, and their argument fizzles without identifying these differing assumptions as a first step toward re-examining them and possibly finding common ground.

48 According to philosopher John Rawls, for example, a moral agent begins ethical inquiry with beliefs and judgments. See RAWLS, *supra* note 27, at 20. The beliefs are revised to make them consistent with each other and with other important ideas. If revision does not cure flaws, the agent might have to reject some formerly comfortable ideas. Sooner or later, no more revision seems necessary. At that point, the agent reaches a state of "reflective equilibrium" in his ethical thinking. See *id.*

This can open new aspirational pathways. On the other hand, an inquirer can emerge from testing with moral intuitions validated and reinforced. Either way, the reflective person approaches the future with renewed strength because of vigilant and tutored reflection.

The tools of moral development have an essential affective dimension. Imagination is stunted by experiential myopia. Sampling the reality of another demands careful practice to avoid succumbing to prejudice and unexamined attitudes. Moral motivation is necessary to subject a comfortable world view to disturbing perspectives. The integrity virtues of courage and strength propel this motivation. Moral exposure also drafts virtues of truthfulness—honesty to appraise oneself boldly and authenticity to express emergent identity. Converting new perspectives into usable form requires active, empathetic imagination. The effort to visualize the world through a foreign glass builds imaginative and empathetic powers for the future. At the same time, empathetic imagination may project personal values and experiences onto another.⁴⁹ Some distortion may be inevitable because it is not possible to shed perspective.⁵⁰ Too much confidence about empathetic powers may paradoxically solidify rather than dissolve arrogant moral attitudes. Humility can assure vigilance about the limits of empathy as a moral skill.

Moral motivation thus has a strong epistemic component. The moral agent strives to purge herself of ambiguity, even as she realizes uncertainty will linger. Persistent inquiry relieves discomfort even as it leaves a residue. The morally engaged person tests ideas to address the ache of complex moral decisions.⁵¹ Comparing narratives expands the moral imagination that pushes ideas to their margins. Testimonials, including literary and non-fictional accounts of moral quandaries, are important resources despite their limitations.⁵²

Still, this searching process plays a limited role in the decision-making of even the most morally engaged person. People typically act spontaneously without much reflection. Most of the time people properly rely on moral spontaneity. We sometimes admire people be-

49 See Kekes, *supra* note 35, at 90.

50 See Martha Minow, *Justice Engendered*, 101 HARV. L. REV. 10, 75 (1987) (criticizing impartiality as unrealistic “God’s Eye” perspective).

51 This is a normative, not empirical, point. Many people in fact would not take the difficult path of ongoing inquiry and would rather simplify their moral lives by closing off seemingly endless possibilities.

52 Martha C. Nussbaum has argued that literature is the most appropriate expression for moral philosophy because it emphasizes “particular people and situations” rather than abstract rules. See MARTHA C. NUSSBAUM, *LOVE’S KNOWLEDGE: ESSAYS ON PHILOSOPHY AND LITERATURE IX–XI*, at 138–44 (1990).

cause of their impulses. At other times, complicated circumstances invite reflection, but pressures make deliberation unrealistic. Often forced to act with incomplete information, moral agents must swallow ambiguity and accept arrested inquiry.

The idea of integrity as epistemic suspension fits these pressured situations. Current notions of moral truth lend enough confidence to act on a hazy vision. A person who tests conscientiously over time can find contentment with such imperfection and need not endure relentless anguish. The promise of sometimes having things right foments the urge to improve in marksmanship over the long haul. Epistemic integrity offers delicate, dynamic equilibrium between ambiguity and clarity and the epistemic emotions of confidence and doubt. This balance is moral wisdom.

Wisdom is not a culminating state but a perpetual process.⁵³ Like its counterpart character trait of integrity, the epistemic condition of wisdom involves constancy. Wisdom is the reliable ability to judge what further work is needed to approach ideals. The person of integrity develops strength, courage, and honesty about missing the mark. Wisdom provides contentment amidst this striving. The person of integrity is humble enough to know her own shortcomings, but caring enough about her moral identity to strive for more.

Integrity as wisdom is self-fortifying. Integrity feeds the desires that make it possible in the first place. Refined commitments and shifting desires come to define the person as better. The feedback between moral wisdom and integrity as a wisdom-supporting trait can atrophy. Lost integrity is lost concern for the growing goodness of the self. The person without integrity suppresses the desire for goodness. The Greek idea of Eros comes close to capturing this notion of integrity as striving toward better moral knowledge and a better self. Integrity is the moral passion that regenerates the self as it fumbles toward improvement. To borrow an overused environmental metaphor, integrity is "sustainable." It is a power of regeneration that draws upon moral resources without exhausting them. Integrity involves motivations, skills, and virtues that are self-replenishing. The opposite state is frozen moral motivation. This is ethical winter, in which the search-

53 The relationship between morality and wisdom was an idea emphasized in classical Greek philosophy, most notably in the writings of Plato and Aristotle, who both viewed knowledge as self-actualization. See ARISTOTLE, *supra* note 13, at 263–66 (linking wisdom with virtue and happiness); PLATO, *Charmides*, in 1 THE DIALOGUES OF PLATO 3, 24 (B. Jowett trans., Random House 1937) (1892) (linking knowledge and happiness); PLATO, *Republic* (Paul Shorey trans.), in THE COLLECTED DIALOGUES OF PLATO 575, 751–52 (Edith Hamilton & Huntington Cairns eds., Lane Cooper et al. trans., 11th prt. 1982) (describing the divine potential of reason).

ing moral impulse withers and even dies. Without integrity, a person lacks or suppresses concern for the kind of person she is and will become.

We expect the person of integrity to stand up for principles, but wisdom provides the space to examine and revise ends.⁵⁴ Stability is the steady process of reflection and refinement. Courage and zeal are unwise if they stifle opportunities for reflection. Courage must engage fresh moral challenge. Ironically akin to the fervent soul, someone weakly committed also lacks wisdom.⁵⁵ The weak person succumbs to a momentary configuration of desires and values instead of identifying tendencies that need attention.⁵⁶ He misses opportunities for considered change as he maneuvers casually among moral positions. He is not motivated to nurture skills like empathetic imagination, and, thus, he squanders his own moral resources, which depend upon exercise. This failure to aspire shrivels the virtues of courage, constancy of purpose, and honesty on which integrity thrives. These virtues become dormant and even decay over time.

The balance of integrity is not some arbitrary middle-ground compromise between excesses of malleability and zeal, however. Here Aristotle's idea of a "golden mean" is helpful. For Aristotle, aiming for the mean is not aspiration to a rough average, but rather a particular target that involves neither excess nor deficiency in each unique situation.⁵⁷ Analogously, appropriate epistemic suspension is not a crude amalgam of skepticism and truth. Rather, wisdom is a disposition to explore the moral complexities that each situation presents, while not missing the rhythm of timely action that depends on confi-

54 See BLUSTEIN, *supra* note 5, at 86 (arguing that flexibility is compatible with integrity); HALFON, *supra* note 5, at 85 (arguing that personal reassessment is compatible with integrity); Taylor, *supra* note 5, at 150 (holding that change is compatible with integrity).

55 Gabriele Taylor describes a person as "shallowly sincere" who weakly shifts commitments, or who fails to follow a course of action she deems best. See Taylor, *supra* note 5, at 145. Although the person makes an honest evaluation, she lacks the resolve to execute the judgment in action. See *id.*

56 Harry Frankfurt's distinction between first and second order desires has been influential in some philosophical circles. "First order" desires are those one happens to have. All sentient beings have these desires in fact. See Frankfurt, *supra* note 34, at 64. What is distinctively human, according to Frankfurt, is the capacity to form "second-order" desires. See *id.* This involves assessing which "first order desires" to reject and which to retain for the sake of becoming the kind of person one wants to be. A person is responsible for the person he is because of this capacity for self-assessment. See *id.*

57 See ARISTOTLE, *supra* note 13, bk. II, at 2. This is not the kind of precision that can be ascertained in advance, but must be determined by an individual agent as the situation arises. See *id.*

dence in one's best current judgment. Sometimes the correct posture is more skeptical than confident, and sometimes the other way around. Moral truth seeking is fluid. The point of balance fluctuates contextually and not according to formulae.

Integrity is elastic enough to accommodate diverse moral principles and commitments within limits. It rules out much less substantively in beliefs, judgments, and actions than in the arena of virtue. Integrity is stability of moral character rather than a surrogate for right principles and conduct. Still, the personality of integrity favors dispositions to act in certain ways over others, and integrity definitively precludes certain treatment of others—much less than a Hitler rules out integrity. Respecting other people and having concern for their interests is distinctly more compatible with the searching soul than is callousness, disregard, or prejudice. An ethic of integrity thus intertwines with an ethic of principle and action.

Integrity requires foundational virtues, and specific virtues themselves must strike epistemic equilibrium. Openness, humility, patience, caring, generosity, curiosity, reflectiveness, and honesty open a person to doubt, while courage, idealism, perseverance, and self-regard hold promise of approaching the mark. Each of these virtues for integrity can become vices if not present in the right degree, and the correct balance of virtue varies contextually. While humility avoids the stagnation and insularity of inflated moral truth, humility is excessive in the person who too casually discards well-considered ideas or in the person whose discomfort with ambiguity either paralyzes or delays timely action.⁵⁸ Similarly, the generosity toward others that expands perspective is excessive if not also extended to oneself. Having confidence in one's own resources is an impetus to action and self-improvement. Integrity as generosity to self is not narcissistic, but provides strength of purpose, commitment, courage, and wisdom that embraces others. Although moral growth implies residual dissatisfaction, doubts become paralyzing if they topple solid ideas along with sloppy ideas. Self-doubt impedes the ability to form and execute commit-

58 See generally THOMAS E. HILL, JR., *Servility and Self-Respect*, in *AUTONOMY AND SELF-RESPECT* 4 (1991) [hereinafter HILL, *Servility and Self-Respect*] (examining excess of humility). To illustrate unreasonable self-sacrifice, Hill uses the example of a "deferential wife," who is totally devoted to her husband and regularly puts herself last. *Id.* at 136. In another context, Hill discusses humility as a virtue and its deficiency as a vice. See Thomas E. Hill, Jr., *Ideals of Human Excellence and Preserving Natural Environments*, 5 *ENVTL. ETHICS* 211, 216 (1983) (discussing insufficient humility in valuing nature only for utility).

ments.⁵⁹ Extreme self-doubt produces moral catatonia. Integrity demands self-respect and willingness to risk.

None of this suggests that integrity is a paramount or all-encompassing virtue. Having integrity is no guarantee of moral perfection. A person of considerable integrity can be wrong about substantive principles, or applications of principle, even as he displays moral wisdom and the courage to stand by self-defining attitudes. Moral wisdom is persistently deficient and striving toward betterment inherently falls short. Lapses are inevitable and mistakes unavoidable. Yet, integrity makes morality sustainable in the face of these challenges.

While integrity is incomplete, it is a more comprehensive virtue trait than most theories suggest. Philosophers have debated whether integrity is one virtue among many or an overarching quality that encompasses all or most virtues.⁶⁰ Most have favored the former view that integrity leaves out some important moral virtues.⁶¹ The virtues of benevolence, altruism, kindness, and justice, for example, are not necessarily part of integrity, according to this view. At first sight, the theory presented here seems to support this position. For example, a person can seek moral wisdom through, and even with, another without necessarily acting with the purpose of benefiting the other. Integrity appears to include social virtues like benevolence and altruism secondarily, as a means to personal moral growth. Yet, the epistemic suspension that guides moral truth seeking also disposes the participant more toward altruistic conduct than purely selfish conduct, since epistemic growth thrives on empathy and openness to diverse perspectives. Although the driving force of these dispositions initially might be self-development, the process stimulates a benevolent attitude meaningful in itself.⁶² The other person has intrinsic value beyond being a resource for self-correction and enrichment. Otherwise the other's input could not persuade. Other people play a meaningful role in our own moral odyssey only because we recognize their intrinsic

59 Such commitments might not even be genuine if they are that much in doubt. See Kekes, *supra* note 16, at 510 (discussing constancy in the face of a challenge); Taylor, *supra* note 5, at 144 (discussing consistency as part of integrity). But see Raimond Gaita, *Integrity*, in *THE ARISTOTELIAN SOCIETY*, *supra* note 5, at 161, 161–62 (arguing that a confused mentally ill person, or person with cultural conflict, is nonetheless capable of integrity).

60 See, e.g., Peter A. French, *Integrity, Intentions, and Corporations*, 34 *AM. BUS. L.J.* 141, 141 (1996); Taylor, *supra* note 5, at 151–52.

61 See, e.g., HALFON, *supra* note 5, at 136, 155; Taylor, *supra* note 5, at 151.

62 This is not a theory of moral egoism that traces all apparently altruistic inclinations to broad self-interest, which includes feeling good about oneself.

sic worth and potential. Compassion and respect are uniform features of integrity.

Even more forcefully, integrity rules out interpersonal vices like unfairness and cruelty. These traits are simply inconsistent with being receptive to others. The person of integrity becomes endowed with the ability to recognize unjust treatment. This perceptual acuity moves the integral person to seek justice in the world as part of her journey toward a wiser and better self. This idea conflicts with the thinking of philosophers like John Rawls who exclude the virtue of justice from integrity.⁶³ Although integrity does not guarantee that a person will seek justice, a person of integrity has the wisdom and resources to coax her development toward a just sensibility. As eros is the search for knowledge loved in itself, erotic integrity is a search for justice as one component of goodness.

A critic might find elitist bias in this highly self-conscious view of integrity. History exhibits moral heroes who achieve goodness without perpetual effort, the objector might say. The portrait of morality sketched here seems labored, given the less complicated paths of some saints, mystics, and role models and considering societies where worldliness and sophisticated cross-cultural intercourse are not valued.⁶⁴ Aristotle, for one, believed that a person at the highest level of moral achievement operates more by habit and pleasure than constant self-examination and anguish.⁶⁵ The best exemplar, for Aristotle, is the person in whom struggle has subsided, who functions naturally and reflexively from deriving pleasure in the good.⁶⁶ Even moral common sense teaches us not to admire those who analyze each situation intricately or who suffer perpetual moral stress.⁶⁷ Contentment, not distress, marks the best of moral lives, according to this prevalent intuition.⁶⁸

63 See RAWLS, *supra* note 27, at 519–20.

64 The philosopher Owen Flanagan refers to some of Dostoevsky's peasant characters to make this point about self-understanding and morality. See OWEN FLANAGAN, *VARIETIES OF MORAL PERSONALITY: ETHICS AND PSYCHOLOGICAL REALISM* 143–44 (1991). Whether deep self-awareness is part of ethics depends on sociological and cultural conditions, according to Flanagan. See *id.*

65 See ARISTOTLE, *supra* note 13, bk. II, at 3.

66 *Id.*

67 See Susan Wolf, *Moral Saints*, 79 J. PHIL. 419, 424 (1982).

68 Cognitive Dissonance theory in psychology supports the view that people adjust conflicts to achieve internal comfort. See, e.g., Erwin Chemerinsky, *Protecting Lawyers from Their Profession: Redefining the Lawyer's Role*, 5 J. LEGAL PROF. 31, 32–34 (1980), reprinted in *THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION* 159 (Geoffrey C. Hazard et al. eds., 1985). Although normative ethics should not ignore moral psychology, a descriptive approach alone cannot address questions of what should be

In reply, the model of integrity presented here does not exclude contented figures despite its reflective orientation. The wholeness and constancy dimensions of integrity encompass those exemplars, since those who act with ease and pleasure have likely achieved a coherent and reliable moral character. Granted, the testing component of integrity is less active in Aristotle's habitually good person or Fodor Dostoevsky's "simple but godly" peasant.⁶⁹ This is because moral motivation has seeped into the general affect of such people. Fewer tests tend to arise over time with such sustaining motivation. The more ordinary person pursues many goals in life—some moral, some non-moral, and some conflicting. She does face temptations and decisions about priorities. Achieving integrity for that more ambivalent person does involve searching, although that process is not necessarily rationalized within formal conceptual frameworks. Even the lives of saintly figures reveal crucial stages, or at least moments, when conscientious effort and moral discipline assumed the forefront.

Saints aside, the theory presented here concedes that a typical moral life passes without frequent moments of stark conflict. A promise of moral truth is that the good and right are often evident, and people can realize their goodness without undue chafe. Still, vigilance plays a crucial role even within a mundane moral stream. At least sometimes, the occasions for significant moral growth are the very ones that do present tests. On the other hand, moral challenges are themselves sources of moral pleasure. Anguish has rewards as people feel satisfied upon emerging from a thorny moral dilemma, knowing they have exerted effort to do their best. Accumulated, these transforming experiences can produce happiness, if not ease.

As modern life casts a wider net, the testing aspect of integrity assumes greater importance for everyone. Moral attitudes are today more evidently pluralistic and conflicts loom more proximately. It may be harder under these conditions, although surely not impossible, to shape a life "of a piece" that finds happiness in moral goodness. Within complex cultures, where people play multiple roles in their work, social, and intimate lives, the space for confusion and fragmentation is large. While the idea of integrity as self-conscious struggle has distinctive cultural dimensions, the idea also straddles many contemporary boundaries.

done. At crucial times in moral life, however unusual, the tendency to avoid moral discomfort impedes moral development.

69 See FLANAGAN, *supra* note 64, at 143–44 (referring to Dostoevsky's moral evaluation of unsophisticated goodness).

V. LEGAL INTEGRITY—CHALLENGES AND HOPE

Is there truth to the popular suspicion that lawyers are unlikely to have integrity? Are lawyers doomed to lament this void in their professional lives? These questions haunt the profession. Although lawyers may be forlorn, they also have some distinguished potential for integrity, especially in the dimension of sensitivity to justice. For lawyers, integrity as a struggle for moral wisdom is a meaningful idea. As the legal ethics literature on "role morality" is large and familiar, I will not re-examine how the lawyer's "role" affects professional conduct.⁷⁰ I shall examine, instead, how the trait of legal integrity supports some preconceptions about lawyers.

The features of integrity that challenge lawyers more than other people, and even other professionals, are those of wholeness and constancy. By its very nature, representing clients involves promoting the goals of others, whether or not the attorney would personally endorse or even accept those goals.⁷¹ While a lawyer must not promote unlawful ends or engage in unethical conduct in representing a client,⁷² the value of client autonomy simultaneously cautions against paternalistic behavior and abuses of power in the professional relationship.⁷³ Lawyers sometimes suspend their values to represent others, and this estrangement may cut straight to the heart of integrity.⁷⁴ Even a lawyer with the fortune of a morally friendly practice faces difficult ethical choices of means. More crucially for her integrity, she cannot always pursue the kind of person she strives to be. A representative posture threatens to dilute personal integrity as an impetus to moral development.

Commentators and drafters of ethical codes agree, on the other hand, that lawyers are free to raise moral and other non-legal issues in their counseling roles,⁷⁵ and some have argued that this kind of dia-

70 See *supra* note 2.

71 Lawyers are guided by their ethical codes to follow the client's decisions about the objectives of the representation, provided those objectives are lawful and do not violate ethical regulations. See MODEL RULES OF PROF'L CONDUCT R. 1.2(a), (e) (1983); MODEL CODE OF PROF'L RESPONSIBILITY DR 7-101(A)(1), DR 7-102 (1980).

72 MODEL RULES OF PROF'L CONDUCT R. 1.2(e); MODEL CODE OF PROF'L RESPONSIBILITY DR 7-102.

73 See Pepper, *supra* note 4, at 630-32 (justifying lawyer partisanship as facilitating client autonomy through access to law); see also Thomas L. Shaffer, *The Practice of Law as Moral Discourse*, 55 NOTRE DAME LAW. 231, 237-39 (1979) (arguing that client autonomy can be threatened by lawyer deciding for client).

74 See JACK & JACK, *supra* note 2, at 34-36; Wasserstrom, *supra* note 3, at 8-9.

75 See MODEL RULES OF PROF'L CONDUCT R. 2.1.; SHAFFER, *supra* note 2, at 22, 26, 126; Pepper, *supra* note 4, at 630-32.

logue can salvage personal morality for the lawyer-advisor who may tap the best in a client.⁷⁶ Others have insisted that "role morality" is hardly unique to lawyers or more onerous than any role dictates, say those of parent or friend.⁷⁷ Some have reasoned that a lawyer who demands strict fidelity to personal values infringes client autonomy and behaves in ethically defective ways.⁷⁸ Do these responses dispel concerns that the wholeness and constancy dimensions of integrity are at risk for lawyers?

Starting with the impact of client autonomy on legal integrity, there is no inherent reason why promoting the self-determination of others threatens a lawyer's own autonomy. The person of high integrity openly approaches another person both as a resource for personal evolution as well as a being of intrinsic worth. The other's autonomy enriches one's own. It only diminishes integrity if it leads a person to discard her own well-considered ideas and casually integrate the other's flawed input. Then epistemic balance tilts too far toward the skeptical end of the spectrum. At the level of action, crediting the client's autonomy can become servility to the client's aims.⁷⁹ The conventional view of lawyers as "empty vessels," who reflexively implement clients' lawful but morally questionable goals, is truly antithetical to legal integrity. When lawyers are glibly loyal as part of "doing their job," they risk corruption. They forego the personal engagement that characterizes an integral approach to decisionmaking. "Am I the sort of person who could do this?" and "Could I face the mirror comfortably?" are questions crucial to moral identity that lawyers may suppress.

Yet, the agnostic approach to representation may itself be morally justified. Ethics literature explores dangers of paternalism in the lawyer-client relationship, even by those critical of client autonomy as a paramount value.⁸⁰ Asymmetry of knowledge and power in the pro-

76 See, e.g., Loder, *Out from Uncertainty*, *supra* note 6, at 139–42; Pepper, *supra* note 4, at 630–32; Shaffer, *supra* note 73, at 244–48.

77 See, e.g., Virginia Held, *The Division of Moral-Labor and the Role of the Lawyer*, in *THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS*, *supra* note 4, at 60, 66–67 (arguing that most morality is role-based); Serena Stier, *Legal Ethics: The Integrity Thesis*, 52 OHIO ST. L.J. 551, 562–64 (1991) (arguing that morality is not comparable in factually different contexts).

78 See, e.g., Stier, *supra* note 77, at 570–71 (arguing that the proper boundary between a lawyer and a client prohibits the intrusion of the lawyer's morality).

79 See HILL, *Servility and Self-Respect*, *supra* note 58, at 11 (arguing that the servile person disrespects her own moral status).

80 See, e.g., SHAFER & COCHRAN, *supra* note 2, at 50 (noting "danger of domination" in moral discourse). See generally Shaffer, *supra* note 73.

fessional relationship aggravates risks of professional imposition.⁸¹ The theory of moral integrity presented here reinforces rather than disregards those cautions. Conceiving integrity as the epistemic suspension of skepticism and truth supports intuitive distaste for “imposing” morality on another.⁸² Both imposition and uncritical absorption are flawed. Moral wisdom involves scrutinizing the ideas that human interactions expose. So far, legal representation of another’s ends is quite compatible with integrity.

The real risk to integrity is that connections to clients will lose their identity-conferring quality. The person of integrity strives toward a fuller personal ideal in relationship to others who enlarge the moral universe. What another person values and does can challenge the identity of an integral person. The moral self is at stake in genuine encounters, whereas it may be dormant in asymmetrical interactions. Professional relationships are easily divested of their moral quality and potential.

The conviction that clients’ desires and goals are private business may appear open and humble. Like other virtues, however, humility can be excessive. The lawyer who evaluates client’s ends for minimal lawfulness and compliance with ethical regulation may take her role to demand facile tolerance and moral agnosticism. She labors under an impoverished epistemic dichotomy between absolutism and relativism. For some good reasons related to client empowerment, legal culture instills more wariness of professional absolutists than relativists. Yet, the lawyer absolutist is a “straw” enemy. The caricature is a set up because it lacks, at the outset, any redeeming features. Even the choice of the term “absolutist” is inflammatory and connotes extremism that few actually defend. Absolutists are those rigid folk who demand universal and exceptionless answers to moral questions. They have little compunction about foisting their views on others who are not in a position to resist. Such absolutists ignore the empirical truth that moral judgments vary enormously. The absolutist also errs normatively. She commits the twin sins of arrogance and dogmatism in assuming the correctness of her own positions and reflexively disapproving those with which she cannot agree. This absolutist picture is far removed from the typical lawyer, who inclines more toward skeptical imbalance than most people. Intolerance is a grave sin for those

81 See Pepper, *supra* note 4, at 615–16 (identifying imbalances of professionalism related to expertise and technical language).

82 My students often express concern with lawyers “imposing their values” on clients. Sometimes their fear leads them to conclude that lawyers should not even discuss moral matters with their clients.

paid to do a client's bidding. The lawyer may find solace in absolutist hyperbole to justify untempered advocacy, but the price may be integrity.

The lawyer fleeing absolutism also faces logical problems. She judges the truth seeker with tacitly privileged standards. In condemning judgmental lawyers as intolerant and power hungry, the skeptical lawyer elevates tolerance while claiming to reject the primacy of any normative standard. That lawyer also has difficulty representing a dogmatist client. Paradoxically, her tolerance prompts her to pursue the ends of the intolerant client.

The lawyer is right in valuing tolerance and understanding as antidotes to oppression and cultural myopia. She simply fails to recognize that these values depend upon judgment being constrained. Otherwise, the ideals have no claim on those who do not already share them. By taking seriously the tension between skepticism and truth, and by aiming for epistemic equilibrium appropriate to each situation, the lawyer cultivates valuable resources both for assessing and receiving a client's input. While assessment need not lead the lawyer to dominate the client from a posture of rectitude, this is always a temptation. The lawyer of integrity needs to combine moral searching with solicitation for assessment. The integral lawyer believes affirmatively in moral truth, yet is humble about certitude.⁸³ She knows that moral judgments need not be universal, exceptionless, or amenable to proof to be confidently true, but must be justified as the best timely, local solution.⁸⁴ This reserve of humility is even more virtuous in the representative capacity than ordinarily.

The moral dialogue model of lawyering is not merely morally permissible, but is at times morally required for the lawyer of integrity.⁸⁵ Dialogue is an imperfect but effective way to test convictions. When lawyer and client disagree, both should invite uncertainty. Yet, operating from special obligation and advantage, the lawyer should be more

83 See, e.g., *supra* notes 20–21 and accompanying text.

84 Nussbaum, *supra* note 32, at 257 (discussing her finding that particular decision absolutely right for particular context); see also Loder, *Out from Uncertainty*, *supra* note 6, at 105 (allowing for ideas better justified, although not necessarily certain or universal).

85 This argument takes dialogue beyond existing regulatory codes of ethics, which permit moral dialogue but do not mandate it: "In rendering advice, a lawyer may refer not only to law but to other circumstances such as moral, economic, social and political factors, that may be relevant to the client's situation." MODEL RULES OF PROF'L CONDUCT R. 2.1 (1983) (emphasis added). "In assisting his client to reach a proper decision, it is *often desirable* for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible." MODEL CODE OF PROF'L RESPONSIBILITY EC 7-8 (1980) (emphasis added).

open than the client to what the other has to teach. Stifling such input would thwart moral growth and cut off possibilities for legal integrity as wholeness, authenticity, and wisdom.

It is cowardly and uncaring to be passive about the moral development of the client.⁸⁶ The client's integrity depends on the process she has chosen to affirm her identity. Even if she appears in consultation not to notice that these choices will contribute to her character, she may care on some level. She may welcome affirmation from her professional advisor that the law has personal consequences. Good advocacy always leads the lawyer to address the non-legal implications of legal decisions. This scope of concern encompasses the client's integrity.

The lawyer's integrity is reciprocally relevant. The dialogic model of lawyering that ethicists commend as having a tempering role also shapes legal character. Integrity buds if the lawyer treats dialogue as a search for truth. For lawyers, saintly and natural integrity is virtually unattainable. Struggle is a realistic legal model, given inherent strains on the constancy and wholeness of a lawyer's character. The lawyer must call upon her core sense of self, even as she opens herself to the client's perspective. She should not smother her moral identity with the ideology of autonomy and loyalty.⁸⁷ Despite extraordinary duties of openness, a lawyer is finally not free to overlook core moral disagreements because she will act for, not merely tolerate, the client. No matter what legal ideology teaches about impersonal roles, at least two moral personalities are vulnerable in the professional relationship. A lawyer must work especially hard to develop her integrity as clients project their aims upon her. If lawyers pursue undesirable human traits, they ultimately absorb those. Such forces exact great strength and vigilance from a lawyer of integrity, especially because legal institutions may not provide adequate support and formal ethical requirements constrain choices.⁸⁸ Legal representation is capable

86 See SHAFER & COCHRAN, *supra* note 2, at 42-43, 46-48, 77 (describing lawyers as friends caring for the kind of person a client becomes).

87 I recently attended a conference on professionalism that included practicing lawyers and judges. Several lawyers noted that some clients enter the professional relationship with expectations that their lawyers will do all it takes to win the case. Thus, the lawyer begins the relationship having to correct misunderstandings about role. All of this can set ethical progress back several steps.

88 For example, lawyers must seek the court's permission to withdraw from representation if trial is underway or imminent, and they must minimize prejudice to a client even if they receive permission. See MODEL CODE OF PROF'L RESPONSIBILITY DR 2-110(A)(1), (2), (3); MODEL RULES OF PROF'L CONDUCT R. 1.16(d).

of causing extreme harm and pain.⁸⁹ The lawyer who uses words and deeds to foster the client's position is not a passive facilitator, but an actor in a morally charged field. Still, lawyers are comfortable targets of hatred within a society that deceives itself about its own values and character. It is easier to hate a lawyer than to face aggression and selfishness in oneself.

For all of these reasons, the equilibrium that defines integrity is far more delicate for lawyers. Asymmetry in the lawyer-client relationship means that a lawyer must be especially open and humble, while the inauthenticity of representation imposes extra duties to avoid moral quiescence. The virtues that usually work harmoniously to support integrity are skewed in the legal role. For a lawyer, humility toward the client generally should dominate. To any person of integrity, however, commitment and dedication to truth are necessary counterbalancing ideals. Although integrity always involves struggle among these warring propensities, the tension rages more vigorously in the lawyer of integrity. For all of these reasons, lawyering does not naturally facilitate lawyer integrity, but poses threats.⁹⁰

The good news is nonetheless considerable for lawyers who do nurture integrity. Each temptation is at once an occasion for growth. Each caution is a call to conscientious reflection. A lawyer reaching for moral wisdom has unusual opportunities to enlarge perspective through exploring the moral personalities of others. Over time, this can enhance altruistic motivations and respect for the intrinsic worth of every person. In consciously trying to appreciate new perspectives to improve legal effectiveness, the conscientious lawyer regularly exercises moral skills like empathy, imagination, and critical judgment. These personal and interpersonal skills build fruitful relationships, and they also heighten sensitivity toward injustice in ways that can be legally as well as morally helpful. Ideally, connecting with clients promotes sympathy and compassion that propel the lawyer motivationally, and thus sustainably, toward helping action.⁹¹ The lawyer can incorporate the ability to recognize and correct injustice into her distinctive integrity. On all but the most positivist notions of justice, this perceptual and affective equipment is invaluable.

89 See, e.g., Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601, 1608, 1615 (1986) (discussing interpreters of law inflicting harm without usual inhibitions); Richard A. Matasar, *The Pain of Moral Lawyering*, 75 IOWA L. REV. 975, 978, 981 (1990) (discussing lawyers manipulating and participating in wrongful conduct).

90 See *supra* notes 35–36, 71–74 and accompanying text.

91 See *supra* notes 20–21 and accompanying text.

Other legal skills also thrive with integrity. The highly contextual nature of legal deliberation requires active practical judgment.⁹² Yet, situational variation does not preclude truth. Particular factors render moral decisions discernibly better or worse for each context, and integrity inclines the lawyer to strive for that Aristotelian mark on each occasion. For excellent lawyers, fine tuning is a stock-in-trade. Since technical scrutiny is habitual, moral scrutiny can become so. A lawyer who takes her role as a given is rather like an economist who assumes the fixity of individual desires and then accepts those as the proper measure of preference satisfaction.⁹³ As the economist avoids evaluating the normative character of desires, the lawyer too easily accepts prepackaged roles, bypassing personal accountability for reshaping role expectations. A person who acts on desires is in some sense responsible for having those desires.⁹⁴ The lawyer who rests on conventional appeals is partly responsible for perpetuating those conventions. Professional frameworks are dynamic and altered, even slightly, by each person who operates within them.

Lawyers are responsible for their professional characters, although collective expectations shape professional identity as much as historical and cultural forces influence personal character. We commonly treat individuals as capable of evaluating and revising some of their traits through concerted effort over time, even as we acknowledge some shaping forces beyond their direct control. Parole boards sometimes reduce the punishment of prisoners who manage to reform their propensities toward violence, and people praise those who shed a character flaw like procrastination through practicing greater self-discipline. These approbations invoke the shared belief that people are responsible for who they are and aspire to be, as well as for what they do. Having integrity means taking charge of influences on core identity. The lawyer of integrity evaluates and, if necessary, attempts to reshape the legal institutions that constrain professional character.

92 Nussbaum, *supra* note 32, at 257 (arguing that contextual analysis is compatible with absolute and objective decision).

93 See Robert Erikson, *Descriptions of Inequality: The Swedish Approach to Welfare Research*, in *THE QUALITY OF LIFE*, *supra* note 32, at 67, 78 (criticizing the method of taking people's own evaluations of their standard of living because of lowered aspirations and adaptations); Thomas Scanlon, *Value, Desire, and Quality of Life*, in *THE QUALITY OF LIFE*, *supra* note 32, at 185, 188–89 (comparing unfavorably the deference to preferential judgments about improving quality of life with the contrasting methods of judging well-being).

94 See Frankfurt, *supra* note 34, at 70, 73 (including freedom of will in the choice of what one wants to want).

Virtue and action are not severable, and fostering integrity involves reflecting critically on professional conduct. Once pressed into a difficult moral choice, any person has a duty to examine how the morally problematic context arose and how to avoid future temptations that could instill patterns and habits. Being a lawyer only enhances these duties. A lawyer might prevent problems by exercising greater caution in accepting a client, by more vigorously discussing case and task assignments with supervisors, by engaging in earlier and more penetrating conversations with the client, or even by reevaluating basic choices about where to work and what kind of law to practice. These duties of prevention should not, however, lead the lawyer to shun moral challenges and complexity. Difficult situations can be important occasions for growth despite, and even because of, the distress they cause. A lawyer cannot simply appeal to a legal world she had no hand in making. Nor can she rest on the overall justness of the legal institutions in which she plays a part. Each time a lawyer ratifies morally problematic features, she bears some personal responsibility for continuity.⁹⁵ Over time, she becomes responsible for being a person disposed to act in professionally scripted ways. While integrity involves overall propensities, the patterns emerge from the details of daily living. Each day presents lawyers with challenges to personal balance, harmony, humility, courage, and searching for moral wisdom.

Someone might object here that a lawyer so concerned with individual integrity is self-indulgent.⁹⁶ Some philosophers have suggested that preoccupation with integrity is narcissistic and self-defeating, in

95 That more than one person bears moral responsibility for a situation does not necessarily diminish each person's share. See JOHN SABINI & MAURY SILVER, *MORALITIES OF EVERYDAY LIFE* 60–61 (1982) (discussing the Milgram Experiment as an example of a situation where one person claims responsibility for an action, but his confession does not absolve other actors of their personal responsibility).

96 Thomas Hill has tackled this potential objection to a moral purist's reluctance to commit an evil act to avoid an act of greater evil done by someone else. See Thomas E. Hill, Jr., *Moral Purity and the Lesser Evil*, 66 *MONIST* 213, 214 (1983) (examining the Purist and Pragmatist viewpoints in an effort to determine the "proper attitude toward one's own moral record"). Hill does acknowledge improper, "self-concerned" motives for such resistance: wanting to be superior to others; seeking to avoid personal discomfort; and refusing to grapple with complex moral problems. *Id.* at 229. Nonetheless, Hill argues that a person's desire to do the right thing and to avoid harmful relations with others can be proper motives for "purist" concerns with integrity. *Id.* at 230. Hill concludes that special concern with one's own integrity makes sense and does not necessarily involve arrogance or "self-preoccupation." *Id.* at 229–30; see also Taylor, *supra* note 5, at 154 (distinguishing self-indulgence from commitments that involve moral identity).

that adopting integrity as a conscious goal makes it impossible to achieve.⁹⁷ A plausible response has some relevance for the lawyer. A person suitably concerned with integrity does not seek integrity for its own sake. Rather, he discovers himself unable to do certain things and compelled to do other things simply because of the kind of person he is.⁹⁸ His personhood is recalcitrant. Integrity is a byproduct of the commitments that comprise personal identity. It is still poignant to warn lawyers of preoccupation with integrity, however. The parallel between general and legal integrity is not complete. Whereas the ordinary person is free to pursue personal commitments, an objector might persist that the professional has external duties that transcend duties to self.⁹⁹ Worse than self-indulgent, the lawyer who makes decisions to enhance personal integrity risks violating oaths of professionalism and duties to clients. In joining the profession and accepting its privileges, the objector might conclude that the lawyer renounces some luxuries of personal moral development.

This argument rightly acknowledges that sacrifices are necessary to serve clients well. Yet, it frighteningly implies that a trait as formative to moral identity as integrity may be a "cost" of choosing to be a lawyer. This view is debilitating if legal integrity encompasses virtues of justice, as argued here. Lawyers' professional vows do not obligate them to forsake their own moral development, which distinctively includes ideals and skills for justice. Disengagement may tantalize because it appears to make professional life less painful. It is important to validate an account of professionalism that does not cast integrity aside so easily.¹⁰⁰ Seeking justice, and not zealous advocacy for its own sake, ultimately defines a lawyer's role. This commitment opens pathways toward moral wisdom through interpersonal connection that are crucial components of integrity. The lawyer cannot invoke prefabricated ideologies to avoid deliberating. Vigilant reflection on the ideologies themselves is crucial.

97 See, e.g., BLUSTEIN, *supra* note 5, at 84–85 (discussing possible "self-subverting property of integrity" when one is preoccupied with having integrity (emphasis omitted)).

98 See Taylor, *supra* note 5, at 155 (describing integrity as the "relation between a person and his actions").

99 See Stier, *supra* note 77, at 591 (noting that lawyers are *prima facie* bound to follow the law governing legal practice).

100 This is a heuristic argument based on the capacity of an ethical theory to assist a person in living life well. See DICTIONARY OF PHILOSOPHY 126 (Dagobert Runes ed., 15th ed. 1960) (defining heuristic as "[s]erving to find out, helping to show how the qualities and relations of objects are to be sought"). Such an argument is not demonstrable but is useful in interpreting and coping with experience. See *id.*

VI. LEGAL INSTITUTIONS AND INTEGRITY

Individual lawyers have the relentless duty to examine their local and general professional environments for conduciveness to personal integrity. Legal integrity is inherently a social phenomenon since lawyers typically work in interactive settings within structured and hierarchical legal institutions. Even solo practitioners work within institutional structures such as courts. Although individual lawyers ultimately are responsible for their own character, their work environment inevitably influences their identities. If that milieu expresses the dominant ideological tenet of moral agnosticism, lawyers will tend to be oriented toward that model and away from a more searching stance. Prevailing legal culture drifts toward the distorting pole of skepticism in the "empty vessel" view of lawyering because scrutinizing the client's aims is uncomfortable and uncompetitive.¹⁰¹ Legalistic oblivion receives support from the ideological commitment to client autonomy the profession too often accepts ritualistically. The much lamented emphasis on law as business also saps lawyers' reflective powers. Lawyers often take for granted that only deference can build a profitable client base. These institutional forces all conspire to sabotage integrity. Individual lawyers must exert conscious efforts to transform this institutional framework if the epistemic equilibrium conducive to integrity is to survive.

If lawyers as a group aspire to reform the features that curse professional integrity most, the profession needs to lend a critical eye, and each individual should participate in this auditing for integrity. Recently, commentators have investigated structural conditions that affect lawyer behavior in law firms, the court system, and legal education.¹⁰² They have focused on the commercialization of law as a business,¹⁰³ the impacts of legal institutions on practical reasoning,¹⁰⁴ and

101 See Loder, *Moral Skepticism*, *supra* note 6, at 55–56.

102 See, e.g., KRONMAN, *supra* note 2, at 165–352 (examining law firms, the judiciary, and legal education); Stephen Gillers, *The Case of Jane Loring-Kraft: Parent, Lawyer*, 4 GEO. J. LEGAL ETHICS 115, 117–28 (1990) (examining law firm work ethic); Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 30–68 (1988) (examining the institutional conditions affecting the independence of lawyers of corporations); Robert L. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 STAN. L. REV. 503, 509–21 (1985) (examining large Chicago law firms).

103 See, e.g., KRONMAN, *supra* note 2, at 274, 277–78, 284–85, 304, 314 (considering economic pressures as increasing firm size, specialization of work, competition among firms for client business, working hours, and describing a shift in practice as corporations rely more on in-house counsel and decreasing internal firm loyalty and stability of membership); see also Gordon, *supra* note 102, at 31–33, 54, 60–61, 63 (considering

the legal work ethic with its all-consuming demands on lawyers' time, energies, and commitments.¹⁰⁵ These phenomena inevitably constrain the conduct and values of lawyers. Young lawyers, in particular, develop enduring habits within hierarchical institutions and absorb institutional norms.¹⁰⁶ Both new and more established lawyers look to legal systems to justify their decisions and actions.¹⁰⁷

A. *Legal Culture and Integrity*

Existing literature does a fine job identifying contemporary problem features of the law firm like the following: the billable hour system;¹⁰⁸ the tensions between current litigation practice and family and personal life;¹⁰⁹ the harms to law and society that stem from severing lawyers from their personal commitments and cherished avocational pursuits;¹¹⁰ the effects of specialization on lawyers' abilities to counsel clients actively and holistically;¹¹¹ and the effects of firm struc-

similar factors of change, in addition to emphasizing the demands of large corporate clients).

104 See, e.g., KRONMAN, *supra* note 2, at 21 ("The common law lawyer instinctively mistrusts abstract speculation.").

105 See, e.g., *id.* at 300–07 (discussing the self-imposed and firm imposed motivations for working long hours on the one hand and the personal toll taken to meet those demands on the other); Gillers, *supra* note 102, at 121, 123, 125 (discussing the compromises and sacrifices that lawyers are forced to make for the sake of their careers); Gordon, *supra* note 102, at 59–63 (stating that the demands of corporate clients turned private legal practice into a full-time occupation with increasingly burdensome demands on lawyers).

106 Frequent conversations with students and former students lead me to conclude that today's young lawyers are probably less resistant to firm culture and values because they face a fiercely competitive job market, which presents fewer choices for initial jobs and less future job security. This market, combined with the increased educational debt of recent law graduates, affects the ability of young lawyers to exert autonomy in the workplace.

107 See, e.g., Luban, *supra* note 4, at 85–87 (criticizing the use of "institutional excuses" by lawyers to justify conduct that would otherwise be unjustifiable outside of that role).

108 See, e.g., KRONMAN, *supra* note 2, at 302–07 (finding that increases in mandatory billing hours constrain life experience and reduce opportunities for the happiness of associates).

109 See *id.*; see also Gillers, *supra* note 102, at 128 (discussing family pressures, particularly on female associates).

110 See *supra* note 102 (citing commentators who have investigated the structural conditions within the legal profession that force lawyers to make personal sacrifices).

111 See, e.g., KRONMAN, *supra* note 2, at 288–89 (specialization reducing individual lawyer's chance to see client's problem as a whole); Gordon, *supra* note 102, at 53 (stating that specialized "one-shot transactions" are reducing long-term trusting relationships).

ture on lawyers' opportunities to engage in moral dialogue with clients and to challenge questionable ethical conduct within firms.¹¹² To these targets could be added the corrosive effects of corporate policies like employment at will on lawyers' loyalties and willingness to stand by members of a firm, or to identify with "the character" of the firm itself.¹¹³

Benefiting from such useful critique, the time may be right to examine law firms not as bad places but as barren places.¹¹⁴ Many modern firms discourage unethical behavior to avoid disciplinary actions, legal sanctions, and loss of reputation. Yet, misbehavior is less a problem in many firms than the problem of ethical winter.¹¹⁵ This is a kind of hibernation of the soul. In the throes of winter, a person is estranged from the affective apparatus that spurs moral reflection. She loses the moral motivation to reflect even though she retains the necessary cognitive powers. Her moral imagination shrivels because she is drained of an erotic passion to test morally difficult situations by glimpsing the world of others, particularly those affected by her acts.

112 See, e.g., Nelson, *supra* note 102, at 533–34 (referring to the author's study showing few lawyers giving non-legal advice that raises moral or social issues). Some recent students are incredulous when their peers declare their intention to resist unethical conduct by legal supervisors. The skeptical ones view this as professional suicide at a time of slim options because of market and debt pressures. The students' apprehensions about getting and keeping a job appear to have some basis in fact since lateral movement between firms is now common, and relationships of lawyers within firms are more transitory. See KRONMAN, *supra* note 2, at 277–79.

113 An associate challenged "at will" employment in his New York law firm. See *Wieder v. Skala*, 593 N.Y.S.2d 752, 753 (Sup. Ct. 1992). He asserted that his firm had fired him for insisting that firm partners report the ethical misconduct of another associate, pursuant to a lawyer's reporting obligation under the relevant provision of the MODEL CODE OF PROF'L RESPONSIBILITY DR 1-103(A). *Id.* Although the New York Court of Appeals did not find wrongful discharge or alter its established "at will" doctrine for lawyers, it did uphold the associate's breach of contract claim, reasoning that the firm and associate impliedly agreed to comply with ethical rules governing the legal profession. See *id.* at 755–57. It is an institutional shortcoming that the associate found no ethical support within the firm and felt forced to publicize his distress.

114 I am indebted to a former student with astute powers of perception for revealing some painful realities of an initiate in a highly respected large law firm in a major urban area. (To protect the professional standing of this student, I am not providing a name.) The observations of lawyers whose judgments I trust, combined with my own observations of law firm culture, have influenced my view of law firm barrenness.

115 Even some lawyers who pride themselves on professionalism find some dose of so-called "hardball" at least occasionally useful and justifiable. See, e.g., Robert L. Haig & Robert S. Getman, *Does "Hardball" Litigation Produce the Best Result for Your Client?*, N.Y. St. B.J., Jan. 1993, at 24, 28 (arguing that "hardball" sometimes is the best method, although not the only available option).

Her empathy atrophies. She avoids confronting moral ambiguity to make work more bearable. Eventually, she stops recognizing moral ambiguity even as she wallows in its legal counterparts. Moral anguish no longer accompanies complex decisions, although the residue of suppressed distress may fill her with amorphous disaffection and even self-contempt.

In a world of law firm accouterments and comforts, where time is scarce, and the young and the bright are enticed, one may wonder whether the very capacity for moral wisdom evaporates. Those who inhabit this world may never do wicked things, and they may even contribute to societal good, in pro bono work, for example. But even good works have their price if they invite ethical complacency. Authentic ethical reflection must arise from an ever-searching heart. The longing for personal betterment fades without tending. Like the ring-necked pheasant who stopped circling the tree with the advent of autumn chill, the lawyer abandons the already fragile chance for integrity as her moral yearning withers.

The lawyer who suppresses moral scrutiny can fall prey to a kind of self-loathing that those with integrity can resist. By ignoring early dissonance, a lawyer suppresses her moral identity instead of silencing it. She may overcome alienation by subtly reshaping who she is as a person. Incrementally, these changes are almost imperceptible. This is human character in moral drift.¹¹⁶ Although personal change can signify moral progress, not all fluidity is compatible with integrity. Moral development emerges from braving the discomforts of self-scrutiny. It arises from caring about personal betterment and moral knowledge. Self-protective maneuvers produce dissonance and alienation instead. Eventually, the lawyer adapts to avoid discomfort and remove moral impediments. Instead of humble, she becomes servile.¹¹⁷ What was at first professional inauthenticity slips into a newly authentic, lesser self. Self-loathing emerges because squelching the moral self leaves lingering guilt and regret. Alternatively, the lawyer might deceive herself about her motives and suffer from haunting bad faith.¹¹⁸ This condition can freeze into a habit of mind to which vigi-

116 Some moral psychologists have identified moral drift in decisionmaking and conduct. John Sabini and Maury Silver, for example, discuss the famous 1960s Milgram Experiment in social psychology as illustrating how ethical problems compound incrementally, making extraction increasingly difficult. See SABINI & SILVER, *supra* note 95, at 64, 70.

117 See generally HILL, *supra* note 58 (discussing the moral objections to servility).

118 See Haig & Getman, *supra* note 115, at 28 (noting that "hardball becomes a habit"); see also SISSELA BOK, LYING: MORAL CHOICE IN PUBLIC AND PRIVATE LIFE 60 (1989) (noting that lying is made easier by each lie).

lance poses a threat. A submerged form of generalized disaffection might result. Professional life might not even seem so bad—only arid. The price of stunted integrity is barrenness on some profound level.

A lawyer without self-respect cannot respect others.¹¹⁹ On the view of integrity presented here, the motivation to reflect is linked to input from others. Closure can hardly be in the client's interest even if the client cares little about her lawyer's respect. The theory presented here depicts the ideal moral agent in delicate equipoise between moral skepticism and truth and receptive to new perspectives in a search for moral wisdom. The urge toward moral development, toward becoming a better and wiser person, leads to caring for and about others. Integrity essentially involves multi-faceted caring about the person one becomes, the process of becoming, and those who invite enhanced insights.¹²⁰

It is plausible to question whether this orientation is fundamentally incompatible with the practice of law. Adversarial representation favors pre-selected interests, and the fee arrangement belies genuine connection. On these stunted terms, caring is at least harder to come by, and a moral skill like empathy can be perverted into a strategic tool for deciphering and manipulating people.¹²¹ It is not sufficient morally or legally to develop interpersonal skills. Both the moral quality and legal effectiveness depend upon how the skills are used. The most constructive response to such hazards is not despair over the inherent evils of law practice, but an alert and cautious eye. In the end, the practice of law does not portend the death of integrity—only its endangerment.

119 See Thomas E. Hill, Jr., *Self-Respect Reconsidered*, in DIGNITY, CHARACTER, AND SELF-RESPECT 117, 117 (Robin S. Dillon ed., 1995).

120 The ability to respect others depends in part on having respect for oneself. For example, Professor Thomas E. Hill, Jr. argues that self-respect involves appreciating that one is an autonomous agent who has moral interest in forming and perfecting personal values. See generally Hill, *supra* note 119 (arguing that appreciation of one's capacity to form perfect moral values is essential in the development of self-respect). By appreciating that capacity in oneself, a person acquires a basis for appreciating that others have rights related to their human capacity for autonomy. See *id.*

121 Empathy is the capacity to conceive a situation from another's point of view, as if the perceiver actually adopted the stance of the other. See Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations To Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1271 (1993) (noting that "empathy has been broadly defined as 'understanding the experiences, behavior and feelings of others as they experience them'"). Generally this appreciation will generate sympathy and respect, but this is not inevitable. Glimpsing another person's experience also could provide information useful against that person.

In some evident ways, the state of ethical winter liberates the lawyer and enhances craft: suspending integrity is tantalizing. Tangible gains may benefit clients who have no ongoing association with the lawyer and no reason to challenge the quality of representation. Lost integrity particularly advantages clients with unfair ends, since integrity enhances the desire and capacity to promote justice.¹²² Even on a reputational level, ruthless disregard for integrity might secure a lawyer some gainfully crippling distance from other lawyers, judges, and lay opponents who have experienced that lawyer's wrath and prefer to avoid it. Some practitioners' instincts about these advantages of playing "hard ball" are not entirely wrong, as much as legal ethicists hate to acknowledge this. Yet, a client still loses overall by being deprived of his lawyer's fullest commitment, care, and respect.¹²³ The client also suffers from the potentially deleterious effects on the professional relationship of the lawyer's self-deception and even self-hatred.

Institutional attention to the structural conditions that make integrity possible may retrieve the professional respect that dwindles with disintegration.¹²⁴ Lawyers attuned to autonomous ethics are assets because of their abilities to recognize and take seriously ethical issues. Ultimately, integrity promotes the altruism and sense of justice that converts the lamented business of law into service.¹²⁵ This is good for business by building a loyal and motivated work community and a high reputation. Such thoughtful and self-respecting lawyers are less prone to the rising and generalized dissatisfaction that infects law practice today.¹²⁶ Loyalty is financially, as well as morally, important because treating lawyers as fungible and expendable poises them

122 See *supra* notes 43–45.

123 See Ogletree, *supra* note 121, at 1274–75 (1993) (arguing that empathy enhances a lawyer's skills in problemsolving for her clients).

124 An American Bar Association study reveals that associates, as well as many older lawyers, are dissatisfied with their professional lives. See YOUNG LAWYERS DIV., AM. BAR ASSOC., 1990 THE STATE OF THE LEGAL PROFESSION 81 (1991) (“[Dissatisfaction] is now reported in significant numbers by lawyers in all positions . . . in firms of all sizes.”). The surveys employed covered such issues as work load, interest and meaningfulness of work, and time left to pursue personal interests. See *id.* at 1. The surveys did not directly canvass lawyers on their ethical comfort levels. See *id.* If integrity is essential to self-respect, and law practice creates some conditions inimical or at least hostile to integrity, some of the widespread lawyer disaffection may have ethical roots.

125 See *supra* notes 43–45 (discussing the relationship between integrity and justice).

126 See *supra* note 124 (making reference to widespread lawyer dissatisfaction).

to flee with a potentially profitable client base.¹²⁷ Stability also matters to continued business health since the supply of new lawyers may dwindle as the profession becomes less secure and less attractive. Although this projection may seem unrealistic given the notorious “glut” of lawyers, one recent report states that only three percent of college freshmen express interest in studying law.¹²⁸ Despite the general convergence of ethics and corporate self-interest, however, firms must foster integrity to withstand the inevitable times when the business gains are not clear.

To cultivate an integrity-conducive environment, law firms could institutionalize regular and deeper dialogue on current and potential ethical problems.¹²⁹ Partners could invite ethicists to lead these discussions or avail themselves of firm members most versed in ethical analysis.¹³⁰ Some firms already have instituted ethics training and formal screening mechanisms, such as ethics committees or persons designated as ethics advisors.¹³¹ While these measures help to avoid damage from lawyers who do not comply with ethical rules,¹³² they

127 A *Newsweek* report states that the risk of being laid off causes workers to assess alternatives on a regular basis: “If you can’t count on Coca-Cola to keep providing your paycheck, why not consider that offer from Pepsi?” Daniel McGinn & John McCormick, *Your Next Job*, NEWSWEEK, Feb. 1, 1999, at 43, 44.

128 See *id.* at 45.

129 Some corporations have instituted active approaches to ethical inquiry and claim to be pleased with the results. The Chairman of Salomon, Inc. of New York, Robert Denham, had this to say on the subject: “The single greatest ethical concern facing any large financial institution is to instill in each employee a sense of personal responsibility to actively seek out ethical questions and to confront them candidly.” *Lawyers Share Views on Ethical Concerns for In-House Counsel*, NAT’L L.J., Aug. 30, 1993, at S16. According to Denham, Salomon has done the following: provided clear policy statements obligating employees to adhere to the highest ethical standards; instituted a “compliance committee” to receive employee communications on ethical issues; required employees to certify compliance with company policies on ethics; and increased ethical training for employees. *Id.* at S17. Some lawyers have urged law firms to institute such measures. See, e.g., Marvin L. Karp, *Some Reflections on Change—and Professionalism*, BRIEF, Summer 1995, at 9, 11 (urging firm members to instill the importance of ethics and professionalism in young associates and to encourage associates’ questions). Of course, such corporate measures may be mere window dressing, or worse, be employed to control employees through information gathering and retaliation.

130 Ethics teaching need not be confined to professional ethicists or philosophers, but teachers should be acquainted with systematic moral reasoning to avoid conducting casual discussions that rest with the opinions of discussants.

131 See Jonathan M. Epstein, *The In-House Ethics Advisor: Practical Benefits for the Modern Law Firm*, 7 GEO. J. LEGAL ETHICS 1011, 1039 (1994).

132 See *id.* at 1034, 1036 (stating that ethics committees can help reduce the risk of legal malpractice).

have not tended to spawn broad ethical dialogue that prompts discussants to examine the underlying morality of their acts and impacts on their integrity. Such broader emphasis even might appear antithetical to business interests, as it takes time from already grueling work expectations. Worse, a reflective approach might appear subversive on the theory that an inquiring lawyer is less likely to be a follower and a passive conduit of firm culture. Of course, the most disturbing possibility is that deep reflection is inimical to law practice as we know it.

If lawyers perceive ethics education and consultation as little more than prudential risk-management devices for firms, such efforts are not likely to affect ethics at the level of internal motivation. Without genuine care for integrity and moral improvement, ethics itself takes on an "instrumental" cast and becomes one more extrinsic goal in an array. It thus becomes easy to sacrifice ethics and the prospects for justice at times when some other objectives seem more pressing. Ethical positivism and "cost-benefit" ethics haunt legal workplaces.

A broader and deeper approach to institutional ethics is not sufficient, however. Enhanced opportunities for ethical deliberation must include genuine possibilities for action. Lawyers should be empowered to decline the relatively rare cases that cannot be morally rehabilitated with attention. Each lawyer, no matter how fragile in status, should possess a small number of "peremptory challenges" to work assignments that threaten integrity. If a resistant lawyer can describe the ethical scrutiny that reinforced initial qualms, that lawyer should be relieved of the work that threatens core identity.¹³³ The implication of this escape valve is that the firm itself must be prepared to decline, modify, or withdraw from cases that many of its lawyers find problematic upon conscientious reflection. Like the canary in the mine, such widespread reservations expose unhealthy conditions in the workplace. Since integrity means standing up for important values in the face of adversity, firms need to absorb the short-term financial risk of occasionally losing questionable business.

133 The "proof" a lawyer should offer to demonstrate the qualification for an ethical exemption is a threshold issue that itself raises potential controversy. Some demonstration would be necessary to avoid the problem of lawyers rejecting cases for non-ethical reasons, for example, because the case is boring, time-consuming, or unpopular and to avoid the problem of lawyers rejecting cases on grounds that are patently shallow. Yet, proof should not be so exacting that it discourages lawyers from exercising the option and allows superiors to grill lawyers on their decisions. Tentative review of a lawyer's decision could include the following related and partially overlapping criteria: that the lawyer is sincere in the objection; that the objection is consistent with the lawyer's strong beliefs; that the lawyer has deliberated rigorously and conscientiously in deciding to object; and that the lawyer has tested his or her perspective through dialogue with others about their perspectives.

A firm also displays core values through its supervisory policies, both formal and tacit. The firm's responses to marginal ethical conduct of its members, for example, might be embedded in a formal statement of principle or a corporate code specifying expected norms of behavior and internal sanctions for breaches. The firm's response to ethical concerns of associates also can be institutionalized in practices like sustained ethical dialogue and emergency tools like the "peremptory challenge." More informally, the firm expresses its ethics policies in the ways lawyers receive colleagues who raise ethical issues. Support for ethically conscientious members is vital. Lawyers develop almost a sixth institutional sense about whether ethical scrutiny is genuinely welcome apart from what policies and codes may espouse.

A firm can set the tone for constancy and wholeness through its selection, retention, and reward of individual lawyers on the basis of personal character as well as technical expertise and skill. The hiring process manifests deep corporate values. If technical credentials supersede commitment and character, that emphasis sends a regrettable message. The individuals who comprise the firm determine collective dispositions that translate into conduct and policies. The most experienced, longstanding, and powerful firm members are models and mentors, and patterns in the composite practices of those key representatives comprise something like the group core character. This is so even though firm partners might not act with unanimity. As individual integrity evolves over a life, with lapses expected, law firm integrity emerges in prevailing patterns.

Thus, firm partners would do well to foster the courage for dissent as a vehicle for collective reflection.¹³⁴ Moral insensibility infects the workplace with disaffection and malaise. Ethical winter takes its eventual toll on institutional vitality. Lawyers lower in the firm hierarchy should also take some initiative for proposing integrity-supporting measures. If nothing else, these initiatives will signal corporate policymakers that ethical health is a feature of firm culture that employees value. Even the newest and least powerful lawyers cannot leave these tasks entirely to others, relying on preexisting conventions and market pressures to justify passivity. Otherwise, they face cold and barren days ahead. Reshaping law firms will require fortitude and courage. Those qualities will build individual and collective integrity.

134 See, e.g., Sanders, *supra* note 42, at 360 (recognizing the importance of constructive deliberation that allows for differences and conflicts).

B. Affiliation Integrity: Group and Individual Integrity Linked

The idea of collective integrity may be morally disconcerting. Once integrity of the whole acquires significance, individual character may seem less important. While individuals ultimately are responsible for decisions about the kind of people they aspire to become, or for lapsing into lazy habits by refusing to tend character ideals, they are not so obviously accountable for the identity of groups to which they belong or the institutions upon which they rely. Group character is determined by varied roles and rules of operation operating in complex conjunction. No single personality or action represents the whole group.

Yet, each group member chooses to participate in a collective enterprise in part because of personal dispositions. Someone might declare that he "could not work for X corporation given X's corporate policies" toward the environment or employees. People make such assessments by imagining how their personal constitution will fit some overall impression of the group. This presupposes some discernable notion of collective character with which to compare self-image. Indeed, individuals define themselves in great part through group affiliations. A person humble about his destiny on the planet might be inclined to join environmental organizations perceived to express that trait of humility. By associating, the individual endorses group character, which becomes part of who he is as a person.

The degree of individual responsibility for group character is not clear, however. The individual lacks full control because of structural factors like tradition and hierarchy. An employee also faces numerous policies, rules, and other directives not of her own making. Practical factors also limit her autonomy in selecting a position initially. Family requirements, educational loans, and market conditions shape career options. Nonetheless, the collective survival of any organization depends upon sufficient membership, and each member makes continued existence of the group more possible. Collective functioning also depends upon allocating tasks, authority, and responsibilities to individuals. Carrying out one's role within the institutional structure functionally implements the goals and character of the entity. Group character depends upon individual contributions to each dimension of the corporate "personality."

The holistic orientation does not make the individual subservient to the collective or expendable. Even small roles count and may be executed with some discretion. Fragmenting responsibility can lead to the "bureaucratization of evil" that postwar studies of German society identified, where compartmentalized tasks facilitated individual

participation in massive evil.¹³⁵ Although participants followed the directives of others, they could not evade individual moral responsibility for harms they could foresee.¹³⁶ By understanding how group dynamics diffuse moral sensibilities, individuals can make a conscientious effort to remain morally alert and engaged.

Although no individual bears full responsibility for group character, each person remains ultimately responsible for choosing and sustaining affiliations. Karl Jasper's distinction between "moral guilt" and "moral taint" is useful here.¹³⁷ Guilt accompanies full-fledged responsibility for wrongdoing, whereas taint is moral responsibility at a lower, but still significant, level.¹³⁸ While a person without authority to make or execute a group decision cannot be morally guilty for the decision, the person might have responsibility to avoid the moral taint of belonging to a group that violates morality. Some boy scouts, for example, have felt moral pressure to distance themselves from scouting because they reject the organization's policy on sexual orientation. Such a scout might discharge this duty through a range of actions from protesting, to dissociating himself from the policy, to publicly terminating his affiliation with the group.¹³⁹ Openness and humility are specific integrity virtues that might be compromised by continued affiliation—so might the courage to honor convictions, or the honesty to display one's authentic self to fellow group members. A person damages moral integrity by continuing to associate with an organization that fails to exhibit traits he aspires to include in his own character. If the traits are important enough, a person who remains bears direct responsibility for tainted character.

These remarks about collective character speak to lawyers on several levels. If a lawyer decides that the kind of person she is, or prefers to become, is incompatible with the character demanded of lawyers in general, she might be morally obligated to leave the profession to avoid taint. A facile threshold decision will not do, however. Aspira-

135 See HANNA ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* 246–48, 287–89 (rev. & enlarged ed. Viking Press 1965) (1963).

136 See SABINI & SILVER, *supra* note 95, at 66 (“[P]eople are responsible for all that they cause so long as they can see that they cause it and can do otherwise.”).

137 I owe this observation to the work of the philosopher Larry May. See LARRY MAY, *SHARING RESPONSIBILITY* 146–62 (1992) (describing “moral taint” as less accusatory than “moral guilt” because the former is based on who one is, rather than what one does).

138 See *id.* at 149 (stating, for example, that individuals failing to separate themselves from their communities are tainted by their share of moral responsibility for the group's harms but are not morally guilty).

139 See *id.* at 154 (finding it morally necessary to sometimes denounce one's group in order to “break the chain of responsibility between individuals and community”).

tions to professional virtue involve fine balancing and, inevitably, struggle. If the motivations that drew her toward the law were authentic and well-considered, she owes considerable deference to the self that chose that path. She should apply her efforts toward reshaping institutions to the extent possible. Exploring multiple possibilities within the law, she might find that the risk of taint is uneven. She could steer herself away from certain areas of practice to avoid cultivating unacceptable traits. The lawyer who is humble about her relationship to the rest of nature, for example, might shun firms that regularly serve corporate clients with environmentally poor records. Since her environmental values are central to her personhood, a decision to affiliate for prudential reasons like paying off educational debts would be morally problematic. On the other hand, a decision to work within a promising firm to influence environmental policy might be a justified decision, and one that would summon the virtue of courage besides.

Pragmatic objections to these "high road" remarks are plausible. It is no secret that career prospects for lawyers are limited. As an ethics teacher, I have observed the impact of demographic and economic factors on students who believe that they cannot afford to be ethically selective in their searches for employment. Many suffer acutely over perceived limits in their ability to practice law in harmony with their values.¹⁴⁰ Since most face significant educational debt upon graduation, they feel compelled to evaluate all job possibilities seriously, even if distastefully. No response is entirely useful, but a teacher can acknowledge these pragmatic constraints and emphasize the formative influence every lawyer can exert even within a flawed workplace. Students underestimate their impact if they offer strong legal skills and a solid work ethic. Many students suffer from a "container" view of legal institutions. They perceive themselves to be entering a pre-formed, rigid framework that will determine their choices and professional identity. They need to re-conceive this model and come to see the "container" as more malleable. They will reconstitute it in everyday decisions about the treatment of others, the worthiness of arguments, and conversations with clients and others.

A short-term strategy that students often find appealing is to accept an initial job, with every intention of moving on. Increasingly, this option serves the practical purposes of reducing debt, gaining val-

140 This is particularly disappointing for students who apply to law school with aspirations for making the world a better place. Many of my students chose their school for its commitment to environmentalism and for their general interest in serving the larger community.

uable training, and “buying time” for a more fruitful future search. This approach carries well-known “golden handcuffs” and cognitive dissonance risks, in that lawyers acculturated to workplace styles and ethics tend to lose the motivation to look further. The values that created moral doubts in the first place wane in response to escalating work demands and benefits. Yet, committed lawyers tend to gravitate toward work “right” for them, although their paths may be circuitous. Some of the very market pressures that limit first time job seekers actually can facilitate ethical mobility. With scarcity and competition looming, associates do not develop the loyalty or habits that convert present affiliations into a career.

Yet, instability also jeopardizes integrity by reducing the character stakes of any given employment experiment. A lawyer with a fluid and uncommitted attitude toward the workplace is less invested personally in the moral significance of daily decisions. Affiliations are less likely to generate emotions like moral taint that may prompt a lawyer to protest or dissociate. Virtues like courage, constancy, and honesty are less likely to develop in this detached context, which means that the overall trait of integrity loses vital support. Integrity as searching for moral wisdom depends upon active individual engagement and institutional attention to character. The young lawyer who cares about the kind of person she is should understand that every association becomes absorbed into her moral identity. The morally disengaged lawyer is not “off the hook” as she tilts toward the skeptical end of the epistemological spectrum and rallies agnostic leanings. She is farther from moral wisdom than even the lawyer who makes prudential decisions despite moral qualms, because she does not take the responsibility to define a personal ideal, let alone stretch to fit that picture.

A former student, then a Wall Street lawyer, observed that amoral lawyers thrived best in her firm’s culture. The immoral lawyer would never last, she claimed, because the firm did not tolerate wrongdoing. To the firm’s credit, this rigorous expectation far exceeded ethical and legal minimums. The firm “cared” about its image of high corporate integrity in part because members cared about their own identities, and also because everyone recognized that reputations have business value. Still, the corporate atmosphere my friend described did not foster critical reflection, dialogue, and moral struggle, and she departed convinced that these traits were fundamentally inimical to the firm’s pursuits. The place was a far cry from ethical hell, but it disturbingly resembled ethical winter. While all lawyers recognized and shunned conduct that did not comply with the law or codes of ethics, they were morally disengaged. They did not detect a link between their work and the shriveling of their moral character. Moral

wisdom was not an individual or collective aspiration and would have seemed curiously out of place in this frozen world.

VII. CLOSING THOUGHTS FOR LAWYERS

In part because of the fine work of Professor Thomas Shaffer, many lawyers accept the moral constraints on action and character that all people share. To admit this commonality is a first step toward rehabilitation. Lawyers have reason to be hopeful and, with effort, proud about their moral futures. For lawyers, integrity is both an ideal and a resource. It provides inspiration and also raw material for creative reasoning with clients and others about the law and its impacts. Because some aspects of integrity are not readily within a lawyer's grasp, others swell in importance. Wholeness and constancy are imperfect ideals for lawyers. Representing others, by its very nature, distracts the steadfast pursuit of coherent commitments that compose core personal identity. On the other hand, integrity, manifesting itself as strength facing adversity, describes many occasions of a lawyer's career. Legal integrity as sensitivity and aspiration to justice is a distinctive, sustaining ideal.

Perhaps most important to lawyers is epistemic integrity. Lawyers more than others thrive on exquisite balance between a skeptical and truth seeking turn of mind. Given the pliability of law and the assorted demands of clients, colleagues, and legal decisionmakers, lawyers must resist the leap from ambiguity into futility. At this brink, the intellectual and moral sides of lawyering fuse. Turning away from moral and legal truth seeking may liberate a lawyer to practice more free of anguish and restraint. The price is a frozen soul. The mark of legal integrity is the search for the truths in every situation. An "integrity check" for lawyers comes not from pressing a computer button, but from a perpetual struggle of the heart.

Integrity does come harder to lawyers. Still, lawyers have more opportunities for integrity than most. They can cultivate the acuity that promotes both justice and integrity. Each day lawyers discover themselves in morally-charged situations, facing tests that suggest a better self through wisdom. Through nourishing reflective virtues like courage, humility, honesty, generosity, and care, lawyers can offer and receive gifts of moral wisdom. They can discover and tend the kind of people they will to be.

CONCLUSION

Postmodern ambivalence may have hit its peak and begun to wane. We must now take care not to swing too far in the other direc-

tion. Atrocities have a way of clarifying the moral universe and permitting truth to penetrate. Outrage is a nearly universal and justified moral emotion. Yet our moral responses to outrage are less clear. Stark lines may offer temporary solace, but they do not eradicate the richness of moral perspectives. We are well-positioned to harness our postmodern skeptical habits for compassion as we bask, even for a moment, in the reignited brilliance of moral truth.

