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**STATE LEGITIMACY AND POLITICAL OBLIGATION IN  
*JUSTICE FOR HEDGEHOGS:*  
THE RADICAL POTENTIAL OF DWORKINIAN DIGNITY**

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INTRODUCTION .....	737
I. DIGNITY AND POLITICS: DWORKIN’S RECONCILIATION PROJECT .....	739
A. <i>The Challenge</i> .....	739
B. <i>Dworkin’s Solution</i> .....	743
II. WHAT DWORKINIAN DIGNITY REALLY DEMANDS .....	746
A. <i>Failures of Political Obligation</i> .....	746
B. <i>Is State Legitimacy the Exception or the Rule?</i> .....	748
C. <i>Historical State Legitimacy and Political obligation</i> .....	750
D. <i>Present Day State Legitimacy and Political Obligation</i> .....	754
CONCLUSION.....	757

INTRODUCTION

In his new book, *Justice for Hedgehogs*, Ronald Dworkin tackles a host of age-old philosophical issues including the nature of reality and truth, the status of moral claims, and the meaning of life.<sup>1</sup> Among other things, he sets out to demonstrate the unity of all values, solve the problem of free will, refute external skepticism about morality, justify the doctrine of double effect, describe the good life and how we should treat others, defend a particular political and legal theory, and explicate an account of human rights.<sup>2</sup> *Justice for Hedgehogs*, however, is not simply a compilation of Dworkin’s views on a wide range of questions that have perennially intrigued philosophers – this would make it a book for foxes. It is instead a book for hedgehogs because of the overarching presence of “one big thing,” which Dworkin identifies as

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<sup>1</sup> RONALD DWORKIN, *JUSTICE FOR HEDGEHOGS* (forthcoming 2010) (Apr. 17, 2009 manuscript at 9, 11, 19, on file with the Boston University Law Review). This paper is based on the draft version of this manuscript dated April 17, 2009. It is possible that the final published version of the book is revised in ways that may obscure some of what is said here.

<sup>2</sup> *Id.* (manuscript at 7, 23-25, 187-91, 211-13, 260-62).

value.<sup>3</sup> At the center of Dworkin's philosophical narrative about value is a particular notion of *human dignity*, the details of which Dworkin meticulously and systematically explores throughout the book.<sup>4</sup> Perhaps most importantly, dignity (as Dworkin understands it) underlies and unifies what he calls "ethics" ("living well") and what he calls "morality" ("being good").<sup>5</sup>

In the penultimate section of his discussion of morality, the duties that people owe to each other, Dworkin takes up the topic of political obligation – the obligations people have in virtue of membership in a political community.<sup>6</sup> As he sees it, the very idea of life under a government raises an immediate and potentially devastating worry, namely that the existence of political rule might pose such a threat to human dignity as to be incompatible and irreconcilable with it.<sup>7</sup> Obeying the laws of a polity seems akin to surrendering one's dominion over one's life, which dignity prohibits.<sup>8</sup> Coercing other people into doing as the majority wishes – a common feature of democratic politics – likewise appears at odds with the requirement that we respect their dignity.<sup>9</sup> Dworkin's goal in his discussion of political obligation is to dispel these worries.<sup>10</sup> He explains how obedience to law can be reconciled *in principle* with respect for the dignity of oneself and others.<sup>11</sup> But he goes further, claiming that the *actual* citizens of many of the political communities that have existed historically, or exist at present, did or do, in fact, have a moral obligation to obey the laws of their states.<sup>12</sup> His contrast class includes those relatively rare cases in which such obligation is absent, either wholly or in part.<sup>13</sup>

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<sup>3</sup> *Id.* (manuscript at 7). The title of Dworkin's book is a reference to the aphorism by the Greek poet Archilochus, "[t]he fox knows many things, but the hedgehog knows one big thing," which inspired Isaiah Berlin's famous essay, *The Hedgehog and the Fox*. ISAIAH BERLIN, *The Hedgehog and the Fox*, in *RUSSIAN THINKERS* 22, 22 (Henry Hardy & Aileen Kelly eds., 1978). Berlin proceeds to divide writers and thinkers into two main categories: hedgehogs, for whom the world boils down to a single defining idea (for instance Plato, Dante, and Hegel), and foxes who draw on a wide variety of experiences (for instance Aristotle, Shakespeare, and Montaigne). *Id.* at 22-23.

<sup>4</sup> DWORKIN, *supra* note 1 (manuscript at 128).

<sup>5</sup> *Id.* (manuscript at 11-12, 165-66).

<sup>6</sup> *Id.* (manuscript at 202-05).

<sup>7</sup> *Id.* (manuscript at 203).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* (manuscript at 204).

<sup>11</sup> *Id.* (arguing that dignity may be protected if the government treats all those whom it governs as equal partners).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* ("[P]olitical obligation wholly fails for any group that is systematically denigrated in second-class citizenship – or none at all – as in the ante-bellum South, Nazi Germany, apartheid South Africa, the genocidal nations of Africa and the Soviet tyranny.").

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Dworkin's argument is rich and thought-provoking. Yet, his discussion is quite brief and highly condensed, taking up less than five pages of text.<sup>14</sup> We thus begin by offering a careful reconstruction of the steps in his argument. With this reconstruction in hand, we raise some questions about the success of his account. We are especially skeptical about Dworkin's optimism regarding the prevalence of genuine political obligation and the governmental legitimacy it presupposes. We argue that a quite different conclusion could and should be drawn from the principles and assumptions of his account. As we will show, Dworkin's own analysis of the circumstances under which political obligation fails gives us reasons to doubt the legitimacy of most states, both past and present. Contrary to how Dworkin himself seems to understand it, his theory provides resources for a deep and widespread *critique* of political societies, and a reassessment of our obligations qua citizens.

## I. DIGNITY AND POLITICS: DWORKIN'S RECONCILIATION PROJECT

### A. *The Challenge*

Dworkin's discussion of political obligation is framed as an answer to the worry that membership in political societies, *even if democratic*, might be incompatible with respect for human dignity.<sup>15</sup> The worry is that the existence of a state *as such* violates the requirements of dignity.<sup>16</sup> He formulates this concern as follows:

Some members of any political community exercise coercive power over others: they threaten punishment for disobedience and they have the power to carry out the threat. That state of affairs threatens dignity in both directions: it threatens both our principles. How can I, given my special responsibility for my own life, accept the dominion of others? How can I, given my respect for the objective importance of other people's lives, join in forcing them to do as I wish? Everyone who is not a dictator faces the first of these challenges. A great many people – in a genuine democracy almost all adults – face the second as well, and it is equally sharp.<sup>17</sup>

In Dworkin's account, both the exercise of political power and the submission to that power present challenges to the ethical and moral ideals he lays out.<sup>18</sup> Understanding why this worry arises – and indeed, why it is a worry at all – requires a brief detour into previous sections of the book.

In earlier chapters of *Justice for Hedgehogs*, Dworkin identifies the concept of dignity as the core interpretative value of human life and specifies its two

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<sup>14</sup> *Id.* (manuscript at 202-06).

<sup>15</sup> *Id.* (manuscript at 204).

<sup>16</sup> *Id.* (manuscript at 203).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

basic requirements: self-respect and authenticity.<sup>19</sup> Because the principle of self-respect and the principle of authenticity concern how one ought to live, as well as how one ought to treat others, these principles govern both ethics and morality.<sup>20</sup>

The principle of self-respect requires that I “accept that it is a matter of importance that [my] . . . life be a successful performance rather than a wasted opportunity.”<sup>21</sup> This basic ethical principle yields a moral imperative. Dworkin adopts what he dubs “Kant’s principle,” which stipulates: “A person can achieve the dignity and self-respect that are indispensable to a successful life only if he shows respect for humanity itself in all its forms.”<sup>22</sup> Recognizing the objective importance of *my* life leads me to recognize the objective importance of *other people’s* lives (there is nothing special about *me* or *my life* which could justify awarding it special status).<sup>23</sup> Indeed, the reason you have to care how your life goes is a reason for you to care about other people’s lives: “You see the objective importance of your life mirrored in the objective importance of everyone else’s.”<sup>24</sup>

The principle of authenticity demands what Dworkin calls “ethical responsibility” and “ethical independence.”<sup>25</sup> According to the former, “[e]ach person has a special, personal responsibility for identifying what counts as success in his own life; he has a personal responsibility to create that life through a coherent narrative that he has himself chosen and endorses.”<sup>26</sup> The latter forbids us from acting according to decisions and values that are not of our own making.<sup>27</sup> Living authentically, for Dworkin, involves designing a life for oneself, creating one’s identity.<sup>28</sup> This is not an endorsement of radical or existential freedom; rather, Dworkin envisions a kind of “cultural palette” from which each person paints his or her own life.<sup>29</sup> His demand is that each person exercise independence in – and thus responsibility for – choosing the color scheme of his or her own life.<sup>30</sup> From the moral perspective, authenticity demands we recognize and respect the responsibility of other people to make their own independent decisions about the values that will shape their lives.<sup>31</sup>

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<sup>19</sup> *Id.* (manuscript at 128).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* (manuscript at 15).

<sup>23</sup> *Id.* (manuscript at 162).

<sup>24</sup> *Id.* (manuscript at 164).

<sup>25</sup> *Id.* (manuscript at 133-32).

<sup>26</sup> *Id.* (manuscript at 132).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* (manuscript at 133) (“[W]e all live in an ethical culture that provides, at any time, the pallet of recognizable ethical values from which possibilities can be drawn.”).

<sup>30</sup> *See id.* (manuscript at 132).

<sup>31</sup> *Id.* (manuscript at 135).

We are now better equipped to make sense of the worry that life in political societies imperils human dignity. States claim the right to control the population within a defined territory, and they demand obedience.<sup>32</sup> They impose penalties for non-compliance, including taking away the subject's goods (with fines), liberty (with prisons), and even life (with capital punishment).<sup>33</sup> They impinge on our responsibility to decide how to live, and force us to observe rules not of our own making.<sup>34</sup> Whether one is on the giving or the receiving end of this coercive social control, the two fundamental principles of dignity appear seriously compromised in political societies.<sup>35</sup>

Recognizing the objective importance of my own life and therefore my special personal responsibility to shape and structure it according to my own decisions rather than the decisions of others is, *prima facie*, threatened to the extent that I am subordinated to higher powers. But being subject to a government involves precisely such subordination to a higher power. Thus, political society seems to make it impossible for people to fulfill the ethical requirements of Dworkin's theory. In a telling comment cited above, Dworkin notes that everyone who is not a dictator faces this challenge.<sup>36</sup> His point is that the dictator does not have to live his life according to someone else's rules; the dictator has the luxury of living by no rules except those of his own making. However, those who are *not* dictators (i.e., the rest of us) cannot: Citizens are subject to an authority which makes it the case that they must, at least for those things that come under the purview of the law, defer to decisions that they did not themselves make.

Dworkin is right to worry about this. Notice that a prohibition on the kinds of coercive social control which states exercise seems to follow almost immediately from the principles of his account.<sup>37</sup> He is clear that ethical responsibility is "non-delegable";<sup>38</sup> but laws that prescribe some forms of conduct and prohibit others impinge on people's ability to exercise their decision-making capacities (at least in those domains covered by law) and thereby impinge on their ability to see themselves as ethically responsible in the requisite way. Indeed, the idea of ethical independence alone seems to rule out submission to a political order. Dworkin states that ethical independence

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<sup>32</sup> *See id.* (manuscript at 203).

<sup>33</sup> *See id.*

<sup>34</sup> *See id.*

<sup>35</sup> *Id.*

<sup>36</sup> *See supra* quotation accompanying note 17.

<sup>37</sup> DWORKIN, *supra* note 1 (manuscript at 204) ("How can dignity be protected in [a democracy] . . . ? Only if government governs in such a way as to treat all those it governs as partners in a collective enterprise so that each can treat collective decisions – even those he disapproves – as issuing from a process in which he has an equal voice.").

<sup>38</sup> *Id.* (manuscript at 132) (stating that authenticity "assigns each person a non-delegable responsibility for identifying and then pursuing his own conception of what it is to live well").

requires us to “resist domination.”<sup>39</sup> He explains that, “[s]o far as deliberate decisions are to be made about the ideals that are to govern my life, these must be my decisions *rather than decisions of others that I am required by some form or dimension of authority to observe.*”<sup>40</sup> While *limitations* of one sort or another are a fact of life, *domination* is avoidable and can and must be resisted.<sup>41</sup>

In the key passage cited above, Dworkin puts the point in terms of *harm*.<sup>42</sup> Domination inflicts a special harm to the dignity of the dominated by depriving them of their personal responsibility to shape and structure their lives according to their own decisions.<sup>43</sup> On its face, government seems to harm us in precisely this way.<sup>44</sup> Every member of a political community (except the dictator, of course) is subject to law, and hence required to behave according to rules which he or she did not choose, or stand ready to pay the penalty for noncompliance. Examples of such restrictions on individuals’ conduct are numerous. My hobbies, for instance, are substantially limited by laws: I cannot swim in protected areas, or scuba dive in deep waters without a certified instructor; I need an authorization to set a camp in national parks. My working conditions are largely influenced by state regulations, or the absence thereof. The rules governing some of our most personal relationships are determined by the state; for example, whom I am permitted to marry (as well as the circumstances in which I am permitted to end that marriage) is dictated by law. In short, the law forms and constrains a good deal of my life prospects and possible trajectories, from the most trivial to the most fundamental. Membership in a polity thus inevitably entails that we at least defer to political authority, if not surrender our autonomy, in such a way that impedes our ability to satisfy Dworkinian ethical norms – or so it seems.<sup>45</sup>

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<sup>39</sup> *Id.* (manuscript at 133).

<sup>40</sup> *Id.* (manuscript at 133-34) (emphasis added).

<sup>41</sup> Domination is distinct from limitation, as Dworkin stresses. *Id.* We are inescapably limited, influenced by our environment, confined to the “cultural palette” of our community. For instance, the life of the ancient Samurai is not available in late twentieth century urban United States: the character played by Forest Whitaker in Jim Jarmusch’s *Ghost Dog: The Way of the Samurai* cannot fulfill his ethical ideals so long as the socio-cultural conditions indispensable for the Samurai lifestyle are missing. He abides by its code of honor but ultimately remains a mafia hit man. Such limitations, however, do not constitute domination. *GHOST DOG: THE WAY OF THE SAMURAI* (Pandora Filmproduktion 1999).

<sup>42</sup> See *supra* quotation accompanying note 17.

<sup>43</sup> DWORKIN, *supra* note 1 (manuscript at 133-34).

<sup>44</sup> *Id.* (manuscript at 134).

<sup>45</sup> Note that Dworkin seems to disavow use of the word “autonomy,” *id.*, distinguishing it from authenticity, but a close reading reveals that it is only certain theorists’ misguided use of the notion that he disavows. *Id.* (describing some philosophers’ conception of the value of autonomy as “a demeaning view of authenticity”). We suspect he would not object to our use of “autonomy” in this context.

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Submission to a system of political rule appears to render it impossible for me to fulfill my ethical duties to myself, but it also, perhaps more importantly, renders it impossible for me to fulfill my moral duties to others.<sup>46</sup> Whoever wields the sovereign power – be it one, few, or many, as the ancient taxonomy has it – seems to violate the demands of self-respect and authenticity. Ethical independence prohibits domination, that is, depriving other people of their special personal responsibility for their own life; yet exercising political power over others may be equivalent to just that: domination. If this is right, even members of democratic societies are guilty of failing to show proper concern for the dignity of their fellow citizens. This moral dimension of the problem appears even in democracies; the democratic state simply coerces others *on my behalf*.

In sum, the problem Dworkin is concerned with is how the coercive apparatus of government can be reconciled with respect for human dignity.<sup>47</sup> Dignity sets out the following conditions: First, recognizing (a) the objective importance of my own life, and (b) my special responsibility to make decisions for myself, requires that I not submit to the domination of others (even the state).<sup>48</sup> Second, recognizing (a) the objective importance of other people's lives, and (b) their special responsibility to make decisions for themselves, requires that I not seek domination over others (even through a state).<sup>49</sup> It seems to follow, therefore, that I cannot properly value my own dignity while submitting to political authority; and that I cannot properly value the dignity of other people while participating in processes and institutions that force them to do as the collectivity wishes.

#### B. *Dworkin's Solution*

Dworkin aims not only to reconcile life in political societies with respect for human dignity, but also to show that under certain conditions submission to political authority is morally required by the principles of dignity.<sup>50</sup> Recall that Dworkin takes on this discussion as he is in the midst of inquiring into the moral relationship that holds among citizens, which is special precisely because it involves the exercise of coercive power by some people over others.<sup>51</sup> Dworkin identifies political obligation, that is, the moral duty to obey the law because it is the law, as the main obligation that normally flows from political association.<sup>52</sup> He focuses on subjection to political authority rather than its exercise because he wants to show that political obligation holds, or

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<sup>46</sup> *See id.* (manuscript at 204).

<sup>47</sup> *Id.* (manuscript at 203).

<sup>48</sup> *Id.* (manuscript at 132-33).

<sup>49</sup> *Id.* (manuscript at 162, 166).

<sup>50</sup> *Id.* (manuscript at 202).

<sup>51</sup> *Id.* (manuscript at 199, 202).

<sup>52</sup> *Id.* (manuscript at 203).

has held, in most political communities, historically and at present.<sup>53</sup> More importantly, he focuses on obedience to law because it constitutes the common, prevalent feature of our experience as members of states, whereas active political participation only occurs in a democracy.<sup>54</sup> As we will see, Dworkin intends his understanding of political obligation as associative obligation to apply to democratic and non-democratic regimes alike.<sup>55</sup>

Dworkin begins by dispelling the worry about the *prima facie* incompatibility between membership in political societies and human dignity.<sup>56</sup> He does this by stipulating that government does not violate dignity *if it treats all those it governs with equal concern*.<sup>57</sup> Coercive state power can be reconciled with dignity to the extent that the political procedures and general structure of law are understood as expressing full and equal respect for all.<sup>58</sup> Such reconciliation is possible, Dworkin says, “[o]nly if government governs in such a way as to treat all those it governs as partners in a collective enterprise so that each can treat collective decisions – even those he disapproves – as issuing from a process in which he has an equal voice.”<sup>59</sup> I can submit to such a government without betraying my duty to take responsibility for my own life because I can view the political association as a collective enterprise in which I partake as an equal partner. And I do not violate my obligation to respect your dignity by joining in the exercise of collective power because you can likewise treat the political decisions as issuing from a process in which you had an equal voice. And generally, if the government treats all with equal concern and respect, then our membership in such state does not jeopardize our ethical and moral endeavors and accomplishments.

For Dworkin, the conditions under which coercive state power does not compromise dignity spell out the conditions of political legitimacy.<sup>60</sup> The state is legitimate if, and only if, (a) it acknowledges the responsibility and right of each citizen to make her own decisions about the personal ethical values that will shape her life, and (b) it judges the fates of all citizens as equally important.<sup>61</sup> Clearly then, a legitimate political community that stands ready to

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<sup>53</sup> *See id.* (manuscript at 204) (recognizing it is counterintuitive to hold that the subjects of most political communities over history had no moral duty to obey the laws of their community).

<sup>54</sup> *Id.* (manuscript at 202-05).

<sup>55</sup> *Id.* (manuscript at 204-05).

<sup>56</sup> *Id.* (manuscript at 204).

<sup>57</sup> *Id.* (manuscript at 209).

<sup>58</sup> *Id.* (manuscript at 204).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* (manuscript at 216) (“[W]e do not recognize that moral authority unless the rulers’ governance is legitimate and we do not accept government as legitimate unless it treats those over whom it claims moral authority with the right attitude.”).

<sup>61</sup> *Id.*

enforce its laws does not threaten its members' self-respect, nor does it prevent them from living authentic lives. Ethical responsibility and independence are therefore compatible with governance by (and over) others when the conditions of legitimacy are met, i.e., when the political arrangements and law express genuine and unwavering respect for the dignity of each of its citizens.<sup>62</sup>

Finally, Dworkin purports to show that compliance with law (at least, to the extent that it emanates from a legitimate state) is not only permissible given the principles of dignity, but morally required.<sup>63</sup> Were I to break the laws of a legitimate state, I would violate my duties to my fellow citizens. Dworkin explains that a community which satisfies the requirements of dignity ((a) and (b) above),<sup>64</sup> has the moral power to create and enforce obligations on its members.<sup>65</sup> Political legitimacy thus entails the moral right to demand compliance from, and exercise coercion on, the governed.<sup>66</sup> Albeit conceptually distinct, state legitimacy and political obligation correlate and are mutually coextensive: Citizens are morally bound to obey the laws of their community when, and to the extent that, these emanate from a legitimate government.<sup>67</sup>

Hence Dworkin moves from the state's right to coerce to citizens' duty to comply via the principles of dignity.<sup>68</sup> State legitimacy entails political obligation insofar as members of the political community "can treat collective decisions – even those they disapprove – as issuing from a process in which [each] . . . has an equal voice."<sup>69</sup> Thus Dworkin concludes that "I owe it to my fellow citizens, and they owe it to me, to obey the law."<sup>70</sup> Someone who properly values dignity in herself and others must do her part in securing a government that protects each citizen's dignity.<sup>71</sup> According to Dworkin, this fundamental responsibility includes "the responsibility . . . to obey the laws of [such a government,] . . . unless those laws themselves outrage dignity."<sup>72</sup> It also includes the duty to bring a legitimate government about if the government in place does not meet the demands of dignity.<sup>73</sup>

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<sup>62</sup> *Id.* (manuscript at 209).

<sup>63</sup> *Id.* (manuscript at 204).

<sup>64</sup> *See supra* text accompanying note 61.

<sup>65</sup> DWORKIN, *supra* note 1 (manuscript at 216).

<sup>66</sup> *Id.* (manuscript at 202).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* (manuscript at 204).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

## II. WHAT DWORKINIAN DIGNITY REALLY DEMANDS

A. *Failures of Political Obligation*

Dworkin concludes his discussion of political obligation by asking the question, “[d]oes political obligation hold only in democracies?”<sup>74</sup> In response, he says:

We might be tempted to say so because we may think that a state does not express an equal concern for all its citizens, or respect the special responsibility of each for his own life, if it allows some of them a special status of coercive power from which others are systematically excluded. No feasible principle of exclusion – by blood, wealth or capacity – might seem even plausibly consistent with equal concern and respect. If we accept that tempting conclusion, however, then we must also accept that most of the subjects of most of the political communities over history had no moral duty to obey the laws of their community. That seems counter-intuitive; certainly it contradicts what I assume to be the convictions of most people in, for example, stable and reasonably just monarchies.<sup>75</sup>

Even though he considers tempting the claim that a state cannot treat all those it governs with equal concern unless it actually gives each of them an equal voice in the political process, Dworkin denies that political obligation only holds in democracies.<sup>76</sup> Notice that the reason that he balks at this idea is that it would entail that “most of the subjects of most of the political communities over history had no moral duty to obey the laws of their community” which, in his opinion, is simply too counterintuitive to be defensible.<sup>77</sup> One gets the impression from this passage that it is Dworkin’s eagerness to resonate with (what he takes to be) common intuitions about political obligation that is doing the work here (i.e., that is motivating the claim that political obligation exists in non-democratic states).

Dworkin suggests instead that both state legitimacy and political obligation come in degrees, and depend on “the character and spirit of working political practices” rather than on the form of government.<sup>78</sup> This way, according to Dworkin, although democracies are the true models of legitimate governments, decent hierarchical societies, including “reasonably just monarchies,”<sup>79</sup> and indeed most of the political communities that have existed historically and at present can be regarded as satisfying the conditions of legitimacy.<sup>80</sup> Political

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *See id.* (manuscript at 205).

<sup>77</sup> *Id.* (manuscript at 204).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

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obligation, even if it is only matter of degree, is thus not the exception; rather it is the norm.

Dworkin's largely optimistic view about the pervasiveness of political obligation is also evident in his discussion of the partial or wholesale failure of political obligation. He says:

It follows that people have no obligation to obey the laws of those political communities that claim dominion over them but whose procedures cannot even plausibly be understood as displaying equal concern for them. Civil disobedience is appropriate, provided other necessary conditions are met, when the overall conditions of political obligation exist – the procedures and general structure of law do reflect a conception of equal concern and respect for all – but some particular law is so strikingly unjust that disobedience is justified as an exception. In contrast, political obligation wholly fails for any group that is systematically denigrated in second-class citizenship – or none at all – as in the ante-bellum South, Nazi Germany, apartheid South Africa, the genocidal nations of Africa and the Soviet tyranny.<sup>81</sup>

Notice that Dworkin's examples of states that fail to generate political obligation are quite extreme. He seems to regard them as tragic episodes that fall outside the ordinary course of history. Political obligation normally prevails, while its failures seem to be relatively exceptional. Thus, Dworkin has potentially granted some degree of legitimacy to non-democratic states, restricted failures of legitimacy to a limited class of exceptions, and insisted that most people in most states *have* had political obligation.<sup>82</sup> At the very least, we can infer he is likely to judge that most contemporary Western states are legitimate and that their citizens have corresponding political obligations.

A close reading of the final sentence of the passage just quoted reveals something telling about what Dworkin takes his position to be: namely, that only the group that is being excluded from the collective enterprise of governance is exempt from political obligation. Thus political obligation to an apartheid state only "wholly fails" for black South Africans; the Nazi regime utterly fails to warrant compliance only from German Jews, gypsies, homosexuals, and so on; and the pre-Civil War United States government merits obedience from everyone except those who are enslaved. The "first-class" citizens (e.g., white South Africans, non-persecuted Germans, and slave-owning Americans) are presumably still obligated to obey the law; indeed, their obligations appear unaffected by the injustices under which they live. Dworkin's position is not unique in this regard; theorists commonly assume that if any portion of the population is exempt from political obligation it does

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

not affect the force of the political obligations that bind the rest of the citizens.<sup>83</sup>

Contrary to how Dworkin sees the issue, we contend that his very own principles commit him to a much more radical position. Specifically, Dworkin's requirements of dignity would call for a *generalized* failure of political obligation in cases of systematic discrimination against a group within the community. Dworkin's account of the moral obligations associated with political membership entail that members of the privileged classes in an unequal society fail to respect the dignity of the oppressed if they participate in (or presumably even acquiesce to) the social and political conditions that maintain the oppressive system.<sup>84</sup> White South Africans who either did nothing or actively supported the apartheid government thereby violated their duties to their black countrymen. In fact, arguably the only way for white South Africans to have fulfilled such duties would have been to attempt to get rid of apartheid and institute a just regime.

It is crucial to keep in mind that the failure of political obligation does not necessarily entail a license to disobey the law. Compliance with law may be justified by appeal to other moral and non-moral principles. However, a Dworkinian citizen cannot be morally bound to abide by rules that systematically discriminate against a group of fellow citizens while simultaneously benefiting her.<sup>85</sup> For, if she were to accept an obligation to obey laws that denigrate certain minorities, she would fail to recognize the objective importance of other people's lives, as the second principle of dignity demands.<sup>86</sup> Having one's dignity recognized and respected by one's community is thus not sufficient to incur an obligation to obey its laws. The demands of dignity cannot be fulfilled for *anyone* unless the community actually treats *everyone* with equal concern and respect. This seems to follow logically from Dworkin's own account, which explicitly states that the government must respect the requirements of dignity "person by person" to be legitimate.<sup>87</sup> We return shortly to what this notion implies.

#### B. *Is State Legitimacy the Exception or the Rule?*

We contend that Dworkin assesses the legitimacy of actual states with excessive optimism. Dworkin holds that the conditions of governmental legitimacy are obtained enough of the time, and to a sufficient extent, that

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<sup>83</sup> Bhikhu Parekh, *A Misconceived Discourse on Political Obligation*, 41 POL. STUD. 236, 239 (1993). According to Parekh, this is the ninth traditional assumption of theorists thinking about political obligation. *Id.* at 237-39.

<sup>84</sup> See DWORKIN, *supra* note 1 (manuscript at 204) (stating that every citizen owes the other citizens a duty to try to secure a legitimate government).

<sup>85</sup> *See id.*

<sup>86</sup> *Id.* (manuscript at 167).

<sup>87</sup> *Id.* (manuscript at 210).

political obligation is prevalent in most states.<sup>88</sup> Yet as he later explains, legitimacy requires political equality and a liberal society: “First, everyone must be permitted to participate in the right way in the collective decisions that make up his governance and, second, everyone must be left free from collective decision in matters that his personal responsibility demands he decide for himself.”<sup>89</sup> A community that generates political obligation is one that is governed by the people as a whole, acting as partners in the joint enterprise of self-governance.<sup>90</sup>

Partnership is the key concept in this discussion. Dworkin puts it at one point in a slogan-like formulation: “Coercive government destroys dignity without partnership.”<sup>91</sup> Dworkin’s “partnership” conception of democracy was first presented in *Freedom’s Law*<sup>92</sup> and further developed in *Sovereign Virtue*.<sup>93</sup> This conception is distinct from a “majoritarian,” merely statistical conception of democracy in that it “fuses” the two concepts of democracy and legitimacy. In *Hedgehogs*, he makes this point saying:

The partnership conception of democracy . . . holds that self-government means government not by the majority of people exercising authority over everyone but by the people as a whole acting as partners. This must inevitably be a partnership that divides over policy, of course, since unanimity is rare in political communities of any size. But it can be a partnership nevertheless if the members accept that in politics they must act with equal respect and concern for all the other partners in the joint enterprise of self-governance. . . . [T]hat is, . . . if each accepts a standing obligation not only to obey the community’s law but to try to make that

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<sup>88</sup> See *id.* (manuscript at 202).

<sup>89</sup> *Id.* (manuscript at 228). Dworkin presents these two conditions as a restatement in concrete terms of the conditions of legitimacy presented earlier. According to Dworkin, as we noted, the state is legitimate if, and only if, (a) it acknowledges the responsibility and right of each citizen to make her own decisions about the personal ethical values that will shape her life; and (b) it judges the fates of all citizens as equally important. *Id.* (manuscript at 216). Note that the second condition is especially intended to prohibit ethical paternalism. See *id.* (manuscript at 133) (“We cannot escape influence, but authenticity requires us to resist domination. The distinction is of great ethical importance: it is the difference between limitation and subordination.”).

<sup>90</sup> *Id.* (manuscript at 202).

<sup>91</sup> *Id.* (manuscript at 205).

<sup>92</sup> RONALD DWORKIN, *FREEDOM’S LAW: THE MORAL READING OF THE AMERICAN CONSTITUTION* 17 (1996) (describing the constitutional conception of democracy and its goal that political institutions treat all members of the community with “equal concern and respect”).

<sup>93</sup> RONALD DWORKIN, *SOVEREIGN VIRTUE: THE THEORY AND PRACTICE OF EQUALITY* 358 (2000) (“According to the partnership conception, government by ‘the people’ means government by *all* the people, acting together as full and equal partners in a collective enterprise of self-government.”).

law consistent with his good faith understanding of what every citizen's dignity requires.<sup>94</sup>

Dworkin concedes the "heroic idealism" of his proposal, by which most existing democracies would fail to qualify as partnerships, and hence fail as legitimate polities.<sup>95</sup> But "[l]egitimacy is a matter of degree," he insists, and the point of the partnership conception of democracy is to make "self-government at least an intelligible ideal."<sup>96</sup>

With deference to Dworkin's intent, we maintain that the requirements of dignity – and the partnership democracy that alone truly meets them – provide a crucial basis for a radical critique of political communities, most of which would score very poorly on what we may call the "legitimacy quotient." Indeed, most states have features (constitutional arrangements or policies) that indicate a lack of concern for some portion of their population, to put it mildly. Since the government must meet the requirements of dignity person-by-person in order to be legitimate, localized failures of political obligation will entail general failure of political obligation. In other words, we contend, contra Dworkin, that political obligation is the exception rather than the norm in historical and contemporary states.

### C. *Historical State Legitimacy and Political Obligation*

Considered historically, virtually all states have disenfranchised, oppressed, or persecuted at least some of their members. In Robert Dahl's social scientific analysis, most of the nation-states existing today, including Western democracies, started as more or less "closed hegemonies," that is, authoritarian regimes in which one or a few rule.<sup>97</sup> Dahl measures democratization in terms of two main indices: "liberalization" or increase of public contestation, and "inclusiveness" or improved participation in the political processes.<sup>98</sup> Hegemonic systems are characterized by a failure on both dimensions.<sup>99</sup> Dahl calls real-world democracies "polyarchies," reserving the normative term "democracy" to refer to perfect liberalization and inclusiveness.<sup>100</sup> He says, "[p]olyarchies . . . may be thought of as relatively (but incompletely) democratized regimes, or, to put it in another way, polyarchies are regimes that have been substantially popularized and liberalized, that is, highly inclusive and extensively open to public contestation."<sup>101</sup>

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<sup>94</sup> DWORKIN, *supra* note 1 (manuscript at 240-41).

<sup>95</sup> *Id.* (manuscript at 241).

<sup>96</sup> *Id.*

<sup>97</sup> ROBERT A. DAHL, POLYARCHY: PARTICIPATION AND OPPOSITION 34-35 (1971).

<sup>98</sup> *Id.* at 5-6.

<sup>99</sup> *Id.* at 7.

<sup>100</sup> *Id.* at 8.

<sup>101</sup> *Id.*

It is particularly interesting to read Dahl's analysis of the American South against the backdrop of Dworkin's favorable outlook on U.S. democracy. Dworkin optimistically conceives of slavery and segregation as mistakes belonging to the early history of American democracy.<sup>102</sup> For Dworkin, the United States has been a more-or-less legitimate political community with the power to create and enforce obligations on its members since its inception.<sup>103</sup> In contrast, Dahl suggests that the United States after Reconstruction qualifies at best as a near-polyarchy given its low degree of inclusiveness.<sup>104</sup>

Dahl describes the American South as a "dual system," namely, "a kind of polyarchy for whites and hegemony for blacks," stating that such system was necessary for white southerners to coercively enforce a condition of extreme material deprivation on African Americans.<sup>105</sup> Dahl explains, "if the freed Negroes had been allowed to participate in the system of public contestation in the South, they could not have been subjected to systematic repression by coercion and terror, . . . for they were much too large a minority."<sup>106</sup> The South's dual system thus consisted in the superimposition of one political system on the other: "A more or less competitive polyarchy in which most whites were included and a hegemonic system to which Negroes were subject and to which southern whites were overwhelmingly allegiant."<sup>107</sup> Furthermore, Dahl observes, "[t]he stability of the South's dual system depended . . . on the strength of an understanding with the main political strata of the North not to interfere with the southern system."<sup>108</sup>

What does Dworkin's theory imply for the political obligations of American citizens at the time? Grant for the sake of argument that the government treated its white population with equal concern and respect, as partners in a collective enterprise (that is, its procedures and laws judged the fates of white citizens with equal importance). In this sense, political authority did not compromise the dignity of most citizens; and the United States could even claim the moral power to create and enforce obligations on its members. On Dworkin's account, then, it seems that the U.S. government would likely have scored relatively well on the legitimacy quotient in virtue of its large-scale, albeit incomplete, inclusiveness; and that the majority of the population was under a corresponding moral obligation to obey the law. However, the logic of his argument suggests the opposite conclusion – it highlights the *weakness* of political obligation under such conditions of injustice.

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<sup>102</sup> See DWORKIN, *supra* note 1 (manuscript at 40-41).

<sup>103</sup> See *id.* (manuscript at 202-04).

<sup>104</sup> DAHL, *supra* note 97, at 28-29.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 29.

<sup>107</sup> *Id.* at 93.

<sup>108</sup> *Id.* at 94.

As we noted above, having one's dignity respected is not sufficient to incur political obligation.<sup>109</sup> It is further necessary that one recognize the objective importance of everyone else's life. The hegemonic system of repressive violence imposed on African Americans in the South clearly insulted the requirements of dignity, not just for its victims, whose dignity was blatantly violated, but for its beneficiaries, who failed to respect the dignity of others. And while southern whites bore direct responsibility for their oppressive treatment of blacks, northern whites' failure to intervene made them complicit, even though they were not direct (or obviously direct) beneficiaries.

So there are two reasons to deny that the United States had the moral authority to coerce its citizens before the Civil Rights era. First, it failed to respect the two requirements of dignity person-by-person, as Dworkin's standard of legitimacy stipulates.<sup>110</sup> Because they were de facto excluded from political participation, blacks would have been exempted from political obligation. Second, even using a legitimacy quotient,<sup>111</sup> that is, on an understanding of political obligation as a matter of degree, it appears that the exclusion and repression of African Americans contaminated, so to speak, whatever political obligation white citizens could have been said to incur.

That Dworkin continues to emphasize the *presence* rather than the *absence* of political obligation is all the more surprising as he is explicit, at least at one point, about the effects of racial discrimination on a community's overall moral authority: "Some governments that might be called democratic on standard tests would then appear actually to lack legitimacy – those in which a racial or other majority systematically discriminates against some minority it allows to vote, for instance . . . ."<sup>112</sup> How then could the American South during Jim Crow have any legitimacy at all?

Dworkin certainly does not ignore the injustices that have marred American "partnership" in the past.<sup>113</sup> But he optimistically conceives of systematic discriminations such as Jim Crow laws as belonging to the early history of American democracy.<sup>114</sup> Given that he finds counterintuitive the notion that "most of the subjects of most of the political communities over history had no moral duty to obey the laws of their community"<sup>115</sup> and attributes even to ante-bellum American society some degree of moral authority to coerce its citizens (though not their slaves),<sup>116</sup> it seems unlikely that he would concede our point

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<sup>109</sup> See *supra* text accompanying notes 84-87.

<sup>110</sup> DWORKIN, *supra* note 1 (manuscript at 210).

<sup>111</sup> See *supra* note 96 and accompanying text.

<sup>112</sup> DWORKIN, *supra* note 1 (manuscript at 204-05).

<sup>113</sup> *Id.* (manuscript at 204) (acknowledging that political obligation failed for minorities in the ante-bellum South).

<sup>114</sup> See *id.* (manuscript at 247) ("[F]ormal discriminations . . . now belong, we hope, mainly to history in the mature democracies.").

<sup>115</sup> *Id.* (manuscript at 204).

<sup>116</sup> See *id.*

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about the near general failure of political obligation in the United States during the Jim Crow era.

In response to us, he would likely point out the large inclusiveness of the U.S. polity and its clear upward moral progress in recent history. He would also probably stress that the political situation at the time called for civil disobedience – as it did in reality. The problem is that Dworkin considers civil disobedience “appropriate, provided other necessary conditions are met, when the overall conditions of political obligation exist.”<sup>117</sup> So it does seem inevitable that Dworkin would attribute some degree of legitimacy to the American South, but it remains puzzling that Dworkin fails to recognize the implications of his account.

A similar examination of the political past of most present-day democracies would cast serious doubt on Dworkin’s affirmation of the prevalence of political obligation in history. We contend that on Dworkin’s own logic, most countries lacked any moral authority for most of their history. Consider that the exclusion of half of the population (i.e., women) from public life was a characteristic feature of Western states prior to the past one hundred years (and of course still is the norm in many places in the world). The disenfranchisement and exclusion of large groups of people within society (not just women, but also, for example, those who did not own property) and the persecution of religious, ethnic, and sexual minorities were the norm, not the exception, in the history of political societies.

Moreover, these were not minor and contingent features of otherwise unproblematic political arrangements; rather, they were fundamental and pervasive. According to the line of argument Dworkin lays out, those excluded have no political obligation, and the obligation of those lucky enough to be included is weakened by – *and to the extent of* – the exclusion.<sup>118</sup> In fact, it is not clear whether we could find an example of a state that succeeds in generating political obligation in any substantive or interesting sense. Or to put the point another way, given that the extent of a state’s legitimacy (and so the obligations people have to obey it) is determined by (and proportional to) the extent it shows equal concern and respect for those it governs, the history of states will be a history of the *absence* rather than the *presence* of legitimacy.

Why is Dworkin anxious that political legitimacy and not its exception be the historical norm? He seems to want to hold onto this because of his commitment to resonate with common intuitions on the matter, which he takes to dictate in favor of political obligation.<sup>119</sup> Even if he is right in his portrayal of common intuitions on this point, such intuitions might very well have their origin in an aversion to the idea that widespread disobedience and rebellion would have been warranted against virtually all states until the last century. But, as we have pointed out above, the absence of political obligation does not

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

entail the duty, or even the permissibility, of political resistance. Perhaps attention to this fact serves to mitigate Dworkin's worry.

D. *Present Day State Legitimacy and Political Obligation*

Does the government respect the requirements of dignity, person-by-person, today? We suspect, contra Dworkin, that even in our modern democracies the conditions of legitimacy fail enough of the time that political obligation will be the exception rather than the rule – or that it will be too weak to genuinely count as political obligation, that is, a *prima facie* moral duty to obey the law.

First, the state respects the principles of dignity if, and only if, it acknowledges the responsibility and right of each citizen to make her own decisions about the personal ethical values that will shape her life.<sup>120</sup> Dworkin explains what this personal responsibility concretely entails in Chapter 18, where he expounds his theory of “negative liberty,” that is, the area of one's total freedom that a political community does wrong to deny or infringe:

Government infringes your liberty whenever it restricts your total freedom without a proper justification. . . . Government must not abridge total freedom when its putative justification relies on some collective decision about what makes a life good or well-lived. We must each make that decision for himself [sic]: that is the core of our ethical responsibility.<sup>121</sup>

In other words, what differentiates legitimate and illegitimate justifications for limiting total freedom is respect for ethical responsibility and independence.

Dworkin discusses the right to religious freedom and the right to free speech as paradigmatic “liberal rights” on which the state must not infringe.<sup>122</sup> Both rights are treated as consequences of the more general political right of ethical independence.<sup>123</sup> Violations of this latter right are an insult to dignity:

However it would certainly be demeaning for me to accept that even a large majority has the right to dictate religious conviction or practice to me, or what opinions I should or should not express in its political debates. I might be forced to obey those dictates as well, but I should not accept that they are legitimate or that I have a duty to bow to them.<sup>124</sup>

Dworkin is explicit: if the state violates the demands of self-respect and authenticity, I am not morally bound to obey its commands. Indeed, ethical independence forbids me from submitting to what amounts to domination.

Dworkin is also clear about the implications of freedom of religious practice in particular – which enjoys a near-consensus in the United States.<sup>125</sup> He says:

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<sup>120</sup> See *supra* text accompanying note 61.

<sup>121</sup> DWORKIN, *supra* note 1 (manuscript at 232).

<sup>122</sup> *Id.* (manuscript at 234).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* (manuscript at 231).

<sup>125</sup> *Id.* (manuscript at 235-36).

But once we accept this proposition we can no longer consistently think, as many people do think, that religion is special and that other ethical choices – about reproduction, research on stem cells, marriage and sexual orientation, for instance – may properly be subject to collective ethical decision. We cannot declare a right to religious freedom and then reject rights to freedom of choice in these other matters without striking self-contradiction.<sup>126</sup>

Choice of marital partners seems to be an integral part of living an authentic life, as Dworkin describes it.<sup>127</sup> If we grant the plausible assumption that respecting a person's ethical independence requires respecting their choice of marital partners, then arguably the U.S. government, via the Defense of Marriage Act,<sup>128</sup> insults the dignity of its gay and lesbian population. Moreover, those responsible for the ban on same-sex marriage – judges, elected representatives, and individual voters – also fail to show proper concern and respect for the fate of some of their fellow citizens: those whose basic freedom to marry the partner of their choice is restricted by this ban.<sup>129</sup> In general, the discriminatory practices of the U.S. government serve to weaken its legitimacy, and thereby weaken the obligations of its citizens to obey its laws. Depending on how pessimistic we are, this could hold to a very large degree indeed.

Second, the state respects dignity if its general procedures and law can be understood as expressing equal concern for the fates of all subjects, so that each citizen could treat political decisions as issuing from a process in which he or she had an equal voice.<sup>130</sup> As Dworkin himself remarks, universal suffrage is neither necessary nor sufficient to guarantee that all citizens have an equal say in the political process; but it matters whether citizens can cast their vote or not.<sup>131</sup> Dworkin laments the Supreme Court's recent decision upholding the constitutionality of state rules that require registered voters to produce a driver's license or other picture ID to access the ballots.<sup>132</sup> Unconstitutional or not, these laws effectively yield the disenfranchisement of the poor, and have a disparate impact on blacks.<sup>133</sup> In the meanwhile, in spite

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<sup>126</sup> *Id.* (manuscript at 236).

<sup>127</sup> *Id.* (manuscript at 128).

<sup>128</sup> 1 U.S.C. § 7 (2006); 28 U.S.C. § 1738C (2006).

<sup>129</sup> Martha Nussbaum has argued explicitly for this point. MARTHA C. NUSSBAUM, FROM DISGUST TO HUMANITY: SEXUAL ORIENTATION AND CONSTITUTIONAL LAW 127-28, 132 (2010).

<sup>130</sup> DWORKIN, *supra* note 1 (manuscript at 204).

<sup>131</sup> *See id.* (manuscript at 247).

<sup>132</sup> *Id.*

<sup>133</sup> More than twenty states have passed voter identification laws. National Conference of State Legislatures, State Requirements for Voter ID, <http://www.ncsl.org/Legislatures/Elections/ElectionsCampaigns/StateRequirementsforVoterID/tabid/16602/Default.aspx> (last visited Jan. 28, 2010). Under an Indiana law (subsequently repealed), voters were required

of an imperfect, but increasingly inclusive polity, society's wealth gap is ever widening – it has doubled in the United States since 1980.<sup>134</sup>

The concentration of economic power at the upper end of the income distribution has tremendous effects on the distribution of power. Explaining why John Rawls thinks that social and economic inequalities compromise the fair value of political liberties of the less advantaged, Samuel Freeman states:

Due to gross inequalities and the concentration of wealth, powers, and positions of office, as well as lack of campaign regulation and restrictions on spending, the wealthy and corporate interests effectively lobby and influence politicians and other government officials to enact legislation primarily benefiting the more advantaged. They largely control the political agenda and use it to further their economic interests.<sup>135</sup>

Given his understanding of political equality, it seems to us that Dworkin cannot but draw the same diagnosis about American democracy today.

Admittedly, Dworkin conceives of political equality as a matter of political standing, rather than political power.<sup>136</sup> But he notes that democracy is

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to produce proof of identification at the polls (typically a driver's license). IND. CODE ANN. § 3-11-8-25.1 (West Supp. 2007), *invalidated* by League of Women Voters of Ind., Inc. v. Rokita, 915 N.E.2d 151 (Ind. Ct. App. 2009). In a 6-3 decision in April 2008, the Supreme Court upheld the law. Crawford v. Marion County Election Bd., 553 U.S. 181, 188-89 (2008). The dissenting opinion, written by Justice Souter and joined by Justice Ginsburg, declared the voter identification law unconstitutional, concluding that "the state interests fail to justify the practical limitations placed on the right to vote, and the law imposes an unreasonable and irrelevant burden on voters who are poor and old." *Id.* at 237 (Souter, J., dissenting). Following the decision in Crawford, the Court of Appeals of Indiana subsequently held the voter identification law unconstitutional. Rokita, 915 N.E.2d at 168-69. Voter identification laws also have a disproportionate impact on blacks. In Florida State Conference of the NAACP v. Browning, the United States Court of Appeals for the Eleventh Circuit approved Florida's system for purging the voting lists by a 2-1 ruling. Fla. State Conference of NAACP v. Browning, 522 F.3d 1153, 1155 (2008). The dissenting judge, Chief Judge Barkett, was the only one to spell out the disparate racial impact. *Id.* at 1176 (Barkett, C.J., dissenting) (arguing that the Florida law deprives over 14,000 citizens the right to vote, many of whom are minorities). She noted that while black voters made up 13% of the scanned pool, they comprised 26% of those who were purged; whites made up 66% of the pool, but represented only 17% of the rejected group. *Id.* at 1176 n.4.

<sup>134</sup> David Cay Johnston, *Income Gap Is Widening, Data Shows*, N.Y. TIMES, Mar. 29, 2007, at C6. Analysis of Internal Revenue Service 2005 tax data showed that "the top 300,000 Americans collectively enjoyed almost as much income as the bottom 150 million Americans." *Id.* "While total reported income in the US increased almost 9 percent in 2005, . . . average incomes for those in the bottom 90 percent dipped slightly compared with the year before, dropping \$172, or 0.6 percent." *Id.* According to the report, "[t]he gains went largely to the top 1 percent, whose incomes rose to an average of more than \$1.1 million each, an increase of more than \$139,000, or about 14 percent." *Id.*

<sup>135</sup> SAMUEL FREEMAN, RAWLS 225 (2007).

<sup>136</sup> DWORKIN, *supra* note 1 (manuscript at 202).

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uniquely suited to express the community's equal concern and respect for all its members because of its equal distribution of political power:

Democracy is the only form of government, short of rule by lottery, that in its most fundamental character confirms equal concern and respect. If any citizen is assigned less electoral impact than others, either because he is denied a vote, or they are given extra votes, or constitutional arrangements place him in a district with more people but no more representatives, or for any other reason, then the difference signals a lesser political standing for him unless it can be justified in some way that negates that signal. . . . Reserving power to any person or group through birth or the spoils of conquest or some aristocracy of talent or denying the emblems of citizenship to any adult (except perhaps in consequence of a crime or other act against the community) is unacceptable. Arithmetic equality of influence is neither possible nor desirable; arithmetic equality of impact is essential when but *only* when deviation is insult.<sup>137</sup>

Dworkin's last qualification is meant to allow for institutional arrangements such as judicial review. In contrast, one cannot but consider the breach of arithmetic equality of impact that results from socio-economic inequalities as an insult to the dignity of the less advantaged. Hence, on Dworkin's own terms, it seems reasonable to doubt that everyone is granted equal political standing in most of our mature democracies today, but especially so in the United States.

If we are right about the implications of Dworkin's theory, then localized, but serious violations of political equality entail a generalized deterioration of political obligation. As we have suggested, such violations have been the norm historically and still persist to some extent in at least one major Western democracy, and most probably others as well.

#### CONCLUSION

The special concern that citizens owe each other in the exercise of political power appears routinely flouted in political associations as we know them, historically and present day. This pessimistic diagnosis necessarily follows from Dworkin's own theory, we have argued, given his understanding of what dignity demands. We have highlighted the potential for the radical critique of political societies at the core of his account.

A strict reading of Dworkin, focusing on the requirement that government respect the principles of dignity person-by-person to qualify as legitimate and generate genuine political obligation, implies that localized failures to respect dignity compromise the legitimacy of the entire community, and thus nullify the political obligation of all of its citizens. But if we take into account Dworkin's suggestion that we treat legitimacy and political obligation as a matter of degree, not an all-or-nothing matter, the diagnosis is more nuanced.

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<sup>137</sup> *Id.* (manuscript at 245-46).

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We can then avoid the conclusion that political obligation simply fails in most modern polities. Instead, we can assess political communities based on what we dubbed their legitimacy quotient and evaluate the varying strength of citizens' political obligation. From this perspective, it would be rare for political obligation wholly to fail in modern democracies. Nonetheless, we suggested that the United States, for example, would likely score quite poorly on the legitimacy quotient, whether as a result of a lack of inclusiveness, or of unjustified restrictions of freedom. And so the political obligation of *all* citizens would be dramatically weakened as a result. In setting out to offer grounds for supporting and praising modern Western democracies as legitimate sources of political obligation, Dworkin has – instead – provided excellent grounds for their critique.

In contemplating the account of legitimacy Dworkin provides, we find especially attractive Dworkin's idea that my relation to the state is affected both by my social position and by how the state treats you. This idea provides resources not only for a critique of past and present societies but serves as the basis for a forceful demand imposed on the more advantaged citizens *as such*. The powerful and privileged are not only obligated to treat people with equal concern and respect, but they also have a general responsibility to secure a legitimate government that will do the same. Dworkin's analysis, thus, provides both a mandate and a call to arms for widespread, and much-needed, political reform and social change.