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## The Many as One: Integrity and Group Choice in Paradoxical Cases

### I. PARADOX AND PERFECT INTEGRITY

#### A. *Layered Choices*

Most decisions by individuals are layered: in potential, at least, they can be described or motivated at more than one level. If, for example, Liza decides to put down her murder mystery and turn to the enterprise of writing an essay, we could stop just there and observe that Liza had made a choice. But we could press further and try to understand how to justify or explain that choice: It might be that as of that moment Liza found writing more pleasant than reading her mystery. But quite the reverse could also be true and she could have acted out of a realization that the essay has a deadline attached that begs for action. Or she may feel that in some other way she will be letting her co-author down if she does not work on the essay. Or perhaps she has a view about how one should spend one's time. Or perhaps she believes that the publication of her essay is vital to the world in some way.

Behind each of these reasons, however they cut, are other reasons. Liza may like to write because it exercises her mind in a way that she finds pleasant or gratifying. Or she may not like to write because it makes her anxious. The deadline may be important because Liza likes the journal or because she feels indebted to its editors, and so on.

At the individual level, at least in principle, it ought to be possible to make sense out of Liza's decision to lay the book aside and fire up her

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computer. Her interests and judgments may press in different ways and need to be set off against one another; and it is unlikely that she has in any conscious way taken account of all reasons she has for choosing one course against the other. And heaven knows that *akrasia*—a failure of the will—is more than a theoretical possibility. But in principle, Liza can hope that the things she values rationally support her decision when she considers all her pertinent values.

### *B. Group Choice and Paradox*

When we move to group decisions, however, this satisfying connection between outcomes and reasons may not be possible, even setting aside human foibles and the limits of vision and understanding. Each individual who is contributing to a group decision can hope that her reasons for choice, considered fully, support the outcome for which she lobbies; but when we undertake to aggregate the views of the group members, it may be logically impossible to line up reasons and outcomes.

Multi-judge courts are a good setting in which to observe instances of this impossibility. A multi-judge court may collect the votes of its members in at least two ways to produce a judgment in the case before it: the court can decide each salient issue by a vote among the judges, and then arrive at an outcome by assembling the results of these salient issues according to the logic dictated by doctrine. In a contract case for example, the court as a whole can decide first whether there was a valid contract entered into by the parties, and second, whether there was a material breach of that contract. Doctrine then dictates that the court find that there is an actionable breach of promise if and only if the plaintiff prevailed on each of these questions. Or the court can decide the case as a whole. Each judge votes directly on the question of whether the conduct of the plaintiff was an actionable breach of promise, and the court tallies these bottom-line votes to arrive at its aggregate judgment in the case. To be sure, in this second instance, doctrine will dictate that each judge decide for herself whether there was a valid contract and whether there was a material breach, but the relevant judgment from the court's standpoint will be the judges' bottom line on the case as a whole. In most cases, nothing will turn on this choice of voting protocols. But, in some cases, the views of the judges will be such that tallying their votes on salient issues will produce a different outcome than will tallying their

TABLE 1  
A PARADOXICAL CONTRACT CASE

	Contract	Breach	Individual View of Liability
Judge X	Y	Y	Y
Judge Y	N	Y	N
Judge Z	Y	N	N
<b>Aggregated View of Issues</b>	<b>Y</b>	<b>Y</b>	<b>Y / N</b>

votes on the case as a whole. The distribution of views among three judges who are considering an action for breach of contract provides an illustration (Table 1).

In earlier work,<sup>1</sup> we called this quirk of multi-judge court decision making the doctrinal paradox. In paradoxical cases of this sort, where reasons and outcomes pull apart, the court's choice of voting protocols determines the outcome of the case.

### *C. Integrity and Paradoxical Group Decisions*

The possibility of a paradoxical distribution of preferences or judgments of this sort is not unique to courts; in principle, a paradoxical distribution of views can arise in any group of three or more persons faced with a decision that can be broken down into at least two constituent sub-decisions. We might do well to change vocabularies from "issues" and "cases" to the more generic "reasons" and "outcomes," but the occurrence of a paradoxical distribution of views makes much the same mischief in the broader domain of political choice as it does in multi-judge courts.

1. Lewis A. Kornhauser and Lawrence G. Sager, "Unpacking the Court," *Yale Law Journal* 96 (1986): 82–117; Lewis A. Kornhauser, "Modeling Collegial Courts I: Path Dependence," *International Review of Law and Economics* 12 (1992): 169–85; Lewis A. Kornhauser, "Modeling Collegial Courts. II. Legal Doctrine," *Journal of Law, Economics and Organization* 8 (1992): 441–70; Lewis A. Kornhauser and Lawrence G. Sager, "The One and the Many: Adjudication in Collegial Courts," *California Law Review* 81 (1993): 1–59.

Our concern in this article begins at a particular conceptual situs of that mischief. Some political theorists who are concerned with group choice and responsibility take the view that the normative choices of a political community should enjoy the same constancy and coherence that we would hope to find in the comparable decisions of a single person. Ronald Dworkin has given a name and a paradigmatic form to this idea of community agency, arguing for the independent political virtue of “integrity.”<sup>2</sup> More recently, Philip Pettit has adopted a view of “republican community” and deliberative democracy that takes the idea of integrity seriously as a requirement of political life generally.<sup>3</sup> Although Pettit does not invoke the virtue of integrity in name, he, like Dworkin, wants to personify political communities (and many other groups as well), making the group as a whole, rather than its members individually, accountable for reasoned choice.

The possibility of a paradoxical distribution of views among the members of the group confounds the pursuit of integrity. In paradoxical cases a group can rationally order its attitudes—beliefs, preferences, judgments—over the applicable reasons by voting on them; or it can rationally order its attitudes over the applicable outcomes by voting on them; but it cannot do both. In contrast, an idealized individual who had worked out all the kinks could rationally order her views over both her reasons and her bottom-line choices or outcomes. If that is what integrity requires, perfect integrity is impossible for groups.

For precisely that reason, paradoxical cases offer a promising point of departure for reflections on group agency and decision making in general and the idea of integrity in particular. We hope to exploit that promise in this article.

## II. PARTIAL INTEGRITY IN THE WORK OF DWORKIN AND PETTIT

The demand that the decisions of groups be integrated in the way that we think the decisions of individuals should be integrated can assume a

2. Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986), esp. ch. 5 and 6.

3. Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997); Pettit, “Democracy, Electoral and Contestatory,” *Nomos* 42 (2000): 105–44; Pettit, “Groups with Minds of their Own,” *Socializing Metaphysics: The Nature of Social Reality*, ed. Frederick Schmitt (Lanham, Maryland: Rowman & Littlefield Publishers, Inc., 2003), pp. 167–93.

number of forms. Integrity might be concerned with the integration of different views held by members of a decision-making group with regard to a single decision; for convenience we call this *synchronic* integrity. Integrity might be concerned with the integration of a string of decisions made by the group over time; we call this *diachronic* integrity. Both synchronic and diachronic integrity can be further subdivided: either might be concerned with the integration of the *reasons* behind a group's decision or with the *outcomes* reached by the group. We can depict these possible targets of the demand for integration in a simple matrix:

INTEGRITY	Synchronic	Diachronic
Reasons	I: Synchronic, Reasons	III: Diachronic, Reasons
Outcomes	II: Synchronic, Outcomes	IV: Diachronic, Outcomes

For Ronald Dworkin, integrity is concerned solely with Box IV on this matrix, with the integration of the substantive outcomes over time. Dworkinian judges must have reasons for their decisions, and their reasons are constrained and inspired by prior decisions; but it is the bottom line of those prior decisions, not the reasons contemporaneously offered to justify them that matters. So Hercules—Dworkin's idealized judge—labors to find the best normative principle that retrospectively fits the outcomes of his court's prior decisions.

Synchronic integration has never been part of Dworkin's articulated view of the requirements of integrity. This may account for a prominent limitation in Dworkin's otherwise rich vision of legal adjudication. However busy Hercules finds himself to be, he is condemned to labor on alone; Dworkin has never turned his attention to the fact that appellate adjudication is conducted by groups, and hence has never taken up the variety of questions involving group deliberation and group resolution. Given the great emphasis on adjudicatory responsibility in his work, this lacuna is a misfortune, since it leaves many interesting and problematic choices of a conscientious judge unaddressed. Why does an increase in the number of judges contribute to the capacity of an appellate court to arrive at the best decision?<sup>4</sup> Should the judge who would be Hercules

4. Kornhauser and Sager, "Unpacking the Court."

always render the best decision conceived of in isolation, or should she compromise her views of the best decision with an eye to bringing the court of which she is a member as close as possible to the best decision? Is the license of a judge to continue to dissent from principles upon which the majority of the court has agreed measured strictly and simply by the demands of fit and value that Hercules would confront on his own, or are there additional variables of obligation introduced by the group nature of appellate adjudication? One of the matters pretermitted by Hercules' solipsism and Dworkin's underlying preoccupation with diachronic integration is the doctrinal paradox and its threat to perfect integrity.

Philip Pettit, in contrast, is acutely concerned with synchronic integration, with the appropriate connection between a given decision by a group and the distribution of opinions within that group as to the decision in question. For him, accordingly, paradoxical cases are very much in the picture, not so much as a problem, perhaps, as an opportunity, an opportunity because when a group's consensus over reasons and its consensus over outcomes pull apart we have the occasion to ask which consensus should matter and why.

Pettit emphatically casts his lot with group reasons, insisting that in paradoxical cases it is the state of group agreement with regard to the reasons that support the choice of outcomes that matters, not the state of group agreement with regard to the choice of outcomes. *His* reasons for a sweeping embrace of reasons grow out of his vision of deliberative democracy and the justification of a group's authority over members of the group whose interests may be adversely affected by the exercise of that authority. Pettit believes that a group is justified in imposing on its members only when it has democratically committed itself to normative propositions that dictate the imposition in question; those normative propositions are for Pettit the active reasons for the choice of an outcome, while the chosen outcome itself is merely the passive result of those reasons. Further, he stresses, members of the group must have had a well-formed opportunity to contest the relevant normative propositions. It follows, Pettit, believes, that it is the collective state of the group's judgment as to reasons that must matter.

Our contrast of Dworkin's and Pettit's views reveals another important dimension of theories of integrity: integrity's plausibility, normative appeal, and practical requirements may vary across political institutions.

Here too the views of Dworkin and Pettit present a sharp and largely undefended contrast: Dworkin, while formally committed to a view of integrity that binds all political actors, is all but exclusively preoccupied with the decisions of judges;<sup>5</sup> Pettit, on the other hand, largely ignores judges and courts, and focuses on legislators. The polarity of Dworkin's and Pettit's views is thus perfect: Dworkin offers a conception of diachronic, outcome-based, judicial integrity; Pettit provides a conception of synchronic, reason-based, legislative integrity.

In much of what follows, our concern is to extend our consideration of paradoxical cases into the broader domain of democratic group choice. Broadly, our critical focus will be on the idea of reason-based, legislative integrity. At least two propositions follow from the refinement of the idea of integrity made possible by a comparison of Dworkin's and Pettit's versions of integrity. First, however appealing the basic idea of holding groups to account as though they were individuals may be, it cannot without more be the grounds for either Pettit's insistence on the priority of reasons or Dworkin's view of the behavior of the ideal judge. In paradoxical cases, perfect integrity is impossible, and the partial, selective nature of the conceptions of integrity favored by both Pettit and Dworkin requires a defense before either conception can do any work at all.<sup>6</sup> Second, although the brunt of our argument is directed against Pettit's position, Dworkin's view of integrity eludes the difficulties that attend to Pettit's view only by virtue of its selectivity, and the grounds of that selectivity, in turn, are open to critical reflection. To take an obvious example: while virtually all of Dworkin's attention is drawn to integrity

5. In *Law's Empire*, Dworkin briefly distinguishes between legislative and adjudicative integrity, and uses legislative examples, such as a compromise "checkerboard ordinance" banning segregation on buses but permitting it in restaurants, to evoke sympathy on behalf of integrity in general (pp. 175–84). But, that work done, the real preoccupation of "law as integrity" is with the work of judges. By and large, legislative integrity enters the picture only briefly and defensively, to explain why it might commonly be sacrificed to other more familiar legislative forces (pp. 217–19), or ascriptively, to justify the interpretive effort of courts to make the best of statutes (pp. 337–38).

6. In Section V, B, below, we observe that Pettit's concern with integrity across a group's members' reasons for resolving a single question before it irresistibly entails a concern with integrity of a group's decision across cases. It is possible that Dworkin's concern with integrity across a group's outcomes over time has a similar entailment regarding integrity across a group's members' basis for their choice in an individual case. We are unaware of any such entailment, however. We mention the possibility of symmetry to signal the rich and largely unexplored territory of integrity as a norm of group behavior.

in judicial adjudication, in principle the requirements of Dworkinian integrity extend to legislatures as well; accordingly, the formidable normative and practical problems that we raise for legislative integrity are somewhat artificially suppressed in Dworkin's presentation of integrity.

For present purposes, however, it is reason-based, legislative integrity that draws our attention. We begin by showing that groups make many different kinds of decisions, and further, that the demands of reason-based integrity are obviously implausible with regard to many types of group decisions.

### III. GROUPS AND REASONS

#### *A. The Choice of a Restaurant*

Suppose three friends plan to go to dinner together, and undertake to choose a restaurant. The friends must choose between two restaurants; Jane and Patricia favor Jean Pierre's Bistro, and Lisa favors Ribs-R-Us. Simple majority rule selects Jean Pierre's Bistro; moreover two distinct reasons justify majority rule: it treats each friend as an equal and roughly maximizes aggregate welfare.

Each of the friends' choice of restaurant, of course, is an "outcome" of sorts, driven by her own reason or reasons. But nothing encourages us to push past the friends' bottom-line choices of restaurant to their reasons for their respective choices; it is clear that the trio should simply go to the restaurant favored by two of them, full stop. If somehow we were tempted to learn of their reasons, nothing would change.

Suppose that Patricia's and Lisa's restaurant choices are only driven by the quality of the food served, but that Patricia regards Jean Pierre's as the superior restaurant while Lisa believes Ribs-R-Us is the better restaurant. Jane, by contrast, is relatively indifferent to food quality, always chooses on grounds of convenience, and Jean Pierre's is just around the corner. If pressed to offer her view of quality, Jane would emphatically agree with Lisa that Ribs-R-Us produces a better meal. It may help to view this structure of reasons schematically (Table 2).

This distribution of reasons is, as a formal matter, paradoxical. If a vote were taken first on the question of whether quality or proximity should be the test, Patricia and Lisa would prevail on quality being the guide. And if then the question of which restaurant served better food



TABLE 2  
THE RESTAURANT CASE WITH A PARADOXICAL STRUCTURE OF REASONS

	Quality	Convenience	Grounds of Choice	<b>Individual Outcomes</b>
Patricia	BISTRO	–	Quality	<b>BISTRO</b>
Lisa	RIBS	–	Quality	<b>RIBS</b>
Jane	RIBS	BISTRO	Convenience	<b>BISTRO</b>
<b><i>Aggregated Reasons</i></b>	<b><i>RIBS</i></b>	<b><i>?</i></b>	<b><i>Quality</i></b>	<b><i>RIBS / BISTRO</i></b>

was put, the views of Jane and Lisa would prevail and Ribs-R-U's would win the day. But asked simply at which restaurant they wanted to eat, Patricia and Lisa would agree on Jean Pierre's.

This case, however, is paradoxical in form only. The reasons the friends have for their choices are unimportant in a case like this, and the choice of Jean Pierre's Bistro remains the unexceptional outcome. It would be bizarre to deny Jane her capacity to vote for Jean Pierre's on grounds of proximity, notwithstanding the preference of her compatriots for quality over convenience.

### *B. Group Decisions That Aggregate Preferences*

We can generalize from the restaurant example: group choices that depend on the aggregation of individual preferences are poor candidates for the claim that reasons rather than outcomes that should govern if the two should pull apart. The scope and force of this observation, of course, depend on what we mean when we speak of individual preferences and of groups decisions that depend on them.

In prior work we distinguished between preferences and judgments.<sup>7</sup> Briefly, preferences are those qualitative rankings or choices over which

7. See Kornhauser and Sager, "Unpacking the Court," and Lewis A. Kornhauser, "Preference, Well-Being and Morality in Social Decisions," *Journal of Legal Studies* 32 (2003): 303–29.

the individual is in a familiar way sovereign. Sovereignty, in this context, means that the individual has the final say on the content of her preferences. Lisa, for example, has no reason to reconsider her preferences when she learns that Patricia's contradict hers. Judgments, in contrast, appeal to external standards of validity, and in this sense are general rather than personal in their scope of authority. The speaker is not sovereign over the judgments she renders; she cannot, simply by rendering a judgment, insure its validity.

As the restaurant example illustrates, groups engaged in the business of aggregating preferences typically will have very good reasons for ignoring the reasons underlying their members' preferences. The obvious primacy of overall preferences or outcomes in the restaurant case is not an artifact of the relative banality of the stakes in these cases or of some other special aspect of the example. Many political choices made by legislatures, for instance decisions on which projects to fund and for how much, have this structure. The polity aims to maximize, or at least to further, the welfare of its citizens. That task requires the determination and aggregation of the preferences of the citizenry. When these preferences conflict, a concern for equality supports the use of majority rule to resolve the conflict. If an individual contests the community decision, the community need not, and does not, respond at the level of reasons underlying individual preferences but at the level of reasons for the choice of majority rule as the appropriate mechanism for aggregating conflicting preferences.

The point is not that preference-driven choices by groups are unreasoned. Rather, groups have the best of reasons—equity and overall welfare—for responding to the bottom-line preferences of their members.

### *C. Group Decisions That Aggregate Judgments*

We turn to group decisions that aggregate judgments. In this section we consider the aggregation of judgments of fact. The subsequent section addresses judgments of value.

Imagine that a community is considering a proposal to reduce automobile emissions radically (RAD). Adoption of this proposal would entail significant welfare losses to many present members of the community. Some people believe, however, that, if the community fails to

adopt RAD, the greenhouse effect will soon cause a substantial increase in temperature that ultimately will diminish drastically the welfare of the community (HOT). Everyone agrees that if HOT is true, then RAD is the appropriate course. The only disagreement is factual. Some are confident of HOT. Some think that the science upon which HOT is based is simply wrong, and that even if the community continues on the trajectory of its present behavior and technology, the greenhouse effect will be trivial or possibly non-existent. Some hold yet another view (NEW) that even if HOT were an accurate prediction *under present technology*, new technology will emerge to rescue the community from HOT without the painful remedy of RAD. But everyone agrees that if HOT is true and NEW is false, then and only then, is RAD justified. Imagine that the decision has been confided to a panel of three expert policymakers, who exactly mirror the distribution of factual judgments among the entire scientific community, as well as the community as a whole (Table 3).

Once we have moved from the realm of preference to that of judgment, it no longer seems nonsensical to suggest that reasons rather than outcome should be favored in the event that they paradoxically pull apart. Now the problem of voting protocol has bite. The choice of voting protocol raises two, possibly overlapping, concerns. The first is epistemic: the community has a large stake in getting the answer to this predictive question right. The second is democratic: the fairer voting protocol should resolve such entrenched factual disagreement.

On epistemic grounds the choice of voting protocol would seem to depend on close questions of the state of empirical conviction. Consider

TABLE 3  
FACTUAL JUDGMENTS WITH REGARD TO RAD

	HOT	NEW	Individual Support of RAD
PM X	Y	N	Y
PM Y	Y	Y	N
PM Z	N	N	N
<i>Aggregated Reasons</i>	Y	N	Y / N

TABLE 4  
CONVICTIONS WITH REGARD TO RAD

	HOT	NEW	Individual Support of RAD
PM X	Y,.55	N,.55	Y
PM Y	Y,.55	Y,.92	N
PM Z	N,.92	N,.55	N
<i>Aggregated Reasons</i>	Y	N	Y / N

first the following case, with the numbers reflecting the state of certainty with which the policymakers hold their various views (Table 4).

We assume, for the moment, that each PM's individual views are structured so that HOT and NEW are exhaustive of the concerns that motivate their bottom-line judgments concerning RAD, and that the strength and direction of their bottom-line judgments connect perfectly rationally to their judgments about HOT and NEW.

In thinking about this distribution of conviction from an epistemic standpoint, two questions present themselves. The first can be asked from the vantage of each individual PM: what relation ought rationally to hold between her degrees of belief in the three propositions HOT, NEW, and RAD? The second question addresses the problem of aggregation: given that the PMs have this distribution of beliefs, held with these degrees of intensity, which voting protocol is most epistemically favorable?

Economists and those who accept the economic approach have a clear answer to the first question.<sup>8</sup> The logic of belief is the logic of prob-

8. The economic approach to the question of intensity of belief is not uniformly accepted or followed. The practice of fact finding in a civil trial, for example, seems to require that someone who believes HOT with a degree of conviction of .55, and disbelieves NEW, again with a degree of conviction of .55, should endorse RAD though the probability calculus requires its rejection. See, for example, R. Lea Brilmayer and Lewis A. Kornhauser, "Review: Quantitative Methods in the Law," *University of Chicago Law Review* 46 (1978): 116-53; L. Jonathan Cohen, *The Probable and the Provable* (Oxford: Oxford University Press, 1977); Glenn Shafer, *The Mathematical Theory of Evidence* (Princeton, N.J.: Princeton University Press, 1976). But for our present purposes, we shall assume that the economic approach is a rational guide to individual judgment in our RAD example.

ability. If an individual's convictions concerning HOT and NEW rest on independent grounds, then her degree of belief in RAD ought simply to be the product of her degree of belief in HOT multiplied by her degree of belief in not-NEW. If we construe depth of conviction as a judgment concerning the probability of the relevant events (first: global warming absent technological rescue; second: technological rescue) occurring, then PM X should believe that there is only about a 30 percent chance that the risk against which RAD would be deployed would eventuate in the absence of RAD; PM Y would believe that there is less than one-half of one percent chance of that risk eventuating; and PM Z would evaluate the risk similarly to PM Y.

More problematic is the question of aggregating the varying depths of conviction across individuals. Consider the following rough, intuitively plausible analysis.<sup>9</sup> If we assume that all policymakers are equally reliable, and we give the degree of conviction with which each holds her view the same weight, then we have good reason to reject RAD on empirical grounds. On the question of HOT, the total units of conviction (ranked on a scale of 1 to 100 for each PM) in favor of HOT is 118 (55 + 55 + 8); and against HOT, 182 (45 + 45 + 92). By the same margin of aggregated units of conviction, NEW prevails. Thus HOT would be rejected and NEW accepted, and RAD would be rejected. If we apply the same method directly to the bottom-line convictions of the policymakers, RAD is rejected by exactly the same margin (RAD: 30 + 44 + 44 = 118; ~RAD: 70 + 56 + 56 = 182). Outcome voting reflects the epistemic advantage of ~RAD; it rejects RAD by the vote of two to one (See Table 4). Moreover, if each policymaker takes account of the probabilistic consequences of combining her judgments, the picture will be even starker. Under these circumstances, PM X will decide that while she believes HOT and disbelieves NEW, her probabilistic confidence in the combination of these judgments is so low (.30) that she ought to disfavor RAD; the outcome vote would then be three to zero against RAD, while the premise vote would continue to favor RAD two to one. Under these circumstances,

9. We are aware of no widely accepted approach to this question. Christian Genest and James Zidek, "Combining Probability Distributions: A Critique and an Annotated Bibliography," *Statistical Science* 1 (1986): 114–18 reviews the relevant literature. It is not clear that our intuitive approach conforms to any of the procedures surveyed in Genest and Zidek, though it might be represented by a weighted average approach.

TABLE 5  
ALTERED CONVICTIONS WITH REGARD TO RAD

	HOT	NEW	Individual Support of RAD
PM X	Y,.92	N,.92	Y
PM Y	Y,.92	Y,.55	N
PM Z	N,.55	N,.92	N
<i>Aggregated Reasons</i>	Y	N	Y / N

accordingly, epistemic concerns would seem to strongly favor outcome voting rather than premise voting.

Now, we could certainly cook the books in the other direction. Suppose the distribution of confidence among the policymakers as to their judgments ran something like that seen in Table 5.

Under these circumstances, premise voting has considerably more epistemic appeal. Our point, bear in mind, is not that epistemic concerns favor either premise or outcome voting in factual judgment cases; our point is that a sweeping claim on behalf of either protocol under these circumstances is suspect.<sup>10</sup>

We have been assuming that HOT and NEW exhaust the concerns that motivate the policymakers' bottom-line judgments concerning RAD, and that the strength and direction of their bottom-line judgments are connected with perfect rationality to their judgments about HOT and NEW. Although these assumptions may hold in some instances, in others they do not. We can imagine some circumstances in which what we have

10. Luc Bovens and Wlodek Rabinowicz, "Complex Collective Decisions: An Epistemic Perspective," *Associations* 7 (2003): 37–50, have shown formally that, on the assumption that each judge has an equal probability of reaching a true conclusion on each issue, neither procedure dominates the other in terms of tracking the truth.

It is possible, of course, that a given community in a given context might seek to minimize false positives or false negatives (or some weighted combination of the two) rather than to minimize overall deviation from the truth. In private communication, Wlodek Rabinowicz has shown that conclusion-based voting weakly dominates reason-based voting in minimizing false positives but that reason-based voting weakly dominates conclusion-based voting in minimizing false negatives.

been treating as an *outcome* is more firmly supported by the conviction of a policymaker than could be accounted for by her conviction with regard to those smaller elements of judgment that we have described as *reasons* for the outcome. In the RAD case, for example, PM Y and PM Z could be either substantially more or substantially less convinced of the bottom-line proposition that the community ultimately will evade the dire effects of global warming despite its decision not to adopt RAD than would be justified by the simple arithmetic combination of their confidence in their views on HOT and NEW. We can easily imagine experience-based instinct or other variables not exhausted by HOT and NEW convincing one or both that RAD is inappropriate, even if they could not fully defend their bottom-line convictions in terms of HOT and NEW, and possibly even if they could not fully defend their bottom-line convictions at all.

Here, as in most group judgments of fact, it is somewhat misleading to speak of reasons and outcomes. We presented RAD as a policy proposal supported by factual judgments. But just behind RAD, and invisible in our schematic presentation is a bottom-line factual question: does the community need RAD to evade disaster or not? In this (artificially) pure case of factual judgment, it is fact all the way up, and there is no a priori reason why small or simple factual judgments should inevitably be preferred to large or complex ones.

Democratic concerns are similarly unhelpful to the sweeping prescription of reason-based voting for the deliberative democratic resolution of paradoxical questions. In our RAD example, we have imagined that the community as a whole evenly divides itself into three parties on the RAD question, parties whose views are perfectly represented by the PM who stands in for them. If the state of empirical conviction puts more certainty on the question of RAD than questions of HOT or NEW, no fairness-related reason requires that judgments on HOT and NEW govern. On the contrary, fairness apparently insists that RAD governs. In our example, after all, two-thirds of the members of the community are convinced that the community will evade disaster without RAD. Their *bottom-line* judgments are rejected and those of a mere one-third of the community acted upon. That might be a democratically acceptable result in some circumstances, but it seems an improbable candidate for democratic sponsorship as a general rule. To be sure, contestability and commitment may be democratic virtues; but where the state of

empirical commitment favors the bottom line rather than its more discrete factual elements, it is the bottom line that is the natural target of both contest and commitment.

#### IV. GROUP DECISIONS INVOLVING JUDGMENTS OF VALUE

Judgments of value implicate those things that a political community has an obligation to value. Propositions of justice or political morality more generally are the most obvious, though not the only, objects of such judgments.

The argument for reasons over outcomes in the domain of normative judgment goes something like this: reasons, by hypothesis, are the premises that justify outcomes; accordingly, on views of democracy that emphasize contest over, and commitment to, those things that drive decisions, it is reasons that must be the focus of debate and agreement. What distinguishes normative decisions in this argument is an implicit view about judgments of value: judgments of value in this argument are implicitly regarded as unidirectional, with the arrow of reason and justification moving from the normatively active material of established value to the passive, derivative material of operational instruction.

On this view, a successful colloquy with a four-year-old essentially reverses the logic of justification. She asks, Why are there traffic lights? You reply, So cars coming to a place where two roads cross each other won't bang into each other. She asks, Why don't people want cars to bang into each other? You reply with an explanation that is close enough to bedrock to be normatively freestanding (or so you hope). Reasons on this account are like your last reply, and the logic of justified choice proceeds upward from them. Reasons are justifying premises. Although this understanding of normative judgment seems a promising account of the linkage of integrity and reasons, closer consideration of this unidirectional-arrow-of-justification-picture casts doubt on it.

##### *A. Individual Normative Reasons*

Let us begin by focusing upon the demands of normative choice on an individual. Imagine an individual who is convinced that it is unjust for the state to prevent women from obtaining abortions under reasonable conditions. Suppose she is pressed to justify her conviction. Consider the



rough shape of the process of reasoning involved. In particular, what is a justifying premise for an individual who is engaged in such a process of normative reflection?

A justifying premise is a comparatively durable unit of normative judgment. In the moral sphere, it is an appealing moral stipulation. So understood, a justifying premise could be a strong intuitive response to a specific, morally charged case, an appealing moral principle, or what we might call a moral axiom, one of a fairly small set of grounding moral principles from which other principles can draw justification.

In one sense, these different levels of moral instinct or judgment are hierarchical: in a fully realized moral view they can be accurately described as running from the most general and abstract to the most narrow and particular. One might be tempted to think of the arrow of justification as running in just that direction, but this is at most a plausible view about the logical structure of a fully realized moral view; it is emphatically not a plausible view about how thoughtful persons acting in good faith form moral understandings and commitments; nor is it a plausible view of the nature of the moral understandings and commitments such persons will find themselves holding.

The process of moral formation does not a priori privilege one level of moral commitment over another. Reactions to specific cases, principles that collect and explain those reactions, and axioms that collect and explain those principles, are all candidates for leadership roles in the process of moral reflection and all candidates for rethinking and amendment in the midst of that process. When the woman seeks to justify her conviction about laws restricting abortion, she seeks a state of equilibrium among her views at any and potentially all of these levels. To achieve this, she may have to tack back and forth among these views, adjusting them where necessary. At any level, the durability of her view is determined by its intrinsic appeal: the native strength of its attractiveness to her, the support it gives to other appealing conclusions and the support it derives from other appealing conclusions.

This picture of what is sometimes described as the process of *reflective equilibration* is highly schematized and idealized of course. But the point is this: in the real and imperfect world of moral reflection, what counts as a justifying premise will depend on the extant state of the relevant individual's moral commitment. It may be that, after some reflection, our woman may decide that she does not yet have satisfactory

moral principles to explain her convictions concerning abortion. She might think that this gives her good reason to rethink her position; or she might be quite sure of her position and realize that she has not yet succeeded in teasing out a fully satisfactory explanation of her position. Even if she finds that her position on abortion laws conflicts with moral principles to which she feels allegiance, it remains an open question whether she will find it necessary to modify her position on abortion or necessary to reshape the moral principles.

### *B. Group Normative Premises*

When we move from individuals to groups, these observations continue to hold. If integrity insists that a group openly contest and reach agreement on the premises that justify its decisions, then the target of that requirement will be as variable as it is in the individual case: contest over and commitment to the most durable normative convictions held by the members of the community. Agreement and contest could focus on outcomes, principles, or axioms, with numerous stops between.

In one respect, this supports the claim that integrity insists that group-voting protocols favor reasons over outcomes when the two pull apart in paradoxical cases. One difficulty with this claim is the problem of knowing when you've gone deeply enough in the regression towards first principles to be able to say that you have reached a reason instead of merely an outcome. In adjudication by multi-judge courts, doctrine stops the regress as it designates the nature of the reasons that justify outcomes in the cases that come before the court. Deeper reasons—reasons for the doctrinal premises—are offstage. When the structure of the doctrinal paradox is removed from its native environment and applied to group deliberations generally, a reason-favoring view must contend with the question of when you know you've reached a reason. The observation that reasons are those propositions that enjoy durable normative commitment helps here, as it offers conceptual grounds identifying out those things that count as reasons.

But this is help that a proponent of the integrity/premise-favoring thesis cannot afford to accept. That thesis depends on the idea that when a group's judgments are distributed paradoxically there will be components of those judgments (reasons) that imply results by virtue of their logical combination (outcomes). But what in this picture are superfi-

cially identified as reasons on the one hand, and what are superficially identified as outcomes on the other, are both contenders for the status of what is morally most salient for purposes of agreement.

Imagine a proposal to lift extant restrictions on the availability of abortion procedures to women. The group considering this law is equally divided among three views: one subgroup holds that abortion involves taking the life of a person, and would maintain the present restrictive law; one subgroup rejects that view of abortion, holds that the present law violates principles of gender equality and would support the proposal to change the law; the remaining subgroup joins the second in rejecting the view that abortion involves taking the life of a person, and would also support the proposal to change the law, but its reason for doing so involves a view of autonomy rather than equality. Assume finally that none of those in the equality party are attracted to the autonomy view, and vice versa. We have, of course, a paradoxical distribution of views (Table 6).

The members of Subgroups Y and Z may be substantially more committed to the view that it is unjust for the state to restrict the option of a woman to have an abortion than they are committed to the specific principal upon which they would rely in justifying their view. Each would say it is the party of choice, not that of equality or autonomy. After full debate and vote, the community has a reason for easing restrictions on abortion: two-thirds of the people in the community believe the present law to be unjust. That agreed-upon judgment is the justifying reason for changing the law.

TABLE 6  
ABORTION AND THE JUSTIFYING PREMISE

	Equality	Autonomy	Ease Restrictions
Subgroup X	N	N	<b>N</b>
Subgroup Y	Y	N	<b>Y</b>
Subgroup Z	N	Y	<b>Y</b>
<b>Column Outcome</b>	<b>N</b>	<b>N</b>	<b>N / Y</b>

## V. THE STRUCTURE OF GROUP CHOICE

These observations about the elusive nature of what should count as a “reason” in a reason-driven voting protocol bring us at last to the question of the complexity of real world decision making in political communities. At an abstract remove from actual institutional arrangements, the champion of reason-based voting could agree with our insistence that reasons are not necessarily the smallest elements of judgment, but rather those premises around which commitment most durably forms. But it is far from clear that any real-world voting process could reliably identify reasons so understood, and far from clear what sort of voting protocol would do the best job overall of even approximating the result-driven outcome so understood. In this section, we will discuss some of the difficulties that must be faced in bridging the gap between an abstract attraction to reason-driven voting and the real world of decision making in political communities.

### A. *The Practical Difficulty of Disciplining Legislative Practice*

We discovered the doctrinal paradox in the course of our work on multi-judge courts. In the context of adjudication, it is possible both to observe and systematically react to paradoxical distributions of judgments. Anglo-American adjudication occurs in the relatively centralized decision-making structure of multi-judge courts and in a conceptual environment that is relatively transparent and stable. In this environment, *doctrine* creates a fixed relation between decisions about discrete sub-parts of a case (issues) and the final decision (outcome).<sup>11</sup> While we are convinced that a sweeping commitment to reason-based voting in paradoxical cases would be a misguided judicial practice,<sup>12</sup> it would be entirely feasible for a multi-judge court to implement such a commitment.

Legislative procedures operate in marked contrast to adjudication. Imagine a group meeting as a committee of the whole, and proceeding

11. For a more elaborate and complete discussion of the structure of doctrine, see Kornhauser, “Modeling Collegial Courts. II. Legal Doctrine,” *Journal of Law, Economics and Organization* 8 (1992): 441–70.

12. With regard to multi-judge courts, it is our view that no blanket rule of any sort is called for; we favor a “meta-vote” to choose between the available aggregation protocols.

under *Robert's Rules of Order* or an equivalent set of operating rules.<sup>13</sup> These rules divide into two broad categories: *framing* rules and *decisional* rules. Framing rules set the agenda; they determine how proposals get to the floor, whether they are amended, tabled, presented in a given order, and conjoined or determined in isolation. Decisional rules determine the voting protocol on the final question of enactment.

For our present purposes, the nature of the framing rules distinguishes what we are calling legislative procedures from judicial procedures. In particular, it is the free-form, highly variable nature of the output of the framing rules that is salient. The question of whether final votes are addressed to broad final outcomes or more narrow parts of, or reasons for, such outcomes, for example, is guided by the largely arbitrary sequence of framing events within the legislative assembly.

Thus, even if most members of a legislative assembly happen to share the belief that outcome X is appropriate only if propositions A and B are both true, the choice to vote only on X, or on A, then B (or for that matter, the choice of whether to abandon X after a negative vote on A) is a function of a succession of votes guided only by the substantively blind dictates of *Robert's Rules* or the equivalent. Accordingly, in legislative environments, no mechanism insures that reasons or premises are revealed, much less acted upon in any formal way, and legislative procedures are notoriously open to the manipulation of their agendae. Nor can legislatures in any recognizable form obviously be remade to accommodate the discipline of deconstructing legislative proposals into their component reasons and to constrain the address of formal votes to such reasons.

The practical difficulty of constructing mechanisms to impose the discipline of reason-based voting on legislative bodies reflects a conceptual difficulty that we have noted earlier. What counts as a reason is a matter not of a linear structure of justification but rather of the depth and durability of normative commitment. Accordingly, what counts as a reason for a group should itself be a matter of democratic contest and commitment. It is hard to imagine how any mechanism that forced a decomposition of bottom-line legislative outcomes into predetermined

13. We offer this example rather than a more recognizable legislature, because that introduces the additional complications of one group deciding for another, which we take up below in Section VI.

judgmental segments could be consistent with the appropriate scope of democratic choice or with the possibility that a community's most durable normative commitments might at any given time be unredeemable in what might be logically prior judgmental segments. Indeed, given the community-specific nature of what should be understood as counting as a reason, democratic concerns with contest and commitment may argue against segmented voting on component "reasons," even if the means of enforcing such voting could be devised. Free-form framing devices familiar in legislative settings, such as *Robert's Rules*, might do a better job overall of composing the questions over which the community should direct its legislative contests and form its legislative commitments.

### *B. The Justificatory Domain of Integrity Over Reasons*

The imposition of reason-based voting over legislative decisions taken one by one would thus be extremely difficult to implement; and if it were somehow achieved, it would not be a normatively attractive. As formidable as these practical and normative obstacles to a regime of reason-based voting are, they pale by comparison to the attempt to impose reason-based voting over entire legislative programs.

On its face, a commitment to synchronic integrity that insisted on reason-based voting need be no more ambitious in its reach than legislative decisions taken one by one. But, upon reflection, it becomes clear that the normative appeal of integrity across persons with regard to a single decision is incoherent. Diachronic integrity is thus a conceptual entailment of synchronic integrity.

To see why this is so, imagine that the group in question is considering a simple legislative proposal (L) that decomposes neatly into sub-questions (A, B), which in combination offer good reason for deciding L. The democratic claim for reason-based voting goes something like this: the group can justify its choice of L to an objecting member by noting that the group has engaged in active democratic contest over substantive matters A and B, and has committed itself to both A and B, which in combination justify L.

The logic of this account has entailments requiring a significant amount of continuity across group decisions. Suppose there were three different pieces of legislation (L, M, and N), which connected to reasons

(A, B, and C) as follows:  $L = A \ \& \ \sim B$ ;  $M = \sim A \ \& \ \sim B$ ; and  $N = A \ \& \ B$ . Now, a community that enacted all three pieces of legislation could not justify itself in the democratic terms that we have just canvassed. Suppose someone objects to legislation M. Voting on reasons (assuming some legislative mechanism could do that), the community would have had to vote both  $\sim A$  and  $\sim B$  in order to have enacted M. But when the community enacted L, it would have had to have voted in support of A; and when it enacted N it would have had to have voted in support of B. Without continuity, reason-based voting cannot offer the community greater justification for its decisions than outcome-based voting. Indeed, the community that enacted L, M & N by reason-based votes would seem to be if anything less justified in the imposition of these legislative strictures on its members.

The logic of democratic justification that underlies reason-based legislative integrity thus has a conceptual scope that is at least as broad as whole legislative programs. Indeed, one might argue that consistency must extend over the legislative programs of successive legislatures. On this account, Pettit's position ought to parallel, in the legislative domain, the requirements of integrity across cases that Dworkin imposes on adjudication.

There is some appeal to such a requirement. Voters elect representatives to the legislature on the basis of the legislative programs they advocate, and often may have in mind the connection between specific legislative programs and broad patterns of legislative choice over time. But legislatures, whether committed politically to broad programs or not, generally proceed statute by statute,<sup>14</sup> or even provision by provision.<sup>15</sup> The demand for reason-based legislative voting thus depends on the availability and desirability of mechanisms of legislative choice that not only will sensibly fix on what counts as the reasons for a community decision, and not only will require that legislatures vote on the sub-units

14. Legislatures do feel some pressure towards enactment of legislative programs as a whole. The Congressional budgeting procedure, for example, attempts to induce Congress to contemplate the full legislative program that it plans to enact when it makes individual budgeting decisions. The process, however, arose not to generate consistency among reasons but to force some spending discipline on Congress.

15. Under an open rule in which any amendment may be made from the floor, *Robert's Rules of Order* permit consideration of a bill first on a provision by provision basis and then subsequently as an entirety.

of judgment that count as reasons, but will further impose some substantial requirement of continuity on decisions over time.

Continuity across time presents serious problems for the reason-based theorist. Recall our earlier example of statutes L, M, and N. Suppose that L is proposed in to Congress at time  $t$ , M to Congress at time  $t + 1$  and N to Congress at time  $t + 2$ . Suppose further that L is enacted. When Congress considers M at time  $t + 1$  does it consider the merits of M alone? Or must it consider its impact on L? Specifically, does the enactment of M implicitly repeal L because it rejects the premise A necessary for the adoption of L? Requiring continuity across time thus makes a sweeping commitment to reason-based voting still less feasible and still less appealing for a democratic community.

#### VI. GROUPS DECIDING FOR GROUPS: LEGISLATIVE INTEGRITY AND THE PROBLEM OF REPRESENTATION

In real-world democratic communities, courts, legislatures and administrative agencies are the key actors, and they almost always act on behalf of a larger polity. In this section we consider how this feature of agency bears on our prior analysis of the conflict between reason-based and outcome-based group decision making in general, and in particular on the case for reason-based procedures. The particular form of agency that is relevant to this question is *representation*; and representation is problematic for a reason-based approach to group decision making.

A group or an individual (the *representative*) can be thought to represent another group or individual (the *constituency*) when one important criteria of the representative's success is the degree to which the representative makes those choices that the constituency would make on its own behalf under some specified decisional circumstances. All agency relationships involve the agent acting on behalf of the principal, but there are a variety of ways in which one group or individual can act on behalf of another. A trustee or fiduciary, for example, might be thought to be under a stringent obligation to act on behalf of another, but this may involve doing what is best for the beneficiary of the relationship, not what the beneficiary would do on her own behalf. In public life, however, representation is a common motif of agency.

For a theorist of deliberative democracy, representation must play a big part in bridging the gap between members of a political community



acting as a committee of the whole in town meeting fashion and standard legislative practice, where a small number of elected legislators make decisions on behalf of large constituencies. This idea of the members of a political community contesting the substantive grounds of community choice and then in turn being bound by community-wide commitments to those grounds, for example, presumably entails a substantial responsibility on the part of legislators to recreate or reflect the will of their constituents. Indeed, Phillip Pettit's commitment to reasons rather than outcomes seems in part designed to assure that voters can choose the legislators who can best be depended upon to reflect their will.

A view of the function of legislators that makes their representative role important is neither surprising nor disturbing. But acknowledging this role raises a number of questions that undercut a sweeping demand that legislators respond to paradoxical cases on the basis of reasons rather than outcomes. A full analysis of these questions is beyond our ambitions here; what follows merely sketches some of the difficulties that a claim for reason-based community choice must confront.

To organize the discussion, observe that we must consider the relation of the views of four distinct groups: the *constituency*, the *individual representative*, the *polity*, and the *legislature*. Notice that one's theory of representation (and the structure of the electoral system) will determine the relation between a representative's views and the (aggregated) views of her constituency. Similarly, the structure of the legislature and the electoral system will determine in part the relation between the (aggregated) views of the polity and the (aggregated) views of the legislature. So, for example, the pattern of individual views in a constituency might be paradoxical though the pattern within the polity as a whole might not be; in this circumstance, the pattern of views within the legislature may or may not be paradoxical. Obviously, there are eight possible relations of patterns of belief among these three groups. The eight patterns are displayed in Table 7.

The question for the reason-based integrity theorist is: in which group or groups will the demands of integrity apply? The answer to that question is fraught with real puzzles in some cases. The earmark of a paradoxical distribution of views, of course, is that support for the component reasons diverges from support for the outcome. To see how the common phenomenon of groups deciding for groups complicates things for the

reason-based integrity theorist, let us suppose that the legislation in question is a law substantially reducing a particular state's restrictions on the opportunity of a woman to secure abortion, and that when a paradoxical distribution obtains on Table 7, the distribution assumes the form we portrayed in Table 6. That is, one-third of the relevant group supports the legislation on equality grounds; a different one-third supports the legislation on autonomy grounds; and the final one-third does not support the legislation at all. So, while each of the two reasons for the legislation is rejected by two-thirds of the relevant group, the law itself is supported by two-thirds of the same group. And let us further suppose that when a non-paradoxical distribution obtains on Table 7, the relevant group still supports the legislation, but the group members' agreement on outcome is now consistent with their agreement on reasons. This could be so for example if all of the sub-group supporting the legislation on autonomy grounds also supports it on equality

TABLE 7  
 POSSIBLE RELATIONS AMONG THE PATTERNS OF VIEWS WITHIN THREE  
 DIFFERENT GROUPS

Constituency	Polity	Legislature
P	P	P
P	P	not-P
P	not-P	P
P	not-P	not-P
not-P	P	P
not-P	P	not-P
not-P	not-P	P
not-P	not-P	not-P

P indicates the existence of a pattern of paradoxical views in the relevant group.

grounds, so that two-thirds of the community now agree on the equality grounds for the legislation.

Now, suppose we consider this row from Table 7:

Constituency	Polity	Legislature
not-P	not-P	P

If integrity binds the legislature, and the legislators accordingly take themselves to be bound to resolve the question before them issue by issue, then they will reject the legislation, despite the fact that two-thirds of the polity they represent would adopt the legislation without any ambiguity as to the grounds for so doing.

Suppose that candidates for the position of constituent representative adopt the policy positions that maximize each candidate's probability of election. Then the positions endorsed by the elected representative will depend critically on the structure of the electoral system with single member districts in a two party system yielding very different outcomes than a party list system within the polity as a whole. In either circumstance, however, it is not clear that the representative will need to endorse views on all the reasons that underlie a legislative outcome.

Consider these rows from Table 7, with all of our other hypothesized circumstances in place:

Constituency	Polity	Legislature
P	not-P	not-P
P	not-P	P

A representative concerned with reelection would surely be inclined to support the legislature removing restrictions on abortions, since two-thirds of her constituents want the legislation, notwithstanding their disagreement on reasons for the legislation. And what reason is there for her not doing so? After all, once again, two-thirds of the polity as a whole want the law, and as a group are fully committed to one or both reasons for the law. Were she to defy the wishes of two-thirds her constituency,

and cast her vote against the law because her constituency as a group did not support a single reason for the law, or on behalf of her constituency, in some overly literal representative mode, vote against each of the reasons, she would not only imperil her reelection, but—were she the deciding vote—she would defeat a law that two-thirds of the polity wanted and that they had integrity-satisfying grounds for wanting.

## VII. CONCLUSION

We have identified several formidable hurdles for a working conception of integrity. First, any theory of integrity must distinguish among and respond to the diverse types of decisions that groups, including legislatures, are called upon to make. Appropriately understood, a group decision might reflect the aggregated preferences of the group; it might reflect the group's factual judgments; or it might reflect the value judgments of the group. As we have seen, the plausibility of the case for integrity, particularly with regard to such nice matters as the aggregation of reasons versus outcomes, is likely to vary substantially among these types.

Second, and following from our analysis of these pure types of decisions, reason-based conceptions of integrity must confront the fact that reasons and outcomes are not presented in neatly labeled packages. In actual deliberation, our commitments to outcomes may sometimes be more basic and fundamental than our commitment to the “principles” or “reasons” that ostensibly support them.

Third, any theory of integrity that implicates legislative integrity is likely to require radical transformations of legislative practice as we know it, transformations that well may be inconsistent with the democratic virtues of that practice.

Fourth, whenever representation enters the picture, serious questions of whose integrity matters arise: that of the decision-making body itself; each representative's discrete constituency, taken one by one; or the polity as a whole? The views of the decision-making body may present a paradoxical case even when the distribution of views of each representative's constituency or of the population as a whole are not paradoxical. Conversely, the distribution of views within the representative body may not be paradoxical when the views of the population as a whole are. Where integrity touches upon representation, it must include a theory of representation that offers guidance through this thicket of possibilities.