Order and the Reason to be Conservative

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Abstract

In this thesis, I make a case for the reasonableness of conservatism and its application to the political philosophical project of identifying the kinds of institutions that beings like us should have. The recent political philosophical literature on conservatism, largely under the influence of Michael Oakeshott, has focused on potential justifications for status quo bias, holding that conservatism is a commitment to conserving the value that individuals find in existing institutions and practices. But, I claim, because individuals and their practices may conflict, they are apt to value institutions differently, and so status quo bias cannot amount to a universalizable reason to be conservative. Having established this, I go on to argue that, inspired by a careful reading of Edmund Burke, conservatism is better understood as a commitment to realising a distinctively conservative value, order, and that this has various implications for political philosophy.

On this view, institutions (in the broadest sense, from our systems of law and politics to our customs and concepts) capture the historical experience of society, the accuracy to reality of which is, I claim (on a reading of Ludwig Wittgenstein) apprehensible by common sense, at least under certain conditions of order. Thus, order is conservative (of historical experience), and conservatism is a commitment to realising order. Normatively, then, I further claim that conservatism is universally motivated, because order is a basic good for beings like us. Access to historical experience is valuable both intrinsically, because as naturally social beings we rely on institutions to capture and convey accurate information about the world and society in which we live, and instrumentally, in that this information is useful for any projects we might conceive as individuals and collectively. In the final chapter, I apply this idea of conservatism to various issues in political philosophy. My aim is not to directly rebut objections to conservatism or the desirability of order, but rather to show that distinctively conservative positions on these issues follow from the theory I have developed.

Identifying conservatism's substantive commitment to order both clarifies our understanding of conservatism and brings to the surface a value claim that is often overlooked in political philosophy.

Declaration

This is to certify that:

1. This thesis contains only my own original work towards the degree of Doctor of Philosophy.
2. All due acknowledgement has been made in the text to all other material used.
3. The thesis length is under the maximum word limit, excluding the bibliography.

Andrew Bushnell

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Dedication

This thesis is dedicated to my parents, Rosie and Noel, who have sacrificed so much for their children, that we may have and pursue opportunities like this one, and to my wife, Melissa, and son, Raphael, who have supported me in this endeavour, far beyond what any man might reasonably expect.

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Introduction

The purpose of this thesis is to develop a systematic account of political conservatism, meaning that the good society, in which people live good lives, is conservative in some given sense and to at least some extent.[1] That is, I am interested in what conservatism means in the context of the political philosophical ambition "to identify the sorts of political institutions that we should have, at least given the background sort of culture or society that we enjoy".[2] By 'systematic', I mean that political conservatism follows logically from, or draws support from, a universalizable *reason to be conservative*.[3] My main claim is that the reason to be conservative is that *order is a basic good* – it is both intrinsically and instrumentally valuable for beings like us – and, moreover, *order is conservative*, which is to say, the goodness of order lies in what it conserves, which is historical experience, and to be conservative means to seek order and rely on historical experience. Like many who have sought a reason to be conservative, I take my inspiration in making this claim from Edmund Burke. However, my approach differs from much of the academic literature, which has largely connected this reason with the concept of status quo bias. This involves the premise that conservatism is simply an esteem for the present, to paraphrase Michael Oakeshott, and a consequent resistance to change.[4] But I believe this focus on the status quo to be misplaced, and that a more compelling philosophical foundation for conservatism can be given. Then, upon this foundation, a more reasonable account of the political implications of conservatism can be elaborated.

[1] In his account, John Kekes describes conservatism as a "political morality" that aims to secure "good lives" for people by curating inherited institutions via reasoned reflection on their historical performance in respect of that aim. My framing of the issue is similar. But while Kekes "systematic" account is founded on four beliefs that exhibit a kind of political moderation, my approach here is to emphasise that conservatism achieves a specific good for humans that is not realisable with other, nonconservative arrangements, and build the system up from there. See John Kekes, *A Case for Conservatism* (Ithaca: Cornell University Press, 1998), 1-4.
[2] Robert Goodin, Phillipe Petit, and Thomas Pogge, *A companion to contemporary political philosophy* (Malden, MA: Blackwell Publishers, 2007), xvi.
[3] In using this framing, I follow James Alexander, "The Contradictions of Conservatism", *Government and Opposition* 48, no. 4 (April 2013): 594-615 (esp. 609). Martin Beckstein,"What does it take to be a true conservative?", *Global Discourse* 5, no. 1 (January 2015): 4-21.
[4] Michael Oakeshott, "On Being Conservative", in *Rationalism in Politics and Other Essays* (London: Shenval Press, 1962), 168-9.

While this may seem like merely a dispute among conservatives, it is also of interest to political philosophy more broadly. The identification of order as a universalizable reason to be conservative puts conservatism on par with other substantive positions in political philosophy, at least in the formal sense of establishing a foundation and working through its implications, eschewing mere dogmatism. This puts the onus back on non-conservatives in political philosophy to explain why conservatism and the purported basic good of order ought to be rejected or traded-off with something else. Moreover, a reason to be conservative allows us to identify a range of interests that conservatives might claim to hold, across areas like constitutional law and reform, immigration and trade, cultural policy, nationalism and symbols of state, family and private property, as well as in more general claims about the value of customs, habits, and received wisdom, and which therefore warrant philosophical consideration and engagement – and this becomes weightier still if we then find that many of these interests are shared by people who are in some aspects of their lives or in some of their beliefs non-conservative.

To advance this engagement, my intention here is to provide a positive (or constructive) account of conservatism and its political implications. My task will be to elaborate a theory of conservatism and its connection to order and to consider political philosophical questions from within that theory – to say how conservatives can and should reasonably approach them – rather than to merely offer refutations or rebuttals of critiques of conservatism that issue from within other theories and value systems. So, for example, I will, in the main, try to show what values like liberty, justice, representation, and so on, mean from a conservative perspective, and how they relate to the basic goodness of order, rather than by directly rebutting objections about conservatism's oppressiveness or unjustness or elitism or whatever. This approach, I think, will be more useful for political philosophy, in two ways: first, it provides a value claim that is generally overlooked or denied, with which the discipline perhaps ought to reckon in its overall project; and secondly, it provides terms in which to understand and critique conservatism that are internal to conservatism itself.

Any definition of conservatism comprises two elements, which together describe what is to be

conserved and why. The first is an epistemic claim about *familiarity* that emerges from the concept of conservation, which implies that the object in question pre-exists the decision to conserve it and that it can be known by experience of it. Secondly, there is a normative claim about what individuals and societies ought to do given the distinction between the familiar and the unfamiliar (which has not been experienced). But familiarity is ambiguous: it is not clear whether familiarity refers to that which is *actual* (presently existing and known to persons now) or that which is *historical* (that which has been established by experience) – one definition subjective, the other objective. Moreover, while the historical includes the actual, the converse is not always true because the actual only includes that which has persisted into the present. Reconciling the two definitions is therefore not straightforward, and this creates a dispute about what conservatives ought to do.

The predominant approach to conservatism in the political philosophical literature can be described as *procedural*: it holds that *to value* includes a commitment, all else equal, to maintaining that which is presently valued – something actual – and on this basis proposes a procedure for managing or mitigating changes that threaten the continuity of that which is valued. But this view of conservatism is also widely criticised for its internal incoherence: in the name of practical knowledge, it purports to limit practice, and in the name of concrete particulars it offers an abstract theory of value.[5] In what follows, I reconstruct and accept these critiques. This motivates the development of a definition of conservatism that avoids these charges.

By contrast, the definition of conservatism that I advance is *substantive* because it holds that being conservative means to pursue a distinct end or value, order, which is valuable because it captures historical, and not merely actual, experience. But it follows that to understand conservatism in this sense, we need to understand what order *is* and why it is good for beings like us.

[5] The first sort of claim can be seen here: FA Hayek, "Postscript: Why I am not a conservative", in *The Constitution of Liberty: The Definitive Edition* (Chicago: The University of Chicago Press, 2011), 517-534
The second sort of claim is made by Alexander (cf. note 3 above), among others.
I consider all this in more detail in Chapter 1.

The meaning of order that I propose is *order properly understood*. On this view, the function of order is to capture historical experience in institutions that, in their internal workings, correspond to reality (the world external to our minds), and, externally, cohere with one another to produce a constitution and picture of the world. Under these conditions the information contained in institutions (ranging from complex institutions like those of government or the associations of civil society to simple institutions like customs and the parts of language) is *contingent but non-arbitrary* – that is, the institutions could be different, but, as they are, their functions reliably produce certain effects. The information about these effects, and the means of their realisation, I call *established practical knowledge*. This knowledge is *practical*, in that it directs and coordinates our actions, and it is *established* because it is captured by institutions that cohere. Roger Scruton captures these ideas neatly when he writes, interpreting Burke, that "There is [a] kind of knowledge, which is neither knowledge *that* nor knowledge *how*, which involves the mastery of situations – knowing *what to do*, in order to accomplish a task successfully, where success is not measured in any exact or fore-envisaged goal, but in the harmony of the result with our human needs and interests".[6]

Going further, the claim is really that without reference to established practical knowledge, our preferences, along with evaluative terms like good and bad and right and wrong, are arbitrary – our concepts are only historical, and history is the only test for whether they are useful or accurate to reality. Thus, established practical knowledge is a far-reaching epistemological claim. To defend it, I argue that it is an extension of common sense, meaning the human capability of grasping facts about the world external to our own minds. Following the later work of Ludwig Wittgenstein, I hold that we are entitled to this claim because we cannot coherently hold otherwise. Among the facts that we can grasp this way is the existence of minds other than our own. If this is right, then we can also surmise that the institutions that constitute our artificial society were created by beings like us, engaging with the same world that we live in, with broadly similar needs and wants. This *historical common sense*

[6] Roger Scruton, *Conservatism: An Invitation to the Great Tradition* (New York: St Martin's Press, 2018), 48-9.

opens history to us as a source of information about what to do to have a good life in our society. In turn, this suggests that orderly institutions contain and do not merely coordinate information.

On this basis, I claim that order properly understood is a basic good. Access to established practical knowledge, through orderly institutions, is good for being like us: first, because as social beings necessarily *formed* by the artificial society in which we live, we have an inherent interest in the artefacts of that society accurately tracking what is known about the world and the kinds of beings that we are; and secondly, because that information is useful for us in the pursuit of our own projects as individuals and in groups. The basic goodness of order has various implications, but the most important one to note here is that it provides a motivation for conservatives to act positively, and to act in ways that might conflict with the value claims of others. On this view, conservatism need not be mere opposition to change, it can promote reform or even a distinctly conservative kind of change (which I will call *conservatisation*) that aims to realise order. My theory, then, provides a guide to action for conservatives and the possibility of anticipating and critiquing those actions – which, at the end of the thesis, I will try to demonstrate by applying the theory to various problems in political philosophy.

In this thesis, I hope to show that conservatism can be rendered coherent by the identification of order as a basic good towards which it is directed. But more than this, I hope to show that the *conservative theory of order* presents a value claim that advances the political philosophical project of describing a good society in which people can live good lives. Towards these ends, the thesis is structured as follows. In Chapter 1, I provide further motivation for the thesis by discussing the need for a reason to be conservative, the ambiguity of familiarity, and two widely cited objections to the possibility of providing a coherent definition of conservatism. In Chapter 2, I argue that the dominant approach in the literature to resolving the question of the reason to be conservative, procedural conservatism and status quo bias, necessarily fails to provide a universalizable reason to be conservative. In Chapter 3, I introduce substantive conservatism by attributing the position to Burke and undertaking a detailed examination of the Burkean system. In Chapter 4, I aim to vindicate historical experience by

connecting it to the common-sense realism of the later Wittgenstein. In Chapter 5, I elaborate the claim that order is a basic good and what this means for order and substantive conservatism, and I argue that my claim *order is conservative* is both a superior definition of conservatism and a superior definition of order. In Chapter 6, I illustrate substantive conservatism by applying the conservative theory of order to five debates with political philosophy – environmentalism, transhumanism, feminism, social justice, and nationality – aiming to show that it is an idea that is useful and illuminating in such matters. A brief conclusion follows.

1 In Search of a Reason to be Conservative

As the word conservatism suggests, we are interested here in something more than merely the action *to conserve*, which, per the dictionary definition, means to keep something in its existing state or to keep something alive.[7] The dictionary definition is too formal to convey much about conservatism as a philosophical position. As Roger Scruton puts the point: "It is a limp definition of conservatism to describe it as the desire to conserve; for although there is in every man and woman some impulse to conserve that which is safe and familiar, it is the nature of this 'familiarity' that needs to be examined".[8]

My purpose in this thesis is to undertake this examination anew. But given that conservatism has existed in politics for at least the two centuries or so since the French Revolution – I will review the history of the term in the next section – it might be thought that it must have a settled rationale. Yet, in fact, the reason to be conservative remains controversial. On one hand, there are widely cited claims that conservatism is inherently unreasonable or dogmatic, and on the other hand, the most popular response to (or line of inquiry into) those claims, which is that conservatism captures (or aims to capture) a reasonable defence of status quo bias, is both the subject of internal dispute among conservatives and, as I will argue, incomplete. To restate my own view briefly, I claim that not only is conservatism reasonable, but also that the reason to be conservative is that order is a basic good, and that conservatism is included in the definition of order. But before I can make that argument, I need first to state the problem and to show both that claims that conservatism is inherently unreasonable or dogmatic admit a solution *and* that the most preferred solution (or line of inquiry) is mistaken.

As such, my aim in this opening chapter is to motivate the inquiry to come by setting up the problem

[7] Compare these two meanings: "To preserve (a condition, institution, privilege, etc.) intact; to maintain in an existing state." versus "To maintain (a person or thing) in continuous existence; to keep alive, existing, or flourishing; to preserve." The one implies stasis, the other implies whatever change is required for survival. As we will see, this difference is key. See "Conserve, v.", OED Online. Oxford University Press, September 2022, https://www.oed.com/view/Entry/39582.

[8] Roger Scruton, *The Meaning of Conservatism: Revised Third Edition* (South Bend: St Augustine's Press, 2002), 10.

of conservatism's reasonableness, breaking down the main claims against conservatism as a concept, and introducing two different paths conservatism might take to coherence – the one taken by the literature, which I will refute in the Chapter 2, and the one I will take and defend in the rest of the thesis.

1.1 Conservatism as Ideology and as Political Philosophy

The use of 'conservative' as a political term is usually traced to the French Catholic Royalist Francois-Rene de Chateaubriand, who in 1818 took it for the name of a political magazine, *Le conservateur*.[9] In 1834, the United Kingdom's Tories rebranded as the Conservative Party and the term has persisted in the politics of Western democracies ever since. But in launching our inquiry into the reason to be conservative, I want first to distinguish our subject from the very different task of explaining, vindicating, or critiquing the actions made by ostensibly conservative politicians and political parties.

There is a difference between *ideology* and *political philosophy*. Gerald F. Gaus introduces this distinction in a discussion of liberalism, suggesting that the philosophical core of liberalism is what is often called 'classical liberalism', but in seeking political power, liberalism has made accommodations of political philosophical critiques of its core commitments, like communitarianism or feminism. Ideological needs sometimes obscure the original philosophical idea.[10] Similarly, writing of conservatism, Robert Nisbet defines an ideology as a "reasonably coherent body of moral, economic, social and cultural ideas that has a solid and well-known reference to politics and political power", yet he also notes that we can consider political conservatism as a political philosophy – at the "pre-political" level – meaning as an idea about which political and social institutions are the best, given certain claims about individuals and societies and their circumstances.[11] Following Gaus and Nisbet,

[9] David Y. Allen, "Modern Conservatism: The Problem of Definition", *The Review of Politics* 43, no. 4 (October 1981), 582. See also: Noel O'Sullivan, *Conservatism* (London: Dent, 1976), 9; Karl Mannheim, *Conservatism: a contribution to the sociology of knowledge*, edited and introduced by David Kettler, Volker Meja, and Nico Stehr, trans. David Kettler and Volker Meja from a first draft by Elizabeth R. King (London; New York: Routledge and Kegan Paul, 1986), 77.
[10] Gerald F. Gaus, "Liberalism at the end of the century", *Journal of Political Ideologies* 5, no. 2 (2000), 193-5.
[11] Robert Nisbet, *Conservatism: dream and reality* (Milton Keynes: Open University Press, 1986), vii.

then, we can say there exists a *political conservative ideology*, but this is not identical with the political philosophy of conservatism that we seek.

1.1.1 The Political Conservative Ideology

Any story of the political conservative ideology must reckon with the fact that for many years and in many countries, a coalition between conservatives and classical liberals has often obtained.

For example, whereas the United Kingdom and Canada (since 1867) have long had nominally conservative political parties, in the United States and Australia conservatism in politics has not enjoyed straightforward political representation. In the United States, conservatism has mostly found a home in the Republican Party, founded in 1854 as a successor to the Whig Party, where it has largely adopted a commitment to the liberalism embodied (it is claimed) in the founding of the country.[12] Australian politics has tended toward a contest between the labour movement, represented by the Labor Party, and various parties representing the interests of big business, small and medium enterprise, and landowners. It has been argued that conservatism does not really exist in Australian politics, at least not by that name.[13] Certainly since the formation of the Liberal Party as the dominant centre-right political party in 1944, conservatism has largely been overshadowed by a kind of moderate free market liberalism, taking inspiration from figures like FA Hayek and opposition to WW2-era central planning.[14]

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[12] The bracketed comment here is just to gesture to the debate about just what, if any, ideology or political philosophy was established in the United States following independence. Haivry and Hazony, for example, argue that the founding of the United States was continuous with the English conservative tradition, properly understood. The term 'classical liberalism' here just means the liberalism of Locke through to, perhaps, Mill – but the term probably requires a separate thesis to analyse properly. Ofir Haivry and Yoram Hazony, "What is Conservatism?", *American Affairs Journal* 1, no. 2 (Summer 2017): 219-246.
For a critical view of the purported distinction between classical and modern varieties of liberalism and their relationship to the United States, see: Patrick Deneen, *Why Liberalism Failed* (New Haven: Yale University Press, 2018). Deneen argues that conservatism in the United States is a kind of liberalism because it seeks to conserve the essentially liberal constitutional structure of the country.

[13] Greg Melleuish, "Conservatism in Australia" in *Liberalism and Conservatism*, ed. Greg Melleuish (Ballarat: Connor Court, 2015), 121-139.

[14] For a useful account of the history of conservatism in Australian politics from this broadly liberal and sceptical perspective, see Waleed Aly, "What's right? The Future of Conservatism in Australia", *Quarterly Essay 37* (January 2010), 1-110. Aly is concerned to defend "liberal conservatism" against what he sees as dogmas like "neoliberal" free market economics and "neoconservative monoculturalism" or anti-pluralism.

This ideology, or variants thereof, was in power in the United States under the administration of President Ronald Reagan (1980-88) and in the United Kingdom under the government of Prime Minister Margaret Thatcher (1979-1990). The later Australian Howard government (1996-2007) was similar. Howard has often claimed that his Liberal Party is, somewhat incongruously, the party of both John Stuart Mill and Edmund Burke.[15] The government of Stephen Harper in Canada (2006-2015) was also associated with 'Blue Toryism', meaning a conservatism that embraced liberal economics.[16] Over this period from the end of the Second World War until the early 21st century, this brand of liberal conservatism, taking inspiration from what is known as the American Conservative Movement, and with the support of a range of publications and think tanks became, in the Anglophone world, the dominant ideological strain within conservative political parties.[17]

However, it is likely that conservatism as a political philosophical position cannot be derived from the positions these parties have taken. Notably, these governments all made a range of decisions that might, in any colloquial sense, be considered dubiously conservative: all oversaw large increases in immigration, expansions of free trade and international governance, adventurism in foreign policy, and changes in cultural practices and policies.[18] But political conservatism is just one faction, and perhaps not the dominant faction, of these parties. So, this recent history raises, but does not answer, the question of how we might evaluate policy decisions like these from a distinctively conservative perspective. And this, in turn, this raises a further question: whether conservatism is directed towards a specific end (substantive) or whether it is a prescription about how ends ought to be pursued

[15] Aly, "What's right?", 20. See also: Greg Melleuish, "Has Menzies' Liberal Party run its course?", *Meanjin* 79, no. 1 (Autumn 2019), 106-112.
[16] Ron Dart defends a more communitarian 'Red Toryism' in: Ron Dart, *The North American High Tory Tradition* (New York: American Anglican Press, 2016)
[17] For an overview of think tanks' role in promoting this kind of politics in Australia, see John Hyde, *Dry: In Defence of Economic Freedom* (Melbourne: Institute of Public Affairs, 2002), 104-122. On the American Conservative Movement, the definitive work is George H. Nash, *The Conservative Intellectual Movement in America since 1945* (Newburyport: Intercollegiate Studies Institute, 2014). See especially Nash's reflection in Chap. 12, 353-363.
[18] For example, John Gray was an early critic of the anti-conservative effects of the Thatcher government's liberalisation of the British economy. See: John Gray, "The Undoing of Conservatism", in *Enlightenment's Wake* (London; New York: Routledge, 1995), Chap. 7. This is also a theme of Scruton, *Meaning*, which castigates conservatives for becoming confused about the supposed primacy of individual freedom in politics.

(procedural). Because looked at a different way, these examples might suggest that political conservatism is incapable of, and uninterested in, determining policy questions, and instead seeks only to modify the way such questions are determined. On this view, the relevant question is not whether the ends pursued are themselves conservative (for example, whether the violent imposition of democracy in the Middle East could conceivably be a conservative end) but whether they are pursued conservatively (whatever that might mean). A conservative might pursue protectionism or free trade, closed or open borders, or religious observance or secularism, but will always try to do so in some conservative way. If this process of mitigation is the reason to be conservative, then arguably the political conservative ideology may have been, to at least some extent, faithful to the underlying philosophical concept. We are left, then, with the overarching question of what is conservative in the political conservative ideology.

1.1.2 Philosophical Origins of Conservatism

Political conservatism can be more than just an ideology as found in practical politics. The ideology did not develop in a vacuum. It can be seen as an interpretation of a set of political philosophical ideas filtered through the exigencies of the political process. Here, I want to say that the ideas associated with political conservatism are readily identifiable but, nonetheless, for our purposes, it is not enough to simply list them, for we are seeking the reason that connects them (or, perhaps, ought to exclude some of them).

The origin story of the political conservative ideology commonly cites philosophical influences like Aristotle (on human sociality and the value of custom), David Hume (on scepticism of theories of social contractarianism and natural rights), and Adam Smith (on the importance of trust and sympathy to the emergence of order). Other names often invoked as proto-conservatives include John Fortescue (whose *Praise of the Law of England* introduces the idea of "political and royal government", meaning the binding of the crown to tradition), John Selden (who originates the idea of tradition as a store of knowledge), and Robert Hooker (who defends the unity of church and state and advances a sceptical

view of political change). The connecting thread is the individual being embedded within a complex, contingent order that cannot be fully apprehended or manipulated. This philosophical tradition is then said to become self-conscious – giving birth to the ideology – with Burke's *Reflections on the Revolution in France*. There, Burke deploys this line of argument, or something like it, to evaluate the revolution and predicts the violence and misery that will follow from the usurpation of the established order. As a test case, the French Revolution went some way to vindicating the general applicability of the earlier set of insights and therefore Burke's catalogue of its errors provides guidance for what conservative politics is about.[19]

Such an account can be fleshed out with more examples, revealing recurrent ideas and arguments in political conservatism. The result is something like a litany. For example, Nisbet's "dogmatics", mostly extracted from Burke, include the preference for history over abstraction, trust in prejudice over deductive reason, the priority of order over liberty, the priority of liberty (especially institutional autonomy) over equality, the importance of private property to order, and the role of religion in public life.[20] Russell Kirk's earlier list of six "conservative canons" was similarly influenced by Burke but is somewhat different: it also includes belief in a transcendent order, institutional autonomy or pluralism, tradition, and private property, but adds hierarchy and prudence.[21] Jerry Z. Muller's later list is longer and includes many of these ideas, but it has a more sceptical emphasis: he includes human

[19] Roger Scruton, *Conservatism: An Invitation* is explicit about Aristotle's role in the "pre-history" of conservatism, and elsewhere writes about the influence of Smith on conservatism (and the limits of that influence) – see Roger Scruton, *How to be a conservative* (London: Bloomsbury Continuum, 2014), Chapters 5,6, and 10. Noel O'Sullivan, *Conservatism* begins his account of conservatism as the "ideology of imperfection" with Burke, as does Nisbet, *Conservatism* and likewise Russell Kirk, *The Conservative Mind* (Washington, DC: Regnery, 1953/2001), 12-70, with the former emphasising Burke's points of agreement with Smith. Hamilton calls Aristotle and Hume "proto-conservatives": Andy Hamilton, "Conservatism", *The Stanford Encylcopedia of Philosophy* (Spring 2020 Edition), ed. Edward M Zalta, https://plato.stanford.edu/archives/spr2020/entries/conservatism. Jerry Z Muller, "Introduction: What is Conservative Social and Political Thought?", in *Conservatism: An Anthology of Social and Political Thought* (Princeton: Princeton University Press, 1997), 1-32, is slightly different in that it takes Hume as the starting point of the tradition. Muller (at 19) also notes that Aristotle gave conservatism, via Burke, one of its recurrent images, the idea of custom as a "second nature". Anthony Quinton, *The Politics of Imperfection* (London: Faber and Faber, 1978) starts with Hooker. Haivry and Hazony, "What is Conservatism" starts with Fortescue.

[20] Nisbet, *Conservatism*, Chap. 2, 21-74

[21] Kirk, *Mind*, 8-9

imperfection, "anti-contractualism" (meaning a rejection of social contract theory), scepticism about written constitutions, and the naturalisation or "veiling" of social institutions.[22] Other examples we might adduce include Kekes' four "basic beliefs" of conservatism, Anthony Quinton's three "principles", and William R. Harbour's 10 "important beliefs", though they defend them with different levels of systematicity (Kekes seems to imply that the four beliefs are necessarily connected, whereas Quinton and Harbour do not make such a claim).[23]

There are two observations we might make about these lists. First, they highlight scope for dispute internal to conservatism.[24] The degree of variation reflects different epistemological refinements of the original Burkean perspective about what people and societies *know*. Some emphasise that society is or should be somehow structured by accepted truth claims, often of a religious character. Others, like Muller and Quinton, expressly distinguishing such knowledge claims (and especially religious "orthodoxy") from political conservatism, which is held to be an exercise in scepticism. The divide makes salient the question of whether conservatism is procedural or substantive: scepticism suggests doubt about any purported conservative value and so further suggests proceduralism; realism, by contrast, suggests conservatism is substantive and ought to work to realising conservative value, whatever that might be.[25]

Secondly, lists cannot tell us the reason to be conservative. Even if all the various litanies of conservative principles could be made to agree with one another, we would still be left with the question of how to apply them and why they should be believed. Without a reason to be conservative, the political conservatism they describe is unmotivated and, worse, apt to seem opportunistic, as

[22] Muller, *Conservatism*, 9-22

[23] Kekes, *Case*, 28. Quinton, I*mperfection*, 17. William R. Harbour, *The Foundations of Conservative Thought: An Anglo-American Tradition in Perspective* (Notre Dame, IN: University of Notre Dame Press, 1982), 4-7.

[24] As Michael Freeden observes, "It is a simple task to demonstrate that for the past two centuries conservatives have compiled very different lists". Michael Freeden, "Theorizing about Conservative Ideology", in *Ideologies and Political Theory: A Conceptual Approach* (Oxford: Oxford University Press, 1998), 333.

[25] As Muller notes about his version of the litany, "None of these are exclusive to conservatism, nor does every conservative analyst share them all". He goes on to say that "it is misguided to expect unity among conservatives on questions of first philosophical or theological principles, since a propensity to slight such question or to regard them as futile or dangerous is a defining element of modern conservatism". Muller, *Conservatism*, 9-10, 23.

items from the list are deployed *ad hoc* to satisfy some conservative intuition. This lends support to the widespread sense of conservatism as dogma rather than a position of theoretical substance.

1.2 Taking a Philosophical Approach

The alternative to making lists of the ideas invoked by conservatives is to take a philosophical approach: to analyse what *conservatism* really means, and then to argue for what conservatives ought to do in politics based on that meaning. But to take this approach, we need first to overcome the sometimes-supposed mutual antagonism of conservatism and political philosophy: that philosophy, by placing concepts and institutions under interrogation, always pre-empts the unfolding of a way of life, which is what conservatism aims to defend.[26] In this vein, for example, Isaiah Berlin suggests that conservatism is, in essence, a Counter-Enlightenment, "a resistance to attempts at a rational reorganisation of society in the name of universal moral and intellectual ideals".[27]

Similarly, conservatives have long been suspicious of political theory, starting from Burke's withering comparison of the "abstract principles" of the French revolutionaries' claimed "rights of men" with the "rights of Englishman… a patrimony derived from their forefathers… worthy of that practical wisdom which superseded… theoretic science".[28] Quinton writes that political conservatism seeks to "undermine" the "theoretical pretensions of revolutionaries and radical reformers" and all theory that "starts from certain propositions about ends, typically about the universal rights of man or the

[26] Timothy Fuller, an eminent scholar of Oakeshott, discusses the complex relationship of Oakeshott's (and Hume's) basic scepticism about the interaction of philosophical inquiry and practical politics, that is, the possibility that philosophy might ever put an end to the business of politics. Timothy Fuller, "The Relation of Philosophy to Conservatism in the Thought of Michael Oakeshott", *The Meanings of Michael Oakeshott's Conservatism*, ed. Corey Abel (Exeter: Imprint Academic, 2010), Chap 8.

[27] This is not to say that Berlin's own project is one such "rational reorganisation". In fact, Berlin's project is to assert the necessity of value pluralism against all such projects – but he does not associate his project with conservatism, which he considers also to be prescriptive about value. Isaiah Berlin, "The Counter-Enlightenment", in *Against the Current: Essays in the History of Ideas*, ed. Henry Hardy (Princeton: Princeton University Press, 2013), 18.

[28] Edmund Burke, et al, *Reflections on the Revolution in France*, ed. Frank M. Turner (New Haven: Yale University Press, 2003), 7-8, 28.

supreme political values".[29] The more religiously-minded Russell Kirk contrasts a "higher kind of order… founded upon the practical experience of human beings over many centuries" with "ideologies… fanatic political creeds… abstract ideas not founded upon historical experience".[30] Muller summarises that "the critique of theory" is one of conservatism's "recurrent arguments", writing that "the conservative accusation against liberal and radical thought is [always] fundamentally the same: liberals and radicals are said to depend upon a systematic, deductivist, universalistic form of reasoning which fails to account for the complexity and peculiarity of the actual institutions they seek to transform".[31]

Yet this antagonism is misplaced. For political philosophy, which holds that the fundamental questions about how we can live and flourish together in society can be resolved, or at least approached, by reason, the persistence of an unreasonable doctrine seems to call into question that project itself. If political conservatism is unreasonable, political philosophy should still be able to explain why it persists and why it must be excluded from politics; and if it is reasonable, political philosophy should be able to explain why, even if conservatives have not done so themselves. Conversely, it has been observed that conservatism must adapt itself to modern conditions, like universal literacy and mass communication. This means, as Scruton puts it, explaining the "local" commitments of conservatism in an "intellectually persuasive way".[32] More fundamentally, Kristof Nyiri claims that because literacy enables reasoned reflection, conservatism's appeal to tacit knowledge and tradition is outmoded when taken by itself.[33] If conservatism aims to persuade, then it must be reasonable.[34]

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[29] Anthony Quinton with Anne Norton, "Conservatism", in Goodin, Petit and Pogge, *Companion*, 295-6. It is worth noting too that Quinton rejects any suggestion that political conservatism does not count as an "ideology" – his point is not that conservatism is bereft of consistent ideas and principles, rather it is strictly that these ideas and principles reflect a kind of "political science", not theory.

[30] Russell Kirk, *The Roots of American Order* (Newburyport: Intercollegiate Studies Institute, 2003), 9.

[31] Muller, *Conservatism*, 14.

[32] Roger Scruton, *A Political Philosophy* (London; New York: Bloomsbury Continuum, 2006), viii-ix.

[33] Kristof Nyiri, "Conservatism and common-sense realism", *The Monist* 99, no. 4 (October 2016), 441-456.

[34] In "Rationalism in politics", Oakeshott notes that the rise of rationalism coincided with the widening of the franchise to new classes and to women, and that it took the form of books purporting to outline a technique for politics that would function as a crib for these new political actors, who, lacking a tradition of participation, would otherwise not know what to do. Oakeshott misses, I think, the full significance of this, which is that any

1.3 Identifying the Elements of Conservatism

In analysing its meaning, we can say that conservatism is the conjunction of two basic *elements*. First, because to consciously set about conserving something implies that we know, in some sense, what it is, there is an *epistemic claim*, which distinguishes the known (or *familiar*) thing that stands to be conserved, from the merely prospective, speculative, or theoretical. Secondly, there is a *normative claim* about what humans ought to do given the epistemic claim; that is, some reason why we might prefer the familiar to the merely prospective.[35]

Conservatism is therefore a general claim about knowledge and how to use it, and not merely a claim about politics or public policy and so on. For this reason, it is usually submitted by political conservatives that their politics stems, at least in part, from a general phenomenon that is part of human life.[36] As Kekes writes, "Conservatives can appeal to this basic attitude – natural conservatism – and realistically hope to be understood…".[37] Karl Mannheim puts the point slightly differently: humans universally evince a tendency to "traditionalism", meaning "simply… clinging to the old ways", and that even "Politically 'progressive' individuals… notwithstanding their political convictions, may bear themselves largely in a traditionalist way in some spheres of life". But conservatism is more than this, being the self-conscious orientation of people "to a continuity, historically and sociologically comprehensible". That is, Mannheim reserves the word 'conservatism' for the reasonable argument made in society for the traditionalist tendency. The utility of Mannheim's framing is that it captures the sense in which conservatism results from continuities or patterns of life being put up for debate.

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political movement or set of interests that lacks a "book" will not only seem "frivolous, even disreputable" but, more simply, will lose. Michael Oakeshott, "Rationalism in politics", in *Rationalism in Politics*, 27-30.

[35] Kieron O'Hara's argument for conservatism makes this form explicit. He argues that what he calls "the knowledge principle" (a kind of scepticism about abstractions) gives rise to a "change principle" (a kind of risk aversion). My position differs from O'Hara's on both dimensions, but I am indebted to his identification of the two elements. Kieron O'Hara, *Conservatism* (London: Reaktion Books, 2011), 23-90.
Moreover, to the extent that O'Hara implies that the latter follows necessarily from the former, his deduction is invalid (a problem I aim to avoid) – Steve Clarke points this out: Steve Clarke, "A Prospect Theory Approach to Understanding Conservatism", *Philosophia* 45 (2017), 552, note 2.

[36] Examples include Lord Hugh Cecil, *Conservatism* (London: Williams and Norgate, 1912), 9-23; Oakeshott, "On Being Conservative", Sections 1 and 2; Scruton, *Meaning*, Chap. 1; Kekes, *Case*, Chap. 1.

[37] Kekes, *Case*, 5

In this sense, conservatism is inherently (trying to be) reasonable about traditionalism, rather than merely reflexively traditional, and this is an argument that might arise in domains other than the political.

The reasonableness of conservatism, then, turns on whether we accept its epistemic claim to be reasonable and whether we thereby find its consequent normative claim to be persuasive. Both elements are required because together they pick out what is to be conserved and why. As Honderich notes, if conservatism were only about familiarity, then it would be "an egregious idiocy… it would fail to make the most elementary distinction in life: between what is familiar and good and what is familiar and bad… *Anything*, after all, can become familiar. Confusion, boredom and torture can."[38] By itself, the epistemic claim that there is some qualitative difference between the knowledge captured by 'familiarity' and other knowledge claims is insufficient for action-guiding purposes. There must follow from that difference some sense of the conditions under which the recognition of this difference conduces to some good, such that that recognition can be said to be normative under those conditions.

However, even though the definition of conservatism as comprising these two elements redounds in the literature, conservatives do not agree on their content. In respect of the epistemic claim, while it is clear that the familiar is known by experience, we can see a difference between the familiar defined as the *actual* and as the *historical*. For example, Oakeshott tells us that "what is esteemed is the present… on account of its familiarity",[39] whereas Frank Meyer tells us that "what the conservative is committed to conserve is not simply whatever happens to be the established conditions of a few years or a few decades, but the consensus of his civilization, of his country, as that consensus over the

[38] Ted Honderich, *Conservatism* (Boulder: West View Press, 1990), 2.

[39] Oakeshott, "On Being Conservative", 169. In this essay, Oakeshott deliberately makes only an argument based on various contingencies – if you are in possession of these sorts of things, they warrant this conservative disposition, which entails these actions. However, Oakeshott does elsewhere suggest some substantive reasons for why the familiar is distinct from abstract knowledge claims. He locates the former in practical knowledge, the latter in theory, and argues that it is a mistake in reasoning to confuse theory extracted from experience for the experience itself – a mistake he calls "rationalism". Oakeshott, "Rationalism in Politics". I discuss this further in the next chapter.

centuries has reflected truth derived from the very constitution of being".[40] This ambiguity about familiarity is crucial to our project because, as Scruton puts it, "[C]onservatism arises directly from the sense that one belongs to some continuing, and pre-existing social order, and that this fact is all-important in determining what to do".[41] Moreover, the ambiguity is enhanced by conservatives often switching between definitions without marking the distinction, as in, say Oakeshott's suggestion that conservatism is both a preference for the present and yet might also lead one to seek a "firmer foothold in the past", or in Quinton holding that conservatism both relies on historical experience as "the deposit of traditional customs and institutions that have survived and become established" and is neither "reactionary" nor "immobilist" but rather committed to slow, organic growth (here we might wonder just what the realness of historical experience even means for Quinton).[42]

Unsurprisingly, then, there is a similar dispute among conservatives about the normative element of conservatism. On one hand, the claim is that inherent in any value claim is an intention to continue having or doing what is valued – Lord Cecil tells us that conservatism makes it so that "what is familiar merely because of its familiarity becomes more acceptable or more tolerable than what is unfamiliar",[43] and Oakeshott that "To be conservative… is to prefer the familiar to the unknown, to prefer the tried to the untried… the actual to the possible…". On the other hand, the claim is about what you ought to value, given what is known – for Meyer, tradition contains a truth that "the collectivist, scientistic, amoral wave of the present" does not capture, and it falls to the conservative to dig out and re-establish this truth.[44] Kekes adds more generally that melioristic policy "must be

[40] Frank S. Meyer, "Freedom, Tradition, Conservatism", in *What is Conservatism: A New Edition of the Classic by 12 Leading Conservatives*, ed. Frank S. Meyer (Newburyport: Intercollegiate Studies Institute, 1964/2015), 14-16.
[41] Scruton, *Meaning*, 10-13. Scruton here seems to be influenced by Oakeshott's later work, *On human conduct*, in which he describes the state as a form of civil association, without purpose but providing a basis for the pursuit of many different purposes, as against the various enterprise associations people form to pursue common purposes.
[42] Quinton, *Imperfection*, 17-21.
[43] Cecil, *Conservatism*, 9-15.
[44] Meyer's subject is political conservatism, and he does not explicitly discuss natural conservatism across domains. We can, however, read him as suggesting a distinction between how conservatism normally works and how it works when the status quo has become discontinuous with the status quo ante, with the former at least being a general proposition.

done in terms of the historical arrangements and conceptions of a good life that exist in society".[45]

We saw earlier that in practical politics conservatism is ambiguous about whether it is procedural or substantive and that conservatism is likewise ambiguous about whether it is sceptical or realist. These ambiguities stem from an ambiguity internal to the term itself, which is that while it seeks to conserve the familiar, just what is familiar is contentious, and this ambiguity feeds through into conservatism's normative prescriptions. Therefore, to settle our question about the reason to be conservative, we will need to resolve the underlying epistemological dispute, and determine what the proper course of action for conservatives is given that resolution.

1.4 Two Objections to the Coherence of Conservatism

Immediately upon embarking on that course of action, however, we confront two objections that hold that thus defined, conservatism is necessarily incoherent. That is, there can be no reason to be conservative because there is no rational way to move from the epistemic claim about the distinctness of familiarity to a normative claim, which is, by definition, not merely familiar but of purportedly universal application. In brief, we can say that the first objection holds that by making a normative claim, conservatism necessarily frustrates the development of the practical knowledge it claims to value; the normative claim does not permit the epistemic claim. Conversely, the second objection holds that the epistemic claim, taken seriously, precludes a conservative normative claim, on the grounds that any such claim will not itself meet the definition of familiar – it will necessarily be a theoretical abstraction. These objections present significant hurdles for my project in this thesis. I will introduce them in turn, starting with the first one, namely, that conservatism frustrates its own purpose. At the end of the chapter, I will suggest two different paths we might take in trying to refute these objections.

[45] Kekes, *Case*, 5, 21-2, 25 [emphasis removed].

1.4.1 First Objection: Conservatism Frustrates its Own Purpose

The first objection is that the normative assertion of the authority or preferability of the familiar will necessarily disrupt the spontaneous process of experimentation that discovers practical knowledge in the first place. Probably the most influential statement of this objection is FA Hayek's essay, "Why I Am Not a Conservative", though to understand the full force of his argument it needs to be placed in the context of his larger body of work. Hayek's case against conservatism is particularly notable given that, as cited above, Hayek is often associated with the political conservative ideology – and so by understanding this objection, we start to get a picture of what conservatism may or may not be once its underlying rationale is discovered.

The heart of Hayek's argument is that conservatism purports to assert authority and direction in the name of a good – practical knowledge – that emerges only in spontaneous individual action. For Hayek, the defining characteristic of conservatism is that it lacks a guiding principle. While "conservatism proper is a legitimate, probably necessary, and certainly widespread attitude of opposition to drastic change", this is all that it is, and consequently, "by its very nature [conservatism] cannot offer an alternative to the direction in which we are moving". While certain "reactionary" figures like Joseph de Maistre and Louis de Bonald "show an understanding of the meaning of spontaneously grown institutions such as language, law, morals, and conventions" this "admiration of the conservatives for free growth generally applies only to the past". In place of principle, conservatism places its faith in authority: "The conservative feels safe and content only if he is assured that some higher wisdom watches and supervises change, only if he knows that some authority is charged with keeping the change 'orderly'". The role of this authority is to "do what is required by the particular circumstances and not be tied to a rigid rule," and, for this reason, conservatives can only "hope that the wise and good will rule". Indeed, conservatism "does not really believe in the power of argument" but instead makes an arbitrary "claim to superior wisdom, based on some self-arrogated superior quality".[46]

[46] Hayek, "Why I Am Not a Conservative", 519-526.

Hayek's anti-conservatism has deep roots in his broader body of work. The heart of Hayek's system is the individual's "inevitable ignorance" about the knowledge of others. Institutions therefore play a coordinative role by providing access to the knowledge of others, which is revealed through their actions – "each individual's use of his particular knowledge may serve to assist others unknown to him in achieving their ends" – and by slowly adapting themselves to the ends of the people who use them – "Our habits and skills, our emotional attitudes, our tools, and our institutions – all are in this sense adaptations to past experience which have grown up by selective elimination of less suitable conduct".[47] But, crucially, for Hayek, this experience-capturing aspect of institutions is never reason to coerce individuals. While he admits that the accumulation of knowledge may or may not make us more satisfied, he says that this "does not matter", because "[p]rogress is movement for movement's sake, for it is in the process of learning, and in the effects of having learned something new, that man enjoys his gift of intelligence".[48] As such, even though institutions play their coordinating role in part by influencing individuals towards time-tested activities – "in social evolution, the decisive factor… [is] the selection by imitation of successful institutions and habits" – and even though we can make our own plans only "because, most of the time, members of our civilisation conform to unconscious patterns of conduct", it does not follow that this influence should be formalised as coercion. Instead, it should operate in the form of customs or "rules which… can be broken by individuals who feel that they have strong enough reasons to brave the censure of their fellows". This preserves the possibility of experimentation, and thus the adaptation of society to new discoveries and circumstances.[49]

Throughout his work, Hayek develops the idea of social evolution as a kind of "spontaneous order" – an indirect result of the several actions of individuals aiming at their own ends. Hayek pays attention to the way that institutions and individual minds stand in reflexive relation, with each shaping the other, and with our institutions considered explicitly as abstractions from prior experience that have

[47] Hayek, *Constitution*, Ch 1 (esp. 58-59, 71).
[48] Hayek, *Constitution*, 94-5.
[49] Hayek, *Constitution*, Ch 4.

survived by producing beneficial results for the societies that have adopted them. Hayek opposes the idea of spontaneous order with the idea of made order ("constructivist rationalism"), which is in error because it promulgates purposive rules, rather than "rules applicable to an unknown and indeterminable number of persons and instances".[50] In the course of making this argument, Hayek also restates his anti-conservatism, in somewhat different terms, by rejecting "organicism" (a favourite analogy of conservatives). An organism is a specific kind of order: within an organism, "most of the individual elements occupy fixed places which, at least once the organism is mature, they retain once and for all… [and are] more or less constant system consisting of a fixed number of elements… [and as such they are] orders of a more concrete kind than the spontaneous orders of society". When deployed as an analogy for describing society, organicism argues for fixed hierarchies and social classes, based on the incorrect idea that maintaining these in their present stations is necessary for the health of the overall society.[51] Thus, Hayek links his anti-conservatism with his anti-constructivism: both seek to direct society towards specific concrete ends and thereby prevent institutions from playing their proper coordinative and evolutionary role.

Hayek's emphasis on experimentation as the driver of social evolution is a recapitulation of John Stuart Mill's argument for "experiments in living" in his essay *On Liberty*. While Hayek seeks to distinguish his project from that of the "rationalist" Mill, who he believes fails to appreciate the indirect nature of the development of liberal society, nonetheless, the opposition Hayek sets up between individual experimentation and social progress, on one side, and traditional (received, established) institutions, on the other side, is substantially the same as that proposed by Mill more than a century earlier.

Indeed, it is not an exaggeration to see Mill's essay as motivated by, more than anything else, a desire to extinguish the influence of tradition on society. The essay opens with a sketch of "the struggle between liberty and authority". He argues that under the "magical influence of custom" expedient

[50] FA Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (London: Taylor and Francis Group, 2012), Chapters 1-4 (quote is at 48).
[51] Hayek, *LLL*, 50.

institutions are made to seem "self-evident and self-justifying". "[T]raditions", which are "not supported by reasons" largely emerge from the "ascendant class" and their own "class interests". Their phony naturalisation creates in people a "servility", based on nothing more than the "likings and dislikings of society". Conventional people are "ape-like" and akin to "steam engines".[52] Mill's principle of liberty is, in fact, designed first and foremost to free people from institutions that restrain their individuality, which is to say, which purport to tell individuals their own interests.

For Mill, liberty is that condition in which individuals' exclusive ability to recognise their own interests and know their own minds is respected, such that they are free to do as they please so long as they do not impermissibly infringe on others' equivalent right to their own interests and minds, which infringement Mill calls "harm". Individuals tend to flourish by making their own "plans" and "experiments in living", and from the opportunity to learn from the experiments (successful or not) of others.[53] It follows that the optimal social order is one in which this opportunity for flourishing is maximised. Not only does this mean replacing existing institutions with ones that better capture people's interests as revealed through spontaneous action, but it also means continually revising institutions as individual experimentation reveals new interests and, by extension, new harms. The line between self-interest and harm shifts as experiments in living reveal more information about individuals' interests.

Mill and Hayek, therefore, share a model of social progress comprising individual spontaneity and institutions that efficiently coordinate individuals' different interests and activities. Based on this model, both hold that because beneficial social institutions emerge from the revealed interests of individuals, preventing that revelation thwarts that emergence.

But Mill and Hayek's arguments come apart when considering how this model is to operate: where Hayek places his faith in spontaneous order, Mill suggests at least some role for government as a

[52] John Stuart Mill, *On Liberty* (Kitchener, ON: Batoche Books, 1859/2001), 6, 10-11, 55-6.
[53] Mill, *On Liberty*, 13-16. Mill uses both "experiments of living" (53) and "experiments in living" (74) to capture his idea that society progresses by individuals pursuing new ways to live well.

"central organ" that distributes new knowledge throughout society (this is the rationalism that Hayek sees in Mill).[54] It is this narrow difference that explains the persistent linkage of Hayek with conservatism – and it is worth taking a moment over this, because it bears on our larger project of discovering the reason to be conservative, if such there is.

When Hayek is read as a conservative, it is usually because his evolutionary model of social progress stands as an alternative to the more self-consciously directed model of someone like Mill. For example, Geoffrey Brennan proposes that Hayek is a "conservative liberal" in that while Hayek is "entirely right to claim that conservatism does not offer an end", conservatism ought to be understood as a question of means, that is, of pursuing ends in a certain cautious, cost-aware way, and this fits with his evolutionary model.[55] Similarly, John Gray argues that Hayek uses the "insights" of conservatism "in an original and uncompromising fashion" by opposing "tacit, practical and inarticulate knowledge" against "the rationalist project… of subjecting the mind to a systematic purge of tradition and prejudice". Gray, though, concedes that this this implies a positive embrace of undirected social evolution that conservatives may not appreciate.[56] Picking up on this last, Scruton endorses Hayek's insight regarding the common law that, in his words, "Just as prices in a market condense into themselves information that is otherwise dispersed throughout contemporary society, so do laws condense information that is dispersed over a society's past", because from there is it is only a "small step" to a recapitulation of Burke's defence of prejudice, custom, and tradition as repositories of wisdom. But Hayek's work is imperfectly conservative because it elides "the tensions that arise between these several spontaneous orders, and the frequent need for a standpoint above and beyond them from which their rival claims can be brokered".[57]

[54] Mill, *On Liberty*, 105. Note though that Mill is aware of the way this might constrain liberty, and argues for diverse forms of schooling, among other measures, to protect individuality.
[55] Geoffrey Brennan, "Hayek's Conservatism: The Possibility of a Conservative Liberal", *ORDO: Jahrbuch fuer die Ordnung von Wirtschaft und Gesellschaft* 65 (2014), 331-343.
[56] John Gray, "Hayek as a Conservative", in *Post-Liberalism: Studies in Political Thought* (London: Routledge, 1993), 32-39.
[57] Roger Scruton, "Hayek and Conservatism", in *The Cambridge Companion to Hayek*, ed. Edward Feser (Cambridge: Cambridge University Press, 2006), 208-31.

Yet Scruton's claim more or less repeats what Hayek himself said – that he is not a conservative simply because he does not hold that such an authoritative Archimedean point exists or is necessary for humans to coordinate their various actions. As such, the debate about Hayek's alleged conservatism highlights the ambiguity within conservatism that we have been discussing. Whereas Brennan and Gray associate Hayek with conservatism because of his desire to slowly evolve from the status quo, Scruton wants to see in Hayek is some acknowledgement of the reality of the historical wisdom that influences the coordinative function of institutions, and he is disappointed not to find it.

Going further, we might say that the kind of status quo bias (more on this in the next chapter) that Brennan, in particular, associates with conservatism is, in fact, simply a part of the model of social progress that Hayek and Mill share. On this model, institutions are shaped by, and reflect, the revealed interests of individuals. The status quo is therefore intelligible as the latest step in the process of social evolution. This is most obviously the case when the model is described as operating indirectly, as in Hayek – there, the existence of social institutions must speak to their utility for at least some people, which means further evolution is always a trade-off between established interests and the interests revealed by individual spontaneity. But it is also a feature of Mill's more intentional model. Millian liberal institutions seek to prevent illegitimate interference with individuals' revealed interests. But there is necessarily a lag between individual spontaneity and institutional recognition of revealed interests and harms. Importantly, the institutional background created by this lag makes possible "originality", which is the engine of social progress. The truly original individual, someone whose spontaneity runs against established practice, conducts experiments in living that are only useful to others if the conditions within which they take place are stable enough to make the revealed information intelligible and reliable. In short, this definition of conservatism can be thought of as merely the name for the value placed on the status quo by the liberal model of social progress – though

why anyone would want to play the role of the conservative in this model is yet unclear.[58]

The validity of this objection to conservatism turns on whether we accept that the knowledge upon which conservatives purport to assert the authority of social institutions is in fact the same kind of knowledge as that revealed by individual experimentation. If, as Scruton seems to suggest, institutional knowledge is itself real, then the objection loses its force. Hayek, whose work rests on the epistemic privilege of individuals in respect of their own minds, denies that it is real: "Knowledge exists only as the knowledge of individuals… it is not much better than a metaphor to speak of the knowledge of society as whole".[59] We see in outline, then, two possible strategies for conservatives to take in response to Hayek: first, to define conservatism as part of the experimental model of social progress; or secondly, to establish, by whatever means, the authority of institutions independent of individual minds. I will come back to these two options at the end of the chapter.

1.4.2 Second Objection: Conservatism is Self-Contradictory

In the previous section, the objection was that the assertion of the normativity of the familiar would undermine the epistemic claim in favour of the familiar. In this section, I will introduce the related, symmetrical claim that the epistemic claim in favour of the familiar precludes any conservative normative claim: in short, that if familiarity is held to be valuable because it is concrete and not abstract, and the normative claim is an abstraction, then this demonstrates that familiarity is not valuable as claimed.[60]

It should be noted that this argument does not escape Hayek – he describes well-ordered institutions

[58] Some critics of the political conservative ideology, like Deneen (*c.f.* note 12), consider this to be, in fact, the proper reading of what conservatism has in practice proven to be. Their critique is slightly different from Hayek and Mill though, in that they deny there is any coherent (conservative) motivation for anyone to play the role of the conservative in this model of social progress. Indeed, this might be considered a problem for Hayek and Mill's model: that it depends on people playing this conservative role but offers no reason for them to do so, and indeed, makes it difficult if not impossible for them to do. We will return to this point in a later chapter.

[59] Hayek, *Constitution*, 75.

[60] On this view, the previous critique is too generous in allowing that conservatism values practical knowledge in some generic sense; this critique says that the move from *this* practical knowledge to *all* practical knowledge is prohibited by the nature of practical knowledge itself.

as being based on abstraction, not on concrete purposes, which is why they can manage and coordinate the various plans of individuals, and what he means by conservatism's lack of a "principle" is that it cannot offer any such abstract rules but only concrete actions. Indeed, Hayek goes as far as arguing that our concrete experiences are always filtered through our abstract constructs (which is why, for example, Gray reads Hayek as an idealist).

But the point has been made more directly by others, and it is worth considering it on its own terms. These others generally frame this objection as uncovering the hidden truth that conservatism is not really about the *status quo* but about effecting (or threatening or pretending to effect), a reversion to the *status quo ante* – a 'counterrevolution' or 'reaction' (as in, say, Burke's opposition to the French Revolution). But, the argument goes, counterrevolution is incoherent: whatever might follow the revolution will always be shaped by the revolution, so the *status quo ante*, in its concrete particulars, is gone forever, and thus conservatism must depart from familiarity to aim at something abstract, new, and self-aware, which is a contradiction.

There are three different ways that conservatism as counterrevolution is purportedly self-contradictory and therefore unreasonable.

First, conservatism is motivated by an idealisation of the status quo ante that is supposedly precluded from its epistemic commitment to familiarity. James Alexander has made this argument in a series of articles. For Alexander, there can be no "distinctively conservative conviction" because by its very nature, rooted in experience, conservatism cannot assert a "timeless" value or principle. Conservatism must accept the status quo because it is essential to conservatism that it is about "holding on to what we have". But the motivation for being conservative in this bare sense lies in the connection of what is actually valuable to a deeper and broader history that explains its value – and this in turn admits a critique of the status quo as being a departure in some sense from the status quo ante. There has been a "rupture", in Alexander's phrasing, and so the conservative must also reject the status quo. In reality, the rupture in question was the series of revolutions across the 18th and 19th centuries that

destroyed Europe's ancient regimes. The distinctive feature of this rupture was a shift from religious or transcendental values to secular and rational values. Conservatism is therefore left with the task of trying to defend tradition in expressly anti-traditional terms – "making tradition into an ideal and abstraction… [to] defend it against the ideals and abstractions which are wholly opposed to all or any traditions". Specifically, for Alexander, conservatives in politics have an unstated ideal of "sacrality… an established cult or church", "hierarchy… from the king at the top through lords, priests, jurists, soldiers, merchants and so on down to the peasants", and "specificity… [whereby] every institution originated out of a specific response to a specific problem [and not] some abstract or universal principle".[61] Or, as he puts it elsewhere, "sacral monarchy", which is "not only antique but absolutely authoritative" and both "political and religious".[62]

So political conservatism is, then, in its fullest expression, always motivated by counter-revolution. Alexander writes that for conservatism: "What happened before [the revolution] is extremely important, not just causally but also conscientiously, for the conservative's view about what humans can ever hope to achieve in this world. Conservatives are therefore in some sense committed to recalling and perhaps even restoring elements of the pre-revolutionary order. *Otherwise, they have no reason to be conservative*…".[63] That is, for Alexander, conservatism is based on an idealisation of the status quo ante, which implies valuing history not as practical knowledge but as an abstraction, precisely what conservatism claims to oppose. Because this is self-defeating, conservatism retreats into a defence of the status quo, opposing change simply because the status quo is the only concrete thing that it knows, and because its previous experience with change was one of loss.

Secondly, picking up on the same theme, Corey Robin argues that conservatives contradict themselves whenever they act on their "reactionary imperative". Reactionary change cannot undo what has been done and so always involves the creation of something new. Like Alexander, Robin argues that

[61] James Alexander, "A dialectical definition of conservatism", *Philosophy* 91, no. 2 (April 2016), 215-232.
[62] Alexander, "The contradictions of conservatism", 609.
[63] Alexander, "The contradictions of conservatism", 607 – my emphasis.

conservatism is based on a diagnosis of failings of the old regime, which diagnosis it seeks to adapt into a program in the present. Both Maistre and Burke, Robin points out, begin their analyses of the French Revolution with condemnation of the French monarchy and aristocracy. Since its beginning, conservatism has been characterised by "antipathy, bordering on contempt" for the old regime and its defenders who "simply lack the ideological wherewithal to press the cause of the old regime with the requisite vigour, clarity, and purpose". Robin plausibly suggests that modern American conservatism, since Goldwater, has exhibited the same construction in its opposition to the "Republican [Party] establishment". For this reason, the Oakeshottian presentation of conservatism as a form of status quo bias is a "conceit" that elides "the fact that conservatism invariably arises in response to a threat to the old regime or after the old regime has been destroyed".[64]

Yet, Robin continues, a counter-revolution will not, and cannot, restore the status quo ante, but rather must make something new, if only because of the self-consciousness of its creation. Conservatism "really does speak to and for people who have lost something", and it is this fact of prior possession that enables conservatives to claim that a counterrevolution will not be as costly as the revolution that begat it, because "the conservative merely asks his followers to do more of what they have always done (albeit, better and differently)". But this is futile because it cannot bring back what was lost. For this reason, Robin detects in conservatism a kind of revolution envy. Conservatives are begrudgingly impressed by the power demonstrated by their radical opponents and come to copy the revolution they oppose. Robin makes the same point as Alexander, that following the revolution, conservatism adopts its language and, Robin adds, in doing so, conservatism comes in turn to be shaped by the language it has adopted – "Setting out to bend a vernacular to his will, [the conservative] finds his will bent by the vernacular" so that repeatedly portraying conservatism in terms of, say, liberty and equality, comes over time to change what conservatives really think. Thus, "Even when the conservative claims to be preserving a present that's threatened or recovering a past that's lost, he is

[64] Corey Robin, "Conservatism and Counterrevolution", in *The Reactionary Mind: Conservatism from Edmund Burke to Sarah Palin* (Oxford Academic Online Edition, 2015), 43-7.

impelled by his own activism and agency to confess that he's making a new beginning and creating the future".[65]

Thirdly, and most broadly, conservatism supposedly contradicts itself by making explicit something that is valuable because tacit. Alexander holds that conservatism is in this respect wholly self-effacing: "It seeks to unwind the dialectic of the enlightenment so far back that conservatism itself, along with liberalism and socialism, can be forgotten… the enlightened form of the discovery that enlightenment is an error…".[66]

Gray makes a similar point in relation to conservatism's incompatibility with modern pluralism. For Gray, conservatism is a doctrine for "practitioners of particular cultures" possessed of "local knowledge" which is "constitutive of our very identity", and which entails "non-progress", meaning a refusal to try to ameliorate imperfection measured against some abstract standard, and the "primacy of cultural forms", meaning the belief that value exists beyond the subjective viewpoint of the individual. But "to support nostalgist and reactionary conceptions of organic or integral community" would "end in tragedy or – more likely in Britain – black comedy" because "the reactionary project of rolling back this diversity of values and world-views" is ridiculous in "a world in which authority and tradition are barely memories". That older world has been replaced by one characterised by "individualism and pluralism" and by other changes, like suburban life, the financial power of women, and technological development, that mean older forms of family and community are impossible – and, indeed, that post-Enlightenment, "a common culture cannot mean a common world-view, religious or secular".[67]

Like the Hayek-Mill objection, the view of Alexander, Robin, and Gray is revealing for our project. On this view, conservatism's commitment to the distinctness of familiarity precludes it from arguing for

[65] Robin, "Conservatism and Counterrevolution", 55-9.
[66] James Alexander, "The Major Ideologies of Liberalism, Socialism, and Conservatism", *Political Studies* 63, Number 5 (December 2015), 988-990.
[67] Gray, "The Undoing of Conservatism", 87-119.

anything that departs from those concrete particulars that constitute the familiar. In effect, conservatism is impossible, because whenever something familiar is "put to the question" (in Alexander's phrase), the offering of a counterargument is inherently non-conservative. Or, put another way, there is an inherent contradiction in being motivated by something that *was real* because the result of the action thereby motivated is prospective and *not real* and therefore *not exactly the same thing as the motivation*. Literally: you cannot want anything that is familiar to you. But we ought to doubt that the resolution of our problem could be so simple.

This latter objection fails to take seriously the conservative epistemic claim *as an epistemic claim*. It confuses knowledge of concrete particulars for those particulars themselves. But the conservative epistemic claim is not intended to preclude abstraction from one set of concrete particulars to another. Oakeshott, for example, holds that we should be conservative – in the sense of preserving the status quo – about tools, because in that way we maintain our skill in using them, which we can transfer from project to project. And as we will see, Burke's more historically-minded conservatism places great weight on prudence, which requires the formulation and application of rules. Conservatism, as I will go on to argue at length, is not – as this caricature would have it – opposed to thought; rather, it draws a distinction between reflection on facts and speculation about possibilities and makes an argument for preferring the former to the latter. There is, as I say, much more to discuss on this point, but for now this should suffice to lift our discussion over this hurdle and keep it moving.

1.5 Two Paths to Coherence: Procedural and Substantive

So far, I have said the following. Our purpose is to identify a reason to be conservative, defined as a commitment to conservatism, which comprises an epistemic claim about the distinctness of familiarity with a normative claim about what we ought to do given that fact. But familiarity is an ambiguous term and this ambiguity looms over our project. Because familiarity is sometimes defined by conservatives as the actual and sometimes as the historical, it is not clear whether conservatism is a sceptical or realist doctrine, and not clear whether its normative commitment is procedural or

substantive. I want to finish this chapter by suggesting that we can identify two possible lines of inquiry in aid of our purpose – two opposing definitions of conservatism.[68]

I will call the first definition *procedural conservatism*. On this view, conservatism is predicated on the distinctness of familiarity as the *actual*. It is *sceptical* of knowledge claims that do not emerge from the concrete particulars of the present or status quo. It is *procedural* because it holds that what follows from actual familiarity is a question about how to manage change so as to preserve what is known in the present. More deeply, procedural conservatism's normative claim is a claim about value: that, all else equal, to say that one values something is also to say that one intends to keep that thing. Thus, *status quo bias* is motivated by the desire to ensure that change does not pointlessly destroy existing value – to make sure that change is truly value maximising, as its proponents claim. This is applicable, it is claimed, regardless of the value held, and hence conservatism is *adjectival*, in that it modifies the pursuit of whatever value is accepted for whatever reason.[69] For example, you might be a liberal and have some liberal value in mind, and here, the idea of procedural conservatism is that whatever liberal value you are pursuing might diminish existing liberal value unless you apply the conservative procedure. So, on this view, the reason to be conservative is that the nature of value itself suggests a certain conservative procedure (which we will soon examine) for managing change.

Procedural conservatism seeks to evade the charge that conservatism frustrates its own purpose by holding that conservatism's normative claim is, in fact, that there is a certain procedure that should be used in aggregating revealed practical knowledge, not that this revelation should be entirely thwarted. And it seeks to evade the second charge, that conservatism is self-contradictory, by holding that its preference for familiarity is not a denial of the possibility of formulating value claims, but rather

[68] Dean Blackburn writes, "Some writers… have claimed that conservatism is a situational ideology whose advocates can, without contradiction, endorse different values in different historical conditions. Others, by contrast, claim that there is a substantive core of conservative values that can be traced throughout the ideology's history." This is, indeed, the key distinction, but I want to argue that the latter position rests on a claim about a single, specific value, order. Dean Blackburn, "In The Shadows: Conservative Epistemology and Ideological Value", *Political Studies Review* 20, no. 3 (2022), 433.

[69] I borrow this description from: Geoffrey Brennan and Alan Hamlin, "Analytic conservatism", *British Journal of Political Science* 34, no. 4 (October 2004), 677.

a necessary part of formulating them properly.

The alternative view I will call *substantive conservatism*. On this view, conservatism defines the familiar as the *historical*. It is *realist* in that it emphasises the realness of historical experience as a source of timeless (or at least very stable) information about the world. Substantive conservatism is *substantive* because it holds that this information is veracious and therefore useful for beings like us, and it seeks to realise the intrinsic and instrumental value of this kind of information by putting institutions into a certain form, such that they operate by reflection on historical experience, which form I will call *order properly understood*. Thus, the reason to be conservative is that *order is a basic good* that is obtained by being conservative.

Substantive conservatism evades the first charge by distinguishing the kind of information contained in orderly institutions from the subjective experiences of experimenting individuals – it is the 'wisdom of the species', to invoke Burke. It evades the second charge by holding that the realness of historical experience likewise gives rise to accurate knowledge about value and what is good for beings like us.

It is important here to be clear about what, ultimately, distinguishes procedural and substantive conservatism.[70] It is not that the former asks what conservatives will or ought to do in any set of circumstances (and so aspires to universality) whereas the latter asks what conservatives will or ought to do in a specific set of circumstances (and so is reasonable only within the bounds of those circumstances). Rather, both are attempts to be reasonable, as Mannheim has it (1.3 above), and universal. Procedural conservatism holds that the conservatism is the vindication of existing value (resident in the familiar) in any decision about change, and its reasonableness turns on a claim about value itself, namely, that part of *to value* is the intention to conserve value.[71] By contrast, substantive conservatism holds to the inherent desirability of conserving historical experience, which entails a (universal) commitment to developing and maintaining the kinds of institutions that perform that

[70] I thank an anonymous examiner for posing the question to which this paragraph is an answer.
[71] I discuss this more in 2.2.1 below.

function. In short, whereas procedural conservatism is a claim about *value* generally, substantive conservatism is a claim about a specific (universal) value, order.

There is an asymmetry here. While I have laid out these two positions as alternatives, it is possible that the full elaboration of substantive conservatism will include, in some sense, the procedure identified by procedural conservatism – some of the principles of change within procedural conservatism may be useful for realising order. However, if procedural conservatism is the proper definition, then it excludes substantive conservatism, because its narrow focus on existing value runs counter to substantive conservatism's commitment to the desirability of certain kinds of institutions. I flag this because it is a theme that I will develop across the thesis.

1.6 Conclusion

In this chapter, I have sought to motivate the inquiry I will undertake throughout the rest of the thesis, namely, the search for a reason to be conservative. To set up that inquiry, I first distinguished between the political conservative ideology as found in ostensibly conservative political parties and the concept of conservatism as found in political philosophy. I then further argued that while it is possible to put together a list of ideas commonly associated in the literature with conservatism, this method cannot answer our question. I proposed instead to take a philosophical approach by exploring the two elements of conservatism (however their content is defined): an epistemic claim about the distinctness of familiarity as a kind of knowledge, and a normative claim (the 'ism' in conservatism) about what we ought to do given the epistemic claim. However, we saw that this approach immediately confronts two arguments against the possible coherence of these two elements. Indeed, throughout, we saw that conservatism is riven by an ambiguity about the definition of familiarity, and so I suggested that there are two different lines of inquiry we might make.

In the next chapter, I will try to demonstrate that one of the two potential definitions of conservatism, which I have called procedural conservatism, is in fact incapable of overcoming the objections we have seen in this chapter. I will then go on to defend the other definition.

2 The Incompleteness of Procedural Conservatism

For what I have called procedural conservatism, the question of whether there is a reason to be conservative is reframed as the question of how existing value might be maintained or traded-off through processes or periods of change. That is, conservatism is defined here as, in Samuel Huntington's words, "the articulate, systematic, theoretical resistance to change", and the challenge is to explain why someone might adopt such a posture, and what might follow from its adoption.[72] This has also been referred to as a justification for *status quo bias*. Broadly, two kinds of status quo bias might be advanced: a positive claim for the value of (or in) the status quo, and a negative claim against the purported value of some proposed change state (that is, a future that is different in some respect from the status quo), with some discussion about whether and how the two kinds might be advanced simultaneously.[73] Once established, this bias is operationalised as a procedure for managing change, with a view to maintaining and adding value without unnecessary loss – to seek genuine "improvement", in Burke's term.[74] Or as Michael Freeden observes, this idea of conservatism is not merely concerned with the status quo but rather it is "predominantly concerned with the problem of change: not necessarily proposing to eliminate it, but to render it safe".[75]

The description of this concern for change as status quo bias may be, as Kieron O'Hara has noted, infelicitous for two reasons.[76] First, that *bias* suggests the preference for existing value is irrational, contrary to conservatism's attempt to be reasonable (as noted in 1.3, above). Secondly, that, in fact, if there is a bias in managing change, it may well run in the opposite direction, that is, against the status quo. So, it worth taking a moment to clarify what I mean by it. In introducing the term, Geoffrey

[72] Samuel Huntington, "Conservatism as an Ideology", *The American Political Science Review* 51, no. 2 (1957), 461.
[73] For example, Geoffrey Brennan and Alan Hamlin identify three forms of status quo bias and argue that they can be held in any combination. By contrast, Martin Beckstein argues that while arguments both for the status quo and against change might be simultaneously advanced, only the former is a "truly conservative" position. I will come to both these points later.
[74] Burke, *Reflections*, 29.
[75] Freeden, *Ideologies*, 332.
[76] Kieron O'Hara, "Burkean Conservatism, Legibility and Populism", *Journal of Political Ideologies* 26, no. 1 (2021), 82-6. (With thanks to an anonymous examiner for raising this question.)

Brennan and Alan Hamlin seem only to want to provide a technical term for what they identify, following Michael Oakeshott, as the conservative disposition towards the familiar, which they redescribe as the "explicit recognition of the normative status of the status quo".[77] In a later paper, they also suggest that definitionally, for them, a conservative argument is one that assigns value to the status quo, whether because this is appropriate to whatever values are at stake, or because of claims about uncertainties inherent in change, or because of some specific value located in the status quo as such.[78] Thus, the bias in question is not, or should not be read as (in my view), an irrational weighting towards the status quo, but rather as the tendency that conservative arguments of these kinds have to conserve the status quo and defeat or mitigate proposals for change *when compared with other ways of thinking about change*. For procedural conservative argument, a proper weighting of the status will tend, overall, to conserve the status quo more frequently than other procedures. In any event, this is how I will deploy the term in this chapter, to capture the various ways that procedural conservatism seeks to vindicate existing value when it is put at stake by change and innovation.

With that said, my purpose in this chapter is to challenge the association of conservatism with status quo bias (thus understood), and to show why we ought instead to seek a reason to be conservative in a distinctively conservative value.[79] Subsidiarily, and this is another reason to continue using this framing, I want also to place the argument of this thesis within the philosophical literature on this subject, which has largely focused on this question of justifying status quo bias.

To these ends, in this chapter I first undertake a reconstruction of the procedural conservative position, starting with its epistemic foundation in the familiar as the actual, and then proceeding through the normative argument for status quo bias. The purpose of this reconstruction is to formulate the argument and its deficits precisely, to enable comparison with the alternative position I will develop in the rest of thesis. I offer two criticisms of procedural conservatism, which clarify the

[77] Brennan and Hamlin, "Analytic Conservatism", 676.
[78] Geoffrey Brennan and Alan Hamlin, "Conservative Value", *The Monist* 99, no. 4 (October 2016), 352-3.
[79] I follow Alexander in describing this procedural kind of conservatism as "incomplete" because it lacks an underlying principle or reason to be conservative. Alexander, "The Contradictions of Conservatism", 600.

two charges against conservatism we saw in the previous chapter, and which motivate the approach I will go on to take.

2.1 The Epistemic Claim: Familiarity and Actual Practice

As noted, familiarity admits two readings: the actual and the historical. Here we are concerned with the former, narrower reading.

The status quo is a subset of the actual, *that which now exists*. As James Buchanan puts it, the signal fact of the status quo is that it exists, and so everything else we might do must begin from the status quo.[80] But defining the status quo in objective terms as simply *all that is actual* raises a host of conceptual difficulties, like whether the past and future are included and to what extent, how long the status quo must persist before it can be considered the status quo, and whether the status quo means the rules that govern the present or the concrete state of affairs that obtains.[81] Thus, to reason from the status quo, as Buchanan would have us do, requires that the status quo first be constructed.

For procedural conservatism, I want to argue, the status quo is constructed by *present enjoyment*, the positive evaluation of that which is actual and familiar. That is, for procedural conservatism, what is at stake in change is not the actual in full, but that which is actual and known to be valuable. We must ask, then, what knowledge is real in the status quo, for it is this that, in turn, explains the

[80] James M. Buchanan, "The Status of the *Status Quo*", *Constitutional Political Economy* 15 (2004), 133-144.

Like Hayek, Buchanan is a liberal who is often associated with conservatism despite having disavowed the position. Buchanan's liberalism starts from the premise that since value is subjective, we ought to have non-coercive government, and as such it follows that change from the status quo must be assented to by all who are implicated in the change. The status quo plays a role in Buchanan's model simply as the starting point for considerations of how to increase the efficient satisfaction of individual wants. For Buchanan, his position is distinct from conservatism because he does not assign any "intrinsic value" to the status quo – its normative weight is merely that it is the state that will continue to obtain if no consensus about change can be reached. The accuracy of this characterisation of conservatism is, of course, our present subject. See James M. Buchanan, *Why I, Too, Am Not a Conservative* (Cheltenham, UK; Northampton, MA: Edward Elgar, 2005), 1-10.

Nonetheless, so pervasive is the belief that conservatism means status quo bias and so stringent is Buchanan's model of change that not only is he continually associated with conservatism, but he is also sometimes alleged to be the inspiration for the American Conservative Movement's supposed anti-democratic bent. See Marc Perry, "A new history of the right has become an intellectual flashpoint", *Chronicle of Higher Education*, 19 July 2017.

[81] Roger Faith, "Can we Know the *Status Quo*?", *Constitutional Political Economy* 15 (2004), 145-151.

understanding of value that inheres in the conservative procedure, and thus the value that non-conservatives miss.

Here, we might consider two answers. First, for Oakeshott, what is real in the status quo inheres in *practice*. Oakeshott distinguishes between technical knowledge, which is found in rules and doctrine and is abstracted from experience, and practical knowledge, which is found only in the act of doing. While technical knowledge and practical knowledge are "always involved in any actual activity" and "do not exist separately", they are nonetheless distinct. The mistake in what Oakeshott calls "rationalism" is that it asserts "the sovereignty of technique", claiming that only technical knowledge is certain and therefore that improvement consists in the replacement of actual practices (including traditions and customs) with rational deductions from technical rules.[82] When Oakeshott elsewhere describes conservatism as concerned with familiarity, he means that it is concerned with practical knowledge and the practices in which it is found. He identifies friendships, which are enjoyed for their own sakes, and tools, which "call for skill in use and skill is inseparable from practice and familiarity". The political application of this idea is just that "general rules of conduct" are a particular kind of tool that the people of a society know how to use.[83] So for Oakeshott, the status quo is real in that it is the site of our actual practices, which contain a kind of non-theoretical knowledge that we would not have if our practices were interrupted.

Secondly, GA Cohen argues that conservatism, in this status quo conserving sense, should be directed towards certain existing things (objects, as well as "processes" and "features") that ought, all else equal, to be kept as they are. That is, the status quo also contains *real things*, some of which are valuable in part *because* of what they are. He suggests two kinds of "existing value": first, "particular value", by which something is intrinsically valuable because of what it specifically is (Cohen's example is his Oxford college); and secondly, "personal value", by which something is held by some person to

[82] Oakeshott, "Rationalism in Politics", 7-13.
[83] Oakeshott, "On Being Conservative", 181-2.

be valuable for what it specifically is (Cohen holds his pencil eraser to be one such thing).[84] I will consider Cohen's value claims in the next section, but here the question is whether his conservatism adds to our understanding of the status quo as that which is (actually) familiar.

On its face, Cohen's position is not an epistemic claim at all, and is rather about the relevance of identity to how things are or ought to be evaluated based on their objective features. However, despite appearances, Cohen's conservatism rests on a claim about familiarity. Cohen wants to say that his kind of conservatism is "not absolute"; that is, he does not want identity to trump possible changes but rather to be factored into them. His view, then, is procedural. He concedes that what he is really talking about is "the correct response to value": we should recognise existing value where we find it, in ways that (while defeasible) count against replacing existing value with something else that might be more valuable when measured from a perspective in which actuality is not considered. What is real, at least in terms of the conservative procedure (I will come back to this), is people's familiarity with the particulars of the existing thing, because it is only that knowledge that distinguishes an existing thing from a prospective thing.[85] This is so whether the recognition is the personal recognition of some existing thing as valuable simply for what it is, or, by extension, the intersubjective or conventional view of it as something valuable.

Both answers, then, turn on familiarity, in the sense that what is real in the status quo is our experience of it, through practice and through the recognition of certain features and of certain things within it.

Conversely, of course, everything that lies outside of this narrow definition of the real status quo is not real. Hence it has been said that Oakeshott's epistemology is both realist and sceptical.[86] The non-

[84] GA Cohen, "Rescuing conservatism: a defence of existing value", in *Finding Oneself in the Other*, ed. Michael Otsuka (Princeton: Princeton University Press, 2013), 143-174.
[85] Cohen makes two concessions in response to comments by his peers: first, that existing value is logically independent from a consideration of the history by which that value was brought into being, i.e., that longevity has no bearing on whether we recognise some existing thing as valuable; and secondly, that if an appreciation of existing value begins from a recognition of something as a particular bearer of value, then some prospective thing that is certain to also bear that value once it exists is just as valuable as the existing thing. Cohen, "Rescuing Conservatism", 157, 166.
[86] Timothy Fuller, "Conservative Realism: The Disposition of Sceptical Faith" in *Conservative Realism: New Essays in Conservatism*, ed. Kenneth Minogue (London: Harper Collins, 1996), Chap. 7.

real includes both inductions from historical experience and deductions from theory – that is, about any ideas that do not ultimately refer to an actual practice and the real knowledge contained in it.

Regarding historical experience, the scepticism of procedural conservatism is broadly Humean.[87] It is Hume's argument against induction that cuts off the actual from the past. Hume argues that induction cannot produce knowledge, because the assumption that observed relationships of cause and effect will continue to hold into the future is invalid. Hume calls this assumption a custom or habit – "the repetition of any particular act or operation [that] produces a propensity to renew the same act or operation, without being impelled by any reasoning or process of the understanding" – and argues that it has no basis in reason. For Hume, narrowly, the real is our actual sensory experience – "some fact, which is present to your memory or senses".[88] The reference here to memory is that, for Hume, we naturally combine our experiences into ideas and our ideas come back to us when prompted by new encounters with the objective features of the world that prompted their creation in the first place. These memories enable us to live in the world: "Had not the presence of an object, instantly excited the idea of those objects, commonly conjoined with it, all our knowledge must have been limited to the narrow sphere of our memory and senses; and we should never have been able to adjust means to ends, or employ our natural powers, either to the producing of good, or avoiding of evil".[89] But importantly, Hume's claim is not that our ideas are real knowledge, but that the features of the world are stable enough that we have repeated and continuous experiences with them. Moreover, our experiences of the world are also stable because human nature is largely invariant.[90]

So while we naturally compile our experiences into ideas, it is not rational for us to rely on these ideas

[87] Oakeshott tells us that "there is more to be learnt about this disposition from Montaigne, Pascal, Hobbes and Hume than from Burke or Bentham". Oakeshott, "On Being Conservative", 195.
[88] David Hume and LA Selby-Bigge, *The Project Gutenberg Ebook of An Enquiry Concerning Human Understanding* (Project Gutenberg, 2011), Sections 36 and 37, https://www.gutenberg.org/files/9662/9662-h/9662-h.htm
[89] Hume, *Enquiry*, Sections 39-45. See also: Sheldon Wolin, "Hume and Conservatism", *The American Political Science Review* 48, no. 4 (December 1954), 1004.
[90] On this latter point, see Christopher J. Berry, "From Hume to Hegel: the case of the social contract", *Journal of the History of Ideas* 38, no. 4 (1977), 694.

as if they were themselves real. Hume's position has therefore been called a kind of fallibilist "methodological conservatism": in the absence of new reasons that would justify a change of belief, it is rational, on this view, to hold to the old belief. The form of this argument is, roughly, that the reasoning individual must start with data or premises to form and rely on a belief about whatever is in question, and that, having done this, it is rational to hold the belief until it is contradicted.[91] Which is to say, because we cannot predict the future based on the past, we ought to defer to the present.

But this has an important consequence for procedural conservatism: it prohibits appeals to historical experience that is *past*, meaning no longer practised. While it will often be the case that actual practices are the way they are for historical reasons, these reasons do not obtain *independent of the practice in which they inhere*. Per Hume, it would be irrational to appeal to them in circumstances where practices have changed, or where the contingencies upon which the practice relies have changed. This is, I will go on to argue, distinct from the substantive conservative position that our practices reveal truths about the world external to our minds, which can and should inform the kinds of institutions we have. The privileging of familiarity (as something actual) is about extending the duration of the period, the present or status quo, during which our previous impressions make sense. This effect is achieved by maintaining the habits (practices) within which that knowledge resides. The familiar is real so long as the practice continues – but practice does not tell us anything that is timeless.

For the same reason, ideas about the future are also non-real. We saw in the previous chapter that suspicion of theory is a recurring conservative theme. In the case of procedural conservatism, the problem with theory is simply that its deductions posit change states that are unfamiliar.

Indeed, this scepticism towards ideas and theory is often presented as the dominant or even only part of the conservative epistemic claim, eliding the realness of familiarity altogether. Quinton describes political conservatism as expressing "political scepticism" because the value of that wisdom lies in the

[91] D. Goldstick, "Methodological Conservatism", *American Philosophical Quarterly* 9, no. 2 (April 1971), 186-191.

recognition of the individual's "intellectual imperfection", meaning his or her inability to understand society in its full complexity.[92] O'Sullivan echoes Quinton in describing conservatism as "an ideology of imperfection" that rests on the inherent limits of human understanding of the world, which manifests in politics as an appreciation of the incompatibility of diverse human goods, at least from a human perspective.[93] Similarly, Kekes refers to conservatism's "moderate scepticism", which derives from the recognition of "human fallibility", but, unlike Quinton or at least more explicitly, Kekes' point is not that political conservatism is a doctrine based only on doubt, just that it prefers to test claims against evidence rather than against theory.[94] Brennan and Hamlin summarise: "[Conservatives] warn that society is too complex to lend itself to theoretical simplification and that this fact must temper all plans for institutional innovation".[95]

But the two claims, the narrow realism of the actually familiar and broad scepticism about all other kinds of knowledge, fit together neatly. The overarching idea is that abstractions of whatever kind cannot (or should not) supervene upon the knowledge contained in actual practice. Just as Hayek (see 1.4.1 above) is both anti-conservative and anti-constructivist, the procedural conservative epistemic claim is that neither the practical past (to use an Oakeshottian term I will come to later) nor the prospective or theoretical future should be permitted to interrupt the spontaneous unfolding of the present. As Oakeshott puts it, the future should be "intimated" in the present, not imposed upon it.

Hence the two kinds of status quo bias introduced above, the positive claim for the value of the status quo and the negative claim about everything outside that point in time and space, are two consequences of the same epistemic claim: that the familiar, knowledge that lies in actual practice, is distinctively real. And the normative claim that follows is that the distinctive realness of this knowledge bears upon how we ought to assess the value that is at stake in a proposed change.

[92] Quinton, *Imperfection*, 16-18.
[93] O'Sullivan, *Conservatism*, Chap. 1.
[94] Kekes, *Case*, 31.
[95] Brennan and Hamlin, "Analytic conservatism", 683.

2.2 The Normative Claim: Present Enjoyment

As we have seen, conservatism is not concerned with mere familiarity, but instead with familiarity interpreted through a normative claim about the significance of its distinctness from other knowledge claims. For procedural conservatism, this means that, all else equal, because we are familiar with those practices, we aim to continue practising them. In what follows, I work through the implications of this idea, identifying four *features* of procedural conservatism that help us to understand its meaning and serve as points of comparison for our later discussion.

2.2.1 Present Enjoyment and Where it is Found

First, we can identify the *object* of procedural conservatism, meaning that which it aims to conserve. This object is the value-laden understanding of the knowledge contained in actual practice, which following Oakeshott again, I will call *present enjoyment*. In his essay on conservatism, Oakeshott uses different variants of this idea: the conservative disposition is "a propensity to use and enjoy what is available", and the conservative finds change hard to accept "because what he has lost was something he actually enjoyed". Friendships are like this, "where what is sought is present enjoyment and not a profit". So too is sport, "the enjoyment of exercising skill…". Tools are useful for enabling this enjoyment, because "Familiarity is the essence of tool using" and this is true of a "certain kind of tool in common use… namely general rules of conduct" which support us "in the enjoyment of orderly and peaceable behaviour… ".[96]

Present enjoyment is what is at stake when change is proposed, and it defines the status quo and supplies the reason for status quo bias. It is the value that practisers place upon their practices when making a *change-decision*.[97] The idea is that an actual practice produces in the mind of the subject practitioner, when questioned, some value, which is whatever enjoyment the subject gets from the

[96] Oakeshott, "On Being Conservative", 168, 170, 175, 178, 179, 181, 188.

[97] Freeden is mining the same vein, I think, when he describes the limited possibility of theorising that Oakeshott allows. For Oakeshott "theorising can do no more than expose contingently related beliefs and understandings of a particular agent in a contextual, historical situation." Freeden, *Ideologies*, 323.

practice, and the value, absent some intervening act, motivates the continuation of the practice and the conditions that enable it.[98] To take an example of Oakeshott's claim about tool use, we can say that a carpenter's skill with a hammer is a kind of practical knowledge, and that to keep that knowledge alive, the carpenter needs projects and materials, and so has an interest in maintaining the conditions, broadly defined, that supply them.

Present enjoyment is not, then, a specific value, but the name for the construction of an actual practice as something valuable for whatever reason. Present enjoyment holds that the meaning of valuing as such includes that, all else equal, you aim to keep that thing and that in any change-decision it will factor into your deliberations.[99] For this reason, Kieron O'Hara characterises his own version of procedural conservatism as not merely a modifier of substantive value claims but as "an essential precondition to the successful pursuit of any political or value-laden end" – that is, conservatism is the recognition of value *for what it really is* and this is the proper starting point for *any* discussion of value.[100]

As this suggests, procedural conservatism might apply to any practice at all, for it is part of rendering that practice in terms of value. It is for this reason, also (and to reiterate), that Cohen's conservatism is wrongly presented as being about the identity of things. By itself, that identity does not capture the procedural conservative point that he wants to make, which is that the present state of certain things

[98] Thus, for example, Donald Livingston interprets Hume's conservatism, which I have suggested is the source of the procedural line that extends through Oakeshott to the most recent academic literature on conservatism, as the maxim: "[T]he mere fact that a practice is established *is* a reason to continue it, the standard of reason being social utility and narrative time being a value constitutive of social utility". Note here that the idea that continuity is included in the definition of value (or utility or function). Donald W. Livingston, *Hume's Philosophy of Common Life* (Chicago: University of Chicago Press, 1984) 340.

[99] I have in mind here two of Samuel Scheffler's observations about value: first, that to value something involves a belief that the thing is valuable, a decision to attach value to that thing, and a consideration of thing's value in one's deliberations; and secondly, that it would be incoherent to hold that someone could attach value to a thing and yet see no reason to preserve it.
For the first: Samuel Scheffler, "Valuing", in *Reasons and Recognition: Essays on the Philosophy of TM Scanlon*, eds. R. Jay Wallace, Rahul Kumar, and Samuel Freeman (Oxford Academic Online Edition, 2012), 31. For the second: Samuel Scheffler, "Immigration and the Significance of Culture", *Philosophy and Public Affairs* 35, No. 2 (Spring, 2007), 101.

[100] Kieron O'Hara, "Conservatism, Epistemology and Value", *The Monist* 99, no. 4 (October 2016), 437. Note that O'Hara describes his sceptical rending of conservatism as "Burkean", a characterisation that I would challenge, based on the argument in the next chapter.

is relevant to change-decisions. What is important, rather, is that those things are *recognised* as valuable – and that what is conserved is the experience of those things, the understanding of what makes them particular or special. A permanent exhibition at the National Gallery of Victoria features the works of the Heidelberg School, but it is not merely the paintings themselves that are the objects of procedural conservatism; instead, it is the experience of those works as examples of impressionism and as artefacts significant to Australian culture that is conserved, that is, their place in a world in which they are recognised for what they are.[101]

However, based on this, we might also reasonably hold that some things are more likely than others to warrant conservation in their present states or less likely to be changed for the better. Let us call this the *scope* of procedural conservatism, the range of things over which it applies. This range includes things that that are, from the point of view of practisers or by convention, already maximally valuable. In Oakeshott's example of friendship and Cohen's example of his favourite eraser, the common element is that those things are valuable or valued for what they are, and so improvement is not possible. In the case of friendship, if Amanda enjoys being friends with Bianca, it does not follow that she would enjoy *even more* to be friends with Camilla – what is valued here is the specific relationship, not the kind of relationship, and this holds for Cohen's personal relationship with his eraser. The scope of procedural conservatism also includes things that do not lend themselves easily to improvement, like Oakeshott's tools and Cohen's college. These are things that are valuable as they are and so changing them would encounter obvious risk of loss. Going a little further than Oakeshott, Cohen suggests that this kind of conservatism "sets itself against the maximising attitude", by which he means that the conservation of particularly valuable things is not motivated by any belief that doing so will lead to an increase in value overall. Yet as Brennan and Hamlin point out, since Cohen also suggests that trade-offs between overall value and particular value might occur, this means that, in practice, particular value is better understood as a weighting of certain things (those that are difficult

[101] In their discussion of Cohen, Brennan and Hamlin make a similar point about how we ought to understand what is real in the status quo (i.e., the positive side of the bias). I come to this below.

to improve in-and-of themselves) within whatever procedure of aggregation is being used.[102] To this, I would add that another way of thinking about this same point is that there is, on the procedural conservative epistemology, no principle of system-level value aggregation that could reasonably supervene upon the concrete understanding of a particular thing.

Finally on this, there are two other points worth noting about present enjoyment for future discussion, which follow from its identification as the object and thus determinant of the scope of conservatism.

First, present enjoyment treats value as *subjective*. Just as practical knowledge is tacit and known only to practisers, so too is the full value of that knowledge a matter for that person to determine. While the practice and the various things and conditions that it includes might have some objective or intrinsic value, this is not how it will be contemplated by the conservative procedure. Moreover, it is important to understand that a present enjoyment value claim is an attempt to make generally intelligible something otherwise apparent only to the practiser. As such, present enjoyment must rely on some shared set of *conventions* that achieve this.[103] Or, put another way, while present enjoyment is subjective, the claims made on its behalf are necessarily *intersubjective* simply because the claim is made in response to a proposed change and so it must be presented in *conventional terms* understood by everyone implicated in the decision. Present enjoyment claims aim to vindicate the value of actual practices within the frame of public reason. But to flag a problem for later discussion, this shift from subjective valuing to intersubjective recognition of value is entirely contingent absent some independent reason for those hearing present enjoyment value claims to care about them.

Secondly, and relatedly, present enjoyment value claims are *relativistic*. Since the practical knowledge encoded in a practice is available only to the practiser, only he or she can say whether and to what extent it is valuable. In this sense, Honderich is right when he says that anything can be familiar, and

[102] Oakeshott, "On Being Conservative", 179-181
Cohen, "Rescuing Conservatism", pp. 153-5
Brennan and Hamlin, "Conservative Value", 360-1.
[103] I use the word 'convention' here to mark that these kinds of institutions that enable present enjoyment value claims should be understood in terms of how they are convenient for enabling practices.

that procedural conservatism does not itself distinguish between familiar and good and familiar and bad. Instead, the question posed by procedural conservatism as an intersubjective system is whether present enjoyment will be recognised by others as a relevant factor in change-decisions in which all are implicated. Put differently, the aim of a present enjoyment value claim is not to vindicate the objective value of a practice but to communicate to others the value placed upon the practice by practisers. So, for example, if I am faced with a choice between continuing to go to the football of a weekend and a season ticket for the opera, I might explain my preference in terms like spending time with my family, enjoying the spectacle, celebrating human excellence and so on, but these are only rationalisations. What I am really saying is just that I want to continue going to the football; hence, I will not be persuaded that I can get all those same goods from the opera, perhaps even in greater quantity. The converse of this idea is at play when Huntington says not only is there no "conservative ideal", but there are also no "conservative institutions". There are only "institutions to be conserved". Any defence from "philosophy" only encourages proponents of change.[104] In essence, procedural conservatism seeks to *moderate* (or deflate) abstract and universal value claims in two ways: by using them itself only as ex post facto rationalisations for actual practice, and by translating such claims into concrete and conventional terms, recasting them as questions of present enjoyment.

As such, the claim is not that present enjoyment is *a* value, but rather that, in light of what makes the status quo real, present enjoyment is how we ought to *understand value itself*. The translation of value claims into conventional terms to convey present enjoyment is what makes the values at stake in a change-decision real and therefore worth deliberating. It is this claim about the need for considering values in terms of practices and concrete particulars that sets up the bias in favour of the status quo (that is, the tendency for the procedure to conserve the status quo). In short, present enjoyment is what *value* means, and conservatism, as status quo bias, is included in the definition of value.

[104] Huntington, "Conservatism as an Ideology", 454-473

2.2.2 Constructing the Status Quo

The third feature of procedural conservatism to consider is its *operation*, that is, how it conserves the range of objects to be conserved, by incorporating status quo bias into change-decisions. This is a three-step operation: constructing the status quo in terms of present enjoyment, justifying the status quo bias, and working through its implications for how change should be handled.

As we have seen, the status quo is constructed by the present enjoyment that is at stake in a change-decision. That is, the status quo is relevant only in deliberations about change, and so how we understand the status quo is structured by the proposed change.[105] Understood this way, though, the status quo is inherently uncertain across both space and time. First, in respect of space, the context and extent of the status quo, it is likely that the full effect of change is likely to be difficult to anticipate. In the above opera versus football decision, the status quo includes things like my relationships with my family, my emotional attachment to my football club, the news I read, and many more things. It probably does not include such things as the car I drive or the haircut I prefer. But beyond this, it is hard to say what will be affected, and thus it is hard to say what value I stand to gain or lose by the change. I even need to ask whether I have any standards by which to compare the two choices. Secondly, in respect of time, these uncertainties are compounded. The realness of the status quo lies in practice, and practice takes place in time. Therefore, the status quo is really a vector, which is given by the rule that governs the practice and make anticipable how things will be *but for* the proposed change.[106] This temporal factor adds another layer of uncertainty to the change-decision. Change-decisions force decision-makers to compare abstraction with abstraction. On one hand, I make a value of my actual practice so that I have an idea of the future but for the change, though ultimately this is

[105] Thus, Karl Mannheim identifies a kind of reactivity as inherent in conservatism: "The conservative only thinks systematically when moved to reaction". Mannheim, *Conservatism*, 88.
Picking up on this point, Freeden suggests that an important part of conservative argumentation is its "mirror image characteristic", whereby conservatism picks up on the ideal claims of progressives and presents their reflections – for example, Burke's defence of traditional rights against universal human rights. Freeden, *Ideologies*, 339-340.

[106] In these terms, the dispute between actual and historical familiarity is whether this rule that governs a person's subjective sense of expected value is rational or not.

only a best guess and not a piece of knowledge, and on the other hand, I must speculate about the change state, coloured by whatever degree of unfamiliarity and uncertainty, and translate that into the terms set by my evaluation of the status quo. The comparison takes place at such a level of abstraction that it might seem almost to preclude the possibility of rational change altogether.

However, these uncertainties are not seen as discrediting the conservative procedure, but as part of what recommends it: taking seriously what is real in the status quo illuminates various problems inherent in change that are otherwise obscured by enthusiasm for what might be achieved by it.

2.2.3 Three Arguments for Status Quo Bias

The procedural conservative combination of realism and scepticism gives rise to three arguments for status quo bias, that is, the claim that it is reasonable to be disposed positively towards the status quo (as defined above) or against change, or both, because of the realness of practical knowledge and the uncertainty that clouds prospective change states and their value.[107] On the positive side of the ledger, the status quo is fortified by two arguments to the effect that we have *more to lose* from change than we might first appreciate. On the negative side of the ledger, potential change states are deflated by arguments to the effect that we have *less to gain* from change than we think.

The *realist* variant of the more-to-lose argument is that unlike whatever else is at stake in a change-decision, present enjoyment is real, and this counts in favour of the status quo. In their interpretation of Cohen's argument, Brennan and Hamlin suggest that certain things (in the expansive sense) that are valuable might be even more valuable as part of a valuable status quo, which they seek to demonstrate by way of a value function.[108] Brennan and Hamlin's function captures, I think, the same

[107] To cite Oakeshott again: "[The conservative] is aware that not all innovation is, in fact, improvement; and he will think that to innovate without improving is either designed or inadvertent folly. Moreover, even when an innovation commends itself as a convincing improvement, he will look twice at its claims before accepting them. From his point of view, because every improvement involves change, the disruption entailed has always to be set against the benefit anticipated… Innovating is always an equivocal enterprise, in which gain and loss (even excluding the loss of familiarity) are so closely interwoven that it is exceedingly difficult to forecast the final up-shot: there is no such thing as an unqualified improvement." Oakeshott, "On Being Conservative", 171.
[108] Brennan and Hamlin, "Conservative value", 362-5.

idea that I have called conventional terms: the status quo is constructed in terms of the subjective understanding of the stakes, and viewed in those terms, it has an advantage over proposed change states because it is real in those terms. Consider also that both the status quo and the change state accept that this value is real in some sense, because they agree that the proposed change would indeed *be a change*; the factuality of the status quo is not in dispute, only how much value to assign to it. The claim, then, is that to evaluate the stakes of a change properly means accounting for the real value at stake, and this means viewing the change from the perspective of the status quo as constructed in terms of *that* value. Viewed this way, there is more to lose from the change than there is if the change state and the status quo are both evaluated in terms of some non-actual value. Or, put differently, the status quo bias created by this argument is a product of adopting the present enjoyment definition of value (which you ought to do because that value is tied to something real, namely, practice).

It is at this point that, as I noted in the previous chapter, there is a temptation for conservatives to switch from defending the continuation of actual practices to defending accumulated historical experience, but without noticing the effect this might have on their normative claim. So Quinton argues that traditional institutions are not "disposable devices" but "constitutive of the social identity of men", without noticing that this is, or at least suggests, a substantive claim about the desirability of traditional institutions for the beneficial *formation* (as I will later call it) of individuals.[109] For this reason, Freeden writes of Oakeshott that he confuses a description of how he thinks change operates with how it ought to operate. Oakeshott "failed to recognise his unconscious preference for one kind of change over another" – namely, slow, organic growth produced by procedural conservatism.[110]

But such a claim is not permitted by the logic of procedural conservatism. The formulation of present enjoyment claims is necessarily subjective, being rooted in a practice understood in full only by the practiser, who seeks to explain his or her preferences in conventional terms. This gives procedural

[109] Quinton, *Imperfection*, 16.
[110] Freeden, *Ideologies*, 333.

conservative arguments a “chameleon-like” quality, according to Freeden, whereby the main object of continuity (continued actual practice) is pursued by the tactical deployment of whatever terms change is presented in. It is important to understand that this is so because on the procedural conservative view conventional terms indeed are, contra Quinton, mere devices. Makers of present enjoyment value claims do not want to be beholden to the abstraction in which their preference for continuity is expressed, for this might bind their actions into the future – as we saw in the football versus opera example, football fans want to keep watching football, not to maximise the value they get from their weekend entertainment. Conventional terms are not to supervene upon the practices they describe, for this would defeat their purpose.

However, while conventional terms are mere devices, and not real in themselves, because these terms are ancillary to present enjoyment – the use of them is an enabling condition for the continued enjoyment of the value at stake – they are also captured by the more-to-lose argument in the following way.

The *sceptical* variant of *more to lose* holds that the status quo can be constructed in terms of convention. Per this form of the argument, the conventions of society, from language rules to social customs to the institutions of government, constitute a system that is too complex to redesign at will without risk or loss. Thus O’Hara, for example, links his conservative procedure directly to the epistemic claim that “because society and its mediating institutions are highly complex and dynamic with natures that are constantly evolving as they are co-constituted with the individuals who are their members, both data and theories about society are highly uncertain”. It follows, O’Hara claims, that “the current state of society is typically undervalued and because the effects of social innovations cannot be known fully in advance, then social change (a) must always risk destroying beneficial institutions and norms, and (b) cannot be guaranteed to achieve the aims for which it was implemented”. O’Hara adds that this is not a status quo *bias* so much as “valuing the status quo

properly", in contrast to "ideologues" who "have a bias *against* the status quo".[111] But the effect is the same either way – the use of present enjoyment as the definition of value provides a rebalancing of the change decision such that the status quo is more likely to be conserved than it was before, in this case because it focuses attention on the complex system of conventions that secure people's enjoyment of their practices.[112]

Put another way, the status quo represents an equilibrium. Buchanan, for example, argues that a purported inefficiency in the status quo can be falsified: if no agreement on remedying an inefficiency can be reached, then the status quo is Pareto optimal, meaning that any change will leave at least one party worse off. Thus the status quo would be found to be more valuable than was first thought. A similar idea, though one Buchanan rejects on other grounds, is that the complexity of the status quo suggests that it was difficult and costly to form, and this means that the costs of transition to a change state will be high.[113] As Brennan and Hamlin put this point, "[T]here can be no assurance that the process of change from the prevailing equilibrium to the target equilibrium will be either smooth or rapid – it may involve an extended period of 'out of equilibrium' behaviour with attendant negative payoffs". As an example, they cite the decision in Sweden to switch from driving on the left to driving on the right, which was rejected by voters at referendum (but later imposed by legislation later anyway), presumably on the grounds that the cost of transitioning to the change state would outweigh whatever gain they would get.[114] This kind of reasoning, Xavier Marquez suggests, is stronger in

[111] O'Hara, "Conservatism, Epistemology and Value", 428-30. It is also worth noting here that O'Hara describes his own position as "adjectival" and "value-independent", and he contrasts it with "substantive conservatism", understood – following Brennan and Hamlin, "Conservative Value" and Beckstein, "What Does It Take to be a True Conservative?" – as a conservatism that provides a distinctively conservative value claim.

[112] Though O'Hara is surely correct when he notes that the term *status quo bias*, with its implication of a rigging of the change calculation, wrongly elides that this rebalancing is, for the procedural conservative, a *correction* of rationalists' own error in reasoning. For present purposes, however, I am not sure that much turns on this point, because I am interested in the possibility of a procedure for managing change that reasonably (justifiably) tends to conserve the status quo (as constructed by present enjoyment); I am not suggesting that this procedure, or any other, is merely a common error or psychological tic. See also the discussion in O'Hara, "Burkean Conservatism, Legibility and Populism", 83-4. (With thanks to an anonymous examiner.)

[113] Buchanan, "What is the Status of the *Status Quo*?".

[114] Geoffrey Brennan and Alan Hamlin, "Practical Conservatism", *The Monist* 99, no. 4 (October 2016), 345-6.

respect of more complex equilibria: while narrow, specific institutions might be readily improved, reforming the basic institutions of society (in John Rawls's sense), with their complex and wide-ranging domains is more likely to "incur unquantifiable risks of intolerable outcomes".[115] So the system of convention ancillary to actual practices is, while not real, conceivable as the complex product of the working-out over time of those practices, and this means that it is difficult and costly to change.

However, I flag here for later discussion a potential tension between the two more-to-lose arguments. Present enjoyment value claims refer to something real, namely the practical knowledge in actual practices. But they are made intelligible by the use of the system of convention. What if existing conventional terms are inadequate to express the real value in the status quo? This might be seen as a version of the claim that society's institutions can be biased against certain persons and their interests, as in, say, the idea of systemic racism preventing a proper accounting of the interests of racial minorities. It would seem perverse if the sceptical more to lose claim were somehow prior to the realist claim, given that conventions are convenient only if they properly capture practices. Yet this is a possibility inherent in the difference between the subjectivity of present enjoyment and the intersubjectivity of the conventions by which it is expressed.

The problem is mitigated, perhaps, if those who find conventional terms inadequate in this way have some reason to conform their practices and values to those conventions. For this reason, status quo bias does not only involve an attempt to properly reckon with the value of the status quo, but also an attempt to deflate value claims made about potential change states.

From the perspective of the status quo, there is always *less to gain* from change than might be first apparent: the status quo starts out ahead, as it were, because the only way to assess the value of proposed changes is to translate them into conventional terms, which refer to concrete practical knowledge. So, in that simple football versus opera example, if the two choices are evaluated in terms of, say, 'cultural enrichment', the content of that term is – and on this argument, can only be – the

[115] Xavier Marquez, "An Epistemic Argument for Conservatism", *Res Publica* 22 (2016), 415.

conventional understanding. For the football fan, cultural enrichment will be understood in terms of his or her experiences with football attendance, and so football will enjoy an advantage in the change-decision. The effect of this is to deflate the claim made for the change state.

The less-to-gain argument can be thought of as a form of scepticism about ideals (understood as value claims that do not refer to actual practices). Brennan and Hamlin describe the principle as "mediating" ideal claims through a bias that emerges from the perceived feasibility of realising the proposed change state. Whereas idealists think that their proposed change states will be much better than the status quo, conservatives will judge the change state from the status quo, conclude that it is likely not much better than what they have now, and accordingly be resistant to change. It is in this way that conservatism is "adjectival": it operates as a modifier of substantive value claims.[116] But this seems to miss that for procedural conservatism, the ideals are not real. It is more accurate, then, to say with Steve Clarke that this less-to-gain argument is based on a rejection of idealism altogether. Applying prospect theory – which holds that people see exceeding a goal as a gain and falling short of a goal as a loss and tailor their risk tolerance accordingly – Clarke suggests that conservatism is driven by "not a preference for the political status quo but the absence of political ideals". In practice this means that, conservatives will use the status quo as their benchmark in lieu of an ideal and be risk-averse in respect of changes that purport to add to existing value and risk-seeking in respect of changes that seek to destroy or replace existing value.[117]

Closely related to the translation of ideals into conventional terms is the claim that the change state might simply be worse than change proponents suggest. As Nicholas Rescher puts it, even if we are convinced that the status quo has its "flaws and failings", nevertheless change might have "unforeseeable negative consequences" and this "presumption of counterproductiveness" becomes stronger as the complexity of a change increases. Less-to-gain reasoning "inheres in the fog of

[116] Brennan and Hamlin, "Analytic Conservatism", 677.
[117] Clarke, "A Prospect Theory Approach to Understanding Conservatism", 566.

futurity".[118] Along, then, with the costs of transitioning to the change state (discussed above), there is also a risk inherent in the very 'unrealness' of the change state.

Going further, we can say that less-to-gain captures the idea of *moderation*, a recurring theme in the broader conservative literature. Rather than believing too deeply in your enthusiasms and speculations about the future, you ought instead to consider your ideals through the prism of established convention. Hume makes this point about religious and political enthusiasm.[119] Sheldon Wolin recounts that Hume had "contempt for what the [Augustan] age called [religious] 'enthusiasm'…" and that he saw party politics as part of the same problem, especially as parties came to base themselves on "principle" and hardened into absolutism.[120] Burke makes a similar point about the need for moderation, though he holds that religion is part of the solution to the problem of political zealotry, in that religious belief instructs a nation's leaders in "the necessity of bowing down the stubborn neck of their pride and ambition to the yoke of moderation and virtue".[121]

As these last two quotes suggest, because less-to-gain is a claim about conventions, it is central to the political interpretation of procedural conservatism. Moderation is held to follow from the limits of human reason. Quinton writes that "The consequence of men's intellectual imperfection is that they should not conduct their political affairs under the impulsion of large, abstract projects of change arrived at by individual thinkers working in isolation from the practical realities of political life".[122] On the same basis, Noel O'Sullivan says that political conservatism emerged originally to vindicate the

[118] Nicholas Rescher, "The Case for Cautious Conservatism", *The Independent Review* 19, no. 3 (Winter 2015), 438.

[119] Quinton argues that Hume had "a distaste for all forms of political enthusiasm" that was rooted in his anti-religious sentiment, which in turn was derived from his experience of Calvinism growing up in Scotland. Hume's rejection of Calvinism also manifests as a rejection of liberalism, and for the same reasons, since at the time liberalism and Protestantism were seen as two sides of the same coin. Quinton, *Imperfection*, 46.

[120] Wolin, "Hume and Conservatism", 1009.
However, it is worth noting that elsewhere, Hume writes of enthusiasm that while it is a form of "corruption", its effects are generally short-lived, whereas "superstition" – which, converse to enthusiasm, views the future with irrational fear – tends to create longer-lasting problems by reinforcing the power of a priestly caste who promise to allay people's fear. David Hume, "Essay X: Of Superstition and Enthusiasm", in *Essays Moral, Political and Literary*, ed. Eugene F. Miller (Indianapolis: Liberty Fund, 1987), 73-80.

[121] Burke, *Reflections*, 86.

[122] Quinton, *Imperfection*, 13.

claim that " the world was by no means as intelligible and malleable as men had come to assume…"[123] Deflation of ambition also forms the basis of Kekes's account of political conservatism as a set of four intermediate positions on key political questions: a moderate scepticism rather than a commitment to a metaphysical order or a radical scepticism about reason; value pluralism rather than absolutism or relativism; traditionalism rather than individualism and autonomous reason or social authority and coercion; and pessimism about the human condition rather than believing in human perfectibility or the impossibility of managing human corruption. Kekes's account combines a sort of fallibilism with a sort of meliorism, and so makes a case for moderation in politics.[124]

Indeed, moderation provides a way to read the three arguments together. The sceptical more-to-lose argument and less-to-gain both reconsider change states in terms of the conventions that presently obtain in society. Underpinning this is the idea that these conventions are ancillary to, and enabling of, actual practices in which there resides real knowledge and thus real value. But it is impossible, on this rendering, to be idealistic or immoderate or enthusiastic and so on about present enjoyment – football fans might be passionate, but in eschewing a change to opera, they are not asking for anything more than they already possess. Continuity is a kind of moderation, just as being moderate is in service of continuity. The three arguments work together to moderate prospective value claims.

It is often said that conservatism is about institutions, rather than about individuals or principles. Muller connects the "positive value" of institutions to status quo bias, on the premise that "conservatives are disposed to protect the authority and legitimacy of existing institutions because they believe human society cannot flourish without them".[125] In the three arguments just reviewed, institutions are understood as a system of convention that exists as a medium within which conflicting value claims are deliberated and adjudicated. In the process of translating both local knowledge and

[123] O'Sullivan, *Conservatism*, 11-12.
[124] However, it is worth noting here that Kekes' argues that Quinton and O'Sullivan, by describing conservatism in terms of imperfection, downplay the limits, both epistemic and moral, that count against nonconservative political theory – that is, he makes a similar point as I made above in respect of 'adjectival' conservatism. Kekes, *Case*, 27-47.
[125] Muller, *Conservatism*, 11.

abstract ideals into points of political discussion intelligible within conventional terms, it is understood that there is uncertainty and imperfection, and so the main function of institutions, as sites of intersubjectivity and the overlap of local interests, is to moderate any value commitment that might disrupt the institutional status quo. Thus Rescher, after sketching a procedural definition of conservatism, concludes that "the moral foundation of conservatism resides in a combination of two key factors: a *respect* for the stance of the wider community that acknowledges the limitations of the individual's personal judgement and a *benevolent concern* for the well-being of others that refrains from putting their interests at risk in the absence of due consultation and well-informed consent".[126] The first of these ideas is conventionality, the second is moderation.

However, the point I will press later in the chapter is that all of this is contingent on the claim that the system of convention *as it currently exists* represents a reasonable attempt to deliver continuity in people's present enjoyment. If, instead, some people have little or no present enjoyment, it seems they would have proportionally little reason to be moderate. It remains unclear why individuals might moderate their values when the institutional order seems unlikely to deliver even partial versions of them.[127]

2.2.4 Cost-Benefit Analysis Under Uncertainty

In practice, the kind of moderation described by the arguments for status quo bias (or status quo conservation) means the application of a certain procedure by which changes are assessed. This procedure is a kind of *cost-benefit analysis under uncertainty*, whereby the benefits, costs, risks, and uncertainties of change are contemplated. Oakeshott introduces the idea: "because every improvement involves change, the disruption entailed has always to be set against the benefit

[126] Rescher, "A Case for Cautious Conservatism", 441.
[127] A closely related idea is that of *civility*, which is moderation in political life. Civility has recently become controversial for just this suggestion that value claims should be deflated out of consideration for the shared institutional order. The question asked is why someone experiencing manifest injustice ought to be civil or moderate in this way.

anticipated".[128] From this, Oakeshott draws five "conclusions" that constitute the conservative procedure, and which redound in the literature.

First, Oakeshott identifies *innovator onus*: "innovation entails certain loss and possible gain, therefore, the onus of proof, to show that the proposed change may be expected to be on the whole beneficial, rests with the would-be innovator".[129] This seems fair enough; it reflects the idea that the status quo is a vector, and that *but for* the change in question, at least some people would be happy to carry on as before and they are owed some consideration. O'Hara adds that the "burden of proof [should be] placed on the innovator" follows from the complexity of the status quo.[130] Marquez talks of a "presumption against significant change to basic institutions".[131] Rescher also talks of "presumptive conservatism" and states that conservatism "envisions a negative presumption… and sees the burden of proof to lie with the proponents of change".[132] We can trace the idea back to Hume's fallibilistic view of authority, and to Burke's rejection of the "arrogance and presumption" of the revolutionaries.[133]

Yet the present enjoyment construction of the status quo complicates matters. On this construction, change is considered in conventional terms. In simple cases of substituting one activity (football) for another (opera) it is easy enough to see that the proponent of opera should try to sell me on the change in terms I understand – say, in terms of my appreciation of human excellence, rather than by disabusing me of my enjoyment of watching a contest. But in more complex cases, it is not clear that innovator onus really tells us anything. Suppose the government and a trade union are in dispute about the removal of a protective tariff.[134] If the subject of the dispute is the conventional understanding of the union's interests, rather than their real interests as resident in their practices,

[128] Oakeshott, "On Being Conservative", 171.
[129] Oakeshott, "On Being Conservative", 172. (All Oakeshott quotes in this section are from this passage.)
[130] O'Hara, "Conservatism, Epistemology and Value", 248.
[131] Marquez, "An Epistemic Argument for Conservatism", 417.
[132] Rescher, "The Case for Cautious Conservatism", 440.
[133] Burke, *Reflections*, 86.
[134] I borrow this example from Brennan and Hamlin, "Analytic Conservatism", 681.

then the government might claim that it already understood those interests when it made the proposal to change the policy. Moreover, to the extent that the change proposal issues from that understanding, it is also an "organic" change (I take this up two paragraphs on).

If this is correct, then more needs to be said about why would-be innovators should restrain themselves than just the potential for unintended consequences, which might also eventuate from doing nothing or be balanced by unintended positive consequences. As Brennan and Hamlin observe, it is not clear that a bias against innovation follows from abundant ignorance – "If uncertainty abounds one seemingly reasonable response might be to experiment and so gather information. JS Mill's famous comments on the value of 'experiments in living' might be taken as a particularly clear statement of the radical approach to politics in the face of abundant ignorance".[135] For similar reasons, Clarke dismisses O'Hara's deduction of his change principle from his knowledge principle as invalid.[136] Innovator onus might be rescued in some form, I think, if conservatism can strengthen its realist commitment by imputing realness to the conventions and institutions themselves – that is, by saying, as conservatives often do, that they contain wisdom, or similar. But this is, again, not the claim of procedural conservatism and it is not available to it, for all the reasons so far outlined.

Oakeshott's second and third conclusions can be taken together. They are *organicism*, the principle that innovation is less likely to be net loss when it is "intimated" in the status quo, rather than "imposed" upon it; and *specificity*, the principle that innovations ought to be targeted to specific disequilibria and not to systemic change. These principles are connected by the proposition that there is a distinction to be drawn between the system and its particulars, such that the former might suggest limited changes to the latter, in order that the value of the system overall be conserved. Thus changes that are endogenous to this system are preferable to those that are inspired by some exogenous influence, like, say, rationalist critique. Where there is some reasonable critique that might be levelled at some part of the system, it is best to apply it only to that part which has been found wanting, rather

[135] Brennan and Hamlin, "Analytic Conservatism", 684.
[136] As I noted in note 35, above.

than use it to indict the system itself.

Here, Oakeshott is at his most Burkean. These ideas are reminiscent of those that Burke invokes in his "proverb" that "To innovate is not to reform". Burke distinguishes between change or innovation, which "alters the substance of the objects themselves; and gets rid of all their essential good, as well as of all the accidental evil, annexed to them" and reform, which "is, not a change in the substance, or in the primary modification, of the object, but, a direct application of a remedy to the grievance complained of".[137] As this suggests, the underlying concern here is with preserving the identity of whatever is undergoing the change in question – it should remain substantially the same, even as it form changes. For Oakeshott, change is something we must "suffer" whereas innovation is something we "design and execute". It is easier to "assimilate" changes that are "small and slow". But "change is a threat to identity" and being conservative means "cleaving to whatever familiarities are not immediately threatened and thus assimilating what is new without becoming unrecognisable to ourselves".[138]

Honderich, though, is trenchant in responding to this identity claim. Mocking Oakeshott's list of changes to be suffered, Honderich suggests that it is doubtful that personal identity is lost when changes occur in the objective world: "I fancy… that Oakeshott, if he found himself without some of his friends, the copse, customs of behaviour, homeland, good luck, some past abilities, and also [his favourite] clown, would still be Oakeshott". In any event, he adds, such a proposition is not distinctive of conservatism, for it is a thought that recurs in the "Left" literature on "alienation". Moreover, if one's objective circumstances have created for one a life of "constraint, of being bullied, defeat or suffering", then one may welcome a change in those circumstances and a change in one's identity.[139] The question recurs, then, of just how trade-offs between preserving the intersubjective system and

[137] Edmund Burke, "Letter to a Noble Lord on the Attacks Made Upon Mr Burke and his Pension, in the House of Lords, by the Duke of Bedford and the Earl of Lauderdale, 1796", in *The Project Gutenberg EBook of the Works of the Right Honourable Edmund Burke, Vol. 5 (of 12)* (Project Gutenberg, 2005), 187-188, https://www.gutenberg.org/files/15701/15701-h/15701-h.htm.
[138] Oakeshott, "On Being Conservative", 170-1.
[139] Honderich, *Conservatism*, 13.

addressing particular problems might be determined absent some reason to value the system and its institutions and not just their own practices.

Oakeshott's remaining conclusions are *incrementalism* – "a slow rather than rapid pace… to observe current consequences and make appropriate adjustments" – and *control* – "other things being equal… the most favourable occasion for innovation [is] when the projected change is most likely to be limited to what is intended and least likely to be corrupted by undesired and unmanageable consequences".[140] Again, these are ideas that are common in the literature. Burke defends his reforms as careful, "healing and mediatorial" reforms underpinned by "principles of research to put me in possession of my matter; on principles of method to regulate it; and on principles in the human mind and in civil affairs to secure and perpetuate the operation".[141] And as we saw above, in respect of less-to-gain, unintended consequences are key to procedural conservative scepticism about change states. Rescher adds to this the idea of irreversibility – that we ought, in making changes, pay heed to the possibility we will not be able to restore that which has been changed should we dislike the consequences.[142]

These principles capture the role of stability in genuine improvement, towards whatever end. The idea is that when making changes, tracking causation requires changing only one variable at a time and devising methods of observing, recording, and, if possible, repeating experiments. Whether or not this approach is the best one to take will depend on the circumstances and the end sought, but wherever you are dealing with a complex subject that affords the opportunity for planning beforehand and reflection after, this approach will suggest itself. This is so even where there is nothing of value in the status quo. Incremental and controlled change will still be justified so long as it seems most likely to achieve whatever goal, however derived. As such, these principles are, as Brennan and Hamlin say, adjectival to substantive ends.

[140] Oakeshott, "On Being Conservative", 172.
[141] Burke, "Letter to a Noble Lord", 189.
[142] Rescher, "The Case for Cautious Conservatism", 439.

But this suggests that with the proper procedure followed, the conservative can – and indeed *should* – accept any change at all so long as it follows the procedure. Consider, without any need to relitigate the merits of the issue, the innovation of the concept of marriage in jurisdictions that have in recent years held plebiscites or constitutional referenda, such as Australia and Ireland. Suppose that contrary to what happened, voters did not support same-sex marriage. Would proponents of the change have given up the issue?[143] It seems unlikely, yet with results what they are, this is apparently what most conservatives have done, were expected to do, and, indeed, announced in advance that they would do. Whatever one's views of the issue may be, it is surely noteworthy that the procedural conservative position is not merely relativistic but willing to give positive affirmation to that which it ostensibly opposed. It is, we might say, a very strict form of proceduralism.

Procedural conservatism seems to say that because substantive concerns are so clouded by uncertainty, we must defer to formalities, institutions, conventions – but, crucially, this deference is justified not by what the institutions are or where they come from, but by their ability to coordinate the various projects and values present in society. As a result, while the onus for innovation may fall on proponents, and they may be obliged to present their case in conventional terms, the concomitant of moderation and civility is that an equally forceful onus falls on opponents of change to accept it once it has happened. It is obvious, then, that conservatives will, exactly as Hayek says, be dragged along a path they have not chosen, because the direction of society's development will always be set by those with a positive impetus for change.

2.2.5 Continuity, Identity, and *Modus Vivendi*

The final part of the reconstruction, then, is to ask what the *result* is of being conservative in the prescribed way. In keeping with the above distinction between subjective present enjoyment and its intersubjective conventional expression, there are two levels at which the result of procedural

[143] This is not really a hypothetical. Voters in California enshrined the traditional definition of marriage in their state constitution but were soon overruled by the Supreme Court of the United States.

conservatism should be analysed: the individual and the social.

For the individual, the intended result of being conservative is *continuity* of practice. The point of formulating a present enjoyment value claim is to explain to proponents of change how you will be affected and why that is important to you. Ideally, your explanation is in terms they will understand from within their own subjective perspectives, and from there, some accommodation might be reached so that everyone can have at least some of what they want. This accommodation is more likely to be reached if all parties seek to explain themselves in terms of present enjoyment – that is, by being moderate instead of imposing theoretical or radical ideas upon the situation. Underlying this is, as we have seen, a concern for identity: to the extent that someone's identity is bound up with their practices, then to that same extent, procedural conservatism's true object is not merely the relationship between subject and object picked out by *familiarity* but also the conservation of the subject itself. In a sense, the most particularly valuable thing of all is the subject who actually experiences enjoyment. Thus Oakeshott tells us that the "The Masai, when they were moved from their old country to the present Masai reserve in Kenya, took with them the names of their hills and plains and rivers and gave them to the hills and plains and rivers of the new country… it is by some such subterfuge of conservatism that every man or people compelled to suffer a notable change avoids the shame of extinction".[144]

At the social level, procedural conservatism is held to entail a certain attitude about government, namely, that its function is simply to help coordinate the interactions of individuals as they pursue their own projects. This can justly be described as *modus vivendi*, a contingent agreement between parties that rests entirely on their mutual satisfaction.

In arriving at *modus vivendi*, procedural conservatism can be seen as an elaboration of Hume's claim

[144] Oakeshott, "On Being Conservative", 171.

that all government ultimately rests on "opinion".[145] We saw above (in 2.1) that Hume's contribution to the epistemology of procedural conservatism is the claim that it is unreasonable to impose one's ideas, derived from experience, upon the future. By extension, just as we are conditioned to believe that the future will be like the past, in politics, we are habituated to the operation of our existing institutions, which we come to accept as authoritative. Longstanding institutions have survived because they were good for people in the past, and we naturally accept that this will hold for us too. Wolin explains that for Hume, in politics, "the greatest calamity was violent change, which worked to snap the close union which history had fashioned between an institution, its utility, and its duration. In contradicting the nature of time and experience, sweeping change could not adapt institutions according to utility; for utility, in political matters, was inseparable from time and experience".[146] Note though that Hume's claim is not that history furnishes lessons, so much as that longevity – the mere fact of having a past – is part of the meaning of habituation, which is the only foundation government can have.

Similarly, Oakeshott's politics denies the desirability of a reasonable foundation for government and custom. For Oakeshott, seeking something more than *modus vivendi* – seeking a reason to be conservative, or to be anything else, in politics – is the problem. Hence his quip about Hayek: "A plan to resist all planning may be better than its opposite, but it belongs to the same style of politics".[147]

Again, the point for Oakeshott is that, since value lies in practice, it is inappropriate for rules to direct rather than coordinate practice. Oakeshott writes that the general rules of society are like tools, in that they are useful for various projects and are therefore difficult to improve without risk of loss. For people "inclined to be passionate about [their] own concerns", the proper function of rules is that they be general and predictable, so as not frustrate people as they try to "get along with one another".

[145] There is a substantial literature on the question of whether Hume's politics are consistent with his epistemology. My claim here is only that procedural conservatism is plausibly linked to one reading of Hume's scepticism.
[146] Wolin, "Hume and Conservatism", 1007.
[147] Oakeshott, "Rationalism in Politics", 21.

By extension, governance is a "specific and limited activity": its purpose is only to "rule", that is, to act as an "umpire" rather than to try to "educate" people or "make them better or happier". This kind of government operates "to deflate, to pacify and to reconcile" because "moderation is indispensable if passionate men are to escape being locked in an encounter of mutual frustration", and it achieves this through its "indifference to the beliefs and substantive activities of its subjects" – it "[does] for us the scepticism we have neither the time nor the inclination to do for ourselves".[148] For Oakeshott, there is a kind of reflexivity between individuality, in the sense of pursuing one's own projects, and specific and limited government, which pivots on moderation: individuals with their own projects need an umpire, and the reduction of government to umpiring will create space for individuals to pursue their own projects. Thus elsewhere Oakeshott argues that, mirroring the distinction between technique and practice, there a distinction between the "moral life" of "following tradition" and the moral life of "creed" and the "reflective application of a moral criterion". While both have their value, the former ought to prevail, for where the latter does, it will have a "disintegrating effect upon habits of behaviour", by disrupting the "poetic character of all human activity" – that is, the gradual unfolding of the status quo and its intimations.[149]

Political conservatism, then, is the claim that because value lies in practice, and it is reasonable to be conservative about value, then by extension it is reasonable to want government that conserves practices, which it does by ruling on conflicts and otherwise refraining from imposing its own substantive views or pursuing its own projects. To secure continuity and identity at the individual level, procedural conservatism seeks to realise, and perpetuate, a *modus vivendi* that rests on opinion, habit, and convention, rather than reason (or, more exactly, some reason external to the practices, the way of life, of its subjects).

[148] Oakeshott, "On Being Conservative", 187-193.
[149] Michael Oakeshott, "The Tower of Babel", in *Rationalism in Politics and Other Essays*, 59-80.

2.3 Two Problems with Procedural Conservatism

Based on the reconstruction above, I want to identify two problems inherent in the procedural conservative argument. The two problems are related and are along similar lines to the two criticisms of conservatism identified in the previous chapter. Both problems issue from the gap between the subjective understanding of practical knowledge and present enjoyment and the intersubjective nature of the conventions that enable the practices in which that value is found. In brief, because procedural conservatism only prescribes a *modus vivendi* at the system level, it will, in a range of circumstances, be incapable of conserving the particulars – practices, relations, identities and so on – that supposedly motivate conservatism.

2.3.1 The System Problem

First, procedural conservatism has a *system problem*. While conservatism as status quo bias makes sense as a claim about how individuals (or groups) as subjects might treat their own present enjoyment, it does not follow that other people should, or will, recognise that value and act accordingly. Procedural conservatism relies on shared conventions that make subjective value claims mutually intelligible (and, moreover, that engender sympathy for the intelligible claims of others). We saw that the uncertainty of the translation from subjective evaluation to intersubjective convention is held to strengthen the procedural conservative argument – both by suggesting that the status quo is more valuable than convention allows us to capture and by suggesting that change states are less valuable because of the uncertain extent of their unfamiliarity. However, despite this, the procedure only works if there is some independent reason to place one's trust in the conventions as conveyances for one's own values and for others' values: this coordinative function requires a leap of faith from one's own subjective perspective to the conventional perspective.

To see this, consider a distinction that Oakeshott skips over. Oakeshott claims that just as skilled workers do not readily change their tools, for that would obsolesce their skills, we ought to treat general rules of conduct the same way. However, while a tradesman might use his tools for various

projects, transferring his skill between them, he is the only one using them. Rules, by contrast, are used by many people for many projects. It is not obvious that all of them share the same interest in the rules as presently formulated.

Again, this is the point in the conservative argument at which it is typical to switch from the subjective perspective of the individual to an objective claim about the utility of these institutions, which is given by their historical character. But this avenue is not open to procedural conservatism because granting that institutions might *contain* rather than merely *coordinate* information about practices (that is, about *what to do*) is inconsistent with a desire to conserve the status quo, in that the extension of conservatism's realism from individuals to institutions would undercut the sceptical basis on which procedural conservatism operates; rather than scepticism about change, the realness of certain institutions (as claims about what to do) would suggest their inherent desirability, which might motivate rather than deflate change. If this is right, a clash is set up between institutional status quo bias and individual status quo bias.[150] Absent some principle providing for which information (institutional prescription or that which lies in actual practice) is more reliable under what conditions, the assumption that institutional prerogatives might reasonably trump individual local knowledge seems arbitrary in exactly the way that Hayek and Mill allege.

Put another way, the procedural conservative sense of moderation is problematic at scale. Each of our practices relies on conditions that we do not fully control, and which overlap with the practices of others. The conservative therefore must rely on others' adopting the same disposition in so far as those enabling conditions are implicated in their practices and projects. Yet there is nothing internal

[150] In note 56, I noted that the tariff example above was borrowed from Brennan and Hamlin. They use it to make the point that conservatism as status quo bias will produce different answers depending on how the status quo is defined. If conservatism is focused on outcomes, it suggests that tariff policy should change in line with global market conditions with the aim of minimising changes in exchange prices or effects on domestic industry. If conservatism focuses on policy settings, then it suggests keeping the tariff as the status quo policy. Finally, if conservatism focuses on the institutions by which policy is made and implemented, then it suggests that conservatives should support whatever tariff policy is duly made and implemented in order to maintain the integrity of the institutions. Recognising that present enjoyment is the object of procedural conservatism, and that the construction of the status quo in terms of present enjoyment is what motivates *more to lose*, teases out this problem further, by suggesting that what Brennan and Hamlin call "institutional conservatism" trumps outcomes and policies. Brennan and Hamlin, "Analytic Conservatism", 681-2.

to the procedural conservative argument that the conservative can use to motivate others to be conservative in the same way about the same things – or at least be sympathetic about them – because all that is captured by that argument is the subjective enjoyment of the conservative. For this reason, O'Sullivan admits that his own brand of "sceptical conservatism" only applies in certain contingent circumstances that "presuppose a widespread respect for individual liberty and an absence of widespread concentrations of power".[151]

The result of unilateral moderation for conservatives is that the conditions within which they enact their practices are gradually eroded by more idealistic and positive agents. As Nassim Taleb points out, one of the dynamics in society as a complex system is that the rules promulgated by the system are often tailored to the preferences of small groups of "intolerant virtuous people". These groups simply care more about having their preference on some matter institutionalised than others care about the matter at all. Taleb notes that most drinks sold in the United States are kosher, even though Jewish people are only a small minority of the beverage market, and he suggests that this is because whether beverages are kosher or not matters a lot to observant Jews but matters not at all, one way or the other, to everyone else. As in this example, this asymmetrical dynamic is often unimportant for the majority – but, Taleb observes, this might change if, say, observing the rules of kosher increased the cost of beverages by a factor of 10. Yet the effect of this "minority rule" can be a process of "renormalisation", in which the minority behaviour comes to be the standard of the larger community, as the inflexibility of the minority makes their preference a fixture in the range of choices available and it becomes easier over time for other, more flexible people to adapt to their preference.[152]

Meanwhile, for non-conservative minorities, the converse situation, in which the majority's adherence to convention prevents minority interests from being considered, is likely to be just as unsatisfying, if not more so. Indeed, perhaps the most common argument against conservatism from non-conservatives is not one directed at the tractability of its epistemology nor at its internal coherence

[151] O'Sullivan, *Conservatism*, 28.
[152] Nassim Nicholas Taleb, *Skin in the Game* (London: Allen Lane, 2018), 69-88.

but one that simply states that certain contingencies are bad for people and that conservatism, to the extent that it is a perspective that emerges from and gives voice to the contingent, is incapable of recognising that badness and, worse, committed to defending it. So we might ask why an abolitionist would feel obliged to make an argument against slavery in conventional terms, or why a religious believer would admit to any scepticism about his or her beliefs. The expectation of moderation is sometimes received as an unjust limitation by those who suspect that society's conventions have been established to thwart the expression of their values. It is for reasons like this that Rawls, for example, insists that his idea of overlapping consensus, which he admits bears some similarity with Oakeshott's idea of civil association, is not sceptical and does not require anyone to adopt a sceptical deflation of his or her commitments.[153] The point was also famously made by Republican United States presidential candidate Barry Goldwater in respect of his own values: "Extremism in defence of liberty is no vice… [and] moderation in pursuit of justice is no virtue".[154]

Moderation is held to extend from the construction of value as present enjoyment, but we know that there are other ways of conceiving values (like, say, abstract ideals). Indeed, the procedural conservative model assumes this to be the case because present enjoyment-constructed values only emerge when a practice is put to the question, and so this question is always exogenous to present enjoyment. Thus it cannot be sufficient motivation for procedural conservatism to say "if you accept present enjoyment as a definition of value then you ought to be conservative" because that is a big 'if' that requires explanation and justification, given that other constructions of value are available.

2.3.2 The Belonging Problem

Secondly, and relatedly, in trying to resolve the system problem, procedural conservatism runs into the *belonging problem*: the value claim on which procedural conservatism is based contradicts all

[153] John Rawls, *Political Liberalism: Expanded Edition* (New York: Columbia University Press, 2005), 42 note 44; 63-4.
[154] Barry Goldwater, "Goldwater's 1964 Acceptance Speech" [transcript], in *Washington Post*, 1998, https://www.washingtonpost.com/wp-srv/politics/daily/may98/goldwaterspeech.htm.

shared value claims that might be used to resolve the system problem, whether they are ideological, religious, national, or even traditional. The subjectivity of the value at stake in procedural conservatism is incompatible with any objective value claim *as* an objective value claim because that value must be translated into conventional and familiar terms for it to influence the actions of someone disposed to view value in that way (that is, a procedural conservative). As such, conservatism is logically committed to *modus vivendi*, and cannot coexist with any shared value claims that might bind together proponents and critics of the status quo.

So while we have seen above that procedural conservatism is sometimes described as "adjectival", in that it describes an approach to values rather than prescribing values, in fact, its description of value itself countermands substantive commitments altogether. For example, when Brennan describes Hayek as a "conservative liberal" (cf 1.4.1 above), he misses that to be such a thing entails being liberal only to the extent that you are accustomed to recognising liberal values in your own practices; the conservative belief that value exists only in practice replaces liberalism with mere contingent liberality, to the extent that it is familiar.[155] This, in fact, is precisely what Huntington argues for in his essay on conservatism. For Huntington, writing in 1957, the threat of communism to the ostensibly liberal institutions of the United States invited a conservative defence of the institutions *for what they are* rather than an appeal to liberal theory: "To continue to expound the philosophy of liberalism simply gives the enemy a weapon with which to attack the society of liberalism".[156] Therefore, Huntington's argument does not have any purchase for any other institutions, liberal or otherwise, anywhere else. Oakeshott's entire argument can be seen in much the same light.

The problem with this is identified by the libertarian economist Murray Rothbard in his response to Huntington on conservatism. Rothbard agrees with Huntington that status quo bias is the best definition of conservatism, but then mocks conservatism as "absurd and pointless" and "tropistic": conservatism cannot win precisely because it has no ideational (Huntington's word) content, that is,

[155] Brennan, "Hayek's conservatism: the possibility of a conservative liberal".
[156] Huntington, "Conservatism as an Ideology", 473.

no reason to be conservative. As such, conservatism is, by definition, irrational and will always lose against more "radical" ideologies: "Pitting a coherent ideology against a tropism will tend to provoke an unequal contest, with the ideational philosophy the victor". Worse, conservatism as Huntington describes it does make ideational (that is, substantive) claims – like conservatism being necessary for order – but eschews defending those claims in favour of falling back upon "habit and emotion".[157] Rothbard's point is very similar to those of Alexander, Robin, and Gray in the previous chapter, that status quo bias is a fall-back position for a substantive view that dare not present itself as such. But Rothbard also makes clear that this is a kind of necessary abnegation that results from being moderate in the face of immoderation.

The Huntington-Rothbard exchange took place during the early years of what became known as the American Conservative Movement (cf 1.1.1 above). The movement eventually coalesced around an idea known as 'fusionism', a term coined by Frank Meyer in his argument for the compatibility, indeed logical dependence, of traditionalism and libertarianism. But Rothbard (a critic of that movement from the libertarian position) and L. Brent Bozell (a critic of Meyer from the traditionalist position) both make the point that the ideological commitment to an abstract idea of liberty will always trump a commitment to tradition if traditionalism is only this kind of sentimental status quo bias, or it will conflict with traditionalism if that is argued for in a more substantive way.[158]

Moreover, this logic holds for other values, not just liberty. In his later work, Roger Scruton seems to seek a fusion of his conservatism with the value of "belonging", more typically associated with nationalism or republicanism (a point I will come to in a later chapter).[159] But this too is futile if procedural conservatism operates, as I claim, by moderating all such value claims, recasting them in

[157] Murray Rothbard, "Huntington on Conservatism: A Comment", *The American Political Science Review* 51, no. 3 (1957), 776-787.
[158] Frank S. Meyer, "The Twisted Tree of Liberty", in *National Review*, 16 January 1962, https://www.nationalreview.com/2017/01/communism-conservatism-twisted-tree-liberty.
L. Brent Bozell, Jr., "Freedom or virtue?", in *National Review*, 16 January 1962, https://www.nationalreview.com/2017/01/freedom-virtue-conservatism-goal-society-freedom-or-virtue.
[159] See, e.g., Scruton, *Conservatism: An Invitation*, 147-155. I discuss Scruton's ideas on nationality in Chapter 6.

conventional terms.

Not only, then, does procedural conservatism, by itself, only offer a contingent reason to be conservative – namely, that the conventions of your society really do enable you to practice your values – but it is committed to denying that any other kind of reason is desirable or even acceptable. For conservatives, this is a strategy ironically fraught with risk, and for non-conservatives, it comes close to mere stipulation, if not outright insult.

2.4 Incompleteness and Why It Matters

Given the two problems just identified, procedural conservatism is, I want to say, *incomplete* as an answer to the political philosophical question with which we are concerned, namely, what kinds of institutions conduce to good societies in which good lives can be led. As reconstructed in this chapter, procedural conservatism can be characterised as a kind of *pragmatic moderation*. It is pragmatic in that it associates value with practice, and it is moderate in that its strategy for conserving value and practice – and for improvement – is to encourage the reduction of all value claims to present enjoyment expressed in conventional terms. But the system and belonging problems call into question the political application of this idea. While procedural conservatism supplies a reason for individuals to be conservative about their own values, it fails to tell us what kinds of institutions we should have if this is our concern – and, indeed, why we should want the conservation of existing value to trump other ends that we may desire from our institutions. What is lacking, then, is a reason to be conservative that does not rest on a contingent claim about the expedience of the conventions by which present enjoyment is made intelligible to others seeks change and innovation.

This finding is not entirely novel. Alexander argues that the presentation of conservatism as a problematic of change (or a status quo bias, as I have used that term) is incomplete in that it is an abstraction that elides the way that conservatism necessarily emerges only in response to existing value being put to the question and therefore operates as an idealisation of the status quo ante.[160]

[160] Alexander, "The Contradictions of Conservatism", 600-1.

Beckstein likewise claims that procedural conservatism describes only a kind of response that people may have to change in some circumstances – not the only possible response, and not in all circumstances – and so fails to specify *true conservatism*, understood as acting to conserve the status quo for a specifically conservative reason.[161] More recently, Dean Blackburn invokes both these claims in arguing that O'Hara's construction of procedural conservatism (as a combination of scepticism and precaution) is incomplete because it relies on substantive claims about the status quo that may not themselves be rooted in scepticism.[162] Uniting all these concerns is that by itself, procedural conservatism offers little that is motivating or persuasive for people not already in possession of value to which they are inclined to be conservative.[163]

But perhaps all this moves too fast. Recall that procedural conservatism is a claim about *value itself*. So, while I have argued in my reconstruction above that procedural conservatism rests on a subjective understanding of *values* – present enjoyment, the value-laden understanding of a practice – a rejoinder might be that this fails to take seriously the objective character of procedural conservatism's claims about *value* (and, by extension, improvement). On this view, which O'Hara (for one) has put in various places, the relative uncertainty of existing value and prospective value, the risks inherent in change (especially in complex systems), and the usefulness of conventions for coordination (the "legibility" that comes from their familiarity) are all inherently at play in change-decisions, and thus the applicability of the conservative procedure has little to do with the precise values that are in question. It is in this sense, also, that to describe procedural conservatism as a justification for status quo bias might be misleading, because the procedure's object is not the conservation of the status

[161] Beckstein, "What Does It Take to be a True Conservative?".
[162] Blackburn, "In The Shadows: Conservative Epistemology and Ideological Value", esp. 435-440.
[163] Understand that here the claim is not that procedural conservatism fails to specify the concrete, real world institutions that we might want to be conservative about (in this status quo conserving sense), but rather that it is incomplete for lack of a universal reason for being conservative that might be persuasive. So, we would not say a theory of nationalism is incomplete if it failed to specify the countries to which it applies – this would be a nonsense, as it would not be a theory in that case – but we would, I think, say that if it failed to specify *why* we should be loyal to our nations. It is presumably for this reason that theories of nationalism tend to spend considerable time and effort elaborating *belonging* as a universalizable good. I discuss nationalism in relation to substantive conservatism in Chapter 6. (With thanks to an anonymous examiner for suggesting this example.)

quo as such – the procedure succeeds where change is really improvement, not only where there is no change at all, and is concerned with existing value, not with the actual *in toto* – and because these claims about value and change are designed to correct what would otherwise be a bias towards change, inherent in the comparison of neat ideals with messy, real-world particulars.[164] Given all this, it is worth taking a moment to review why these features of value and change, and of conventions as I have called them, do not rescue procedural conservatism from the two problems identified.

This last-ditch rescue effort fails for two reasons inherent in the logic of procedural conservatism. First, procedural conservatives cannot repair directly to the objective features of convention noted in the previous paragraph. For, recall, procedural conservatism is only reactive: but for some change proposal, people and institutions will continue to do as they have always done. Because of this, it is entirely plausible for change proponents to argue (as I noted in 2.2.4, above) that the objective features of the existing conventions have already been 'priced in' to their proposals: to the extent that the conventions are familiar to all, merely pointing to their familiarity is not especially compelling. What is really at stake is the *value* placed on those conventions, rooted in people's experiences with them. So, for example, when radical feminists argue for the abolition of the family, they do not do so because they are *unaware* of the history of that institution or the objective features of the system of which it is part (I discuss this in more detail in Chapter 6). On this kind of question, O'Hara notes that just because change proponents have a critique, it does not follow that they have the legitimacy to "impose risks on society", which is, of course, true, but only reiterates that the problem here is

[164] In his reply to Blackburn, O'Hara notes that "conservatism is risk management", and questions of risk are generally available in debates about change. O'Hara, "What Conservatives Value: Reply to Blackburn", *Political Studies Review* 20, No. 3, 448-451. Elsewhere, as noted above (note 112), O'Hara refutes the suggestion that procedural conservatism is a form of, or justification of, status quo bias, holding that it is a correction of a bias that inheres in comparing abstractions with concrete particulars. In that same article, he notes that none of these kinds of objective arguments issue from "cognitive biases" like "loss aversion", nor from any other "subjectivising" of conservatives' views – they are simply features of change, considered reasonably. He also introduces the idea of legibility: "the existing order is familiar, and for that reason, helpful in understanding how the world (the lifeworld) works, how to navigate round it, how to adapt to it, and how to change it", as a feature more likely possessed by existing institutions than replacements – though he notes that there are occasions on which "standardisation" might be better. O'Hara, "Burkean Conservatism, Legibility and Populism", 83-90.

precisely that of determining which actions are legitimate, and what conservatism might have to say about that.[165] Just as in the case of Cohen's college (see 2.2.1), what looks at first to be a claim about the objective character of something is, in fact, a claim about the value placed on that thing, and this is so because the value claim always only follows some claim *against* the thing in question. The reactivity of procedural conservatism means that it is engaged in a dispute about the proper evaluation of practices and institutions, not (or not only) a dispute about their objective features.

Secondly, in this dispute about evaluation, procedural conservatism's reactivity also means that it is locked in the subjective perspective of the conservative. To distinguish the status quo from the actual *in toto*, procedural conservatism must identify value that exists and is familiar, because it is this value that, it is claimed, compares favourably with merely prospective value. For this argument to get off the ground, then, the status quo must specify what is *known*. To vindicate the familiar and deflate the prospective, procedural conservatism advances a Humean scepticism that distinguishes our ideas from our practices. But this scepticism is symmetrical: it rejects both speculations about the future and inductions from the past *as knowledge claims*. For this reason, procedural conservatism cannot point to existing institutions as containing inducted propositional knowledge that might supervene, in some way, upon the knowledge contained in actual practices. While our existing institutions may have a history, and this history may continue to work in the present to shape our interactions within and through these institutions, the history itself cannot be appealed to by procedural conservatives to explain the kinds of institutions we ought to have. They cannot say, though they may want to, that one *objective* feature of familiar institutions is that their history captures something *true* about human flourishing in our society, such that we do better to rely on that wisdom, and apply it, than to listen to innovators (or, even, to ourselves); and they cannot say, though they may want to, that one *desirable* feature of familiar institutions is that, beyond legibility, they are good for us because they supply historical wisdom. They cannot say these things because that would imply that our society possesses

[165] O'Hara, "Burkean Conservatism, Legibility and Populism", 84.

real knowledge, and so does not need to repair to mere scepticism whenever we want to deflect or deflate change proposals. Instead, they can only point to the actual practices of individuals and note that the proper evaluation of the knowledge contained in them is, ultimately, a matter only for those individuals.

Thus, when I claimed earlier that institutions, on the procedural conservative view, merely coordinate information rather than contain it, what I meant was that institutions, on this view, coordinate actual practices in which information resides, but if they were held to contain information, such that they might justifiably supervene upon individuals' practices, then this would undermine the procedural conservative claim to issue from *value itself*, because it would suggest that the *historical character* of institutions is, for some reason, inherently desirable, notwithstanding that those institutions may not, in fact, facilitate some practices and (subjective) values. So, something extra must be said, something to justify the *historical character* of institutions, which would be implicated in trade-offs with those who would do away with those institutions.

In short, procedural conservatism is incomplete because it does not argue, normatively, for historical experience as a source of wisdom – and so this is what I propose to do in the remainder of the thesis.

2.5 Conclusion

Based on the reconstruction undertaken in this chapter, procedural conservatism has four features: the object it seeks to conserve is present enjoyment, a definition of value that captures the inherent desirability of continuity in practice; its scope is the range of things that are conceivably already value-maximised or otherwise difficult to improve; it operates by constructing the status quo in terms of present enjoyment, and applying a status quo bias in the cost-benefit analysis to which it subjects change proposals; and it results in continuity of practice, the conservation of personal identity, and a *modus vivendi* predicated on the moderation that follows from adopting the present enjoyment definition of value. But while this kind of pragmatic moderation, as I have called it, often makes sense for individuals confronted with change, it has limited political philosophical applicability, because it

fails to make an argument for the kinds of institutions that we *should* have if we share procedural conservatives' concern with conserving existing practices and values. It amounts only to a contingent *modus vivendi*, the character of which, in the end, is not really determined by conservatives. To put it another way, even if we think that, say, Oakeshott's picture of a society ruled by general, stable rules and populated by individuals cooperatively pursuing diverse projects (what he calls *civil association* in his later work) is attractive, we still need a reason to prefer that kind of society to one that, for example, is imbued with purpose or seeking to implement some rationalist scheme.

Yet it seems odd that while it is quite plausible to say that part of what it means to value something is to want to keep it, there is apparently little to be said in defence of the institutions that make that possible. I want to suggest, then, that rather than thinking about conservatism in terms of change, we should think about it in terms of the value of the kinds of institutions that Oakeshott, Hume, and others suggest we ought to have. We ought to reconsider whether actuality is really the full extent of the conservative epistemic claim; and take more seriously the idea that the history of institutions and society attests to their beneficence. Rather than claiming that proponents of change bear the onus of establishing the need for what they propose (an idea that, as noted above, is not always clearly applicable), this is, I think, better conceived as a trade-off *between* values, with a distinctively conservative value, resident in this kind of institution, included. Importantly, however, if we can identify a distinctively conservative value in certain institutions, conventions, customs and so on can, then this will, as Rothbard and others have shown, take conservatism beyond the status quo – for if there is such a value, then a true conservative will want to have it. This may well mean that the conservative procedure here reconstructed is not only incomplete as a definition of conservatism but also inaccurate or inadequate once the true aims of conservatism have been identified.

To pursue this argument, in the next chapter, I will go back to Burke. My claim is that in the *Reflections* and elsewhere, Burke presents a range of concepts that amount to, or are at least central to, substantive conservatism. The two chapters after that will seek to vindicate the epistemic and normative elements of the Burkean system.

3 Towards Substantive Conservatism: Key Burkean Concepts

Over the next three chapters, my intention is to offer a defence of *substantive conservatism*, that is, a definition of conservatism that includes a distinctively conservative value, which serves as a universalizable reason to be conservative. That is, by being conservative in the relevant sense, people and societies obtain some value they would not otherwise obtain. In this way, I claim, substantive conservatism avoids the problems associated with procedural conservatism identified in the previous two chapters.

My strategy will be to reconsider the two elements of the definition of conservatism. The problems of procedural conservatism issue from its subjective rendering of familiarity as actual practice and value as present enjoyment. The search for an alternative definition, then, begins with a shift in perspective, from the subjective view individuals have of their own practices to the view of society as found in its institutions (meaning, broadly, society's political institutions, cultural norms, linguistic rules and so on) – the *institutional perspective*. Familiarity in this sense is the claim that institutions, under certain conditions, contain and do not merely coordinate information – and that, therefore, this information is not reducible to individual minds. Put another way, familiarity refers not to *what I know by practice* but to *that which has been established by practice*, and the claims is that this historical experience is an accurate record of reality, not merely the aggregation of individuals' impressions of the moment.[166] If this definition of familiarity as historical experience can be sustained, then the normative interpretation of its significance is, I claim, that we have an interest in realising and maintaining the

[166] Thus, the contrast here is precisely with the Hayekian view of distributed knowledge. Hayek, recall, tells us that social knowledge is only a metaphor and that it is always reducible to individuals. Similarly, Karl Popper writes that "[I]f I say, for example, that we owe our reason to 'society', then I always mean that we owe it to certain concrete individuals—though perhaps to a considerable number of anonymous individuals—and to our intellectual intercourse with them. Therefore, in speaking of a 'social' theory of reason (or of scientific method), I mean more precisely that the theory is an inter-personal one, and never that it is a collectivist theory. Certainly we owe a great deal to tradition, and tradition is very important, but the term 'tradition' also has to be analysed into concrete personal relations." Karl Popper, *The Open Society and its Enemies: New One-Volume Edition* (Princeton: Princeton University Press, 1994), 432.

conditions under which institutions capture this information and make it available to us.

In defending substantive conservatism, the underlying intuition I wish to explore is that everyone relies on institutions from time to time for information about what to do and how to do it. Thus, Karl Mannheim writes, "Politically 'progressive' individuals… notwithstanding their political convictions, may bear themselves largely in a traditionalist way in some spheres of life."[167] Similarly, Roger Scruton asks rhetorically, "But what does this right [of privacy] amount to when unprotected by the state? Nothing. What is fulfillment without the values of the social order? Nothing. And what is eccentricity without the norm against which to measure it? Nothing."[168] Whether people are self-consciously conservative or not, when they act, they necessarily take for granted that the information upon which they act, about what to do and how to do it, is reliable – meaning that suggested ends really are beneficial, all else equal, and that suggested means really will achieve those ends, all else equal. So the idea here, then, is not to defend mere deference or mere conformity, but to argue, in light of our reliance upon institutions, for the desirability of our institutions making use of all that is known about the world external to our minds, including the kind of being that we are.

To begin to make my case, I want in this chapter to take conservatism back to Edmund Burke. In this, I mean not only to follow the conventional understanding of Burke as the founder of conservatism, but to suggest that procedural conservatism and the reduction of conservatism to status quo bias has been a wrong turn for conservatism.[169] This is not entirely novel, of course. The value of historical experience is a prominent theme in the literature on conservatism. For example, Nisbet tells us that "history" is "basic to conservative politics" and "reduced to its essentials is no more than experience" and so "trust in history" reflects "conservative trust in experience over abstract, and deductive

[167] Mannheim, *Conservatism*, 73.
[168] Scruton, *Meaning*, 179.
[169] Kirk popularised this view of Burke. The opening chapter of his *The conservative mind* is a panoramic analysis of Burke. Likewise, Don Herzog's much more critical commentary on conservatism also notes at the outset that the *Reflections* is the "master text" of conservatism. Herzog notes that he starts with Burke "in deference to convention". This seems fitting, given the subject matter. Don Herzog, *Poisoning the minds of the lower orders* (Princeton: Princeton University Press, 1998), 13. I note here also that Harbour, *Foundations*, frames its inquiry as a response to the Oakeshottian view of conservatism as status quo bias – see 1-2.

thought in matters of human relationships".[170] Mannheim, whose perspective overall is somewhat different from Nisbet's, puts the point this way: conservatism "approaches the particular in some way from *behind*, from the past".[171] Harbour adds to this idea that since individuals "must rely upon and build from the experience of others… this means accepting certain things on authority from those whose previous experiences and successes merit one's trust".[172] We could adduce many more examples like these. Indeed, for this reason, Alexander remarks that one of the striking features of Oakeshott's conservatism is that he "abstracts conservatism from history altogether", suggesting there is nothing to learn about conservatism from history nor for conservatives to learn from history.[173]

In Burke, by contrast, we find a positive and normative case for a society that takes its history seriously. Specifically, I claim that in Burke we find, at least in outline, a defence of social knowledge as something above and beyond the individual, and the claim that the institutions of society ought to conform to that knowledge and make use of it. Here, I want to place my argument within the tradition by identifying key concepts in Burke that are essential to the substantive conservatism I will defend.[174]

3.1 The Choice of Inheritance

Burke's positive intent in the *Reflections* is clear. Whereas Oakeshott is preoccupied with slowing down change because he likes what he sees in his society, Burke's subject in the *Reflections* and his

[170] Nisbet, *Conservatism*, 23.
[171] Mannheim, *Conservatism*, 96.
[172] Harbour, *Foundations*, 65.
[173] In the same passage, Alexander notes Oakeshott's comment that "It would perhaps have been more fortunate if modern conservatives had paid more attention to Hume and less to Burke", which Oakeshott invokes as part of his preference for rendering conservatism as a mere disposition and not a reasonable doctrine. Alexander "A Dialectical Definition of Conservatism", 220.
[174] There is a spectrum of readings of Burke: at the poles, perhaps, are Gertrude Himmelfarb's description of Burke as more or less an Enlightenment liberal and Daniel O'Neill's description of him as a wild-eyed reactionary. I do not expect to resolve these questions; instead, I think what I offer here is an accurate reading that teases out what is of most value in Burke for the project of defining conservatism properly. Compare: Gertrude Himmelfarb, "Edmund Burke's Enlightenment", in *The Roads to Modernity* (London: Vintage, 2008), 71-92, and Daniel I. O'Neill, "Burke on Democracy as the Death of Western Civilization", in *The Burke-Wollstonecraft Debate: Savagery, Civilization, and Democracy* (University Park: Penn State University Press, 2007), 195-226.

later work is France, a society that he thinks has fallen ill, and he is warning other societies, especially his own England, that the illness is contagious.[175] In making his case against the revolution, Burke also offers an alternative, based on the English experience.

Thus, while Burke says he understands that the French regime was "full of abuses… faults and defects", he denies that the only options were to continue to suffer them or revolution. He suggests that constitutional monarchy – "a mixed and tempered government" – was a viable alternative: "Have they never heard of a monarchy directed by laws, controlled and balanced by the great hereditary wealth and hereditary dignity of a nation; and both again controlled by a judicious check from the reason and feeling of the people at large, acting by a suitable and permanent organ?"[176] Burke chides the French for their extravagance and failure to learn from the example of England, writing that the great failure of the revolutionaries is to overlook their own ancestors, in whom they might have found "a standard of virtue and wisdom", and also the example of England, in which reside "the ancient principles and models of the old common law of Europe meliorated and adapted to its present state".[177]

The key difference between the two countries, Burke argues, is that while the French have launched a revolution on the basis of "speculation", "theory", and the words of "philosophers", the English have always made the "choice of inheritance". In England, the "spirit of our constitution" is that it seeks to always to preserve "our ancient, indisputable laws and liberties" by treating them as "an entailed inheritance derived to us from our forefathers, and to be transmitted to our posterity". This understanding makes possible reform, which proceeds from "the principle of reverence to antiquity" and is "formed upon analogical precedent, authority, and example". *Historical orientation*, as I will call it, is recommended by its concordance with nature: "By a constitutional policy, working after the

[175] This is another way in which Oakeshott's conservatism is like Hume's. It has been remarked on above that Hume did not live to see the revolution, and this accounts for the difference between him and (especially the later) Burke.
[176] Burke, *Reflections*, 105, 108.
[177] Burke, *Reflections*, 30-31. It has even been argued that Burke's Reflections are *more* about vindicating the 1688 constitution to head off revolutionary sentiment at home, and democratic reforms more generally, than about France. See Ben James Taylor, "Reflections on the Revolution in England: Edmund Burke's Uses of 1688", *History of Political Thought* 35, no. 1 (Spring 2014): 91-120.

pattern of nature, we received, we hold, we transmit our government and our privileges…". The pattern of nature is that for any "permanent body composed of transitory parts", it grows by adding the new to the established, and this is true too of "the conduct of the state, in what we improve, we are never wholly new; in what we retain, we are never wholly obsolete". Growth comes from looking to the past and seeking to connect it to the future, not from "a spirit of innovation… selfish temper, and confined views".[178]

On this basis, Burke extols the English constitution to his French interlocutor not for its particulars – he thinks it is impossible for one country to adopt another's constitution wholesale – but for its principles, which demonstrate the proper form that all constitutions must have.[179] Among these principles are respect for "the patrimony of knowledge which was left us by our forefathers", which is a precondition of "improvement", properly understood as the "receiving and meliorating" of new discoveries in science, art, and literature into "these old institutions".[180]

It is in this way that Burke's argument goes beyond the status quo and beyond mere vindication of the ancient constitution of England, to present a universal vision of how constitutions work to hold back anarchy and arbitrary rule and enable human flourishing.[181] By contrast, Oakeshott is, I think, better

[178] Burke, *Reflections*, 27-9.

[179] "When I praised the British constitution, and wished it to be well studied, I did not mean that its exterior form and positive arrangement should become a model for you or for any people servilely to copy. I meant to recommend the *principles* from which it has grown, and the policy on which it has been progressively improved out of elements common to you and us." Edmund Burke, "A Letter to a Member of the National Assembly in Answer to Some Objections to his Book on French Affairs" in *The Project Gutenberg Ebook of the Works of the Right Honourable Edmund Burke, Volume IV (of 12)* (Project Gutenberg, 2005), 47. https://www.gutenberg.org/files/15700/15700-h/15700-h.htm.

[180] Burke, *Reflections*, 85

[181] See Kirk, *Mind*, 16-18. Compare with Hans Barth: "…Burke did not stop with mere defense… in coming to terms with new political ideas and forms that threaten the traditional state of affairs, it has been shown repeatedly that mere defense of the *status quo* is denied decisive success." But note that Barth for this reason says that Burke is not, therefore, "exclusively… a political philosopher of conservatism", implying that status quo bias is in fact the correct definition of conservatism. Barth argues that Burke was a kind of proto-communitarian revolutionary, and the inspiration for the romantic, radical conservatism of Germany in the 19th Century. Barth's characterisation of Burke's philosophy – "the recognition of the dignity of history, of tradition and of time, the evocation of the power of the heart on which the social structures are essentially founded, and the insight into the fundamental condition of man as a political and social being" – is, I hope to show, the correct definition of political conservatism, because that recognition of history (etc.) is part of order itself. Hans Barth, *The Idea of Order: Contributions to a Philosophy of Politics*, trans. Ernest W. Hankamer and William M. Newell (Dordrecht: D. Reidel Publishing Company, 1960). 22-3.

characterised as elaborating a self-contained understanding of the English idea of government – so much so that, supposedly, when he was once asked by Kekes what countries ought to do if they are without sound traditional institutions to draw upon, he replied, "That's your problem".[182] Burke's scope is wider, and his ambition higher. Beyond the *Reflections*, Burke's vision can be seen in so much of his work being directed to problems external to England: imperial rule in Ireland and India, independence in America, and the revolution in France. Burke means that all societies should, all else equal, eschew revolution and make the same choice of inheritance the English made.[183] The argument of the *Reflections* should be read in this light.

3.2 Second Nature and Artificial Society

The foundation of Burke's argument is the connection he draws between individuals, institutions, and reality. As Scruton puts it, "Burke's argument [in the *Reflections*] was a diagnosis of what goes wrong when the relation between the free individual and the orderly community is misconstrued".[184]

Burke's basic claim about human nature is that it is dual. Humans are capable of reason and naturally given to sociality, and this means that we can go beyond the mere impulse that drives animal life and learn from one another. I will follow Muller in calling this idea humans' *second nature*. Muller takes the name from Burke:

> [M]en are made of two parts, the physical part, and the moral. The former he has in common with the brute creation… [But] Man, in his moral nature, becomes, in his progress through life, a creature of prejudice, a creature of opinions, a creature of habits, and of sentiments growing out of them. These form our second nature, as inhabitants of the country and members of the society in which Providence has placed us.[185]

[182] Recounted in Attila K. Mohar, "Conservatives' Paradox in Post-Communism" in Abel, *Meanings*, 180.
[183] There is a somewhat overlooked comment in the Reflections, in which Burke suggests that revolution is permissible when it is a matter of "necessity", that is, survival. As we will see, this is because for Burke, the ultimate test of government is whether it is truly beneficial for the people it governs – that is, the foundation of his argument is in the intelligibility of the good, not the form or history of institutions. Burke, *Reflections*, 82.
[184] Scruton, *Conservatism: An Invitation*, 52.
[185] Quoted in Muller, *Conservatism*, 19. Muller traces the idea to Aristotle and Plutarch.

Burke also deploys this image on other occasions. In the *Reflections*, Burke argues that it is "this second nature" that accounts for the "many diversities amongst men", and that the revolution's central folly is to ignore this diversity and to treat humans as "one homogenous mass".[186] In a related but slightly different rendering, Burke, in more philosophical mode early in his career, discusses how "second nature" operates in the mind as a sort of "indifference" such that our customs do not give us pleasure, but we are pained by their disruption: "It is so with the second nature, custom, in all things which relate to it… the want of the usual proportions in men and in other animals is sure to disgust, though their presence is by no means any cause of real pleasure".[187]

The connecting thread is that it is through exposure to institutions, the experience they impart and the habits and expectations they inculcate, that individuals become fully formed, and formed in different ways. *Formation*, as I will call it, means the development of a set of habits and customs that operate at a pre-rational level, and inform the way that individuals exercise their reason towards the different ends to which their dual natures dispose them. Humans have a dual nature because we are "in a great degree a creature of [our] own making", but we also, for the same reason, have an interest in being formed as we "ought to be made". That is, we have an interest in the social institutions and customs and habit that shape our second nature being truly wise and beneficial – indeed Burke counts among our rights that just as government is a contrivance of human wisdom, then we also "have a right that these wants should be provided for by this wisdom".[188]

The other pillar of Burke's politics is that society is natural to humans. If humans are capable of developing this second nature, it follows that we flourish in full only within a society and institutional order that has something to teach us, and the best teacher is experience. Our common inheritance – society and its institutions – is itself natural, in the sense that government emerges naturally from our

[186] Burke, *Reflections*, 157 – I come back to this passage in a later section below.
[187] Edmund Burke, "A Philosophical Inquiry into the Origins of our Ideas of the Sublime and Beautiful: with an Introductory Discourse Concerning Taste", in *The Project Gutenberg Ebook of the Works of the Right Honourable Edmund Burke, Volume I (of 12)*, (Project Gutenberg, 2005), Part III, Section V. https://www.gutenberg.org/files/15043/15043-h/15043-h.htm.
[188] Burke, *Reflections*, 50-1.

predicament as social beings. More broadly, Burke's claim is that there is a continuum between the social order and the natural order. The test for a successful social order is how well it tracks and builds upon what is known about the natural order, because it is by making use of that knowledge that institutions conduce to the benefit of individuals.

The idea is a constant in Burke. In his earliest work, *A Vindication of Natural Society*, Burke satirises utopian arguments, specifically those of Bolingbroke.[189] There, the case Burke presents ironically is that society oppresses the individual, who would otherwise be free in the state of nature: "[A]ll governments must frequently infringe the rules of justice to support themselves… truth must give way to dissimulation; honesty to convenience; and humanity itself to the reigning interest… no wonder that what is set up in Opposition to the State of Nature, should preserve itself by trampling upon the Law of Nature".[190] And in one of his last pamphlets, Burke argues that "Art is man's nature… [we] are as much, at least, in a state of Nature in formed manhood as in immature and helpless infancy".[191] As Francis Canavan notes, while civil society may be for Burke "artificial, conventional, even, if you will, contractual… it is natural to man because 'he is never perfectly in his natural state, but when he is placed where reason may be best cultivated, and most predominates'".[192]

In the *Reflections*, this dual nature becomes the claim that the test for institutions is beneficence. Society is "a contrivance of human wisdom to provide for human wants". The principle of inheritance enables the establishment and improvement over time of practical knowledge encoded in institutions, which are therefore, on Burke's argument, *contingent but non-arbitrary*, in that they are known by experience to be beneficial. As humans, we are linked to both our ancestors and our posterity – it is

[189] Burke's mockery notwithstanding, Quinton includes Bolingbroke in his analysis of conservative thinkers. But Quinton's typology is based on a sceptical understanding of the conservative epistemic claim, and so Quinton misses what is really at issue in Burke's refutation of Bolingbroke, which is that Burke does not doubt that social knowledge is real.

[190] Edmund Burke, "A Vindication of Natural Society: Or, a View of the Miseries and Evils Arising to Mankind from Every Species of Artificial Society" in Burke, *Works Vol. I*, 29.

[191] Edmund Burke, "An Appeal from the New to the Old Whigs, in Consequence of Some Late Discussions in Parliament Relative to the Reflections on the French Revolution" in Burke, *Works, Vol. IV*, 176.

[192] Francis Canavan, *Edmund Burke: Prescription and Providence* (Durham, NC: Carolina Academic, 1987) 109.

this that makes us more than the "flies of a summer", who live and die without memory or attachment.[193]

3.3 Burke's Epistemic Claim: Latent Wisdom

The importance of the principle of inheritance is that it is the mechanism by which society comes to have a "bank" of historical experience, which, in various ways, is useful for institutions and individuals. Under this principle, institutions can be presumed to know more about human affairs than individuals do by themselves. In making this claim, I mean to suggest that Burke goes beyond the Humean notion that longevity speaks, in some imprecise way, to utility, and hence creates a presumption against change.[194] I claim that Burke is more specific than this – and beyond than this point of interpretation, I claim that substantive conservatism *must* say more than this.

A distinction suggests itself here, which Burke implies but does not spell out. On one hand, Burke appeals to *prescription*, a legal term that refers to titles that are unchallengeable because their origins are too distant in time to be interrogated. For Burke, prescription is merely *the fact of having a history*. Like Hume, Burke suggests that prescriptive titles have some utility that can be presumed from their survival: "Old establishments are tried by their effects. If the people are happy, united, wealthy, and powerful, we presume the rest".[195] In his survey of the field, Muller describes political conservatism as a kind of "historical utilitarianism" defined as the claim that "the historical survival of an institution or practice – be it marriage, monarchy, or the market – creates a *prima facie* case that it has served some human need".[196]

But Burke does not limit his claim about history to the fact of prescription. On the other hand, then,

[193] Burke, *Reflections*, 81.
[194] For example, Burke reminds us of Hume when he writes, "When ancient opinions and rules of life are taken away, the loss cannot possibly be estimated. From that moment we have no compass to govern us; nor can we know distinctly to what port we steer". But the very next paragraph begins, "We are but too apt to consider things in the state in which we find them, without sufficiently adverting to the causes by which they have been produced, and possibly may be upheld". Burke, *Reflections*, 67.
[195] Burke, *Reflections*, 147.
[196] Muller, *Conservatism*, 7.

Burke extends this notion by describing prescriptive institutions as containing "wisdom" or "reason". For Burke, it is not only that established institutions must be utile if they have stood the test of time, but that in standing that test, they reveal what utility really *is* – mere venerability becomes a source of information. Burke invokes this idea is the passage in which the term 'latent wisdom' is introduced:

> We are afraid to put men to live and trade each on his own private stock of reason; because we suspect that this stock in each man is small, and that the individuals would do better to avail themselves of the general bank and capital of nations and of ages. Many of our [that is, England's] men of speculation, instead of exploding general prejudices, employ their sagacity to discover the latent wisdom which prevails in them.[197]

We see here the claim that societies know, in some sense, more than the individuals who constitute them do, and that prejudices, as conventional wisdom, are derivative products of this social knowledge. That is, prejudice at the individual level is reasonable when it draws on the bank of social knowledge – a point I will discuss shortly.

In Burke, then, the Humean claim of a presumption in favour of venerable institutions becomes a claim about the information contained within them, and the possibility of reflecting upon it. But if it is the case that institutions contain information, two questions arise: what is the content of this information, and why is it reliable? The short answers to these questions are given by Burke in perhaps his most famous words: "Society is indeed a contract… It is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership… between those who are living, those who are dead, and those who are to be born".[198] That is, a society links together its generations (its *history*) and thereby brings together all that it knows about how to live (its *experience*). Inheritance, then, is an epistemic claim, in that it secures and builds society's practical knowledge, that gives rise to the normative claim that society and its institutions ought to have an historical orientation that makes use

[197] Burke, Reflections, 75.
[198] Burke, *Reflections*, 82.

of this knowledge.

Burke, though, is clearer about what this information is supposed to tell us and the uses to which it ought to be put than he is about how we come to have and why it is reliable. For that reason, I will offer a common-sense realist defence of historical experience in the next chapter. But here, I will continue to focus on reconstructing the Burkean position.

3.3.1 Burkean Virtue

For Burke, the history of a society reveals permanent categories of what is good for beings like us, and what is evil, and these provide standard by which we can establish right and wrong. Call this claim *Burkean virtue* – that right action is defined by a commitment to historically-revealed goods. Or, as we saw Scruton put the point, history is about "knowing *what to do*".[199]

Historical experience, then, is a source of wisdom about what to do because it reveals what kind of being we are – what is good and bad for us. In the main, writes Burke, history furnishes negative examples: "In history a great volume is unrolled for our instruction, drawing the materials of future wisdom from the past errors and infirmities of mankind". Thus, from history we learn "of the miseries brought upon the world by pride, ambition, avarice, revenge, lust, sedition, hypocrisy, ungoverned zeal, and all the train of disorderly appetites, which shake the public with the same". In this passage, Burke is warning against the misuse of history to make, in effect, the present seem worse than it is by confusing transient institutional defects with evil itself, and thereby doing further evil – by "attending only to the shell and husk of history", we are only "feeding… odious vices". But we also learn the converse – about what is good for us. These identified vices, Burke explains, are corruptions of goods like "religion, morals, laws, prerogatives, privileges, liberties, rights of men". Thus, "wise men will apply their remedies to vices… to the causes of evil which are permanent". Eventually, Burke adds, historians come to see historical events from "that elevation of reason, which places centuries under

[199] As noted above (note 6).

our eye, and brings things to the true point of comparison… [which is] the spirit and moral quality of human actions".[200]

For Burke, these permanent categories of good and evil determine the ideas of right and wrong that become established in a society's institutions.[201] That is, *the good is prior to the right*. Thus, Burke tells us that "law itself is only beneficence acting by a rule", and so, because "civil society [is] made for the advantage of man", we can identify people's "real rights", among which are justice, property, work, inheritance, family, education, religion, autonomy, and fairness. But these are rights possessed *only* in civil society by the "civil social man", and so their details are matters of "convention", which here Burke uses as a synonym for beneficence and advantage. Civil society is "the offspring of convention" and "that convention must limit and modify all the descriptions of constitution which are formed under it… [e]very sort of legislative, judicial, or executory power are its creatures". The civil social man, writes Burke, striking a Hobbesian note, "abandons the right of self defence, the first law of nature" because "[t]hat he may obtain justice, he gives up his right of determining what it is in points the most essential to him". The role, then, of civil society is to shape individual actions towards virtue: "the inclinations of men should frequently be thwarted, their will controlled, and their passions brought into subjection… *by a power out of themselves*". It is by restraining individuals in this way that society provides for the general beneficence, and because a well-ordered society is to everyone's benefit, "the restraints on men, as well as their liberties, are to be reckoned among their rights". In short, what is right for people is what is good for them – "The rights of men in governments are their advantages; and these are often in balances between differences of good; in compromises sometimes between good and evil. Political reason is a computing principle; adding, subtracting, multiplying, and dividing,

[200] Burke, *Reflections*, 119-121.

[201] On permanence, Burke tells us that "We [the English] We know that we have made no discoveries, and we think that no discoveries are to be made, in morality; nor many in the great principles of government, nor in the ideas of liberty, which were understood long before we were born, altogether as well as they will be after the grave has heaped its mould upon our presumption, and the silent tomb shall have imposed its law on our pert loquacity". Burke, *Reflections*, 73.

morally and not metaphysically, or mathematically, true moral denominations".[202]

It is the priority of the good that sustains Burke's earlier distinction between innovation and change (see 2.2.4 above) and sustains the same distinction in the *Reflections*, between reformation and revolution. The distinction only makes sense if, as Burke says, while the "nature of man is intricate; the objects of society are of the greatest possible complexity", nonetheless, "The rights of men are in a sort of *middle*, incapable of definition, but not impossible to be discerned" – that is, discerned by experience, not defined by theory. Accordingly, Burke places a lot of weight on prudence – the careful selection and application of rules to concrete circumstances – and the class of persons (statesmen in particular) who are charged with prudent decision-making. The "community… has no right inconsistent with virtue, and the first of all virtues, prudence", by which Burke means that while the theorists indulge their "speculation", "tedious, moderate, but practical resistance" is left to persons like himself. He adds, "This sort of people are so taken up with their theories about the rights of man, that they have totally forgotten his nature". That is, they make no connection between their claims and how life is really lived, and this is what makes them dangerous.[203]

3.3.2 Invariant Human Nature

Burkean virtue implies that there is an invariant human nature that is discernible by careful observation. This is one of the more striking, and easily confused, parts of Burke's argument. For Burke is not saying that all judgements are relative to time and place, he is saying that the best way (and the only defensible way) to make judgements about what to do is to look to what is known by study about humans and their societies. Hence, Burke writes:

> The science of constructing a commonwealth, or renovating it, or reforming it, is, like every other experimental science, not to be taught *a priori*… [It] requires experience, and even more experience than any person can gain in his whole life, however sagacious and

[202] Burke, *Reflections*, 51-2. See Kirk, *Mind*, 60 as well.
[203] Burke, *Reflections*, 52-4.

> observing he may be, [so] it is with infinite caution that any man ought to venture upon pulling down an edifice, which has answered in any tolerable degree for ages the common purposes of society, or on building it up again, without having models and patterns of approved utility before his eyes.[204]

Leo Strauss is one who makes this mistake about Burke, who he calls an "historicist".[205] He reads Burke as a Humean sceptic.[206] Missing Burke's extension of Hume's claims about prescription, Strauss tells us that Burke's "interpretation of his 'conservatism'… is, or tends to become, identical with a theory of the British [sic] constitution…" that offers only prescription as justification and eschews "transcendent standards" of evaluation. For Strauss, the privilege that Burke gives to practical knowledge over theory, while at first seeming to recall Aristotle, becomes a dismissal of metaphysics altogether, and so Burke is, in the end, a thoroughly modern figure, whose main concern is with "individuality" and the order that emerges from its exercise. Burke, then, is an historicist and idealist who denies that political philosophy is even possible. Strauss summarises his view as: "[Burke's] intransigent opposition to the French revolution must not blind us to the fact that, in opposing the French revolution, he has recourse to the same fundamental principle which is at the bottom of the revolutionary theorems and which is alien to all earlier thought." That is, Burke exhibits the same relativisation – or "temporalization" or "secularization" – of value that, in Strauss's rendering, inspired

[204] Burke, *Reflections*, 51-2.

[205] For Strauss, an historicist is someone who believes that right and wrong are entirely historical, which he contrasts with the "ancient" belief in "natural right" identified by reason. By contrast, Karl Popper tells us that an historicist is precisely someone who holds, like Strauss, that there are natural principles that stand as permanent rebukes to the status quo, because this gives rise to an erroneous view of history as the progressive working out of the meaning of those principles. Thus, Strauss identifies his anti-historicist position with Plato, who Popper calls an historicist! We might wonder how useful the term is – but as I say in this section, there is one sense in which the term might be appropriately applied to Burke. Compare: Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 9-12; Karl Popper, *Open Society*, 7-9.

[206] Strauss is not alone in this interpretation, of course. As I note in the next paragraph, there is a symmetry between Stauss's Burke and Oakeshott's. A clear statement of the position is Michael A. Mosher, "The Skeptic's Burke: Reflections on the Revolution in France, 1790-1990" *Political Theory* 19, no. 3 (1991), 391-418. Mosher notes that Strauss and his student Harvey Mansfield have "anxieties about Burke" because they read him as implicitly accepting the revolutionaries' premise that the social order is entirely contingent and so resorting to mere prescription and "securing the abandonment of rivals claims" for the sustainment of the social order.

the Revolution.[207]

But Strauss's reading of Burke is so odd that Claes Ryn, for one, suggests that it is a deliberate misrepresentation, and Steven Lenzner, for another, calls Strauss's final treatment of Burke "less than fair".[208]

As Ryn points out, Strauss simply misses or ignores Burke's point about the connection between universality and particularity. Ryn describes Burke's approach as a unique brand of "value-centred historicism". Burke does not disavow the possibility of critique or of moral knowledge, as Strauss claims. Rather, Burke is "reconstituting, not abandoning, the ancient idea of universality" by recognising that "universality and particularity… [are] potentially aspects of one and the same higher reality" and that "universal values" can be found in "concrete, historically formed, experiential manifestations of value".[209] Burke's point is that critique, where it is appropriate, stems from evidence that the contingent institutions of society are not, in fact, beneficial; we are to judge them in terms of virtue and vice, not their forms.

For the same reason, Strauss also misunderstands the role of prudence in Burke's argument. Strauss reads Burke as holding that "the common good is the product of activities which are not by themselves ordered toward the common good".[210] By contrast with the ancients (Strauss tends to lump them all together), Burke, according to Strauss, accords no place to "reflection" in the development of social

[207] Strauss, *NRH*, 314-320.
[208] Claes Ryn, "History as Transcendence: What Leo Strauss Does Not Understand About Edmund Burke", *Humanitas* 31, no. 1 and 2 (2018), 103. "Strauss is wholly unreceptive to Burke's point of view and flagrantly misrepresents it, sometimes embarrassingly so."
Steven J. Lenzner, "Strauss's Three Burkes: The Problem of Edmund Burke in *Natural right and history*", *Political Theory* 19, no. 3 (1991), 372-3. "Several other implicit and explicit charges in the third section – including some that are patently unjust – leave one with the strong opinion that Strauss was being intentionally less than fair to Burke in this section." Though it should be noted that Lenzner characterises this section of Strauss's essay as "political" and suggests that Strauss's earlier construction of Burke as seeking to act, in qualified manner, on Aristotelian principles, is Strauss's real "teaching".
[209] Ryn, "History as Transcendence",
[210] Strauss, *NRH*, 315.

institutions and social order.[211] But what Burke really says is that order in society develops through the deliberate attention of decision-makers to historical experience, which attention is what Burke means by prudence.[212]

Burkean virtue, then, holds that the meaning of virtue is learned from historical experience, not that its content is entirely historicised. For Burke, Strauss's claims about natural right would simply be unintelligible, because the only way to know about right is by studying society and history – to combine "original justice with the infinite variety of human concerns".[213] Similarly, in another place, Burke mocks the idea that theories about right could ever be prior to practice: "A prescriptive Government, such as ours, never was the work of any Legislator, never was made upon any foregone theory. It seems to me a preposterous way of reasoning, and a perfect confusion of ideas, to take the theories, which learned and speculative men have made from that Government, and then supposing it made on those theories, which were made from it, to accuse the Government as not corresponding with them".[214] The challenge for reformers, then, is not to find "errors and defects of old establishments [which] are visible and palpable" but to "at once… preserve and reform" by "a vigorous mind, steady, persevering attention, various powers of comparison and combination, and the resources of an understanding fruitful in expedients…".[215] Attention is to be paid to what is good (or bad) for people, not to theories of institutional form, that is, right and wrong.

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[211] Strauss is perhaps best known for advancing the idea that political philosophical texts often admit "esoteric" readings. His idea is that political philosophers often have to be careful about their teachings, which generally amount to critique of the status quo authorities, even to the point of obscuring their true meanings. If we apply this idea to Strauss himself, one possible reading of *Natural Right and History* is that natural right is either not real and is instead constructed by, or is real but only intelligible to, an elite class of philosophers. His ungenerous reading of Burke might be, on this line of thought, an attempt to distance himself from a philosopher who is too openly elitist and anti-democratic, and therefore risks giving the game away for all elitist philosophers everywhere, including Strauss. Mark Lilla hints at something similar about Strauss in his discussion of Strauss's belief that philosophy is a sceptical exercise incompatible with revealed (or established) truths. Mark Lilla, *The Shipwrecked Mind* (New York: New York Review Books, 2016), 50-3.

[212] Ryn, "History as Transcendence", 97-9.

[213] Burke, *Reflections*, 81.

[214] Burke, "Speech on a motion made in the House of Commons, May 7, 1782, for a Committee to Inquire into the State of the Representation of the Commons in Parliament" in *The Project Gutenberg EBook of the Works of the Right Honourable Edmund Burke, Volume VII (of 12)*, 97

[215] Burke, *Reflections*, 143.

3.3.3 Human Wants

When Burke tells us that artificial society is a contrivance of human wisdom for meeting human wants, he means the goods for which we are permanently wanting, not transient preferences. His idea is a "plan of conformity to nature in our artificial institutions", not that society should be constantly adapting itself to the desires of individuals.

This is a mistake made by Oakeshott. He correctly identifies that for Burke "artificial society" is part of his understanding of human nature, and that human's artifice and nature become interwoven by history, like a "landscape" that it is "a blend of 'nature' and 'art', a blend of the 'necessary' and the 'chosen', of the 'given' and the 'made', in which the 'given' and the 'made' are indistinguishable…".[216] But he misses the significance of the connection that Burke draws between the artificial and the natural.[217]

For Oakeshott, Burke's political philosophy is continuous with the individualism of early moderns like Kant and Smith. All three are individualists concerned with the tension between individuality and the desirability of cooperation and association with others under the authority of rules, conventions, norms and so on. Though Burke's arguments are distinguishable from those other two in that they rest ultimately on "semi-theological" grounds – namely, that historically emergent beneficial institutions can be taken as providential – they amount to the same sort of system as those of the more philosophical Kant and more empirical Smith, with government's role being to "umpire the collisions which are apt to occur between the numerous individuals and teams of individuals" in society. The use of 'collisions' here is instructive, for reducing collisions is precisely how Oakeshott describes the purpose of his own conservatism, and so here he directly assimilates Burke into his own view. Just as for Oakeshott the function of conservatism is to moderate individuals' personal

[216] Michael Oakeshott, "Interpretations of the Modern European State (2)" in *Lectures in the history of political thought*, ed. Terry Nardin and Luke O'Sullivan (London: Andrews UK, 2007), Section 10.
[217] Though in his essay on conservatism, Oakeshott's dismissive comment that the defence of conservatism need not refer to any theory of human nature is perhaps aimed at Burke and his admirers. Oakeshott, "On Being Conservative", 173.

commitments, for Oakeshott's Burke, it is, like Hume, to restrain their "passions" – another way of saying the same thing.[218]

Yet while Burke does, as we have seen, hold that one function of civil society is to restrain individuals' passions, he also holds that their authority to do so issues from the knowledge on which they draw in making determinations about what is truly beneficial or advantageous for society and individuals. The passage in question (from which I quoted extensively above) culminates in the claim that "Men have no right to what is not reasonable, and to what is not for their benefit".[219] That is, in context, the reason Burke offers for restraining the passions is not merely reducing conflict between the different projects of individuals, but because, as he has said all along, there are real and knowable human goods and it is these, along with prescription, that authorise institutions to act. As Scruton puts it, for the sake of our shared inheritance, this historical experience, "we learn to circumscribe our demands, to see our own place in things as part of a continuous chain of giving and receiving, and to recognise that the good things we inherit are not ours to spoil…".[220]

Burke's argument, then, implies an invariant human nature by which to make sense of the idea that what is good and bad for beings like us, and thus what we ought to do, is knowable by reference to historical experience. This distinguishes his argument from Oakeshott. It also suggests, interestingly, that Burke's position is closer to Strauss's than the latter admits. So the triangle the three men create is worth considering briefly, because it illuminates the role that knowledge of the good and human nature plays in Burke and must play in substantive conservatism.

Both Oakeshott and Strauss hold that Burke is ultimately a modern philosopher, sharing the Hobbesian view of individuals as stomachs and concerned with the question of how to manage their various, conflicting appetites. So for them, "human wants" and the surrounding Burkean argument about the

[218] Michael Oakeshott, "Kant, Adam Smith and Burke", in *Morality and Politics in Europe: the Harvard Lectures*, ed. Shirley Robin Letwin (New Haven: Yale University Press, 1993), 59-72.
[219] Burke, *Reflections*, 53.
[220] Scruton, *Conservatism: An Invitation*, 45.

need for restraint and virtue becomes a procedural conservative argument for moderation. Strauss and Oakeshott are themselves often considered to be political conservatives, despite the differences in their philosophical projects, because of their shared interest in this kind of moderation, which interest both, in their own ways, also attribute to Burke.[221] Oakeshott, too, places Burke in the list of those who, like himself, have considered modern politics as a question of non-purposive *nomocratic* government as against purposive *teleocratic* government.[222] Yet for Strauss, it is precisely this that explains the ambivalence of his conclusion about Burke – essentially that Burke identifies the problem of modern politics correctly but fails to offer a sound alternative. So although they read Burke the same way, Oakeshott and Strauss draw different conclusions about him. For Oakeshott, Burke's arguments are, in a sense, *too* moralistic, too dependent on a fixed concept of human nature. But Strauss thinks that Burke offers no foundation for his conservatism, and therefore his arguments cannot support his otherwise sound appeal to ancient virtue. So, Strauss finds Burke inadequate for *lack* of moral certainty.

I want to suggest that Strauss's claims about the role of human nature in conservatism are worthwhile, even though Burke is an improper target for his critique. He would have done better to aim at Oakeshott. Strauss is right that unless there is some fixed idea of nature, the conservative political argument – broadly, that radical (i.e. ahistorical and unfamiliar) projects to remake society and humanity are anathema to human flourishing properly understood – does not get off the ground. But Strauss's view is too limited to some sort of idea of pure reason as the proper foundation of the social and political order to see that Burke proposes an alternative foundation rooted in historical experience *as a kind of reason*. Strauss does not see, or at least does not agree, that historical findings provide a

[221] David McIlwain, *Michael Oakeshott and Leo Strauss: The Politics of Renaissance and Enlightenment* (Palgrave Macmillan, 2019), Chap. 2. McIlwain seeks to limit the characterisation of the two men as political conservatives so as not to distract from their philosophical projects, but also because he finds in them a shared interest in what we might call *liberality*, the tolerance and open-mindedness that connects "classical republicanism" to modernity. The characterisation of this position as 'conservative' is, McIlwain suggests, largely a function of Strauss's and Oakeshott's rejection of "progressivism" as it took shape during the Cold War.

[222] Michael Oakeshott "The office of government (2)" in *Lectures in the History of Political Thought*.

non-arbitrary basis for politics, and this is his error. (Moreover, to the extent that Strauss looks for what he calls *natural right* elsewhere from historical experience to that same extent his project is not really a conservative one. Though I leave this aside.)

If this is right, it places a lot of weight on the reliability of historical experience, the mechanism by which it is compiled, and its use in prudential decision-making. The normative claim that historical orientation is the best method of decision-making (in politics and anywhere else) will only be as convincing as the underlying epistemic claim that historical experience is especially reliable compared to other purported forms of knowledge.

3.3.4 Union of Minds over Time

The principle of inheritance works, then, by bringing together experience across generations. Burke bids us to look backwards "to our ancestors" so that we may better serve our "posterity".[223] But, again, he is less clear about *how* this historical orientation functions – that is, why this information is veracious in a way that theory is not – than he is about what it is supposed to tell us.

Burke offers two related principles for how the choice of inheritance operates. First, Burke holds that by developing only incrementally, the state can aggregate the wisdom of more minds than exist just in the present age, and this improves the fit of institutions to the needs and wants of the people. True reform takes time and effort, and "circumspection and caution" are a "duty" because reform risks that "multitudes may be rendered miserable". This risk is minimised only where it is understood that "the true lawgiver… [ought] to fear himself", that "Political arrangement, as it is a work for social ends, is to be wrought only by social means", and that this means that "*Time is required to produce the union of minds which alone can produce all the good we aim at*" [my emphasis]. Burke writes of "a slow but well-sustained progress" that proceeds from "light to light" by ensuring that "the parts or the system do not clash" and that "one advantage is as little as possible, sacrificed to another". Secondly, Burke

[223] Burke, *Reflections*, 29, 81.

holds that over time, we can come to see the effects of our institutions, to judge whether they are expedient or not, and thus whether our reforms are better or worse, and he implies that this method ensures that "the ship proceeds in her course". Here he invokes a kind of organicism, linking minds across generations, by establishing and leaving alone certain principles of government: "If justice requires this, the work itself requires the aid of more minds than one age can furnish… the best legislators have been often satisfied with the establishment of some sure, solid, and ruling principle in government… and having fixed the principle, they have left it afterwards to its own operation".[224] The two mechanisms are related, in that establishing a principle is how the union of minds over time is brought into being.

Yet legal philosopher Adrian Vermeule doubts that either of these arguments can sustain Burke's claim that historical precedent and analogical reasoning are epistemically superior to *de novo* judgements, especially those of assemblies. For Vermeule, Burke's two arguments for historical orientation are "many minds" arguments that hold "in some way or another, many heads are better than one" in respect of tracking the truth, whether about the world or about people's preferences. But the circumstances in which this is true seem to Vermeule to be quite limited, and in any event, assemblies of minds in the present are more accurate combinations of many minds than historical populations, for reasons to do both with how moral, ethical, legal, or political questions are framed and how they can best be answered.[225]

Vermeule interprets Burke's first argument, about the union of minds over time, by deploying the Condorcet Jury Theorem, which holds that where there is a choice of options and one option is correct, and where the jury members are more competent than random chance, then as the number of members of the jury increases so too does the probability that the jury will, by majority, choose correctly. But when this idea is extended in time, as Burke suggests, it is compromised: the jury votes in a sequence, and so later voters know more than earlier voters; the questions they are considering

[224] Burke, Reflections, p. 144
[225] Adrian Vermeule, *Law and the limits of reason* (New York: Oxford University Press, 2009), 25.

are not the same; precedential reasoning by design supervenes on considerations of present contingencies, pushing them through a predetermined filter; and, moreover, by relying on precedent, voters weaken their independence, which is required for the aggregation to function. The result is the "Burkean paradox": "If many participants in the line of precedent or tradition followed the precedent or tradition because doing so was a way to conserve on decisionmaking costs or improve their information, then the informational value of the line of precedent or tradition is lower to that extent; there are fewer independent minds contributing to the collective wisdom."[226] Vermeule's paradox can be likened to the Mill-Hayek critique of tradition seen in Chapter 1: all hold that precedential reasoning is self-undermining because the information it relies upon is only created by decisions that do not follow precedent.

According to Vermeule, however, Burke's second argument for historical orientation resembles Hayek's later argument for social evolution. Burke suggests that society ought to hold to certain *set-and-forget* principles, which Vermeule interprets as an "invisible hand" argument in which "collective wisdom would arise from human action but not from human design". That is, with Strauss, Vermeule suggests that Burke is a Smithian – and thus like Hayek. But, says Vermeule, the metaphor of social evolution fails. An evolutionary model has three components: competition between species, ideas, or some other kind of thing; heritability of the attributes that characterise those things; and fitness, meaning that certain variations of those things survive because they are adapted to their environment. But in the case of lines of precedent (in the law and anywhere else), it is not clear what 'fitness' might mean. Basically, whereas Burke extols the merits of slow change, Vermeule retorts that organic change (at least in the law) is likely to be too slow: the social and political environment will change more quickly than the line of precedent can develop. Alternatively, improvement of the line of precedent through novel applications and distinctions is possible but undermined by judges (or decision-makers more broadly) cynically making new distinctions based on predetermined biases. In

[226] Vermeule, *LLR*, 76.

either case, the accuracy of precedent to reality is dubious, either because the facts of reality are too changeable, or the principle being applied is too vague.

Thus, the challenge that Vermeule presents for Burkean virtue is that its combination of historical orientation and prudence is unsound. For Vermeule, prudence often suggests departing from history, and so it is not clear that decisions ought to be determined by reference to precedent or made by elite decision-makers trained in those precedents. For substantive conservatism to succeed, we will need to identify some sense in which the information supposedly contained by institutions and relied upon in historical orientation is not reducible to many individual minds, as Vermeule interprets it.

This task will occupy us in the next chapter. But here, it is important to understand that Burke's epistemic claims come in the context of his overall argument, which is that a beneficial society is one that is attentive to historical evidence for its claims about virtue and the good life. At the start of his argument, Vermeule tells us that he is not interested in the claim that "tradition has intrinsic worth… [because it] is constitutive of our very identities", choosing to focus instead on the "instrumental or derivative value" clams made in favour of tradition on "epistemic grounds".[227] In the terms we have been using, Vermeule interprets Burke – or more exactly, the legal tradition that considers itself Burkean – in terms of procedural conservatism: "Burkeans with various first-order theories about what makes outcomes good, or valuable, or just, can converge on the second-order value of precedent or tradition, without settling their theoretical differences". Yet Burke's argument is not predicated on the separateness of the minds of individuals – indeed, its opposite. The function of artificial society is to form the individual, shaping him or her with knowledge gleaned from historical experience.[228] And, thereby, it is a system for producing prudent leadership, formed in the same way. This is the institutional perspective.

[227] Vermeule, *LLR*, 63.
[228] Thus, Burke holds that the "ruin" of the "ancient democracies" was too much rule by "occasional decrees", which "broke in upon the tenour and consistency of the laws… [and] abated the respect of the people towards them". Burke, *Reflections*, 176.

That is, the construction of the information in question in the epistemic claim is reliable not because it aggregates many minds, but because those minds have oriented themselves towards what has already been established. It is not the number of minds that counts, but rather the quality of their thoughts. On this point, it is worth noting that when Burke describes jurisprudence, Vermeule's main subject, as "the reason of ages", he juxtaposes it with "Personal self-sufficiency and arrogance (the certain attendants upon all those who have never experienced a wisdom greater than their own)", and this comes in the middle of a passage emphasising that decision-makers must understand themselves as trustees with no right to "cut off the entail, or commit waste on the inheritance", because the alternative means only that "the whole chain and continuity of the commonwealth would be broken".[229] Put another way, in respect of judges, Vermeule only shifts the problem of how decisions ought to be made from one venue to another, and he notes himself that a traditionalist might well argue that parliaments should be mindful of tradition.[230] As, perhaps, should everyone be. This, I think, is the true Burkean claim, and certainly the substantive conservative position.

But this response to Vermeule – only a sketch at this point – might suggest a kind of circularity: we are apparently bid to accept the epistemic claim for historical experience over theory, which gives rise to certain normative principles about how constitutions should work, which then structure how we inquire into history. Put another way, if the authority of Burkean moral knowledge lies in its historical accuracy, then assertion of that authority is self-defeating, since any historical inquiry undertaken in support of it will not be historically accurate, by definition. Burkean historicism, the identification of virtue in historical experience, is simply a kind of confirmation bias – a mining of history to support predetermined present-day priorities – and as such, there is no reason to suppose that its claims are, as required for justifying historical orientation, more reliable than speculation.

A version of this rejoinder can be found in Oakeshott's philosophy of history. For Oakeshott, history is a particular "mode" of experience. Based on the fragmentary evidence that has survived into the

[229] Burke, *Reflections*, 81.
[230] Vermeule, *LLR*, 93.

present, history seeks by inference to explain what must have happened to have brought the present about. On this basis, he distinguishes between the *historical past*, which is the past understood as a discrete set of interrelated events assessed on their own terms against an historical hypothesis or proposed explanation for the connections between them, and the *practical past*, which is a past constructed in service of some desire for the future. Importantly, though, a practical past cannot ever be accurate or coherent in the way that an historical past is – the past when viewed through the prism of practical needs can only ever be as true as the prism itself. As such, just as in politics the imposition of technical abstraction distorts one's understanding of practice, and just as the imposition of an aprioristic scheme distorts one's view of society, to view the past from within present concerns is a kind of rationalist distortion, a substitution of one's own notions for the facts of the matter.[231]

On this view, the counterrevolutionary spirit of Burke's argument amounts to nothing, because by construing the past in terms of present needs, the Burkean argument undercuts its own claim that experience is more reliable than theory.

The refutation of this objection turns, I think, on the Burkean claim that virtue – whatever it is – can *only* be known *a posteriori*. And as such, if there is anything that can be called virtue, it *is* these practices that demonstrate it.[232] So the term *virtue* is not an arbitrary construction overlaid on history, but an aspect of history. Consider this question: if we accept virtue and vice are known to us at all, and we think that what we know is true, then what harm, in terms of accuracy, could possibly come from including this definition in our construction of the past? That is, rather than seeking to use history

[231] See these lectures by Oakeshott: "Political thought as a subject of historical enquiry", "The philosophy of history", "The Whig interpretation of history", and "What is history?" all in Michael Oakeshott, *What is History? And Other Essays*, ed. Luke O'Sullivan (London: Andrews UK, 2004).
In this paragraph I also drew on: Luke O'Sullivan, "Introduction" in *Oakeshott on History* (London: Andrews UK, 2003); Geoffrey Thomas, "Michael Oakeshott's Philosophy of History" and Timothy Fuller, "Radical temporality and the modern moral imagination", both in in *A Companion to Michael Oakeshott*, ed. Paul Franco and Leslie Marsh (University Park: Penn State University Press, 2012); and Martyn P. Thompson, *Michael Oakeshott and the Cambridge School on the History of Political Thought*, (New York: Routledge, 2019), Parts 1 and 2.
[232] In his semantics, Burke defines 'virtue', along with 'liberty' and 'honour', as an example of an "compound abstract word" – a kind of word that does not refer to an idea (like red, blue, round, square) nor to natural types (man, horse, tree), but rather make sense by evoking a history of their use in relation to instances of "good or evil". That is, these words refer to historical experience. Burke, "On the sublime and beautiful", Part V, Sections I-V.

for present purposes, the Burkean claim is more that when we look to the past and try to explain it coherently, as Oakeshott would have us do, one factor to consider is the role that what we know about invariant human nature – the things beings like us need and want, the goods we can achieve, and the harms we do to each other and to the world around us – played in those events.

Put another way, we can accept Oakeshott's claim that history is contingent, but this does not mean that we should, or can, believe that we know nothing about what the human actors in those historical events were trying to do and why. We are entitled to believe that our categories of virtue and vice are timeless, and therefore not distortive of our historical inquiries, so long as we also believe that the beings involved in past events were in fact beings like us.[233] The extension of my understanding of what is good for me to what is good for beings like me is possible across not only the present moment but across moments, because those beings were like me – and, I would add, their times were not really so foreign to me as may first appear. This is the defence I will pursue in the next chapter.

3.4 Burke's Normative Claim: A Partnership in All Perfection

Setting aside, for the moment, doubts over Burke's epistemic claim, we can consider how a society that adopts the principle of inheritance is "good for the community and good for every individual in it", as Burke puts it in one place – a definition of the *common good*.[234] Here we return to Burke's earlier theme of humans' second nature and its formation in the institutions of artificial society. For Burke, the normativity of the history-oriented society comes from our interest in having institutions that are truly beneficial for us, and that therefore shape our second natures in the right way. In keeping with the institutional perspective, I will start with how, on this Burkean scheme, institutions ought to operate and then consider how this is beneficial for beings like us.

[233] It is worth noting that, at one point, Oakeshott claims that a "changeless self-identity, like the concept of 'freedom', or 'pleasure', or 'art'" is not a proper subject of historical inquiry. These concepts are never dead and gone; they cannot be past. Inquiry into them is not historical, but philosophical. Thus, in Oakeshott's terms, the Burkean model fails to keep separate history and philosophy.

[234] Edmund Burke, "Speech on a motion made in the House of Commons, May 7, 1782, for a Committee to Inquire into the State of the Representation of the Commons in Parliament", 98. https://www.gutenberg.org/files/16292/16292-h/16292-h.htm.

3.4.1 Little Platoons and Autonomous Institutions

Artificial society, which is natural to us, is made up of institutions that are, or ought to be, autonomous from the state, because that is how they conduce to beneficence.[235]

Burke argues that the sociality of people is cultivated first within institutions and from there grows outward to society as a whole: "To be attached to the subdivision, to love the little platoon we belong to in society, is the first principle (the germ as it were) of public affections. It is the first link in the series by which we proceed towards a love to our country, and to mankind".[236] In context, Burke is mounting an attack on those members of the nobility who would lead the "third estate", the commoners, into mischief by sacrificing their social role and its duties to their personal ambitions. That is, the 'little platoons' to which Burke refers are social classes.[237] But his point is generalisable (and often generalised by conservatives) to a defence of civil society as a set of orders within which sociality is developed.[238] Burke makes this clearer later when discussing the revolutionaries' plan to replace to traditional subdivisions of France with a new geometric scheme: "We begin our public affections in our families… We pass on to our neighbourhoods, and our habitual provincial connexions… The love to the whole is not extinguished by this subordinate partiality".[239]

The starting point for the development of second nature is the family. In the *Reflections*, Burke mainly discusses family as it relates to the hereditary nobility.[240] But he also tells us that among the "real rights" people have in civil society is "a right to the acquisitions of their parents [and] to the nourishment and improvement of their offspring" – and, of course, the principle of inheritance makes

[235] I borrow the term 'autonomous institution' from Scruton, *Meaning*. I discuss his idea in more detail in Chapter 5.
[236] Burke, *Reflections*, 40.
[237] Yuval Levin makes this point too. Yuval Levin, *The Great Debate: Edmund Burke, Thomas Paine, and the Birth of Right and Left* (New York: Basic Books, 2014), 86.
[238] See, eg, Kirk, *Mind*, Chapters 2 and 13.
[239] Burke, *Reflections*, 167.
[240] For example, when Burke writes of "the power of perpetuating our property in our families… tends the most to the perpetuation of society itself", he is writing about the noble families, and their property includes their stake in the state itself. Burke, *Reflections*, 44.

plain that the state is to conform to this pattern, rather than people conform to some other, theoretical pattern. Elaborating on this theme, Christopher Berry points out that the primacy of the family in our understanding of human nature is, in the first place, "the physical dependence of the human infant at birth". Humans are not precocial animals that come into the world with all or nearly all their faculties and abilities (horses can walk more or less from birth, for example); instead, humans are born into families that nurture them to maturity. Berry notes that part of this process is that the mature human form entails "acculturation", first into the ways of the family and then into the ways of wider society. The key conservative themes of "family, custom, nation, hierarchy, biology and divine purpose" all follow from this fact.[241]

In the *Reflections*, however, Burke mainly illustrates these points with a discussion of the value of an established church, against the destruction of the church in France. The established church is "the first of our prejudices, [and] not a prejudice destitute of reason, but involving in it profound and extensive wisdom". It is not only the teachings of the church that Burke values, but its role in the "consecration" of the state – in guiding those in government towards "high and worthy notions" and encouraging free people to understand their rights and powers as held as entrusted to them by "the one great Master, Author, and Founder of society".[242] He goes on to argue that the English constitution's foundation in religion is one of the reasons for its success: the church and its privileges are "favourable to morality and discipline… [yet] susceptible of amendment, without altering the ground… capable of receiving and meliorating, and above all preserving, the accessions of science and literature, as the order of Providence should successively produce them". He adds that the English have as much "illuminated and adorned the modern world, as any other nation in Europe".[243] The church, then, is a symbol of Burke's model of improvement: by holding in trust what is known, it enables discovery and

[241] Christopher Berry, "Conservatism and Human Nature" in *Politics and Human Nature*, ed. Ian Forbes and Steve Smith (London: Frances Pinter, 1983), 53-67.
[242] Burke, *Reflections*, 78-9. This is at the start of the lengthy passage in which Burke explains the sense in which society is a contract and the importance of continuity. It is interesting that Burke, a Whig by party, should frame this passage, the heart of his argument, with a defence of the established church, in effect appealing to 'throne and altar' Toryism.
[243] Burke, *Reflections*, 85.

achievement.

However, Burke's point is broader than just the church. For example, he justifies the length of his discussion of the expropriation of church property by suggesting that this incident reveals the "general tendency" of the revolutionaries and "a centre from which afterwards all their measures radiate".[244] Thus he goes on to argue that the destruction of the church is part of a wider campaign against "private property" and the established ways of life that grow up around it. He argues that prescription suggests a kind of estoppel that is justified not only by property itself, but by what it means to people: "When men are encouraged to go into a certain mode of life by the existing laws, and protected in that mode as in a lawful occupation—when they have accommodated all their ideas and all their habits to it… I am sure it is unjust in legislature, by an arbitrary act, to offer a sudden violence to their minds and their feelings". It is, then, because human life is bound up with established institutions, secured in their private property (beyond, as Burke says, the reach of the state), that they are valuable. Thus, the monasteries are an example, but not the only ones, of institutions that are "the products of enthusiasm… [and] the instruments of wisdom", which they have acquired over time, and which cannot be created *de novo*. All such institutions are "suited to a man who has long views" – that is, focused on genuine improvement – and they are – or can be made by prudent reform to be – "to the great and lasting benefit of [the] country".[245]

As this suggests, for Burke, the point of autonomous institutions is that when left to their own devices, they will link generations together. Thus, Mannheim notes that conservatism has generally argued that family and property go together, in that they both function to connect generations and exist as concrete features of life, rather than as abstractions.[246] But more exactly, family is the most basic of the various institutions that have this function, secured by property. And since it is the linking of generations together that creates the historical experience on which the state should operate, for

[244] Burke, *Reflections*, 103.
[245] Burke, *Reflections*, 133-4.
[246] Mannheim, *Conservatism*, 99-104.

Burke, autonomous institutions are of vital importance to the common good. Hence, to destroy them, like the revolutionaries did to the monasteries of France, is a grave harm, even violence: "To destroy any power, growing wild from the rank productive force of the human mind, is almost tantamount, in the moral world, to the destruction of the apparently active properties of bodies in the material".[247]

Autonomous institutions are diverse. There are many different orders in society that form individuals in different ways for different roles. The "effects of those habits which are communicated by the circumstances of civil life" is that there are "many diversities amongst men, according to their birth, their education, their professions, the periods of their lives, their residence in towns or in the country, their several ways of acquiring and of fixing property, and according to the quality of the property itself, all which rendered them as it were so many different species of animals". These different classes come to have different interests and privileges. While the "legislators who framed the ancient republics" understood this, their modern equivalents in France "have levelled and crushed together all the orders which they found", treating individuals as interchangeable units and removing "a strong barrier against the excesses of despotism".[248] For Burke, then, in a good regime, there will be a range of institutions, beyond the family, in which individuals are formed for civil society, and this is good, in part, because it secures the interests of beings like us (who are amenable to such formation) against the interests of the superintending government.[249]

The reputation of the *Reflections* rests, in large part, on the prediction that Burke makes on this basis.[250] He tells his French interlocutor that with these bulwarks of autonomous institutions removed, authority is vested entirely in the state, which therefore rules by force – "Everything depends upon the army in such a government as yours; for you have industriously destroyed all the opinions, and

[247] Burke, *Reflections*, 134.
[248] Burke, *Reflections*, 157.
[249] Later, Burke makes a similar claim in respect of the revolutionaries' abolition of the local *parlements* – local magistracies independent of the crown – which might have served "as one of the balances and correctives to the evils of a light and unjust democracy". Burke, *Reflections*, 175.
[250] E.g., Christopher Hitchens, "Reactionary Prophet", *The Atlantic* (April 2004), https://www.theatlantic.com/magazine/archive/2004/04/reactionary-prophet/302914/.

prejudices, and, as far as in you lay, all the instincts which support government". This means that the French republic will be vulnerable to the rise of "some popular general" who will make himself "the master of your Assembly, the master of your whole republic".[251]

3.4.2 The Mixed Regime

Burke characterises his normative vision of society as a defence of a mixed regime – "mixed and tempered government". Citing Aristotle, he notes that "a democracy has many striking points of resemblance with a tyranny" in that it can impose "the most cruel oppressions upon the minority". The French monarchy was bad, Burke concedes, but it is easier to add a democratic element to a monarchy than the converse. And a mix is needed: "[S]teady, independent minds… will judge of human institutions as they do of human characters. They will sort out the good from the evil, which is mixed in mortal institutions, as it is in mortal men".[252] For Burke, the English constitution is an exemplary mixed regime: "We are resolved to keep an established church, an established monarchy, an established aristocracy, and an established democracy, each in the degree it exists, and in no greater".[253]

A mixed regime is, naturally, hierarchical. It is hierarchical because the diverse interests represented by different institutions contend with one another. It is this contention that must be worked out over time by the principle of improvement, whereby "One advantage is as little as possible sacrificed to another… We are enabled to unite into a consistent whole the various anomalies and contending principles that are found in the minds and affairs of men. From hence arises, not an excellence in simplicity, but one far superior, an excellence in composition".[254] Hence, elsewhere, Burke argues that "The parts of our Constitution have gradually, and almost insensibly, in a long course of time, accommodated themselves to each other, and to their common as well as to their separate purposes.

[251] Burke, *Reflections*, 186.
[252] Burke, *Reflections*, 107.
[253] Burke, *Reflections*, 78.
[254] Burke, *Reflections*. 144.

But this adaptation of contending parts, as it has not been in ours [England], so it can never be in yours [France], or in any country, the effect of a single instantaneous regulation, and no sound heads could ever think of doing it in that manner".[255]

It is in this context that Burke defends the nobility and rejects the democratic idea that government can be performed by the "hair-dresser" or "tallow-chandler", who possess neither the honour nor wisdom required for governing.[256] Elsewhere, Burke extols the virtues of the "natural aristocracy", whose education starts young and with "nothing low and sordid [in] infancy" and continues into their careers as judges, professors, and traders. This class of people are formed by society for the general benefit of everyone; they are leaders, and it is only under their influence that "the people" can be trusted with sovereignty. This "beautiful order, this array of truth and nature" is the proper basis of authority and possession – of titles and even of a nation's territory.[257] So for Burke, the hierarchy of society places at its top the landed aristocracy, who have property in the state, and the natural aristocracy, who have "ability", and the impression Burke leaves the reader with is that it is smart for the nobility to share power in this way, but not more widely than that.

Burke's defence of the mixed regime rests on the principle of inheritance, in two senses. In a narrow sense, Burke is not being metaphorical when he describes institutions' authority as prescriptive – he really does seem to mean that some measure of power belongs to the hereditary elite exactly as their property does.[258] This is generally good because while the exact privileges of nobles are mere "opinion" and therefore subject to change by the law, the existence of privileges incentivises the pursuit of excellence, and those who acquire them guard them jealously, which provides a bulwark

[255] Burke, "A Letter to a Member of the National Assembly", 50.
[256] Burke, *Reflections*, 42.
[257] Burke, "An Appeal from the New to the Old Whigs", 176.
[258] Burke strikes a Lockean note, suggesting that property is the foundation of all rights, or, perhaps, that all rights are property rights: "If prescription be once shaken, no species of property is secure, when it once becomes an object large enough to tempt the cupidity of indigent power". Burke goes on to argue that the revolutionaries will not stop at expropriating Church property and privileges, but will soon come for the aristocracy and its lands, and then eventually "all property of all descriptions…". Burke, *Reflections*, 128. See also 149, where Burke discusses the voting franchise in terms of property.

against the totalising tendency of the state. Thus, the levelling drive of democracy is "without taste for the reality, or for any image or representation of virtue".[259] In a broader sense, Burke holds that the non-elected parts of government operate as a trust for the benefit of the people at large, and so in discharging the duties of that trust, they must, in fact, attend to the circumstances of the people.

The proper role of democracy, then, is essentially advisory; it is to bring attention to issues afflicting the people at large. All else being equal, if people claim to be suffering, then this ought to be taken seriously. Burke writes, in his earlier pamphlet *Thoughts on the Cause of the Present Discontents*, that "When popular discontents have been very prevalent, it may well be affirmed and supported, that there has been generally something found amiss in the constitution, or in the conduct of government". He goes on to argue that it is the function of Parliament, not so much to represent the people, for this is also a function of the king, the lords, and the judges, but to give them some measure of control, or input into, the functioning of the "standing government": "A vigilant and jealous eye over executory and judicial magistracy; and anxious care of public money; an openness, approaching towards facility, to public complaint: these seem to be the true characteristics of a House of Commons".[260]

Burke's elitism is one of the most controversial aspects of his philosophy. Daniel O'Neill portrays Burke as virulently anti-democratic, describing Burke's later work as a "crusade" in defence of Western Civilisation against the democratisation of society. Both he and Don Herzog describe Burke as having only contempt for "the lower orders".[261] Francis Canavan, too, at the end of a sympathetic treatment of Burke's notion of prescription, observes that Burke risks identifying "the wise and the good with the well-born and the well-to-do".[262] Even leaving aside the normative merits of the mixed regime, as an empirical matter, we might wonder whether there is such an elite, or such a gap between the elite and the rest of society, now as there was then. After all, Burke's laudation of the church and nobility – which O'Neill observes, rightly, rests on their role in converting power into authority by wielding

[259] Burke, *Reflections*, 117-8.
[260] Edmund Burke, "Thoughts on the Causes of the Present Discontents", Burke, *Works Vol. I*, 493.
[261] Herzog, *Poisoning*, 29.
[262] Francis Canavan, "Burke on Prescription of Government", *The Review of Politics* 35, no. 4(1973), 473.

what Burke had earlier called the sublime and the beautiful, the most powerful of our sentiments – was made at a time of widespread illiteracy and limited means of communication, contingencies which have long since expired in modern societies. Burke does say that all privileges are themselves contingent, and so he might not make the same case today. But a more difficult question, which I will defer for now, is what this example says about ostensibly invariant human nature. It is not merely a matter of separating form and substance, tricky enough, but of an apparent change in the substance, or at least, something like it, something that distinguishes people and their interests now from people then.

However, despite Burke's anti-democratic leanings (or, more accurately, anti-*republican* leanings), Burke's views in respect of the "lower orders" is best characterised as paternalistic.[263] Burke is, in a sense, a proto-corporatist, seeing the role of institutions as serving specific interests and the role of government as balancing those interests and "to secure the weak from being crushed by the strong".[264]

3.4.3 Formation, Prejudice, and Liberty

For Burke, the function of institutions is to shape individuals' second nature. The process of formation takes place through our interactions in these various institutions, which develop over time to secure known goods, avoid known evils, and generally inculcate individuals with virtue. For this reason, we have an interest in tending to "old establishments" and their proven value with care, rather than imposing upon them simplistic, abstract schemes that strip them of their property, sunder the

[263] Burke's paternalism is also controversial, for it underlies the gradualist position he took on the issue of the emancipation of slaves in the United States. The most extended commentary by Burke on this issue is his unpublished *Sketch of the Negro Code*, in which he does not hold that Africans are inherently inferior beings but does claim that the slave population will need to be educated in the ways of civil society before they can be released from bondage, a process with an indeterminate timeframe. Nonetheless, in the letter he wrote when transmitting the document to a political colleague, 12 years later, Burke indicates that his preference is abolition but worries it is a "very chimerical project". Edmund Burke, "A Letter to the Right Hon. Henry Dundas, One of His Majesty's Principal Secretaries of State, with the Sketch of a Negro Code, 1792", in *The Project Gutenberg EBook of the Works of the Right Honourable Edmund Burke, Volume VI (of 12)* (Project Gutenberg, 2005), 255-290.

[264] Burke, *Reflections*, 151.

generations they link, and rob us of the wisdom they contain. That interest is that what institutions teach us becomes our prejudices, the practical knowledge we rely on day-to-day, and this knowledge, in turn, prepares us for exercising our liberties responsibly.

Burke's defence of prejudice in the *Reflections* is one of his most famous contributions. But it is often misunderstood. Burke does not commend unreasoning or automatic behaviour, as such.[265] Rather, he argues that we acquire our prejudices under the influence of institutions, and they are each as reasonable as the other. Prejudice is, to use Nisbet's word, the "epitomization" of the reason of ages as it comes to exist in the individual mind through the process of formation within institutions.[266] Therefore, it is in the context of artificial society as a repository of historical-experiential wisdom that we should consider prejudice.

Prejudice can be understood as a kind of practical knowledge that exists within society even while its implicit reason may not be consciously understood by many who enact it. Burke introduces the idea in the same passage in which he discusses the "general bank and capital of nations". Just before that line, he writes: "You see, Sir, that in this enlightened age I am bold enough to confess, that we are generally men of untaught feelings; that instead of casting away all our old prejudices, we cherish them to a very considerable degree, and, to take more shame to ourselves, we cherish them because they are prejudices; and the longer they have lasted, and the more generally they have prevailed, the more we cherish them".[267] The reference here to 'untaught feelings' is important because what Burke is suggesting is that prejudice comes to us through the process of formation, not from formal

[265] I have in mind here Alasdair MacIntyre, who all but excludes Burke from his discussion of traditionalism, on the grounds that Burke extols "wisdom without reflection", which, while a direct quote from Burke, is nonetheless profoundly misleading. I will return to MacIntyre later in the chapter. See Alasdair MacIntyre, *Whose Justice? Which Rationality?* (South Bend: University of Notre Dame Press, 1988), 353.
A more recent work that adopts this reading of Burke is Adam Adatto Sandel, *The Place of Prejudice* (Cambridge: Harvard University Press, 2015). For Sandel, Burke's defence of prejudice is "sentimentalist" and "utilitarian"; rather than containing wisdom, prejudice, on this reading, is a convention emerging from subjective values and defensible only in that it is necessary for society that the people should defer to their traditional authorities. See 55-68. Sandel's purpose is to distinguish his own defence of prejudice as a kind of reason from Burke's argument. But on my account, Burke has already succeeded in this.
[266] Nisbet, *Conservatism*, 30.
[267] Burke, *Reflections*, 74.

instruction – I will argue in the next chapter that this is best interpreted as a claim about common sense. But more important than this for present purposes is the reference to the durability of prejudice being connected to its reasonableness; this sets the scene for the later introduction, in his discussion of the established church, of the multigenerational social knowledge we understand as historical experience.

However, while prejudice itself might be, in the moment of action, without reflection, its reliability is a function of its situation within a context that is itself reasonable. So where institutions are history-oriented, drawing on what is known of virtue, then the prejudices they impart are also virtuous. Thus: "Prejudice is of ready application in the emergency; it previously engages the mind in a steady course of wisdom and virtue, and does not leave the man hesitating in the moment of decision, sceptical, puzzled, and unresolved. Prejudice renders a man's virtue his habit; and not a series of unconnected acts. Through just prejudice, his duty becomes a part of his nature." When Burke defends prejudices, he means "just prejudice", those untaught feelings that align with the permanent categories of virtue and vice captured by the latent wisdom of society. The individual, formed by just institutions, becomes just, and that wisdom, that moral knowledge, "becomes a part of his nature", which is to say, it is his second nature, that comes to him from his place in artificial society.

Burke's claim, then, is not that prejudice *per se* is always right or good.[268] This is why, in his wider body of work, Burke in many places refers to prejudice as "antiquated" or as something to be overcome. For example, his speech to the electors of Bristol holds that his role as their MP is not merely to represent "local prejudices" but to deploy his abilities in the interest of the whole nation.[269] Rather, it

[268] I take Harbour, *Foundations*, 64-72 to be saying something similar about Burke. Harbour notes first that the function of "prejudice, custom, tradition, and authority" is that of "perpetuating the life of a civilised community". Hence, he concludes this passage, the "reasonableness" of this proposition rests on whether "that authority and tradition" has "value for the day-to-day life of the individual". But as Harbour notes, the tension for conservatism here is that the occasional need for reform places a lot of weight on the idea of prudence, and the capacity of a leadership class to demonstrate that virtue.

[269] Edmund Burke, "Speech to the Electors of Bristol" in *The Project Gutenberg Ebook of the Works of the Right Honourable Edmund Burke Volume II (of 12)* (Project Gutenberg, 2005), 97. https://www.gutenberg.org/files/15198/15198-h/15198-h.htm.
See also Burke, "Thoughts on the Causes of Present Discontents", 445.

is the "civil social man", whose prejudices are virtuous – he is a man who knows what to do.

At the same time as equipping people with virtuous prejudices, artificial society prepares them for liberty. Throughout the *Reflections*, Burke strives to put liberty in its proper place – as a contributor to the common good under the conditions that people are properly formed for it and that it is not used to undermine the institutions that secure the real rights of all. At the start of his essay, Burke tells us that "government, as well as liberty, is good" but he mocks the idea that liberty, "stripped of every relation" and taken as a "metaphysical abstraction", should be celebrated: "Is it because liberty in the abstract may be classed amongst the blessings of mankind, that I am seriously to felicitate a madman, who has escaped from the protecting restraint and wholesome darkness of his cell, on his restoration to the enjoyment of light and liberty?".[270]

Instead, he suggests, the test for liberty, as for other principles, is its effect in the circumstances. For the English, liberty refers, concretely, to "our ancient, indisputable laws and liberties", which is (as noted) an inheritance. Considered this way, "our liberty becomes a noble freedom [with] a pedigree and illustrating ancestors". The spirit of reverence encouraged by the principle of inheritance is what gives life to the ancient liberties – it is "those inbred sentiments which are the faithful guardians… of all liberal and manly morals… [and] all other feelings are false and spurious, and tend to corrupt our minds, to vitiate our primary morals, [and] to render us unfit for rational liberty". Virtue, then, and liberty are coupled by Burke, in that both are the products of an artificial society that is oriented towards history, and away from theoretical speculation. But virtue is the master. Liberty is an empty notion if it does not, in fact, lead to good lives being lead: "I shall always, however, consider that liberty as very equivocal in her appearance, which has not wisdom and justice for her companions; and does not lead prosperity and plenty in her train". Liberty, Burke holds, can be self-defeating where it erodes prescription and property; the French, after all, were left with neither their inheritance nor liberty.[271]

[270] Burke, *Reflections*, 7.
[271] Burke, *Reflections*, 27, 30, 73, 113.

3.5 Burkean Realism

Second nature refers to the faculties that humans develop through socialisation. Humans are born into families and societies that shape them as they mature, and faculties like reason and language develop through interaction with others. The individual mind is not (wholly) autonomous, because it is formed by institutions. Thus, we have an interest in the information imparted to us through this process of formation being accurate to reality, and the Burkean claim is that this is most likely under a mixed regime embodying the principle of inheritance and making use of historical experience.

Importantly, then, the substantive conservative interpretation of Burke is that he is a realist about social knowledge and moral reality, recognising that there are goods that are natural to beings like us and that shape rights and institutions accordingly. The process of discovery that Ryn calls Burke's unique historicism is only possible if our institutions are shaped by their contact with the real world.[272] The Burkean model proposed in this chapter is therefore incompatible with scepticism or idealism. If conservatives tend towards scepticism, they struggle to make some objective claim about institutions based on the collective subjective impressions of individuals, which is what undid Oakeshottian procedural conservatism. At the same time, substantive conservatism must also resist idealism, which suggests that second nature means that we must always operate at a distance from reality because we can only experience it through the medium of the ideas installed in us during our formation or socialisation. If all that matters is the coherence of our ideas, then historical experience (familiarity) has no especial value; we could produce, through experimentation or democracy or abstraction or whatever, some other coherent scheme by which to view the world.

Both scepticism and idealism arrive at the claim that if for whatever reason our institutional order is

[272] Again, a similar point is made by Levin: "The historical experience of social and political life consists in essence of a kind of rubbing up against the principles of natural justice, and the institutions and practices that survive the experience thereby take on something of the shape of those principles, because only those that have this shape do survive. Over time, therefore, provided they develop in accordance with the model of prescription, societies come to express in their institutions, their charters, their traditions, and their habits a simulacrum of the standard of justice." Though I think 'simulacrum' is the wrong word here; 'version' is more accurate. Levin, *Great Debate*, 77-8.

inconvenient by some standard, be it subjective or abstract (or both), then it can and should be remade. They are united in their *constructivism*. From the conservative point of view, all constructivism is arbitrary, and arbitrariness is not only inaccurate but bad for beings like us.

3.6 Conclusion

Burke's principles of inheritance and improvement can be likened to the conservative procedure proposed by Oakeshott and elaborated in the previous chapter. But in Burke, the idea of securing the past so as to improve the future is part of a detailed normative vision of society. Burke, then, puts procedural conservatism into its proper place by incorporating it into a fuller substantive picture of human nature and the artificial society in which humans live.

Yet his normative claim that it is good for beings like us to live under non-arbitrary history-oriented institutions will be no more nor less persuasive than the claim that institutions of this (conservative) kind contain real wisdom or reason – that is, the epistemic claim is that familiarity as historical experience is the only non-arbitrary source of information upon which institutions might operate.

The realness of this information is still to be explained. For our purposes, we cannot simply say with Burke, "Don't fear the power of a father…".[273] We must ask why the father, and father figures, are reliable, and why individuals should accept, or even welcome, this claim about their formation within institutions, rather than struggling against it and, by extension, reality itself. Our next task, then, is to investigate whether and how institutions can be, as I have interpreted Burke, *contingent but non-arbitrary*. This task I undertake in the next chapter, with the one following that offering an interpretation of its normative implications.

[273] Burke, "Speech on a Bill for the Repeal of the Marriage Act" in *Works Vol. VII*, 133.

4 Historical Common Sense and Order Properly Understood

The purpose of this chapter is to elaborate the underlying epistemic claim of substantive conservatism. That is, the question at hand is the plausibility of holding, with Burke, that institutions under certain conditions contain rather than merely coordinate information and can therefore be described as contingent but non-arbitrary (or authoritative). As we have seen, on the Burkean substantive conservative view, institutions are authoritative when they make use of historical experience – when they choose inheritance over theory. But this claim about the veracity of historical experience remains to be defended. It is on this basis that we might then inquire into the soundness of Burke's claim that constitutions evince general principles but are best when they are adapted to the unique circumstances of peoples and places (see 3.4.2 above).

The defence of historical experience that I want to offer is based in common sense realism. The basic claim of common sense is that the human mind can apprehend reality directly, through practice, such that we can say, with certainty, that there are facts, and kinds of facts, that we simply *know*. But this is not enough for our purposes. For to say that institutions provide access to historical experience is to say that they provide access to, as Burke says, more experience than the individual can acquire in his or her own life. Therefore, we need now to inquire into the grounds on which historical experience can be said to be a product of the human capacity for common sense. The Burkean substantive conservative idea is that second nature is formed by the immediate apprehension not only of empirical facts about the material world, but also of facts about the social or public world, namely, that certain institutions, like the vocabulary and grammar of our language but not limited to these, provide us with an accurate picture of reality itself. To put the point as Ludwig Wittgenstein does, our second nature provides us with a set of propositions that we have no grounds to doubt, and which are therefore objective.

In invoking Wittgenstein here, I follow the school, including Roger Scruton, who associate him with

conservatism. This is not to say that Wittgenstein aimed to vindicate conservatism, though David Bloor plausibly argues that this is the case.[274] Nor is it to say that Wittgenstein was a *political* conservative of some sort, though there is also some evidence for this, as Kristof Nyiri has shown.[275] It is only to claim, with Scruton – or, perhaps, more explicitly than Scruton – that Wittgenstein's later work provides an argument that is relevant to the substantive conservative position that social institutions can have some epistemic authority that is not reducible to individual minds.

Specifically, and somewhat differently from the others who have pursued this connection, I want to suggest that Wittgenstein's response to GE Moore on common sense demonstrates the veracity of historical experience, which follows from our common sense apprehension of the realness of the world outside our own minds, including the realness of other people.[276] What emerges from this discussion is a distinct conservative use of common sense: if I am capable of immediately apprehending reality *and* if part of that reality is the artificial society in which I live *and* if the combined picture of reality thereby produced seems coherent *then* I can conclude that the people who produced that order, whether by design or accident or a combination of both those things, were responding to the same world to which I am responding. We can therefore reflect upon what those people were doing and trying to do and learn from their experiences. Historical experience, meaning the wisdom of the species, as Burke would have it, tethers artificial society through its institutions to reality, and

[274] David Bloor, "Ludwig Wittgenstein and Edmund Burke" in *Essays on Wittgenstein and Austrian Philosophy: In Honour of JC Nyiri*, ed. Tamas Demeter (Leiden: Brill, 2004), 109-136.
David Bloor, "Wittgenstein as a Conservative Thinker" in *The Sociology of Philosophical Knowledge*, ed. Martin Kusch (Dordrecht: Springer, 2000), 1-14.

[275] JC [Kristof] Nyiri, "Wittgenstein's Later Work in Relation to Conservatism" in *Wittgenstein and his Times*, ed. Brian McGuinness (London: Blackwell, 1982), 44-68.

[276] Scruton and Nyiri both connect Wittgenstein to conservatism by way of his private language argument. Basically, the idea is that language is necessarily public: you cannot have your own private language because you would have no way of verifying if your concepts were referring accurately to their supposed referents, and, anyway, there would be no point in naming your concepts unless you wanted to test them against something outside your own mind. But I choose to rely on Wittgenstein's response to Moore because it places him in direct conversation with common sense realism, which, as I will briefly consider in the next section, influenced Burke.
For the private language argument see Ludwig Wittgenstein, *Philosophical Investigations*, trans. GEM Anscombe (Oxford: Basil Blackwell, 1953.1958), paras 243-315. See also Roger Scruton, *Modern Philosophy: An Introduction and Survey* (London: Bloomsbury, 1994), 50-4.

these tethers – or relations – are facts as immediately apprehensible as any other feature of reality, and, indeed, are among the first things grasped by children during their formation.

The importance of all this is twofold. First, it provides a reason for holding that institutions, under certain conditions at least, might be authoritative, which provides a limit to the autonomy of reason on which constructivist political philosophy rests. Secondly, it provides motivation for political conservatism as itself a positive exercise, as the specification of the conditions under which this authority is tenable becomes the basis for the political conservative claim that it is good to have access to institutions that are history-oriented. The conditions under which institutions are authoritative in this way I call *order properly understood* – the proper arrangements within and between institutions such that the information they contain is defensible as common sense.

To pursue this argument, I will start with the understanding of common sense as a form of realism and the contrast it draws with Humean scepticism. I will then discuss Moore's argument for common sense and why it fails before turning to Wittgenstein's efforts to rescue Moore's position. Finally, I will describe order properly understood, as an extension of Wittgensteinian common sense realism.

4.1 Common Sense Realism

The position I am developing in this thesis is a response to the Humean and Oakeshottian idea of conservatism as a status quo bias. Common sense realism first emerges in response to Hume. So there is a natural affinity here. Indeed, the connection between conservatism and common sense can arguably be traced back as far as the famous story of the Tory Samuel Johnson's refutation of Berkeley's idealism. As James Boswell recounts: "After we came out of the church, we stood talking for some time together of Bishop Berkeley's ingenious sophistry to prove the non-existence of matter and that everything in the universe is merely ideal. I never shall forget the alacrity with which Johnson answered, striking his foot with mighty force against a large stone, till he rebounded from it, 'I refute

it *thus*'."[277] Moreover, Burke's position on the connection between artificial society and human nature is very similar to that of Adam Ferguson, often associated with the Scottish common sense school; like Burke, Ferguson rejects the idea "that man would be found in a state of war, or in a state of brutality were it not for himself" and that as such, we can conclude that "man is made for society and the attainments of reason". Just as Burke would later assert, Ferguson continues, "Man is by nature an artist".[278] There are clues, then, in the history of (what would become) conservatism that we are looking in the right place.[279]

The common sense school's problem with Humean scepticism is narrow but profound. Whereas Hume holds that our "natural beliefs" (the ways that our minds combine our various impressions and use those combinations to assist our actions) are, while unavoidable, insufficient grounds for knowledge, common sense holds that those beliefs, or something like them, are obvious, not ungrounded. The dispute is narrow enough that there is some debate about whether the common sense school had missed Hume's point. Hume distances himself from 'Pyrrhonian scepticism' and denies that his scepticism extends to everyday beliefs or religious conviction.[280] On this basis, David Fate Norton claims that Hume was, in fact, a "common sense moralist" who holds that our moral sense responds

[277] Boswell, *Life of Johnson* quoted in Douglas Lane Patey, "Johnson's Refutation of Berkeley: Kicking the Stone Again", *Journal of the History of Ideas*, 47, no. 1 (1986), 139-145. Patey also introduces Johnson's connection to the Scottish school.

[278] Adam Ferguson, "Of man's progressive nature", in *Selections from the Scottish Philosophy of Common Sense*, ed. GA Johnstone (Chicago and London: Open Court, 1915), 209-210. Compare 3.2 above (note 177).

[279] More clues can be found in O'Neill's discussion of the influence of the Scottish Enlightenment, including both Adam Smith and the Scottish common sense school, on Burke. O'Neill convincingly argues that Burke read the work of Beattie (see next paragraph) and that his interest in common sense was in giving Smithian sympathy, with which he was in total agreement, a non-sceptical foundation – that is, common sense provides a reason to believe that our direct apprehensions of the world, from which reasoning follows, are not irrational. Applying this idea to Burke's (aborted) historical studies, O'Neill shows that Burke believed in the possibility of historical reflection being guided by an idea of invariant human nature, which idea underpins his historicist belief in the evolution of institutions. O'Neill is a critic of Burke's idea that civilisation is a progressive process, and especially of the support that view lends to imperialism. My task here is not to vindicate or defend Burke in this respect; rather I am investigating whether the epistemic claim of common sense can be defended and put towards a coherent definition of conservatism, rooted in historical experience. O'Neill, *Debate*, 51-87.

[280] See the discussion in James A Harris, "Hume and the Common Sense Philosophers" in *Common Sense in the Scottish Enlightenment* ed. CB Bow (Oxford: Oxford University Press, 2018) 150-164.

to objective features of the world.[281] Yet the common sense realists did have a point. James Beattie, for example, makes an early version of the Millian objection to status quo bias when he observes that scepticism can hardly be assumed to lead, as Hume claims, to moderation, it might just as easily, or more easily, lead one to depart from established moral standards.[282] And on the epistemological question, Thomas Reid argues that Hume is a kind of idealist, and counters that because the apprehension of reality by the senses and the conceptualisation of it happen simultaneously, there is no gap between them across which fidelity might be lost. The dispute between Hume and the (other) Scots, then, is not so much about the apparatus naturally available to humans, nor even about processes by which the data furnished by that apparatus are put to use, but about whether the product of all this counts as knowledge.[283]

Put another way, the dispute is about whether knowledge can be institutionalised, that is, whether the various impressions people have of the world can be reliably compiled into ideas and rules.[284] For this reason, Johnson declares that Hume is only a "Tory by chance". Johnson sees that the Humean position is only a form of status quo bias and not an endorsement of lessons learned from history and the authorities that lay claim to stewardship of those lessons. Johnson calls Hume a "Hobbist",

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[281] David Fate Norton, "Hume's Common Sense Morality", *Canadian Journal of Philosophy* 5, no. 4 (1978), 523-543.
Alasdair MacIntyre gave Norton's subsequent book (1982) a favourable but questioning review, attributing to Norton's Hume a view very similar to that which I am developing here and credit to Burke's suggestion. MacIntyre writes: "Professor Norton argues… that, while Hume understands our beliefs and passion to be produced in us by nature antecedently to and independently of any reasoning, he also asserts that we can by reasoning both modify and correct what we feel, both in the realm of morality and in that belief… Moreover nature not only produces first-order reasoning in us, but it also gives us the power to reflect on such reasoning in our second-order reasoning, so as to modify or correct its errors". MacIntyre's second-order reasoning is akin to what I have called, following Burke, second nature – but, importantly, this reflective power is enabled by, and exercised under the influence of, institutional realities i.e. the historical experience imparted by orderly institutions. Alasdair MacIntyre, "Review" *Nous* 18, no. 2 (1984), 379-382.

[282] Which is just to say that the position sometimes called 'epistemic conservatism', which states that it is reasonable to hold onto a belief in the absence of new evidence, does not necessarily follow from scepticism; there is no necessary reason why you would not go searching for new evidence against which to test your beliefs.

[283] I am indebted here to: Chester Chapin, "Samuel Johnson and the Scottish Common Sense School", *The Eighteenth Century* 20, no. 1 (Winter 1979), 50-64; and Gavin Ardley, "Hume's Common Sense Critics", *Revue Internationale de Philosophie* 30, no. 115/116 (1976), 104-125.

[284] Or, more broadly, whether practical knowledge can become propositional knowledge – more exactly, the claim that only propositions that connect to practices are knowledge.

meaning a follower of Hobbes, and this is most naturally read as a reference to the methodological individualism common to both men's work.[285] But common sense is a realist position, and it is this that makes it a promising line of inquiry for conservatism.

4.2 What is Real in Common Sense?

Common sense, then, holds that we are capable of apprehending immediate facts about reality – but we must ask, what kinds of facts? This question can, I think, be answered by reference to the dispute between Moore and Wittgenstein on this question. The claim here is not that the work of one or the other should be considered conservative or unconservative *per se*, but rather that Wittgenstein's response to Moore's definition of common sense helps us to see what it means for the substantive conservative case to rest on a kind of common sense realism.[286] Similarly, my primary aim is not to engage with the voluminous scholarship on Wittgenstein's later work, which has been read in a variety of ways, including many that depart quite radically from my interpretation, nor with the scholarship on Moore in epistemology.[287] My focus is narrower than this. With Wittgenstein, as he writes in his *On Certainty*, I believe that there is an error in Moore's defence of common sense, that that error is illuminating for present purposes, and that its resolution gives us the answer we are looking for.

[285] The history of these comments by Johnson is detailed in Paul Russell, "A Hobbist Tory: Johnson on Hume", *Hume Studies* 16, no. 1 (1990), 75-80.

[286] In Moore's case, his name is linked with the Bloomsbury Group, a collection of generally radical thinkers active in London in the first half of the 20th century who invoked Moore's work in ethics as an inspiration. But Moore himself never associated with the group and he was, it is claimed, unhappy to be linked with it. See Gabriel Franks, "George Edward Moore's Criticism of Some Ethical Theories", *The Thomist* 31, no. 3 (1967), 261-2, esp. note 7.

There is also a dispute, which I will not enter an opinion about, over whether Moore adhered to a Humean fallibilistic status quo bias, whether in his epistemology or ethics. Moore's ethics have been described as a "conservative form of rule consequentialism", where 'conservatism' means sticking to the rule absent overwhelming evidence for some other option, a form of Humean fallibilism. See the encyclopedia entry on Moore here: Tom Baldwin, "George Edward Moore", in *The Stanford Encyclopedia of Philosophy* (Summer 2010 Edition), ed. Edward N. Zalta. https://plato.stanford.edu/archives/sum2010/entries/moore/. And on his moral philosophy here: Thomas Hurka, "Moore's Moral Philosophy", in *The Stanford Encyclopedia of Philosophy* (Summer 2021 Edition), ed. Edward N. Zalta. https://plato.stanford.edu/archives/sum2021/entries/moore-moral/.

[287] Bloor, "Wittgenstein as a Conservative Thinker", 2.

4.2.1 The Limits of Moorean Common Sense

Moore gave two famous lectures on common sense, and they provide a good starting point for our discussion. Just as the original Scottish common sense school arose in reaction to Hume's scepticism, Moore was responding to Hegelian idealism, the proponents of which, in the British context, included the young Oakeshott. But as we will see, while Moore seems to have something important to say, he does not succeed in capturing the idea, and it is Wittgenstein who rescues common sense and, by extension, the possibility of substantive conservatism.

In the two lectures, Moore offers related reasons for why we are entitled to claim that we know there is a world external to our own minds. In the first talk, Moore describes common sense as a set of "propositions, every one of which (in my opinion) I *know*, with certainty, to be true", which propositions are about his own physical existence, the physical existence of other things including other bodies, his conscious experiences he has had as that body, and that the other human bodies he has perceived have experienced the same or similar things. To these classes of proposition, Moore adds another single proposition: that all those propositions he knows to be true, others also know to be true about themselves.[288] In the later talk, Moore argues along similar lines that he can prove the existence of the external world simply: "Here is one hand," he says, pointing to his hand, "And here is another". His point is that the claim that what he is showing his audience are hands implies necessarily that there are some referents external to his own mind that he calls hands, and that one valid way of demonstrating the existence of those referents is simply to point to them. Similarly, and perhaps more clearly, if one person tells another that a page in a book in front of them has three misprints on it, then "Surely he *could* prove it by taking the book, turning to the page, and pointing to three separate places on it…". Of course, the first person might be wrong, "But to say that he *might* prove it in this way, is to say that it *might* be certain that there was [a misprint in each of the three places]. And if

[288] GE Moore, "A Defence of Common Sense", in *Selected Writings*, edited by Thomas Baldwin (New York: Routledge, 1993), Section 1.

such a thing as that could ever be certain, then assuredly it was certain just now there was one hand in one of the two places I indicated and another in the other". The idea is just that for the assertion to make any sense, there must be an external world, some fact of the matter, against which it might be tested.[289]

But Moore's arguments break down in similar ways, failing to show that Moore and his audience are both real and part of the same world. That is, Moore cannot show that other minds are real, so his claims about his own impressions of the world are merely claims, not the certainties he insists upon.

In the first lecture, Moore's problem is that his central move, from common sense first-person singular claims like *I know I have a body* to first-person plural claims like *we know we have bodies* is undermined by his scepticism about "mental facts" and "events". He says he is unsure whether rules connecting objective states of affairs to mental states could ever count as knowledge: "The proposition that I have had experiences [i.e. mental states] does not necessarily entail the proposition that there have been any events [i.e. objective states of affairs] which were experiences; and I cannot satisfy myself that I am acquainted with any events of the supposed kind". For the same reason, Moore also says he is unsure about the connection between some "sense datum" and the object in the world that has, ostensibly, caused it; that is, it is not clear they are identical. For example, my hand will look different if looked at with my bare eyes or through a microscope, or with an x-ray machine, so it cannot be said that the hand itself, as a whole, is apprehended.[290] But Moore misses that this scepticism renders untenable his extension of common sense from the first-person singular. If we cannot say, as a rule, *this kind of sense data is an experience produced by this event or by this thing*, then we also cannot say that my experience of, say, handedness, is the same as yours – that *we* have experienced the same thing. That class of propositions that Moore would include in common sense, which says there are other beings like me, is simply unavailable to him, because that recognition is a function of an abstraction from *me* to *beings like me*, the latter category requiring some objective content of

[289] GE Moore, "Proof of an External World", in *Selected Writings*, 167.
[290] Moore, "A Defence of Common Sense", 123, 128-33.

precisely the kind that Moore finds dubious.

Similarly, in the second lecture, Moore's problem is that his examples show, at most, that certain common claims necessarily imply a hidden premise or undefended postulate, which is that the referents of these kinds of claims are external to the mind of the claimant. But this is different from proving that those things exist.[291] He suggests that in the case of the hands, people who doubt might satisfy themselves "by coming up and examining the suspected hand close up", yet this does not help, since what is at stake is not whether people might agree that there is something there, but whether something really is there, and this cannot be proved by adding more observers and more parties to that agreement.

In effect, Moore admits that he cannot prove to us that his mind exists. Earlier, he states that similarly, it is not possible to prove that one is in pain, nor is it possible to disprove someone's assertion of being in pain, because whether we ourselves feel pain or not in our own lives, we cannot feel *that specific pain*. Moorean common sense is entirely subjective – the external world is only real in the direct impressions it makes on a particular mind; it cannot be known by rules, only by direct experience. By extension, then, Moore must admit that he cannot know that other minds exist. It might be the case that his mind apprehends things in the world, including the claims of others, or it might the case that everything is taking place only in Moore's head. Because he cannot accept that the external world includes rules, its externality is extraneous: it is a world experienced only 'one at a time', and therefore might as well exist only in the individual mind. As an alternative to scepticism or idealism, Moorean common sense fails.

From the substantive conservative point of view, then, we need to say something additional to Moore's account; we need to say that Moore's original position, that among the facts of the world that are immediately apprehensible is *the fact that other minds exist*, was correct. What I want to

[291] Wittgenstein notices the same thing – as I will soon discuss in detail. Ludwig Wittgenstein, *On Certainty*, ed. GEM Anscombe and GH von Wright, trans. Denis Paul and GEM Anscombe (Oxford: Basil Blackwell, 1969-1975), paras 13-15.

argue is that rescuing Moore's position requires that we accept that "here is one hand" works as a common-sense claim because *hand* is itself known to refer to a particular class of objects in the external world – the designator *hand* is not arbitrary, and Moore knows this when he makes his claim, and so the content of that claim, as a *knowledge claim*, includes the relation between that designator and that class of objects. Moore should, indeed, say that what is known is not only that "here is one hand" refers to an object in the external world, but that it refers to a hand (that kind of thing we call *hand*) specifically. That is, we must say that among the facts of the external world that we can grasp immediately are the rules of that world – and also the institutions within which they are captured.

This line of argument is developed by Wittgenstein in his commentary on Moore, and, moreover, Wittgenstein's insights about common sense dovetail with the Burkean position outlined in the last chapter, or so I claim.

4.2.2 Wittgensteinian Common Sense

In his last work, *On Certainty*, Wittgenstein puzzles over Moore's claims about common sense and the external world. Wittgenstein is convinced that Moore's argument is wrong, but also that Moore is onto something. Wittgenstein's rescue of Moore's position rests on two key claims.

First, for Wittgenstein, knowledge claims are always claims about the objective (external) world. Wittgenstein says that Moore confuses knowledge with "concepts [like] 'believe', 'surmise', 'doubt', 'be convinced'" – but unlike those kinds of claims, about which a speaker cannot be mistaken, a claim to 'know' something is not a claim about the speaker's mental state but rather "seems to describe a state of affairs which guarantees what is known, guarantees it as a fact". Thus, I cannot infer knowledge from someone else's first-person claim 'I know that', because it may turn out that that person was mistaken. So, "It needs to be shown that no mistake was possible" – and 'shown' means "objectively established". This means that built into first-person knowledge claims is an implicit objective test: "When we say that we *know* that such and such… we mean that any reasonable person in our position would also know it, that it would be a piece of unreason to doubt it…". And, he adds

later, “If someone believes something, we needn't always be able to answer the question 'why he believes it'; but if he knows something, then the question ‘how does he know?’ must be capable of being answered”.[292]

Secondly, for Wittgenstein, the objectivity of the external world is built into experience itself. Our knowledge of such objective states of affairs is through experience, but there are some propositions, part of that experience, that are *indubitable* and do not admit further testing: for Wittgenstein, Moore’s purported knowledge claims “are all of such a kind that it is difficult to imagine *why* anyone should believe the contrary”. By itself, experience sets up a regress – “experience does not direct us to derive anything from experience” – but Wittgenstein thinks that Moore his hit upon a stopping point. “In certain circumstances, for example, we regard calculation as sufficiently checked… Somewhere we must be finished with justification, and then there remains the proposition that *this* is how we calculate”. For these kinds of propositions, to doubt leads to paradox, because if you doubt them, you must doubt everything. But why is it that to doubt that “here is one hand” necessarily leads to this paradox? Wittgenstein agrees with Moore that a claim like “here is one hand” implies an empirical test, which, if passed, justifies the claim. For Wittgenstein, such tests take place within the various “language-games” that make up our “world-picture” or “form of life”. Language-games are interactions bounded by acknowledged rules, which refer to objective features of the world and cannot be doubted without abandoning the game. Indeed, “The game of doubting itself presupposes certainty”. Thus, “It is our acting, which lies at the bottom of the language-game”. In acting we announce that we take some propositions to be true because we have no “system” for doubting them. This is what he means when writes that, “At the foundation of well-founded belief lies belief that is not founded”: indubitable propositions are not founded in further positive belief, but rather, they require no such further belief because they are indubitable, and they are indubitable because they are inherent in our language-games.[293]

[292] Wittgenstein, *On Certainty*, paras 13, 15, 325, 550.
[293] Wittgenstein, *On Certainty*, paras 136, 212, 115, 204, 247-8.

But this does not mean that for Wittgenstein all knowledge is entirely internal to the form of life constituted by these language games. The games only work because they refer to reality, that is, the external world. I take Wittgenstein as saying that certain propositions, those that are indubitable, are just as much a part of reality as objects themselves. On my view, Wittgenstein combines a coherentist understanding of social knowledge as embodied in forms of life with a correspondence claim for the form of life, as a set of games or practices, to be an accurate picture of reality. This combination, and the confirmationist epistemology on which it rests, is, I want to say, the core of substantive conservatism, because it creates the possibility of contingent non-arbitrary institutions.

Wittgenstein's coherence claim is the clearer of the two. What is apprehended by common sense is not, as Moore would have it, single instances of reality, formulated as single propositions like "Here is one hand…", nor do we merely learn the rules that structure our language-games or "practices"; instead, we are "taught judgements and their connection with other judgements… a *totality* of judgements is made plausible to us". We do not first believe "a single proposition, [but] a whole system of propositions" and "not single axioms [but] a system in which consequences and premises give one another mutual support". We are introduced to this system through our formation as children, a point that Wittgenstein makes repeatedly. In the context of this system he is describing, he notes that children learn "bit by bit" a system in which "some things stand unshakeably fast" and "what stands fast does so, not because it is intrinsically obvious or convincing; it is rather held fast by what lies around it". It is this system that determines not just our judgements as such – like "here is one hand" – but what it means to judge: "From a child up I learnt to judge like this. *This* is judging". It is for this reason that when the sceptic purports to deny that "here is one hand", he or she is really purporting to deny the entire system of thought in which that proposition resides, and this is the paradox. For: "Our knowledge forms an enormous system. And only within this system has a particular bit the value we give it".[294]

[294] Wittgenstein, *On Certainty*, paras 140-2, 144, 128, 410.

But this is not *all* that he says. Indeed, the bulk of the argument is dedicated to teasing out just how this system of propositions, axioms, judgements and so on can escape the paradox of scepticism, which is to say, why it is reasonable to say that this system contains *knowledge as such*.

Wittgenstein's correspondence claim is that the system of the form of life or world-picture includes the indubitable propositions at which our reasoning terminates, signifying we have some grasp of reality. The world picture is objective: "it is the inherited background against which I distinguish between true and false". But these are objective judgements even though they are arrived at within this world picture. Wittgenstein likens our empirical propositions to a river: we have some thoughts that flow over a river-bed of other thoughts, and sometimes our thoughts settle and sometimes they are churned up, but the river is shaped by its banks, which are composed "partly of hard rock, subject to no alteration or only to an imperceptible one, partly of sand, which now in one place now in another gets washed away, or deposited". The hard rock here is reality, and it is connected to, or mixed up with, the sand that accretes from the churning of our thoughts. The image does not quite allow Wittgenstein to say what he later tries to articulate, which is that indubitable propositions are necessarily true, just as logical propositions are. He writes, "I want to say: propositions of the form of empirical propositions, and not only propositions of logic, form the foundation of all operating with thoughts (with language)". He immediately retreats from this and adds that Moore's type of proposition "is the truth only inasmuch as it is an unmoving foundation of his language-games". Eventually, however, he arrives again at his formulation of this foundation as being characterised by indubitability: "There are cases where doubt is reasonable, but others where it seems logically impossible. And there seems to be no clear boundary between them". The objective world, then, is intelligible as, or by reference with, those propositions, both empirical and logical, for which we have no grounds for doubt.[295]

Underlying both limbs of this world picture is the operation of confirmation. Within a language game

[295] Wittgenstein, *On Certainty*, paras 94, 99, 401, 403

or practice, the rule is confirmed by the act; and then the various games confirm one another as a system. But we learn it the other way: the system first, and its various rules later, by testing. Wittgenstein writes: "I learned an enormous amount and accepted it on human authority, and then I found some things confirmed or disconfirmed by my own experience". But while individuals can always test a proposition for themselves, the propositions are supplied by – exactly as Burke has it – the experience of others. There are "countless" empirical claims that we treat as certain because they are part of the coherent whole of the world-picture into which we are educated: "One such [certainty] is that if someone's arm is cut off it will not grow again… Experience can be said to teach us these propositions. However, it does not teach us them in isolation: rather, it teaches us a host of interdependent propositions. If they were isolated I might perhaps doubt them, for I have no experience relating to them". So the function of education is to supply a coherent picture of the world that draws on the experience of others and which is borne out by the individual's own experience: "If experience is the ground of certainty, then naturally it is past experience. And it isn't for example just *my* experience, but other people's, that I get knowledge from… Though it is true that this trust [in others' experiences] is *backed up* by my own experience".[296]

Historical experience, then, plays the role in Wittgenstein's epistemology of what we might call *pre-confirmation* – it supplies the propositions that we are educated in, use, and test in our own lives. Frequently, there is no reason to doubt that experience, and, we find, sometimes to doubt one proposition is to doubt all. The process of formation creates a world picture "that a human being acquires by means of observation and instruction". Anyone who fails to acquire this understanding is simply "incapable". Within this context, we can deploy the judgements that we have been instructed to believe, and, moreover, we can infer rules about those judgements, because it is logically permissible to use induction to infer a proposition as "an instrument for a definitive use". As in Burke, our individual practical reason derives its reasonability from the institutions in which it is nurtured.[297]

[296] Wittgenstein, *On Certainty*, paras 161, 274.
[297] Wittgenstein, *On Certainty*, paras 279, 283, 297.

In the course of Wittgenstein's argument, in a more sophisticated way than Burke, he connects artificial society with human nature. There are some empirical propositions that are necessary like logical propositions. Wittgenstein asks this question: "'I don't know if this is a hand.' But do you know what the word 'hand' means? And don't say 'I know what it means now for me'. *And isn't it an empirical fact - that this word is used like this*?". Later, he concludes that "We learn with the same inexorability that is a chair as that 2X2=4". Similarly, "If the proposition 12X12=144 is exempt from doubt, then so too must non-mathematical propositions be". Mathematical propositions are "incontrovertible" in the sense that if 12X12=144 were ever mistaken, we would suspect an error *in this calculation this time* rather than in the equation itself, which has been "checked over and over again". Similarly, the proposition "I am called [LW]" is incontrovertible because the evidence for it is so "overwhelming" that "we do not *need* to give way before contrary evidence". The new evidence is no more certain than the old, and maybe less so. The point is, there are certain empirical propositions that it is just as reasonable as logical propositions to say that we *know* them.[298]

For this reason, the correspondence part of the language-game is mostly inexplicit. Wittgenstein tells us that "the idea of 'agreement with reality' does not have any clear application", not because the language-game does not agree with reality, but because to say that it does is redundant, in the same way that it is useless to say "I know I am in pain" – the pain *is* the knowing, and the language-game *is* the agreeing with reality. The game only works if it connects to reality – it is only prompted by the implacable fact of the external world.[299]

Thus, Wittgenstein concludes that no thought is possible within a closed hermeneutic, divorced from reality: "'But even if in such cases I can't be mistaken, isn't it possible that I am drugged?' If I am and if the drug has taken away my consciousness, then I am not now really talking and thinking. I cannot seriously suppose that I am at this moment dreaming. Someone who, dreaming, says "I am dreaming", even if he speaks audibly in doing so, is no more right than if he said in his dream "it is raining", while

[298] Wittgenstein, *On Certainty*, paras 306 [my emphasis], 455, 653, 650, 657.
[299] Wittgenstein, *On Certainty*, para 215.

it was in fact raining. Even if his dream were actually connected with the noise of the rain". The final impression that Wittgenstein leaves is that, if you are dreaming, to become conscious you are dreaming is to stop dreaming; and that for words to have meaning, they must refer to a reality external to the speaker – it is not enough to say "it is raining" when it is in fact raining; the statement must refer to the fact; and this it cannot do if the mind of the speaker is cut off from reality, as if in a dream.[300]

For our purposes, Wittgenstein's scheme provides a foundation for holding that information contained in institutions is real, and therefore, under certain conditions, authoritative. In effect, Wittgenstein collapses the distinction between propositional and practical knowledge by suggesting a reason for holding that certain propositions are indubitable because they refer to certain practices known to connect with reality. In Wittgenstein, then, we find a way to resist the twin dangers, identified earlier, of idealism and scepticism. Wittgenstein resist the conclusions that our ideas are all we know or that we know nothing – for it seems obvious to him that the concept of knowing has a definite meaning, which is correspondence, and that the testing of knowledge claims is made possible by a set of received ideas that are useful to us because they cohere with one another. So for Wittgenstein, there is a necessary connection between the world as it really is and our form of life (or, in other terms, public world or artificial society), and this connection is experience. The propositions of our form of life are tested in our practices, and those we learn as children, the most basic, are generally confirmed; and some are even indubitable, in that if a test did not confirm them, we would instead doubt we had performed the test correctly. As such, the tether between the form of life and reality is not just personal experience but historical experience, which is evidenced by the pre-existence of our received form of life and its practices, (for we are receiving it from someone, so it must have begun before we were here) and by the coherence of the system, which is the strongest evidence of its correspondence with reality.

[300] Wittgenstein, *On Certainty*, para 676.

4.3 Historical Common Sense

Wittgenstein's rescue of common sense supports the Burkean ideas of second nature and artificial society. We can now begin to see how an institution can be contingent but non-arbitrary – if it refers to reality or is part of a coherent world picture that so refers in other ways. To this, I now want to add a Wittgensteinian understanding of another of the key Burkean concepts, historical orientation. Specifically, I have two claims: first, that Wittgenstein's model admits a defence of invariant human nature; and secondly, that based on this, Wittgenstein's model supports the weight Burke places on prudence by enabling reflection on historical experience.

4.3.1 Beings Like Us – Now and Then

Wittgenstein's rescue of common sense overcomes Moore's residual scepticism about "events" – that is, about objective states of affairs that are known to prompt certain experiences in one's mind – and this allows him to validly claim to know that minds other than his, but like his own, exist. The claim I want to make here is that the same reasoning allows us to claim that other minds – that is other beings like us – *did* exist, and this is important for sustaining what I have called the institutional perspective.

For Wittgenstein, we encounter reality when we recognise propositions that are indubitable because to doubt them entails a paradoxical doubt about our own minds. Among these propositions are not only assertions of fact about the natural world, but also assertions of fact about the artificial society into which we are enculturated as children – it is not just that "here is one hand" refers to *something* external to the mind of the speaker, but also that the speaker knows how to play the language-game in which 'hand' refers to the *kind of thing* to which he or she is pointing. Among the various propositions that any of us would grasp in the normal course of our formation are the rules and functions of institutions that pre-exist us and which we share with others who likewise understand them.

As such, these institutions testify to us that other minds exist, because the only reason they are needed at all is to mediate between beings like us. Why else would they exist? Could any rival

explanation be more plausible than the obvious? In this way, the extension from *I know* to *beings like me know*, which was invalid in Moore's argument, is valid in Wittgenstein's, because for Wittgenstein, the existence of other minds is the kind of proposition that it is incoherent to doubt.

Thus, we can extend the Wittgensteinian claim about other minds into the past. A merely presentist interpretation of Wittgenstein would elide that for children, the games into which they are enculturated are pre-existing. If common sense allows us to grasp certain propositions, judgements, rules and so on, and this tells us, or confirms for us, that other people exist the way we do, then by the same logic, the history of those things we grasp tells us that other people, beings like us, existed before now too. This proposition also cannot be doubted without paradox, because to doubt that the past was real is to sever oneself from one's memories – can you doubt that the people of the past were beings like us without doubting your own childhood, without doubting your parents, without doubting that you yourself are a being capable of growth and learning, the kind of being that is capable of making sense of the world and making use of the information available in it? So pre-existing artificial society is not just evidence of other minds, but evidence of one's situation in time, as part of, as Scruton says, an ongoing order of people.

The extension in time of common sense founds the Burkean notion of invariant human nature. We know that 'beings like us' have certain needs and a distinct propensity for sociality and the accumulation and sharing of wisdom. It is not merely that in the process of formation we are presented with a coherent set of propositions – or, more exactly, propositions that prove themselves a coherent set as we rely on them in our own lives – but that common sense tells us that this coherence is not accidental or coincidental. Rather, as so much of what was instilled in us is confirmed by our own experience, we realise that the beings like us from whom we inherited these propositions were interacting with the same world as ours, and it is this, the similarity of our experience with theirs, that confirms for us that *this* is reality. Thus we know that these propositions have descended to us because they have been useful for beings like us.

4.3.2 Reflection and Prudence

In the previous chapter, I noted that Burke goes beyond Hume's idea of prescription as a presumption against change and claims that institutions ought to make use of historical experience. The extension of common sense into the past that serves to defend the invariance of human nature also provides a sound basis for this kind of *reflection* on the past.

Prescription, in the Burkean sense, is known to us by common sense, but the wisdom of historical experience is indeed latent and must be drawn out by reflection and inference. That is, the claim here is not that historical experience is entirely incorporated in common sense or that reflection upon historical experience is itself an act of common sense. Rather, common sense tells us that the social institutions into which we are enculturated as children are not arbitrary but rather historical products of beings like us acting upon wants and needs and apprehensions of good and bad and vice and virtue that were like our own. But the contents of all this is not so obvious, because, per Burke, "the nature of man is intricate", and so must be contemplated by reason.

Institutions, then, should be understood, by inference from our common-sense apprehension of the fact of 'beings like us', as containing (under certain conditions) information about how beings like us have lived and thrived. Institutions represent practices, and the historical experience they capture is a form of practical knowledge, in that it is about what to do and how to do it. Institutionalisation therefore means externalising the practical knowledge in question – this information becomes the "power outside of themselves" that Burke claims civilised people require, or, in Wittgensteinian terms, it is converted into propositional knowledge. The implication is that historical experience, once institutionalised, remains real even if no-one is practising the practice it captures – or at least, that such experience remains qualitatively different from speculation about untried activities, and this difference bears upon what an individual or society ought to do in the present. Thus, an orderly institution, that is, one that captures some practice that tracks reality, either itself or as part of the network of institutions of which it is part, is not reducible to the individual minds who have

contemplated the information it imparts but rather stands as an objective part of the world in which those minds operate.

We see in this, then, an alternative to the Oakeshottian view of practical knowledge as existing only within actual practice. Instead, institutions provide information about practices that, because of the stability of human nature, translates directly to the circumstances of the present. The problem of abstraction or abridgement that so concerned Oakeshott is weakened, and perhaps set aside altogether, once we accept that it is a problem predicated on an exaggeration of the differences between the practices and circumstances of others and our own practices and circumstances. The key epistemological question in respect of familiarity is not, as Oakeshott argues, about the difference between practice and technique, but the difference between experience, as information about reality, and speculation. Historical experience is institutionalised (or established) practical knowledge, and it is held to be real because of the history of the practice encoded in the institution.

Reading Wittgenstein's model into Burke in this way, it emerges that far from being unthinking or automatic, substantive conservatism is instead an argument *for* reflectiveness as an alternative to speculation. Historical common sense opens up the possibility of drawing on more experience than the individual can acquire alone. This, I think is a point that is often missed, because it is obscured by the association of conservatism with status quo bias. Nyiri, for example, describes "strong" traditionalism as the claim that there are traditions which contain information that is that is transmitted through initiation into continuous practice and "cannot be separated from the way in which it is handed down". This is distinct from the kind of self-conscious reflection on one's practices that is enabled by literacy. Indeed, strong traditionalism's claims about practical knowledge become unpersuasive once it is understood that much of our practical knowledge can, in fact, be written down and so does not require initiation or apprenticeship.[301] Moreover, once information is written down,

[301] He directs this criticism at Wittgenstein's private language argument (*c.f.* note 258 above). But as Nyiri says, this argument is much weaker in respect of written language than spoken language, because you might have good reason to externalise your thoughts by putting them in writing.

and externalised from the mind, the individual can consider it, and take it or leave it. So, if conservatism is supposed to be the defence of tradition as a repository of a kind of knowledge that is necessarily tacit and thus only known in practice, then it is fundamentally at odds with the individuality engendered by mass literacy.[302] In effect, the possibility of writing down or institutionalising practical knowledge weakens the hold of the present upon us, because we are no longer merely doing (continuing to do), but reasoning about what we do, which involves contemplating the past with a view to the future. But against all this, historical common sense suggests that there is a right way to undertake such reflection, namely, by contemplating the historical reasons for institutions, and their relation to one another, and it is this that is normative (rather than, say, critiquing historical institutions by reference to theoretical propositions).

Reflection, then, provides some support for Burkean prudence. As noted, Burke places great weight on the possibility of prudent leadership, which is supported by the realness of experience and, in particular, by the realness of rules derived from experience. In a sense, prudence is the mechanism by which historical experience is incorporated into the present and turned towards the future. This common-sense interpretation of Burke suggests that reflection upon historical experience in order to identify stable truths about human nature, the ends that beings like us should pursue, and expedient means to the realisation of those ends is what it means to be prudent – *this is prudence*, as Wittgenstein might say. As such, the insights of the Burkean system apply beyond the institutions of the political domain; to be conservative in other domains entails a similar kind of reflective, history-oriented common sense and the reliance on that kind of knowledge, as found in institutions broadly conceived, and considered both severally and together, in preference to other knowledge claims.

I want then to argue that this combination of Burke and Wittgenstein amounts to a specific description of order, as it exists within and between institutions, which confirms historical experience as real. This idea of order functions in conservatism as the end towards which the actions that constitute being

[302] JC [Kristof] Nyiri, *Tradition and Individuality* (Dordrecht: Springer, 1992), Chapters 3, 5, and 10.

conservative are directed. That is, because prudence draws on the broader historical experience that is found across the system of the form of life as a whole, conservatism includes the possibility of reform, meaning changes that bring institutions back into alignment with the system and thereby with reality, and, by extension, the possibility of what I will later call *conservatisation*, meaning the putting of the system and its institutions in order.

In the rest of this chapter, I will describe this idea of order. Then, in the next chapter, I will claim that order in this sense is a basic good and discuss what this means for the definition of conservatism.

4.4 Order Properly Understood

The Burkean history-oriented artificial society finds a plausible foundation in Wittgensteinian common sense. The Burkean claim is that a coherent system of institutions (or *constitution*) is confirmed by experience to correspond with reality itself. That is, the historical experience of society, contained in its constitution, provides a means for understanding reality and pursuing what is truly good and right for beings like us.

Together, these three claims – correspondence, coherence, and confirmation – amount to a definition of order. *Order properly understood* specifies the conditions under which it is plausible to hold that institutions contain rather than merely coordinate information. Here, first, I will interpret the correspondence claim as *internal order*, which is the condition under which an institution successfully matches means to ends, that is, captures a rule that reliably achieves a certain result and as such contains information about what to do and why. Secondly, I will interpret the coherence claim as *external order*, the condition under which an institution's rule coheres with other such institutions and rules, such that together they form a system that tracks reality and provides a coherent world picture. Thirdly, each of these limbs relies on confirmation by experience, but at the end, I will tease out an important implication of the reflective model of order properly understood, which will bear on the later discussion of its normativity. Order properly understood is a question of form. Under these conditions, institutions contain the kind of information, which, all else equal, is authoritative. The

Burkean system relies on this authority for its substance, which will be the subject of the next chapter.

4.4.1 Institutions

As a preliminary matter, it is worth briefly stating what I mean by 'institution', a term which, in political philosophy, is often used but not always clearly defined. As in previous chapters, I use the word in its broadest sense, to capture not only political institutions but also customs, norms, linguistic rules and so on. For order properly understood, and the substantive conservative argument, it is important to understand that all these are essentially the same kind of thing: institutions are the means by which experience is turned into rules. And these rules, being history-oriented and drawing on what is 'pre-written', we can call *prescriptions*, just as Burke extends the Humean notion of prescription from the fact of having a past to the latent wisdom that resides in that history. Thus, the constitution, for reasons that will become apparent, includes all these institutions and their rules or prescriptions.

But here I want to introduce a distinction: On one hand, there are *complex institutions*, rule-making bodies like the institutions of the political system and civil society; and on the other hand, there are *simple institutions*, the rules that complex institutions promulgate, or which emerge from individuals' interactions, including those that govern how rule-making bodies interact. We can see this distinction in the difference between Burke's various discussions of the "balanced" constitution of England and Wittgenstein's more general elaboration of language-games. Burke notes that England has a monarchy and democracy both, and he thinks that the great merit of England is that it has been able to fashion, over time, some coherence between the different components of the state, each of which performs a function, both in itself and as part of the constitution.[303] Wittgenstein makes a similar point, but in relation to institutions in the more general sense. Each language-game is both a function in itself and part of the form of life as a whole, and, importantly, Wittgenstein notes that we do not learn each game, or each proposition, individually, but together as parts of the whole.

[303] 'Balance' is a watchword for Burke. See, e.g., Burke, *Reflections*, 105, 151, 175 (among others).

The significance of the distinction is that the epistemic authority of each type lies in different places. A complex institution will tend to have a person, or some group of persons, charged with exercising authority, meaning to impose it on others; a simple institution, by contrast, derives its authority either from the complex institution that enforces it or from the network of institutions of which it is part. To say that an institution warrants deference is sometimes, but not always, to say that there is some person or group of persons who also warrant deference, provided certain conditions obtain. This is liable to be controversial. But importantly, those persons in positions of authority are bound by historical experience and the place of their authority within the network of institutions. The authority of an institution, whether complex or simple, is always a question of the historical experience that attests to its utility for beings like us, and this is because the purpose of an institution is to turn that experience into a rule. So, in complex institutions, it is not that certain persons command deference simply because of who they are or the offices they hold, but rather, deference is owed to the information about which these persons are supposedly expert. These persons are, for that reason, also supposed to humble themselves before this information, which is theirs only to interpret and apply.

This question of authority is an important one, for it is likely to be received as stretching the underlying epistemology too far, by introducing an irremovable human element in the creation and application of rules, which element is interposed between the subject of the rule and the supposed knowledge of reality that gives the rule its force. For now, I will only flag this objection. What we can say here is that authority is a function of order: where order obtains, then an institution is authoritative, and to the extent that we come to doubt an authority, it is because we doubt that the institution within which it resides is in order.

4.4.2 Internal Order

Internal order describes the correspondence limb of the Burkean conservative epistemic claim. It pertains to the mechanism by which an institution turns historical experience into a rule that

successfully matches means and ends, or practice and result, meaning that when the rule is followed, the specified result really does eventuate in the world. The idea here is to capture the Wittgensteinian notion of a 'test': we ask, *how else could we satisfy ourselves that a prescription is reliable other than by enacting the prescribed practice?* and where the result is good, we conclude that the prescribed means and ends amount to a true proposition about reality.

In the simple case, the test for internal order is whether its rule can be, and has been, repeatedly followed successfully. A successful language-game, for example, is one in which different users in different circumstances can achieve the same result: if the instruction is 'pick a red flower', then success in the language-game is whether someone picks something that is both a flower and red.[304] (The example reveals, too, the importance of external order, since the language-game for redness is hardly worth playing, and its results hardly intelligible, without the rest of the games that make up the language as a system.) At a certain point, after so many successful games, such rules are so reliable that we can conclude that the games they entail refer to reality, as something external to the game and the players – or, rather, we can no longer coherently doubt this. When we learn how to play a language-game like this, or how to follow a simple rule, all we need to know is that other people use the institution in this way, and have done, and knowing this enables cooperation with others in the present and opens up the whole world of experience accessible on the premise of historical common sense.

In the case of complex institutions, we find a more complicated set of conditions, but it is a set that is nonetheless analogous to that just described. Complex institutions, in which authority is exercised by persons invested with it, are also orderly where they exhibit a history of success which is relied upon by both users (or subjects) of the institutions and by the persons who run them. For complex institutions, success means the promulgation of rules that reliably match means and ends. In the political case, as we have seen, the measure of this correspondence is that the institutions and rules,

[304] To borrow an example from Wittgenstein, *Philosophical Investigations*, para 53.

taken together as a system, actually conduce to human flourishing (or beneficence, advantage, convenience, and so on).[305] In a relatively straightforward case, a company is internally ordered if its rules and operations actually achieve the goals of the company – like, to be a bit old-fashioned about it, maximising profits. A company is disordered, in respect of that function, if its staff spend all day doing online training courses devised by their over-zealous colleagues in human resources. This disorder might issue from a source internal to the institution (the zeal in question might arise from incentives put in place for some other institutional reason) or an external source (supervening regulation from some other institution with its own purpose, like the government).

It is notable, then, that internal order describes institutions in terms of function. Whereas Oakeshott holds that conservatism, in the sense of status quo bias, is appropriate in respect of institutions that have no function beyond themselves or are useful for many projects, a conservatism that is interested in order, and not merely the status quo, will include within its scope all institutions that are part of the constitution or form of life. Moreover, this point about function is, I think, how we should understand the autonomy of institutions (see 3.4.1 above). In the Burkean model I am developing, it is the internal order or function of institutions that connects them, and by extension the constitution, to reality. It follows that there is a limit to how much outside interference with function an institution can bear before it is rendered disorderly.

Institutions shape us towards their functions; we come to know what they require of us. This is easiest to see in complex institutions. For example, as Scruton notes, in a family, a father plays a certain role, working to provide for his wife and children, and he comes to learn what it takes to fulfil those duties. The point can be made just as easily, and less sentimentally, with respect to sports and clubs, professional associations, hobbies and so on. Even though in those cases participation may be voluntary, once you are 'in', then you adopt a role that is defined for you – you must keep your arm

[305] That human flourishing should be the goal of political institutions is not, on the conservative view, arbitrary, since those institutions are (a major) part of the artificial society that humans develop in order to better express their full nature – so flourishing is definitionally part of these institutions, and indeed all institutions.

straight when you bowl, you must pay your membership dues, you must keep your accreditations up to date, and so on. The obligations are definitional for the institution. The point further generalises to simple rules and customs. There are no necessary connections between the various obligations that we find ourselves under when we enter "the public world", as Scruton calls it (channelling Wittgenstein). The obligation to, say, be on time for meetings (and the characterisation of someone as habitually punctual or late) is independent of the obligation to touch your card on the sensor at the train station (and the characterisation of someone as a 'fare evader'). But each rule does suggest a characterisation – a role you are expected to play – with the implication that to do these things and be the sort of person who does them is validly prescribed. (As we will see, it is for this reason that being formed by rules that really are beneficial is intrinsically valuable for beings like us.)

Institutions guide us and form us. They *operate*. And this means they are extended in time. It is for this reason that they must rely on historical experience, not only to generate loyalty to their rules, but for the working of their rules. The epistemic claim here is that rules are, or should be, based on reflection on historical experience rather than abstract speculation, because they work by reference to this knowledge. In the case of a simple institution, like a language-game, it is only repeat practice that makes the connection between signifier and referent, which is entirely contingent, non-arbitrary: that is, 'red' only picks out red things because that is precisely its function, confirmed by use, and understood within the context of the English language. In the case of a complex institution, this is even more important, for how else might a usurpation, as Hume has it, become authoritative, other than by a track record of success? The internal ordering of an institution, the matching of means and ends, is known only by its track record, just as virtue, in the Burkean example, is known only by historical experience.

Therefore, where authority is invested in persons, it is important – indeed, necessary, if the system is to work – that those persons are truly capable of prudence, that is, educated in the history and historically-evidenced principles that they are charged with applying. Burke's elitism (see 3.4.2 above) is an extension of his claim about second nature: since individuals are formed in part by the institutions

to which they are exposed, it follows that those most adept with complex institutions are those, in effect, raised to fill the role of authority within them. What this means in practice is itself a question of prudence – it is not obvious that in modern circumstances this claim implies a hereditary ruling class. It is, instead, more like Oakeshott's point about apprenticeship: the only way to really learn a practice is to practise, and the best way to practise is at the foot of someone already excellent at the practice – though, as common sense realism suggests, we should also accept that this includes, or is complemented by, the written history of an institution and society. In any event, however it is achieved, the claim here is that the continued successful operation of an institution – its continued internal ordering – requires the transmission of the information on which it operates – that is, makes decisions and promulgates new rules – from one generation of authorised persons (elites, leaders, or whatever) to the next. The question of prudent leadership within a complex institution is therefore intimately bound up with the question of succession.

Institutions, then, are defined by function, and their internal ordering is a question of whether the practices they prescribe successfully perform that function. This question is answerable by reflection on, and application of, the historical experience of the practice. The mechanisms by which this internal order is achieved and sustained differ across simple and complex institutions, but the form of them is the same.

However, when we generalise the point this far, we start to see how the autonomy of institutions is, and can only ever be, partial. As Wittgenstein says, we learn the games together, not severally. The rules of institutions trade on characterisations that overlap with, and sometimes derive from, other institutions. The family man's virtues are not so dissimilar from those of the hardworking colleague or the solid citizen; the chucker in cricket is not so dissimilar from the rude and tardy person or the thief. Scruton puts it this way: "In the language provided by a culture all ideals and morality may be more finely and more accurately expressed" and so "[e]very arrangement which allows men to value an activity for its own sake will also provide them with a paradigm through which to understand the ends

of life".[306] Institutions provide not only their own meanings, that derive from their internal order, but access to the wider set of meanings contained in the various institutions of society, and, through these various portals, a view of human nature and reality.

4.4.3 External Order

Institutions do not exist in isolation but as part of a system. A coherent system of institutions is a constitution. Joseph de Maistre uses this word to capture two thoughts: that the true constitution of a country is not something that can be written down, and that this is so because it is not possible to separate the complex institutions, including and especially the political institutions, of a country from its other cultural institutions, like its language and customs.[307] Underlying this is the "platitude", as Scruton calls it in one place, that a true proposition is consistent with every other true proposition. For to say that an institution corresponds to reality is also to say that the institution is a proposition about reality. Thus, discussing Wittgenstein, Scruton tells us, "Our common-sense world-view is not simply a jumble of appearances, ordered for administrative convenience. It is a shared and public *theory*, designed to explain and predict the way things appear. We come to conclusions about the world on the basis of experience, and form a picture of reality in accordance with the everyday need for consistency and explanation".[308]

External order describes the conditions under which institutions cohere, such that the historical-experiential world picture of the constitution can held to be reliable. External order is the 'systemness' of the form of life. In practice, this refers to the relationships between institutions and an

[306] Scruton, *Meaning*, 142.
[307] Joseph de Maistre, *Essay on the Generative Principle of Constitutions and Other Human Institutions*, trans. Elisha Greifer with Laurence M. Porter. http://maistre.uni.cx/generative_principle.html.
[308] This quote comes at the end of Scruton's discussions in *Modern Philosophy* of truth (Chapter 9) and the distinction between appearances and reality (Chapter 10). In the first of these two chapters, Scruton outlines the dispute between correspondence and coherence theories of truth, and ends by suggesting, citing Alfred Tarski, that the solution might be to collapse the distinction between them by reframing the question as a dispute about the nature of reality. Scruton's interpretation of Tarski here is like my interpretation of Wittgenstein, and indeed, this idea of order properly understood that we are considering. Scruton earlier calls Wittgenstein a "nominalist", a characterisation I dispute for the reasons given above. The similarity between the two views (Scruton's interpretation of Tarski and my interpretation of Wittgenstein) is reinforced by the quote cited here. Scruton, *Modern Philosophy*, Chaps. 9 and 10 – the quote is at 117-8.

understanding of the internal ordering of institutions by reference to their place within the broader system.

System and establishment

First, then, external order means that institutions relate to one another coherently, such that their purposes and practices generally function together to provide individuals with a reliable picture of reality. The relation between institutions that are ordered in this way is one of confirmation: institutions work together to confirm that reality is as it seems, and in this way, they are parts of a whole that is more than the sum of its parts. Scruton makes this point, channelling Wittgenstein, with the example of language. He writes that while we might be able to come up with some sufficient theory to explain how two sentences are related, our explanation would not capture the "connection of meaning", that is, what each sentence really says. For that, we need to know the language as a system.[309] Picking red flowers is something that can be done and repeated without words, but the command 'pick a red flower' operates at a level of abstraction removed from the practice itself, and at this level, there must be a system. There is a part of the spectrum of light picked out by 'red' and that flowers can indeed appear that colour and that flowers can be 'picked' – all this suggests that the system of the language presents a coherent relation to the world as it really is.

Complex institutions are, or ought to be, ordered in this way too, for they are part of this same system. Again, we get a sense of what this means from Scruton's discussion of autonomous institutions. For Scruton, these complex institutions become "established" as their rights and prerogatives are recognised as beneficial for society taken as a whole. It is only by some such process, he argues, "that the tensions created by the multiplicity of subject institutions… will ultimately be resolved". This process, which Scruton calls "ratification", involves the state (at the top of the constitutional hierarchy) lending its authority to the powers inherent in institutions – "the gathering up of quasi-autonomous powers as subjects". He notes that the state cannot allow for powers "at large" in society

[309] Scruton, *Meaning*, 27.

to become independently authoritative, because then, like "the Mafia", they become rivals to the state. So the state has to have some means by which it can bestow its authority on its subjects when they play certain socially beneficial roles.[310]

For Scruton, when complex institutions are ratified as part of the constitution, they tend to take on two formal characteristics. First, as the notion of authority expands outward from the family, it comes less and less to be vested in concrete persons, and instead is vested in offices. Scruton gives as examples military ranks and political offices. He notes that in these instances, it is often important for the functioning of an institution that authority is not identified with the person who exercises it: if it is "Mr Nixon, or Mr Ford, or Mr Carter" who is ordering the bombing of a city, then this is "monstrous", but such an act might be legitimate if done by the president as part of the function of that office. Secondly, turning to how authority operates, Scruton cites "ceremony" and "myth". Here, Scruton means that institutions become established in part through the stories they tell about themselves, which attract the "allegiance" of individuals. Myths, then, "constitute the great artifact whereby institutions enter the life of the state and absorb the life of the citizen".[311]

To generalise from Scruton, the systemness of institutions entails that their internal ordering becomes formalised. Authority becomes associated with the institution, and not with persons or users, and it comes to be understood in a particular way, its mythical or ceremonial aspect, which is, I think, just to say that the practice it captures comes to be performed in a way that is known to cohere with other institutions. So, for example, courts of law are dressed in various conventions (modes of address, clothes, procedures) for exactly the same reasons that the pronunciation and spelling of words are standardised. Complex institutions merely, because their authority is exercised by persons in a conscious way, make explicit what is implicit in the systemness of all institutions, namely, that they must be used in a formalised, regularised way if they are to make sense within the system.

[310] Scruton, *Meaning*, 152-3.
[311] Scruton, *Meaning*, 154-7.

Yet there is a danger for conservatism here. Call it the danger of *nominalism*.[312] Broadly, nominalism is the idea that universals are not real, and so names, under which we bring together various things that we find alike in some respect, are arbitrary and changeable (even at will). The danger of nominalism is that it challenges the Burkean claim that names are non-arbitrary where they are part of a system that is known by historical experience to correspond to reality. Yet the formalisation of institutions as part of their establishment in the constitution risks suggesting that coherence is more important than correspondence.

Take Scruton's example of military ranks. Authority is vested in rank, and respect for rank is part of playing the military game, which is nested in the bigger game of being a member of the society and state whose interests the military defends. But it does not do any good to, say, follow any particular general just because he or she holds that rank – it makes sense, as a matter of authority, only where the office of 'general' really does pick out, say, 'skilled war fighter'. But if the military in question begins to select officers for promotion based on some other standard, in effect replacing the historical referent class of 'general' with some new referent class, then 'general' no longer refers to reality – it is no longer true that following the orders of the general results, in practice, in victory in battle. The authority of that office is undermined. Moreover, if we change the purpose of the military to match the attributes for which the 'general' referent class is now selected, we have to conclude, based on conservative historical-experiential reasoning, that we are now no longer talking about the same thing as before. The new entity will be using the same names as the old, and those names might continue to work as part of the broader system (at least for a time), but they will not be authoritative and non-arbitrary, and we will not be able to reflect on the past to understand its function.

[312] Richard Weaver famously (in American conservatism) argues that it is nominalism as such that has undermined authority within civilisation. Weaver's analysis, like Strauss's, does not seem at first to admit the possibility of empirical inquiry yielding or establishing truth, but he goes on to describe something like common sense: "In the same way that our cognition passes from a report of particular details to a knowledge of universals, so our sentiments pass from a welter of feeling to an illumined concept of what one ought to feel". In any event, the use to which I will put this problem of nominalism does not depend on Weaver being read this way (or depend on him at all). Richard M. Weaver, *Ideas Have Consequences* (Chicago and London: The University of Chicago Press, 1948), 22.

Thus, internal order places a limit on external order and the process of formalisation and establishment that it entails. While Scruton does not make the point exactly this way, it can be seen in one his examples of establishment. Scruton argues that state institutions that provide welfare services need to be careful not to out-compete or erase autonomous institutions that perform the same functions. For example, "doctors, lawyers, and teachers" are motivated by values that are captured by professional autonomous institutions – "inns of court, medical societies, private school… devoted to the internal purposes of law, medicine, and scholarship". The assumption by the state of some of these functions should not entirely displace these autonomous institutions because to do so would jeopardise the motivating force of the professions. That is, people do not become doctors, lawyers, and teachers to serve the state, but because they want to achieve and provide excellence in medicine, law, and education. So establishment means, in this case, recognising the limits of the state's involvement in the purposes served by the autonomous institutions. The demands of systemness tend to formalise institutions and thus to fix them in coherent relation to one another, but this tendency is self-defeating where it threatens the successful continuation of the practices captured by institutions.

Emergence and intentionality

Because of the danger of nominalism, it is important to understand that institutions come to form a coherent system through a mix of emergent and intentional factors.

External order is emergent to the extent that the coherence of institutions is a matter of their interaction over time. The external order of institutions emerges from how practices aid or thwart one another, and what people do about that. A language is emergent in that the parts of its vocabulary and grammar adapt to one another as the language is used. Languages add, modify, and discard words and rules, and this is based on how useful they are. Moreover, a language's functions are influenced by what its users aim to do, and, in turn, it influences them in what they do. For example, Spanish tends to place less emphasis on agency than does English: if I drop a plate, in Spanish I say (or tend to

say), "*El plato se cayo*," which is literally in English, "the plate itself fell," eliding my role in the plate's fall. Likewise, whereas in English the subjunctive has almost entirely disappeared, Spanish not only has this case but overall a more subtle sense of time and conditionality, captured by 14 different tenses. These are emergent properties of the languages, based on complex interactions between the parts of the language, the people who use it, their circumstances, their beliefs and values, and so on.

Similarly, the complex institutions of society come to form a system in part by competing and cooperating as suits their own purposes (as we saw Burke say in 3.4.2 above). The compromises reached are contingent. There are different possible and reasonable uses of information, different trade-offs in its use, different emphases and so on. Maistre adds that that it is not possible to harmonise the institutions of society completely: "Social harmony, like musical harmony, obeys the law of just proportions in the keyboard of the universe. Tune the fifths rigorously and the octaves will be dissonant, and conversely. Since discord is inevitable, instead of eliminating it, which is impossible, we must moderate it by a general distribution. Thus, in all parts, imperfection is an element of the perfection possible".[313] External order, then, to the extent that it is emergent, is also contentious. This is a necessary consequent of internally-ordered institutions being authoritative within the domains of their practices – and jealous of their authority. Indeed, if they were not so, then the corruption of their correspondence to reality, nominalism, would result. So, we saw that for Burke, privileges secure a bulwark against despotism, or arbitrary rule, and this is because they provide a motivation to defend the internal order of institutions against overreaching external order claims.

However, external order is not only an emergent phenomenon; it is also intentional, because the continued correspondence of institutions with reality requires, as in that example of the military above, that institutions act upon, and guard, their own knowledge. Here, then, order properly understood comes apart from the Hayekian idea of spontaneous order. The institutional perspective expects that authorities will be reflective in meeting new contingencies, taking seriously what

[313] Maistre, *Essay*, para XLI.

institutions know, through historical experience, about their own means and ends, *and* their place in the system. External order is not whatever follows from the operation of institutions or the decisions of authorities, but it is a consideration in that operation and those decisions, and as such, something intentionally aimed at. For it is only by the appeal to historical experience that an institution's claim to beneficence can be grounded in truth, and it is only if institutions are grounded in this way that the system that they form will be coherent.

For example, equity emerged from competition between the Court of Chancery and the royal courts. But it was the Crown that declared that equity would prevail when the orders of the different jurisdictions clashed. Neither the practical knowledge encoded in the common law courts, which tied the English notion of justice to past practice, nor the practical knowledge in the Court of Chancery, which sought to express the even older notion of equity as found in Roman law, was beyond the ken of the Crown, which was competent to rule on the conflict by right of its overarching authority to determine the greater good for the English people and realm.

But what about simple institutions? There is no self-conscious authority for the word 'red' – it has authority only in the sense that it can relied upon to pick out 'redness' as understood within a system in which that relation is recognised by other institutions, which make it intelligible. Moreover, that 'red' is the preferred English-language signifier for 'redness' – there are other words, but they pick out shades of red, like 'maroon' or 'vermilion' – is an emergent phenomenon; the word was not 'founded' or 'legislated', and it does not continue to be used because people are deferent to some institution higher up the hierarchy which backs its use. Now if, as Burke, Maistre, and Scruton all claim in various ways, the complex institutions of a society are networked with the simple institutions, and if authorities make use of simple institutions like words and rules of grammar in making their decisions, then does not the intentional aspect of external order, and order as whole, take place within the spontaneous, emergent world of these simple institutions? Is it not the case that the positive power of the state, or any authority, is ultimately limited by the culture that surrounds it, which supplies the terms and meanings and facts and interests toward which that power is directed? In short, is it not

the case that "politics is downstream from culture"?[314]

To a certain extent, this is correct, but the relationship also runs in the other direction. Decisions by authorities can promote or suppress words and customs and other simple institutions – state-backed taboos can practically eliminate words, the dictionary shapes the way words are used, and new fashions are often boosted by authoritative decision-makers adopting them, though the adoption may not be motivated by this possibility of influencing others. As such, it really is possible to change the culture by positive action, like legislation, even though it might not be possible to dictate every outcome. Culture tends to grow around authoritative institutions, because individuals, through the process of formation, depend on institutional knowledge to know what to do. We are all, then, under the influence of specific authorities, and not just situated within some amorphous and impersonal culture.[315]

Hierarchy and particularity

The intentionality of external order gives rise to *hierarchy*. Each institution is an authority unto itself, whether about something simple, like the rule that connects signifier to referent, or about something complex, like what justice requires in a particular set of circumstances. But they are not necessarily equal – as we saw in the case of common law and equity.

There is among institutions a hierarchy of competence. Authorities are subordinate to other authorities that are in a position to understand, and rule upon, how their domains interact with the domains of other authorities. At the peak of this hierarchy is an authority that has established its competence in ruling on the constitutional arrangements most beneficial for the system and people

[314] This expression is generally attributed to Andrew Breitbart, an American journalist and somewhat notorious figure within the American conservative movement. Breitbart wanted American conservatives to understand that they would need to change the culture before they could get the kinds of policy change that they wanted.
[315] This provides a contrast between Burkean conservatism and, say, the liberal communitarianism of Michael Sandel or Will Kymlicka, because the Burkean does not hold that these authorities can be, or ought to be, chosen, at least where they really are reliable, which is to say, history-oriented and prudent. I discuss this further in Chapters 5 and 6.

taken together – broadly speaking, this is the meaning of the *common good*.[316] This peak is the sovereign, however conceived: in a constitutional monarchy, while the sovereign is nominally the monarch, in practice it is Parliament, or more specifically Cabinet, that rules; in a constitutional republic, the people are nominally sovereign, but in practice that power is exercised by the executive and governed, ultimately, by the constitutional court. But wherever this power lies, it is charged with prudentially resolving conflicts between the institutions of the constitutional order so as to provide the coherent artificial society that people need for flourishing.

However, this is not 'decisionism'. Under order properly understood, even the ultimate decision-maker in a constitution is constrained by reality, and as such, their authority is not purely positive. That is, even the highest decision-maker in a hierarchy is bound by what is known by the rest of the institutional order and overrides that knowledge only at the risk of undermining its own authority.

The various trade-offs between institutions within a constitution can also be understood as information about a society's values – how it understands what is to its benefit. It is for this reason that Scruton describes the public world created by the constitutional order as the world of meaning: it is how reality has been interpreted for beneficial use. We can know, for example, why equity came to prevail over the common law – not just the facts of the matter but the value claims involved, which are opened up to us by historical common sense. By itself, of course, this information may not settle whatever question has prompted reflection upon it, but it can and should contribute to our reasoning about that question.

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[316] Recall here Burke's definition of an expedient constitution as "good for the community and good for every individual in it". See 3.4, above.
An interesting aside here, which I do not have space to pursue, is that one of the critics of Burke cited in the previous chapter, Adrian Vermeule, is critical on the grounds that "Burkean traditionalism" does not sufficiently empower decision-makers in government, especially on constitutional courts or in regulators within the executive branch, to rule "strongly" for the common good. One of my aims here has been to show that the Burkean system is not merely a kind of handbrake traditionalism, but a robust definition of how the common good can be known, and how prudential decision-making works in practice.
Vermeule provides an overview of how he would use the concept of the common good here: Adrian Vermeule, "Beyond Originalism", *The Atlantic*, 31 March 2020.
https://www.theatlantic.com/ideas/archive/2020/03/common-good-constitutionalism/609037/

As such, even in a society with a strong historical-experiential connection to reality, values and judgements about how to interpret that reality for the common good have an element of *particularity*, such that the information contained within the constitutional order is not always, or often, of use to someone whose formation took place outside that system. Hence Maistre's quip that "there is no such thing as *man*", only "Frenchmen, Italians, Russians, and so on".[317]

That different societies may disagree about how to interpret reality, and about what benefit consists in, is generally held to be a problem for realist arguments. For example, the "fact of pluralism" is the basis of Rawlsian liberalism: in modern conditions, "the inevitable outcome of free human reason" is a proliferation of ways of life, or a "diversity of reasonable comprehensive religious, philosophical, and moral doctrines".[318] But it is not only liberals like Rawls who hold value pluralism to be determinative of reasonable politics. As we saw in Chapter 1, Gray, who may have coined the term 'post-liberal', concludes his discussion of conservatism with the claim that it is impossible to "roll back" from pluralism to "authority and tradition".[319] For this reason, perhaps, in his defence of conservatism, Kekes embraces value pluralism and claims that it is only conservatism that can properly account for it as a mid-point between absolutism (which is "embarrassed" by the fact of pluralism) and relativism (which cannot account for the "common sense" recognition that all humans have certain basic needs).[320]

Yet I do not find this to clash with Burkean realism. For Burke, what is real is invariant human nature and thus what is good and bad for beings like us. The test, then, for a constitution is whether it reliably tracks this reality. Thus, we can say, ends are universal, means are particular. This is not really value pluralism because there is still a standard, invariant human nature, that is prior to the different institutions and trade-offs that give us our values. Indeed, if we wish to ground our values, and our

[317] Joseph de Maistre, *Considerations on France*, trans. Richard Lebrun (Cambridge: Cambridge University Press, 1974/1994) 53.
[318] Rawls, *Political Liberalism*, 36.
[319] See 3.3.1, note 162.
[320] Kekes, *Case*, 31-6.

various projects, in reason, then on the argument I am developing, grounding it in reality is the only way to do it. I will come back to this in the next chapter when I discuss the logical dependency of order and conservatism.

As an epistemic claim, the idea here is that the claim of order properly understood to be in contact with reality through its various practices is not falsifiable by the emergence of new practices or new contingencies. As Wittgenstein says, if we got a different result to "12X12" then we would suspect our error was in the calculation *this time*, not in the system of mathematics itself. Similarly, new practices and new ideas are likely to be erroneous in proportion to how established the institution they purport to contradict is. This is the fundamental difference between order properly understood as a realist system, and all sceptical and idealist alternatives. To end the chapter, I will discuss this briefly.

4.4.4 Reality

Order properly understood combines a correspondence claim for institutions' practices and rules with a coherence claim about the working out over time of the relationships between institutions. Both limbs are founded on an epistemology of confirmation: historical experience, as prescription, as accessed through reflection, and as applied by prudence, serves to confirm both the function of institutions and their coherence with one another. Moreover, through the process of formation, we are furnished with propositions and practices that have been confirmed to correspond to reality, and which we further confirm in our lives. Order, then, starts with what is known – with what is familiar.

On this model, the purpose of reflection upon history is to seek out the limits that reality places on what we might wish to do. Or, more positively, it is to understand what we can do, so we can focus our attention wisely. The purpose of reflection is *not* to test old verities against new contingencies; it is to test new contingencies against old verities. Prudence requires rules.

As such, order properly understood is the opposite of the kind of falsificationist traditionalism of Alasdair MacIntyre. It is ironic, in fact, that MacIntyre writes Burke out of his defence of the rationality of tradition, claiming that Burke was "an agent of positive harm" for declaring that traditions, like

nature, are "wisdom without reflection" and thereby leaving no place for "reflection, rational theorising as a work of and within tradition".[321] I think I have done enough to show why MacIntyre has misunderstood Burke on this narrow point – the passage MacIntyre cites also includes the line, which I quoted earlier, "People will not look forward to posterity, who never look backward to their ancestors". But more broadly, there is an important theoretical dispute here about what reflection entails.

For MacIntyre, whose work is an example of Nyiri's strong traditionalism, rationality is only possible within a tradition that supplies substantive ends to reason about. Tradition supplies a set of contingent claims that are treated as given, and which the people of the tradition work to elaborate over time as they encounter new circumstances and other traditions. A conception of truth is integral to a rational tradition, and to practical reason within it. So all traditions begin with given authorities – practices, texts, institutions and so on that are accepted by members as given, though they are entirely contingent. Inevitably, these authorities are put to the question by new circumstances, by the discovery of inconsistencies internal to them, or by encountering some other tradition with competing claims. A tradition must find within itself the resources to respond to these new questions by the "reformulation of beliefs, the revaluation of authorities, the reinterpretation of texts, the emergence of new forms of the authority, and the production of new texts".[322]

The test for the rationality of a tradition is whether it can, in practice, assimilate new contingencies, or whether their appearance reveals or creates incoherence within the tradition. When it cannot coherently understand or explain new contingencies, a tradition enters an "epistemological crisis", which means "by its own standards of progress it ceases to make progress". To meet the crisis, a tradition needs a "radically new and conceptually enriched scheme", an "explanation" of what had made the tradition "sterile or incoherent or both", and some way of connecting the new scheme and the explanation to the older "shared beliefs in terms of which the tradition of enquiry had been

[321] MacIntyre, *WJWR*, 353.
[322] MacIntyre, *WJWR*, 355.

defined up to this point". It is quite clear here that MacIntyre is envisioning a revolution – the new scheme "will in no way be derivable from [the] earlier positions", it will be an "imaginative conceptual innovation". If this new understanding cannot be reconciled with the earlier understanding, then in effect, the tradition has been falsified and the rational action is to accept that the new understanding better tracks reality. MacIntyre gives the example of a tradition in crisis encountering another "alien" tradition and finding that the beliefs of the others can resolve its crisis: "What the explanation afforded from within the alien tradition will have disclosed is a lack of correspondence between the dominant beliefs of their own tradition and the reality disclosed by the most successful explanation". Though MacIntyre says that this may not be "acknowledged" in fact – he says, for example, that some medieval scientists persisted with their beliefs despite the discoveries of Galileo – the disclosed lack of correspondence "deprives" the earlier tradition "of warrant for its claims to truth".[323]

While there is a similarity here between order properly understood and MacIntyre's rational tradition – both connect correspondence and coherence – there is a fundamental difference. For the Burkean model, the original authority of pre-existing artificial society rests on the common-sense apprehension of invariant human nature. MacIntyre has a more Humean view: the authority of the given is presumptive and liable to falsification. For our model, given authorities are amenable to analysis in terms of the claims they make about human nature or beings like us. For MacIntyre, given authorities are to be analysed in terms of new contingencies: "It is in respect of their adequacy or inadequacy in their responses to epistemological crises that traditions are vindicated or fail to be vindicated".[324]

Underlying this difference is an anthropological one. For Burke, humans have two natures that artificial society aims to reconcile. MacIntyre has a more radical view of contingency and human freedom (he is more like Oakeshott in this). Every human action, practice, and institution might have been otherwise. MacIntyre's falsificationist epistemology comes from his view that the possibility of

[323] MacIntyre, *WJWR*, 361-5.
[324] MacIntyre, *WJWR*, 366.

epistemological crisis is ever-present.[325] There are no propositions that we could ever hold that might not someday be contradicted.

So he must also be a presentist, like Oakeshott. For if the status quo were not the fullest expression of the tradition, then the tradition would be in crisis and facing a revolution. Moreover, the dialectical model of tradition is, in the end, constructivistic in the way that we have been discussing. The tradition advances by way of a kind of internal scepticism: MacIntyre seeks to distinguish rational tradition from Hegelian dialectic by denying that any tradition could ever culminate in Absolute Knowledge. From within a tradition, he says, "No-one at any stage can ever rule out the future possibility of their present beliefs and judgements being shown to be inadequate in a variety of ways". (Note how radical this is – does he mean *any belief* or *any judgement*?) MacIntyre sets up a process of development that is not restrained by any permanent standards other than coherence. Traditions are closed hermeneutic circles up until the point of their collapse. There is nothing, then, in MacIntyre's answer to the charge of relativism that suggests any limits on how society might develop – to say that wherever a tradition might go it must be self-consistent over time is not to hold any universal view about the good society. This is obvious really, since MacIntyre's project is entirely about vindicating the self-contained nature of traditions. But what is worth saying is that the MacIntyrean combination of radical contingency, the permanent possibility of epistemological crisis and need for revolution, and the sealed hermeneutic of rational tradition is simply a recapitulation of all modern political philosophy, the basic model of which is that individuals and institutions form a dynamic process of mutual adaptation. There is nothing really anti-modern about MacIntyre's *philosophy* even as the content of it, his preferred tradition, Thomism, is likely to strike most people as something of a throwback. By contrast, Burkean substantive conservatism is a defence of the reality of historical experience in full.

MacIntyre takes rational tradition to be a coherent system that might fail to assimilate new data. He does not deny reality, but he does deny that it can be known. But the Burkean model has more points

[325] MacIntyre, *WJWR*, 364: "Every tradition, whether it recognises the fact or not, confronts the possibility that at some future time it will fall into a state of epistemological crisis…"

of contact with reality. Because it holds that practices give order its correspondence with reality, and that coherence is a second-order property, the Burkean model cannot be falsified in the way that MacIntyre suggests. Autonomous institutions might fail, but the system need not. Hence the different attitudes they have towards revolution – MacIntyre seeing it as all but inevitable, Burke seeing it as largely impossible and violently destructive.

Finally, I note that the same answer applies to the various objections we saw to the Burkean version of this epistemic claim in the previous chapter. The concerns of Strauss, Oakeshott, and Vermeule are all answered by rooting the Burkean model in common sense realism. In effect, the confirmation claim at the heart of this model says that many questions about the world have been asked and answered. Differences in human interests between now and the past are only apparent; illusions thrown up by changes in institutional structures without due attention to the substance they reveal. The objections all turn on an exaggeration of the dissimilarity of contingencies. But really, common sense says, there is nothing new under the sun.

As I will discuss in the next chapter, this dispute suggests something important about conservatism: it is opposed to *republicanism*, defined as systems that are based on a progressive, constructivist, dialectical push-and-pull between individuals and institutions. Into this mix, conservatism adds reality (as understood by historical experience) – those stable features of individuals and their natural and artificial environments that cannot, and should not, be deconstructed and rebuilt by human will, and which therefore place irremovable limits on the political process itself. The assertion that known reality necessarily intrudes on politics means that the dialectical model does not get off the ground, for, at the level of reality, there can be no 'rupture', and hence no synthesis. From the common-sense view of history, any synthesis that follows from a purported rupture is arbitrary because it is founded on a mistake.

4.5 Conclusion

In this chapter, I have sought to defend the plausibility of the Burkean conservative epistemic claim,

namely, that under certain conditions institutions contain and do not merely coordinate information, and so for this reason they are contingent but non-arbitrary authorities. To make this case, I read into the key Burkean concepts identified in the previous chapter a Wittgensteinian defence of common sense realism, predicated on the indubitability of certain propositions contained within a coherent form of life. I argued that on this view, propositional knowledge is rooted in practical knowledge that is captured by institutions, which knowledge is both coherently organised and correspondent with reality. I held that in this way, Wittgenstein successfully breaks out of the subjectivist perspective – succeeding where Moore fails – and gives us reason to hold that other minds exist. From there, we can extend the same claim into the past: historical common sense simply says that the pre-existence of the institutions that form us as individuals confirm that other minds like ours have existed, and this claim opens up the past to reflection. Putting the Burkean and Wittgensteinian claims together, I then gave a detailed sketch of what I called *order properly understood*, which specifies the conditions under which institutions and the constitution they form can be held to contain historically confirmed information.

Order properly understood has already begun to fill in some of the details of substantive conservatism. It explains the meaning of second nature, formation, institutional autonomy, authority, hierarchy, and reflection, among other things. What remains, however, is to say why any or all of this is desirable. In the next chapter, I will argue that order is a basic good: because of the kind of being that we are, we have an inherent interest in being formed by institutions that track reality in the way I have proposed here; and, moreover, an artificial society based on institutions that are history-oriented, that is, that adopt a common sense view of reality, is valuable for us as we pursue our own projects as individuals and as societies.

5 Order as the Reason to be Conservative

In this chapter, I argue that order properly understood is normative, and that the substance of this claim is the desirability of the information that is available to individuals and groups when institutions are properly ordered. Further, I propose that political conservatism should be understood as the commitment to taking the actions required to realise order properly understood, and that this is so because conservatism in all domains is just this commitment applied to whatever institutions are in question. Conservatism *means* this commitment to institutionalising practical knowledge and putting it in order. Thus, conservatism is, on this reckoning, a substantive endeavour, directed towards the realisation of a specific end or value, namely the production, accessibility, and conservation of that valuable information contained within order properly understood.

This chapter undertakes two tasks. First, I argue that *order is a basic good*: it is both intrinsically valuable for us, given the kind of being we are, and instrumentally valuable, in that it is useful for the various projects we might undertake individually and together. This is so because of because our invariant and dual nature means that we are shaped by social institutions, and as such we have an interest in the information that is imparted to us being accurate to reality. This is fulfilled by the historical-experiential knowledge contained in order properly understood, *established practical knowledge*, which furnishes information about desirable ends and appropriate means for the lives of beings like us. Secondly, I argue that *order is conservative*, by which I mean that the two ideas, order and conservatism, are best described together: order as the mechanism by which practical knowledge is conserved, conservatism as the recognition of order as a basic good. Thus, order is the distinctively conservative value and universal reason to be conservative for which we have been searching.

The contrast here with procedural conservatism, then, is that substantive conservatism rests on a claim about what is good for beings like us, order, and this claim is not devised reactively and merely deployed against proposed changes or innovations. What makes this a substantive position is not (or not only) the concrete particulars of historical experience themselves – they are as valuable as they

are accurate to reality – but rather the universal desirability of that kind of information for beings like us. Substantive conservatism is a general prescription, applicable across times and places, and therefore properly political philosophical in the sense we have been discussing.

5.1 Order is Intrinsically Valuable

The first limb of my claim that order is a basic good is that it is *intrinsically valuable* for beings like us because of our dual nature. We are capable of learning not only from our own experiences, but also from the experiences of others, through the institutionalisation of practical knowledge.

So, for instance, we saw earlier the observation that humans are not precocial and therefore mature over a long period under the influence of first our families and then later within other institutions. To this, Arnold Gehlen adds that not only are human non-precocial, but we are uniquely lacking in instincts proper, for as we mature and become capable of reflection, it is this capability that we rely upon to survive. In this sense, what is unique and morally significant about human beings is our "world-openness": while on one hand, it is a survival disadvantage for humans to be nature's generalists, born without adaptations fitted to specific environments, on the other hand, this is an advantage in that it creates the possibility for humans to adapt to any environment through the accumulation of information within a culture or civilisation. In lieu of instincts that are suited only to certain circumstances, humans adapt to circumstances through action: "Man… is a being who must form attitudes… [and] become a being of discipline: self-discipline, training, self-correction in order to achieve a certain state of being and maintain it". Second nature, then, is "man's restructured nature, within which he can survive".[326]

It follows from this that we have an interest in our institutions accurately tracking reality. That is, our institutions ought to shape us with, and inform us of, what is known about the kind of being that we are and the world in which we live. Our artificial society should therefore have an historical orientation

[326] Arnold Gehlen, *Man, his nature and place in the world* (New York: Columbia University Press 1940/1988), Sections 3-5.

of the Burkean kind because, per common sense, the best source of this information is historical experience.

Thus, the establishment of order is intrinsically valuable for beings like us, for in its absence, we do not, and cannot, develop our full potential, not only as individuals, but as societies, and even, in Burke's terminology, as a species.[327] The proper development of second nature is realised by certain conditions, as specified by the Burkean system. These include: the principle of inheritance, the autonomy of institutions, the hierarchical external ordering of institutions within the constitution, the reflective rather than constructive operation of institutions, and the process of individual formation within an authoritative constitution. These conditions, which *are* order, secure and distribute what is known about reality based on common sense by establishing and maintaining the practical connection between institutions and reality. Under these conditions, we are entitled to hold as true certain propositions about the kind of beings that we are, and this enables the kind of reflection that is necessary for prudently meeting and taking advantage of new contingencies as they arise.

All this implies something about institutions that will be important for both limbs of my claim that order is a basic good. Per the definition of order properly understood elaborated in the previous chapter, institutions function as propositions about reality that have been developed because it is useful for us to know these things. So, the understanding of institutions here is broadly *functionalist*. If institutions are understood as rules that match means and ends, then taken on their own terms, it can only be good if those prescriptions really work – 'good' could not really mean anything else here. All else equal, it is good when a word successfully picks out something in the world, good when a club

[327] Compare here, then, my claim with Oakeshott's description of civil association in *On Human Conduct*. For Oakeshott, civil association is a formal condition that obtains between free agents (*cives*), and so to secure that freedom, it is not itself purposive or descriptive of any good at all. Moreover, Oakeshott holds that his position is the true Aristotelian position, claiming that for Aristotle, *eudaimonia* is only formal and not substantive, though it logically depends on the fulfilment of certain substantive conditions, like health and wealth. My Burkean response to this is that the substantive conditions necessary for flourishing are, in fact, what flourishing means – because it cannot really mean anything else – and that these conditions include access to historical wisdom via orderly institutions. See Michael Oakeshott, "On the Civil Condition", in *On Human Conduct* (Oxford: Oxford University Press, 1975/1993), 111-122.

provides services to its members, good when books are arranged neatly on shelves, and good when toilets work properly. So, the intrinsic value claim is that because we flourish only by creating institutions (and a network of institutions), then included in our understanding of what is good for us is that our institutions really work. And, consequently, it is also the case that our institutions are most instrumentally valuable when they assist us in our projects.

An interesting question that I flag for later discussion is "functional for whom?". In brief, we can say that since orderly institutions are ostensibly authoritative in their prescriptions, they are only functional if all who are subject to these prescriptions benefit from them to at least some extent. Beneficence and authority are linked. However, judgements about function are not (at least, not generally) made in isolation. The internal ordering of an institution, the success of its rules, might not, all things considered, be good in fact. We might appreciate the cleverness of an organised crime outfit, but nonetheless understand that it is, all else equal, disorderly, if it interferes with so much else in society. Pablo Escobar's cartel was in one sense very successful, but in the more important sense, was obviously bad for his society. So, it is at this constitutional level that considerations of justice take place – and to signpost an argument I will make later (in Chapter 6), it follows from the functionalist view of institutions implicit in order properly understood that justice is sufficientarian not egalitarian, that is, concerned that everyone benefits (or can benefit) to a certain extent, not that all benefit in the same way or to the same extent. But for now, the key point is that the goodness of any specific orderly institution is intelligible, in full, only within the context of the constitution as a whole. For this reason, we all have an interest in order properly understood generally, and not merely in putting specific institutions in order, and, moreover, included in the test of beneficence inherent in order is some concern for, and capacity for delivering, value to all who are subject to order.

5.1.1 Established Practical Knowledge

The substance of the claim that order is intrinsically valuable is the kind of information that order properly understood makes available to us, and which we would not otherwise have.

This information is knowledge about what to do and how to do it, what to expect others to do, and how to cooperate and avoid conflict – this is what Burkean virtue, seen under the aspect of historical common sense, really means. I call this knowledge *established practical knowledge*. It is *established* in the Scrutonian sense discussed in the previous chapter: it is found in institutions that are ratified as part of the coherent form of life of a society, which confirms that the prescribed practices of the institution refer to reality in a way that coheres with society's broader understanding, including the value implications of the hierarchy and trade-offs inherent in external order. It is *practical knowledge* in that it is the accumulated experience of repeated practice and captures lessons about how to flourish within the artificial society constituted by the institutions that provide this knowledge and shape the individual through the process of formation – what to do, how to do it, and why.

The underlying epistemological claim here is that practical knowledge becomes propositional knowledge through institutionalisation; this is the meaning of 'contingent but non-arbitrary', and how it is distinct from merely theoretical or speculative knowledge claims. It is important to note, then, that established practical knowledge is not *mere experience*. It is, instead, experience that has been curated, institutionalised, and established as part of the coherent whole of the form of life of society.

Established practical knowledge can be further analysed into two kinds of information.

First, established practical knowledge provides *direction* about ends that are known to be worth pursuing and the means by which they might be pursued. As noted in the previous chapter, the function of institutions is to turn historical experience into rules. This is not only factual information, or even only information how to do something, but also the interpretation given to facts and practices by their institutionalisation and establishment within the constitution of artificial society. From the earliest days of our formation as individuals, we are exposed to, and have access to, a wide range of information about what people have already done, and we can learn by those examples what good lives are and how they can be lived – indeed, on the Burkean view, it is not clear that there is any other way to learn what 'good' here might mean, other than through one's own direct experiences, which

are necessarily less extensive than those which constitute the wisdom of the species. Directive information, therefore, is that which 'fills in' our idea of what is good by connecting us to the history of beings like us.

On this view, institutions are not, and cannot be, value-neutral or logically independent of an idea of human nature. All institutions, even those of general utility like tools, rules, and government (Oakeshott's examples) convey information about ends – about the kinds of projects for which people have needed these kinds of institutions, the circumstances of those projects, their viability, and so on.[328] In fact, institutionalisation is the process by which the ends of practices are identified as desirable and transformed into instructions for general use. The only reason to institutionalise – to make a tool, to formalise a rule, to adopt a government – is if an end has been identified as desirable. That is, institutions are institutions *because* they communicate information about ends.

But by itself, this risks triviality – and, indeed, risks walking into Honderich's point that "*Anything*, after all, can become familiar. Confusion, boredom and torture can." (See 1.3 above.) Here we must ask, again, the Wittgensteinian counter-question: if 'good' does not refer to 'that which is known by experience to promote the flourishing of beings like us', then what else could it mean? Moreover, the full meaning of 'good' is not contained in any one institution, but in the constitutional system, linked by external order. The tradition of torture may well correspond to reality – instruments of torture on display in museums certainly look like they would hurt – but it does not cohere with what we know of the flourishing of beings like us. It is a matter of common sense that beings who are being tortured are not flourishing, and thus that this is something we should avoid doing, all else equal. Moreover, the function of institutionalising what we know about torture is to fill in our world picture and make it useful for us. So the directive information within institutions must be understood within the context provided by its relationship with other institutions, directions, and ends, and this is a question of

[328] It is sometimes overlooked that Oakeshott's examples of institutions that do not lend themselves to improvement and therefore warrant the conservative (status quo conserving) disposition are, or involve, inducted abstractions. Tools and rules are useful for many projects not because of what they concretely are, but for their ability to transfer information across contexts.

prudence and reflection.

Secondly, established practical knowledge provides *coordination* in that it allows individuals to anticipate what others in their society will do and value, enabling cooperation and reducing conflict between them as they make their own decisions in life. Whereas with directive information the claim is that ends are only really knowable (and evaluable) based on historical experience, with coordinative information, allowing that ends might admit many different effective means, and that different ends might be desirable at different times, the claim is that historical means are generally efficient.

On this point, the Oakeshottian line is mostly apt. Individuals tend to share an interest in institutions that allow them to coordinate their plans with one another, whether to realise collectively that which cannot be realised alone or to reduce conflict between the various projects that individuals and groups of individuals might pursue. As such, the value of coordinative information will often be captured by preventing or slowing down change to the rules in question. Yet by itself, I claim, the Oakeshottian argument does not capture the role that historical orientation plays in successful coordination.[329]

For any decision-maker, historical experience provides a reason to believe that an institutional rule will be followed, because the period of time represented by its history has permitted the dissemination of the rule to the population in question. If I am a member of a club, the longevity of the club and the tenure of its members is relevant to my expectation about their behaviour in respect of the rules of the club – this is why initiates to clubs generally have restricted rights and often have to be vouched for and even escorted by existing members, by which means the rules and expectations of the club are transmitted to them. This expectation is implicit in the rule itself, which announces that *this is how we do things here*, and so you are expected to do the same. In the terms of the earlier discussion of institutional autonomy, coordinative information is contained in the role that an

[329] As Brennan and Hamlin point out, the coordinative aspect of status quo bias can be achieved by any rule – it does not have to be an historical rule – because all that matters is that some players in the coordination game commit to playing in a certain way and that the other players know of this commitment. Brennan and Hamlin, "Practical Conservatism", 341

institution bids you to play, whether that is the role of citizen or member or something as simple as 'person habituated to walking on the correct side of the street'. In effect, the rules of an institution become common sense for members, just as historical-experiential latent wisdom becomes the reason (and prejudice) of individuals through the process of formation.

By contrast, when some authority external to an institution imposes a new rule upon it, there is a lag between promulgation and widespread adherence, even where the new rule serves an obvious need and even where the authority in question is competent to make rules across domains. Consider the various rules promulgated during the Covid-19 pandemic. Widespread usage of facemasks and mobile phone applications for checking in wherever we go are novelties in Australia, and so, leaving aside any debates about their efficacy or appropriateness or about the competency of the authorities in question, there is a period in which these new rules must be communicated to people. Governments, which have come to see their primary function as the creation and enforcement of new rules, now expend vast amounts on public affairs for just this reason. The phenomenon is also just as easily recognised in the somewhat more dynamic and emergent world of simple institutions. Changes in word use, especially when imposed by authority acting beyond its ken or encouraged by a subset of users, often reduce the efficiency of a language, as users begin to talk past one another and increasingly need to seek clarification from one another. Or consider again a simple coordinative custom like which side of the street one is supposed to walk: the introduction into a population of individuals who adhere to a different custom – say, here we traditionally keep left, but they traditionally keep right – disrupts efficient coordination among people out walking.

Coordinative information, then, allows the efficient pursuit of the ends built into the constitution of artificial society. Thus, direction and coordination are closely linked, because those ends that are directed by history-oriented institutions are most easily pursued and most easily coordinated. In this way, coordination is often a kind of direction, just as direction improves coordination by narrowing the range of ends to be coordinated. For example, the law in Melbourne that stipulates public ovals are to be made available to cricket clubs for 6 months a year and football clubs the other 6 months is

ostensibly about reducing conflict between the sports and between clubs, but because the rule does not contemplate other uses for those public lands, it also makes a direction about the value of organised sport generally and those two sports in particular. The judgement implied by this law is inseparable from the range of local laws and customs that bear upon it – laws about land use and development, customs about leisure time, and, importantly, judgements about historical patterns of behaviour. Similarly, the wisdom of a rule like this is amenable to historical reflection.

Direction and coordination are also related in the further sense that the viability and sustainability of a direction is sensitive to how well it coordinates with other purposes people may have. Friction is an impediment to the achievement of the direction, and too much might reduce its net value once effort and risk are taken into consideration. An example here might be the decline in church attendance seen across Christian countries over the last century, which is a phenomenon with many causes, but which was arguably accelerated by governments lifting restrictions on Sunday trading. A legal change ostensibly aimed at better coordinating the different activities of people in society was also both the disestablishment of a particular prescribed end, which had enjoyed a privilege in the law, and the endorsement of other, rival ends as at least equally valuable. The point being, of course, just that the coordination of ends is also a form of direction, because it involves an evaluation of ends and an allocation of priorities and privileges.

Finally, just as external order is subordinate to internal order – because too much emphasis on coherence will undermine the correspondence claim on which institutional authority rests – so too is coordination subordinate to the information about ends captured by orderly institutions. The efficient coordination of ends that are known, based on information contained within the constitution or system as a whole, to be bad is not orderly, as those ends will, or at least may, disrupt the pursuit of other, better ends. Conversely, the pursuit of ends that are known to be beneficial may permissibly clash with other, worse ends. Though, of course, because this is a question about institutions – a political question – it is a matter of prudence, too.

This, then, is the main point. Established practical knowledge is the *subject matter* of prudence, and, moreover, of all virtue – these terms refer to what we know, through the constitution, about means and ends. The proper exercise of our reason, as beings shaped by society, requires that we draw upon historical experience as the best of what our society knows, and this goes to the ends that we pursue, the means by which we pursue them, and how we interact with other people pursing the same or different ends by the same or different means.

5.1.2 The Conservative View of the Self

Underlying the claim that order and the information it provides is intrinsically valuable is a view of the self that is particular to conservatism. This view of the self is, broadly, an interpretation of the Aristotelian 'social animal'. But this interpretation is distinct within political philosophy, departing in some significant ways from both liberal and republican views.

The conservative view of the self is non-liberal in that, as we have seen, the development of our second nature takes places within society – and, specifically, within certain institutions, chief among which is the family. The entire conservative emphasis on the process of formation is predicated on the idea that our reason is not ours alone, that we pick up prejudices and are prepared for freedom by the imparting of social knowledge, and that as such, it is a mistake to treat humans as though autonomy were our basic feature. Thus Scruton, in his early work, tells us the "principal enemy of conservatism [is] the philosophy of liberalism, with all its attendant trappings of individual autonomy and the natural rights of man".[330]

For Scruton, the defining characteristic of liberalism, common across the various statements of the position descended from Kant via figures like Rawls and Dworkin, is a conception of the autonomous individual who is free to determine his or her own goods and pursue them.[331] The error in this, Scruton

[330] Scruton *Meaning*, 5. In a later work, he more gently describes conservatism as being at first a "hesitation' within liberalism that grew into an alternative position. Scruton, *Conservatism: An Invitation*, 33.
[331] Though it is worth noting that Rawls did not include the family in his idea of the basic structure – those institutions to which his theory of justice applies. I discuss the question of the scope of justice (or its *reach* as I

thinks, is that it overemphasises the "first person" view of life and underplays the "third person" perspective, objective knowledge of society as encoded in its institutions. Scruton suggests that to emphasise the latter view at the expense of the former is also a mistake; utilitarianism, for example, seeks to understand individuals only from a third-person perspective, and so fails to comprehend individuals' own reasons for acting as they do. Conservatism, then, is an attempt to appreciate both perspectives by directing attention to the institutions within which the first-person perspective is both nurtured and overcome, so that individuals develop the capacity for reason and choice but also the appreciation of the situation they share with others. In this way, "Conservatives resemble functionalist anthropologists, in their concern for the long-term effects of social customs and political institutions".[332]

Institutions provide the context for individuality. Without some stable, shared, objective backdrop, liberalism's autonomy is an empty notion. Institutions form a bridge from the abstract concerns of the Kantian individual to the real-world concerns of individuals as they are, and as members of a particular society living in a particular set of circumstances. The heart of the conservative vision of society, therefore, is the recognition and defence of the institutions that provide values for individuals. Again, the primary institution is the family, but, Scruton claims, the point of institutional attachment and situation is generalisable: "People are born into a web of attachments; they are nurtured and protected by forces the operation of which they could neither consent to nor intend. Their very existence is burdened with a debt of love and gratitude, and it is responding to that burden that they begin to recognise the power of 'ought'".[333] Or, as William Harbour puts the same point, "Conservatives hold that tradition provides a valuable framework for the functioning of human reason… [t]hey argue that this is especially true for moral and political reasoning because well-

will refer to it) in Chapter 6, and touch on Rawls again there. With thanks to Dan Halliday for making this connection.

[332] Scruton, *Meaning*, 186.

[333] Scruton, *Meaning*, p. 192. Again, I flag here that this idealisation of the family does not address concerns about the reach of justice, and the possibility of abuse within the family leading to (What we might call) malformation. In the next chapter, I discuss the limits of institutional autonomy and order's relationship with justice.

accepted traditions provide enough common ground where different individuals may understand and communicate with each other in a sympathetic manner that, despite their differences, the peace of society may be preserved".[334]

There is in all this a similarity with what is generally called the *communitarian* view of the self. Like the conservative view, this idea is typically contrasted with the liberal view of the self as an autonomous chooser of its own ends, and thus ultimately characterised by its capacity for choosing.[335] For example, Charles Taylor famously critiques "primacy-of-rights doctrine"– broadly, the liberal claim that individual rights prevail over common understandings of the good ostensibly because of the self's capacity for choosing – as implying an atomistic view of the individual as "self-sufficient alone". Whereas "theories of the social nature of man" hold that "living in society is a necessary condition of the development of rationality… or of becoming a moral agent in the full sense of the term" and thus also "affirm that it is good that such capacities be developed", the atomistic view "exalts choice as a human capacity" but misunderstands "choice as a given rather than as a potential which has to be developed".[336]

Similarly, Michael Sandel argues that the priority of the right over the good is based on a flawed "philosophical anthropology" that describes the self as a possessor of ends, not as a being for whom certain ends are constitutive. Sandel envisions instead a being that comes to its ends through something like the process of formation: it is a being that finds itself encumbered by ends, and it exercises its freedom by reflecting upon its constitutive ends and deciding how to pursue them – a process of self-discovery.[337] Sandel goes on, in a subsequent work, to argue for civic republicanism, characterised by participation in local, voluntary institutions, as an alternative to "procedural

[334] Harbour, *Foundations*, 117.
[335] The liberal-communitarian debate, as it became known, was prompted by the critiques of Rawls's *A theory of justice* offered by Taylor, Sandel, MacIntyre (see previous chapter) and others. The dispute about the nature of the self that I sketch here is just one part of that debate.
[336] Charles Taylor, "Atomism", in *Philosophical Papers 2* (Cambridge: Cambridge University Press, 1985), 189-197
[337] Michael Sandel, "Justice and the Good", in *Liberalism and the Limits of Justice*, 2nd edition (Cambridge: Cambridge University Press, 1998), 170.

liberalism", with a view to explaining how individual freedom can be reconciled with the reality of the self's formation in society through collective processes of goal setting and decision making.[338]

In fact, Scruton's discussion of the first- and third-person perspectives is parallel Michael Sandel's discussion of Kant and Rawls: both identify the risk in Kantianism (and by extension in Rawls) that the individual is either an empty abstraction divorced from real world concerns or is, alternatively, completely lost within those concerns and unable to evaluate them at all. And both conclude that for individual autonomy to make sense at all, it must be understood as the contemplation by the individual of ends that are part of him or her, and not merely objects to be picked up and put down.

But the conservative view of the self differs from the communitarian view in an important way. For the communitarians, what is valuable to humans is sociality as such, and this gives rise to a republican political philosophy that emphasises participation in politics and the duties of citizenship as fundamental for human flourishing. By contrast, conservatism is more interested in the formation of the individual in childhood than in an ongoing political process of making and remaking the self and society. As Bruce Frohnen puts it, "conservative virtue is distinct from republican virtue in that it emphasises social rather than political or military action": what is important for flourishing is the conservative sense of being part of a continuing, historical order, not one's participation in or standing within society – for a society needs, as Burke says, people of many different kinds and stations, and this emerges from inculturation in given social forms, not from republican governance. Frohnen argues that conservatism therefore departs from Aristotle on this point, because for Aristotle, flourishing means the cultivation of the intellect or reason, and so the best life is one of contemplation and participation in communal decision making, but for the conservative, recognising that this life is not universally available, the concern is with cultivating "prudence and tradition" across society rather than with raising everyone to the life of the philosopher.[339]

[338] I rely here on William A. Galston, "Review", *Ethics* 107, no. 3 (April 1997), 509-512.
[339] Bruce Frohnen, *Virtue and the Promise of Conservatism: The Legacy of Burke and Tocqueville* (Lawrence, KS: University of Kansas Press, 1993) 25-6.

Put another way, the conservative will prefer to emphasise another important Aristotelian theme, which is that virtue is a disposition towards doing the right thing, which disposition is formed by repeat actions – prejudice rendering virtue as habit, as Burke says. Being raised into certain practices that reveal the true nature of virtue is antecedent to any discussion of the proper political forms, and therefore constrains what those forms may be and the decisions that political institutions may take. The republican view of human sociality is that through social life we develop our faculties, and we can thereby reason together to mutual benefit. But the conservative view, while accepting this to a point, will also emphasise the *content* of the process of formation – it is not just that a good society will raise reasonable people, but that it will impart to them true information about the world, including the meaning of virtue. The mature person is not simply endowed with certain faculties, but is a carrier, as it were, of the information on which society runs, which is encoded in that person by authoritative institutions through the process of formation. It is in this way that individuals play a linking role across generations, as they become examples to their own children.

The meaning of human sociality, then, is not, as often supposed, a question of bringing into alignment the wills of individuals and the general will of society. This republican dynamic misses the most important point, which is that the only such reconciliation that is truly beneficial for individuals and societies alike is that which is brought about by the recognition of reality. In effect, constructivist republicanism construes second nature as mere susceptibility to the ideas of others and fails to take seriously the desirability of being influenced by what is true and good, and not merely what is popular or agreed-upon. The goal of society is flourishing in fact; not merely coming to *modus vivendi* or consensus about the satisfaction of various preferences. In the terms we have been developing, neither the individual nor society is able to substitute its will for reality, which is captured by the established practical knowledge available under the conditions of order properly understood. The veracity of that information trumps the political process. Conservatism, with its claim that order is a basic good, is therefore non-republican, in that what is valuable about society is not merely that its participatory quality brings out, or engenders, something important about humans, but also that,

under the conditions of order properly understood, it imparts knowledge of reality, more knowledge than the individual could obtain on his or her own.[340]

In sum, the distinction can perhaps be put like this: for the communitarian, flourishing requires participation in a free and creative process of social construction, but for the conservative, this process will supervene on, and disrupt, the value of society as an order that provides the background against which individuals and families live good lives.[341] Order is reflective, not constructive. As we will see in the next section, this has some implications for how conservatives view politics and, in particular, democracy.

5.2 Order is Instrumentally Valuable

So far, I have said that because we are beings of a specific kind then what is good for us can only be that which properly apprehends our nature, and that this knowledge is available to us, and imparted to us, as established practical knowledge captured in properly ordered institutions. But once we have this kind of knowledge, then it becomes something not merely that we receive, but something that we can *use*. The point of the process of formation, and the nature of the authority on which it draws, is not to erase the individual and his or her freedom, but to shape it and give it meaning, nor to pervert or distort our understanding of ourselves and what is to our benefit, but to capture what is known about that and prepare us accordingly. In short: *order is the sine qua non of the good life*. Whatever

[340] As an aside, the failure to recognise this distinction between the conservative view of sociality and the republican view underlies an ongoing dispute within political conservatism. For example, Deneen (*c.f.* notes 12 and 58 above) argues that the liberal self is part of a self-defeating political system in which the state atomises the individual by dissolving all particularistic attachments but at the same time also abolishes the motivation for caring about individual liberty altogether. Yet in the alternative, Deneen proposes only a reassertion of the Tocquevillian view of America as a place of local ties, political activism, and voluntaristic association – in short, the same republicanism as Sandel. That this has struck many as an underwhelming conclusion is perhaps because it leaves unaddressed the question of why such "intentional communities" would tolerate one another – in short, Deneen does not propose a sufficiently robust alternative anthropology that captures what else, besides participation, the human self gains from society. Deneen, *WLF*, 191-8

[341] Scruton calls this making a home in the world. David McPherson has recently argued that this should be considered conservatism's fundamental commitment (as a kind of status quo bias), though he claims there are no straightforward political implications of this. For McPherson, Sandel and GA Cohen are both "existential conservatives" who are not political conservatives. He also suggests that Scruton and Sandel share similar views of the 'encumbered self' but notes that only Sandel of the two sees this as grounds for "egalitarian distributive policies". David McPherson, "Existential conservatism", *Philosophy* 94 (2019), 383-407.

we might do as individuals and societies, we should do in the context of order.

From this it follows that order is instrumentally valuable in two ways: first, at the individual level, we can and should use the information provided by order in the selection and pursuit of our own projects; and secondly, at the institutional level, this information makes it possible to identify and reform institutions that are not, in fact, conducing to our flourishing, and indeed, this is the only standard by which that judgement can be prudently made.

5.2.1 Individuals

Individuals benefit from order not only because a flourishing life for humans takes place within society, but also because an orderly society is useful for the exercise of those faculties by which we each might separate ourselves from our fellows. Our capacities for reason, judgement, and will, and the virtues associated with their use, take place against the background provided by the institutions into which we are born and raised.

This is a point often made by conservatives, and it has recurred throughout the foregoing discussion: in Scruton's understanding of the public world as providing the third-person context for the first-person point of view, in Gehlen's claim that the human being is "unfinished" without society, and in the earlier discussion of reflection as distinguishing conservatism from scepticism and idealism. Kekes' statement of this idea is apposite: "As [individuals] participate in [traditions], they of course exercise their autonomy. They make choices and judgements; their wills are engaged; they learn from the past and plan for the future. But they do so in the frameworks of various traditions which authoritatively provide them with the relevant choices, with the matters that are left to their judgements, and with the standards that within a tradition determine what choices and judgements are good or bad, reasonable or unreasonable".[342]

Under the Burkean model, the purpose of institutionalising practical knowledge is to separate it from

[342] Kekes, *Case*, 39.

the individual, to make of experience an object for common consideration, just as a tool transfers information between users and across projects. It is this process which makes reflection and prudence possible – for if we are to be prudent, we need rules to apply to new contingencies, and access to the information that allows us to discern how best to make that application. Therefore, to be formed by established practical knowledge is also to know how to use it, and, more deeply, to be the sort of person for whom it is historical common sense that that information is reliable because you are the descendent of persons who were formed in the same way. Autonomy is therefore enabled by established practical knowledge, for it provides the information on which choice itself turns, and, indeed, order itself is created, in part, in service of this aspect of our nature.

Going further, the understanding of oneself as part of a tradition, according to TS Eliot, not only necessary for making choices, but also for doing anything original. Eliot argues that art is only intelligible within the tradition of that art, and therefore the concept of novelty depends on access to tradition. For the only way that something can be art is to be new, and to be new it must be comparable with, and distinct from, the old. Art conforms to tradition, even as the tradition expands to include what is new in art.[343] Human institutions are like this: they furnish information which can then be prudently applied to new circumstances in the world, and each successful application demonstrates the soundness of the rule and expands its capacity for application. Note here though that is not merely an *ex post facto* rationalisation of successful novelties – that is, it is not simply that we have to wait and see whether art succeeds or fails according to the tradition – because it is the tradition itself that motivates and inspires the art in the first place. So, if creativity is to be something more than mindless spontaneity – if it is to be will and not mere appetite – then it must make use of the world as it finds it.[344]

The conservative view of individuality is, then, the opposite of, say, John Stuart Mill. Whereas for Mill

[343] TS Eliot, "Tradition and the Individual Talent", in *The Sacred Wood* (Methuen, 1934), 47-59.
[344] Sandel, it should be noted, makes this point too, though, I think, he does not seem interested in whether our attachments are to reality or merely to consensus.

it is individual spontaneity that leads to the development of custom, and so custom, *qua* custom, cannot permissibly restrict spontaneity, for Eliot and for conservatism, individuality is more than spontaneous, instead being the use of customs by which one has been formed and which are amenable to further reflection. We might say that Mill, in his discussion of experiments of living, undervalues the conditions within which individual self-expression could ever really be experimental: not only does the tracking of causation require stable conditions, but the results of an experiment need to be measured and evaluated, and these tests, as Wittgenstein shows, cannot merely reside in the head of the experimenter.[345]

All these conditions, then, must be institutional – set apart from the minds of individuals, and demonstrably connected to the world that individuals really live in. For the individual as an autonomous being, access to these conditions is the function of order.

5.2.2 Society

That institutions are supposed to be useful to individuals is just another way of saying, with Burke, that "convention" is the "law" of "civil society". That is, the test for institutions is whether they correspond to what is known by historical experience to be beneficial for beings like us. But what is to be done about institutions that are not beneficial in this way? Here, I want to suggest that part of the claim that order is a basic good is that order provides a basis on which to identify and remedy non-beneficial institutions – both by restoring external order (bringing them into coherence with the constitution or world picture as a whole), which is known as *reform*, and by improving internal order (the correspondence of an institution's prescriptions with reality), which I will call *conservatisation*, that is, making them more conservative.

Reform

For Burke, reform is the name for change that improves while at the same time conserving what is

[345] Here I mean Wittgenstein's private language argument (*c.f.* notes 258, 283 above).

known to be good. Burke says in the *Reflections*: "A state without the means of some change is without the means of its conservation".[346] Established practical knowledge is that means. This is why Burke goes on, in that same passage from the *Reflections*, to say of the English that following the Restoration of the monarchy in 1660 and the subsequent constitutional changes known as the Glorious Revolution of 1688, "in both cases they regenerated the deficient part of the constitution through the parts which were not impaired".[347] And, indeed, this is a restatement of something Burke had written much earlier (in 1780) in respect of parliamentary reform: "To enable us to correct the Constitution, the whole Constitution must be viewed together; and it must be compared with the actual state of the people, and the circumstances of the time".[348] The Burkean idea of reform, then, is a kind of self-repair, in which society draws upon experience to solve its problems, rather than seeking some exogenous solution.[349]

Recall that our understanding of our nature and what is good and bad for us is provided to us not by any one institution – not even the family, which is first site of our formation – but by the entire world picture encoded in the constitution. As such, that information and those standards can be applied from within the system to its particular institutions, and so it is reflection upon established practical knowledge that provides the basis for reform. That an institution is not aligned with reality is revealed by its inconsistency with our world picture and, more specifically, the understanding that world picture includes of what is good for beings like us. Therefore, to remedy the inconsistency means to draw upon that same standard. So reform is not merely change arrived at by following certain principles, but a specific kind of change. Reform restores order: it puts an institution into correspondence with

[346] This is oft-cited and much abused line – it is sometimes used to cajole political conservatives into supporting policies they seem dogmatically to oppose. Burke, *Reflections*, p. 19.
[347] Burke, *Reflections*, 19.
[348] Edmund Burke, "A Letter to the Chairman of the Buckinghamshire Meeting", in *Works Vol VI*, 291-8.
[349] To reiterate a point that I made in relation to MacIntyre, for the Burkean conservative, no clean break with history is conceivable; an entire tradition cannot be falsified. Historical experience remains real even where it has been harmfully misapplied.

reality and coherence with the world picture provided by the constitution of which it is part.[350]

This is a difficult business because, again, "human nature is intricate". So, as Burke says, reform requires "a vigorous mind, steady persevering attention, various powers of comparison and combination, and the resources of an understanding fruitful in expedients", and the ability to walk a path between "obstinacy" in respect of change and "levity" in respect of established value.[351] Moreover, it is difficult because the information that is deployed in reform is drawn from, or emerges from, the interaction of the autonomous institutions that provide contact points with reality. Thus reform is constrained by the need to maintain the autonomy of the institutions being reformed – as noted in 4.4.2 and 4.4.3, for order properly understood, internal order is prior to external order, in that a misplaced emphasis on coherence will undermine the correspondence of institutions with reality.

As such, reform is slow and deliberate. In one place, Burke writes, "[A] temperate reform is permanent, because it has a principle of growth. Whenever we improve, it is right to leave room for a further improvement".[352] In the *Reflections* he tells us that reform should be "slow, and in some cases almost imperceptible", and he gives, as we saw in the discussion of historic orientation in the previous chapter, two principles by which the passage of time assists in the development of beneficial institutions: that by orienting ourselves to the past, we can access "many minds"; and by setting and forgetting principles, we permit our institutions to grow towards beneficence. The first of these is reflection enabled by historical common sense, the second is prudence that draws upon reflection to identify and apply principles. But while these principles may, as Oakeshott says, generally conduce to the conservation of the status quo, in Burke they are part of a larger, normative argument for order,

[350] In this sense, reform is an idea closely related to justice, conceived, as I argue in the next chapter, as a concern for desert: in restoring order, reform will entail a consideration of who benefits from an institution. But, as I will try to show, just deserts are only one part of a beneficial constitution.
[351] Burke, *Reflections*, 143.
[352] Edmund Burke, "Speech on Presenting to the House of Commons a Plan for the Better Security of the Independence of Parliament, and the Economical Reformation of the Civil and Other Establishments", in *Works Vol. II*, 281.

and specifically for historical orientation and the principle of inheritance. For Burke, beneficial institutions are reflective and prudent institutions. This is what Burke means when he says that "the idea of inheritance furnishes a sure principle of conservation, and a sure principle of transmission; without at all excluding a principle of improvement". As such, improvement follows from institutions adopting the principles of historical orientation ("look[ing] backward to their ancestors"). This is "a constitutional policy, working after the pattern of nature" that amounts to "adhering in this manner and on those principles to our forefathers".[353]

Put another way, Burkean virtue holds that virtue is difficult but not impossible to discern. As such, it is not only that, as Oakeshott has it, by slowing down we increase the chances of making a genuine improvement, but that because the pursuit of genuine improvement is difficult, it is necessarily slow, and therefore calls not only for delay of the sort that both Burke and Oakeshott suggest, but for institutions to be of a certain kind and to operate in a certain way.

Conservatisation

Therefore, by extension from Burke, I want to claim that the substantive conservative position goes beyond reform and includes a principle of *conservatisation*: the making of a more conservative society by establishing institutions on the epistemic claim that historical experience is real and that inquiry into the information it contains is the surest means of improving society and the lives of individuals. Conservatisation goes to the internal order – the correspondence claim – of institutions.

I have in mind here something formally akin to the idea of *liberalisation* that we find in Hayek. For Hayek, it is possible to reform particular institutions by drawing upon what is known about society through other institutions, and so, over time, to remake society.[354] And in this, it is possible that Hayek was invoking what Burke calls the "method of nature" in the constitution: that society, by keeping what is good and discarding what is bad, "moves on through the varied tenor of perpetual decay, fall,

[353] Burke, *Reflections*, 29-30.
[354] FA Hayek, "The errors of constructivism" in *New Studies in Philosophy, Politics, Economics and the History of Ideas* (London: Routledge and Kegan Paul, 1978), 3-22.

renovation, and progression".[355] But Hayek's idea of reform is to progressively apply his definition of liberty, which rests on the claim that information about what is good is subjective and dispersed among individuals, and therefore holds that liberalisation benefits individuals by returning to them prerogatives claimed, unreasonably, by epistemically deficient authorities.

By contrast, conservatisation means applying the principles of historical orientation and inheritance. That is, reflecting on what is known, prudent application of that knowledge, motivated by a desire to conserve what is good and add to it, thereby following the example of nature and placing the constitution in "a just correspondence and symmetry with the order of the world", and ensuring that "in what we improve we are never wholly new; in what we retain we are never wholly obsolete".[356] The goal is to make institutions worthy of the epistemic authority that they claim, such that they can, in fact, be relied upon to conduce to the benefit of beings like us. That authority comes from practices that track reality and, in the case of complex institutions, applied by those trained in (formed by) the knowledge (that is, historical experience) of the institution and its place within the constitution. So conservatisation means, in part, the establishment of authority and hierarchy based on competence. It also means, following the method of nature, that institutions should be multi-generational. They should aim to connect posterity to ancestry, that is, to operate in such a way as to stand the test of time, by not over-extending or discrediting their authority, avoiding the problem of nominalism, by drawing and using on precedent and analogy (and not being consumed by the exaggerated dissimilarity of contingencies), and by applying clear rules of succession. To be conservative is to seek the establishment of authority – but this means true authority, not authority for its own sake.[357]

An obvious objection here (though one I feel I have already answered in various ways) is that conservatisation contradicts the conservative epistemic claim that hewing to the familiar means rejecting any sort of plan for improvement. But the principles Burke identifies as central to mimicking

[355] Burke, *Reflections*, 29.
[356] Burke, *Reflections*, 29.
[357] As a program, conservatisation would, in effect, amount to identifying propositional claims within the constitution that do not refer by practice to reality and reforming, replacing, or abolishing them.

the method of nature exemplify the idea of contingent but non-arbitrary knowledge: how he has formulated them is contingent, but experience confirms their correspondence with reality. If you were starting out from nothing, of course, you would have nothing to reflect upon and no way of knowing these principles, but this is not really a problem. First, you would have no way of knowing any other principles, like Hayek's, either. Secondly, you would soon discover that it is possible to pool collective experiences in institutions for the general benefit, and from there it is a straightforward path to recognising the parallel in their operation to that of nature. There is therefore nothing internal to substantive conservatism that precludes conservatisation – that is, the realisation of its own conception of order, motivated by its basic goodness.

We saw earlier (in 3.4.2) that reasoning like this leads Burke to defend the mixed regime – a government that includes a monarchy, an aristocratic and religious 'trustee' class, and a parliament. Again, we might think that the details of the regime that Burke defends are unsuited to our times. Certainly, they do not seem to exist except as vestiges – to see this, just imagine what would happen in the United Kingdom or Australia if the monarchy sought to exercise any of its nominal power. Nonetheless, the idea of a mixed regime, or something like it, is not as unusual as it may seem. Aspects of it can be seen in the common use of counter-majoritarian features of written constitutions (like, for example, the equal representation of states within a federation, or the power of a constitutional court to rule on legislation) and in the longer terms for members of upper houses, like senators in the United States or Australia. What is different, usually, is that while these forms permit the delay and defeat of legislation, no-one really pretends that the holders of these offices are the keepers of some historical-experiential social knowledge – except for, perhaps, the most senior members of the judiciary. But that the democratic will should be filtered through parts of the constitution that are less amenable to change remains standard practice even now.[358] Democracy is, on this conception, an extension of the

[358] For example, Burke seems to have held that the United States constitution (of 1787) is an adaptation of the English constitution. Ofir Haivry argues that Burke saw this, the second constitution post-independence, as a restoration of English principles after the failure of the earlier Articles of Confederation. For Haivry, the

right to petition government, identified by Blackstone as early as 1753, rather than the mode of government itself.[359]

All these details are to be worked out by reference to expedience. For our purposes, what is important is that in the discussion of the *kinds* of institutions we should have, order is a value that is at stake. Conservatisation, in practice, will mean finding expedient ways for historical experience to influence society and politics. Put this way, it surely does not seem odd to say that there are trade-offs between order (and specifically certain institutions that are established in the constitution) and other ends of political and social life.

However, more than this, conservatism claims that because the content of expedience is itself to be determined by reference to established practical knowledge, these debates and trade-offs ought to take place within order, which is prior to them. That is, on the conservative view, order is prior to democracy just as it is prior to individual autonomy, and for the same reason. For the conservative, this reason is simply that individual and institutional actions are bound by reality, and, more specifically, what we know of reality, and this means that the real referents of values that might be thought of as competing with order, like liberty or equality, are in fact given by established practical knowledge. Therefore, more positively, because humans might want to pursue reforms like liberalisation or equalisation, or other projects (including, simply, the administration of justice or other functions of government), through collective means, order is useful for those purposes, just as it is useful for individual projects, though therefore also necessarily prior to those purposes and projects.

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importance of this is that it is a mistake to see the constitution as binding Americans to a Lockean view of natural rights. Ofir Haivry, "American restoration: Edmund Burke and the American Constitution", *American Affairs* (online edition, 17 February 2020): https://americanaffairsjournal.org/2020/02/american-restoration-edmund-burke-and-the-american-constitution/

[359] See also the discussion in Scruton, *Meaning*, 45-8, in which Scruton argues that for conservatives, democracy takes place within the constitution, and this refutes the idea that the constitution is entirely founded on consent. More boldly, in the First Edition, he writes: "No conservative, then, is likely to think that democracy is an essential axiom of his politics, even though he is likely to value an independent thing which is often confused with it, which is the individual's ability to participate in government, and at the same time to avoid the encroachments of arbitrary, unconstituted power. This ability, exemplified in the entire course of English history, pre-existed democracy, and lay, indeed, from the beginning, implicit in the common law of our Saxon ancestors." Roger Scruton, *The Meaning of Conservatism* First Edition (Harmondsworth UK: Penguin, 1980), 54.

In effect, because order is a basic good, it places a limit on the human will, but this is also to say that the human will functions best when it is aware of, and bound by, reality. I will come back to this at the end of the chapter.

5.3 Recognising Order and Disorder

In arguing that order is a basic good, I have placed a lot of weight on order being a recognisable state of affairs. It must be, or else we would not be able to say that order is intrinsically valuable, nor that people can make use of the information it provides. As Burke tells us, the test for institutions is whether they are, on careful inspection of the facts, really conducing to the benefit of people: "Old establishments are tried by their effects. If the people are happy, united, wealthy, and powerful, we presume the rest".[360] But Burke also holds that it is easier to identify "palpable" defects in society than it is to know what to do about them; and with this we might also add, with Kekes, that because there are many ways to live good lives but only a few basic necessities that follow from our nature, our priority ought to be avoiding evil, rather than seeking good: "Curbing evil is a means to pursuing the good and has priority over it".[361] Be that as it may, I want to argue that order is positively identifiable and not merely identifiable by its absence.

5.3.1 Four Signs of Order

There are certain recognisable *signs of order* that not only serve as diagnostic tools for the health of the institutions of a society, but also as aspirations that any good society, aiming at good lives for its members, will try to exhibit. Put another way, the signs of order can be thought of as different, but related, tests for whether the claim that such and such a state of affairs is in order. Common sense

[360] Burke, *Reflections*, 147.

[361] John Kekes, *The Illusions of Egalitarianism* (Ithaca: Cornell University Press, 2003), 209. However, Kekes holds this view because he believes that all values are "conditional", that as such there is no value that is most basic, and so society is justified only in limiting practices that are inconsistent with the limited necessities of human life. He calls this view "pluralism". I will discuss this in some detail in the next section, for I believe it to be confused. Nonetheless, in this statement, Kekes speaks for much of the conservative literature, and it is, I think, a clear echo of Burke.

suggests that if we see these signs, then we are in the presence of order.

The first sign of order is *continuity*. All else being equal, when people are in a good situation, they aim to keep it going. Oakeshott captures this sentiment with his "present enjoyment" – but he errs by implying that continuity is the only aim of conservatism. Continuity is a sign of order because it follows from people using the directive and coordinative information of their institutions, which suggests the reliability of that knowledge and the order by which it is accessible. In a simple institution, continuity is just its consistent use – there are words that have survived, sometimes with little change, in our language for hundreds of years, suggesting they reliably pick out some feature of reality that people have a need or desire to engage with.[362] Among more complex institutions, continuity in rule-making processes, rules, offices, roles, and lines of succession all suggest that they possess knowledge of their ends and appropriate means.

But continuity is not by itself sufficient to signal order. An institution might be continuous but of diminishing benefit to those it serves, perhaps because it has been overtaken by events or discoveries or by changes in connected institutions. It is possible for an institution to lose contact with reality if it remains static. Moreover, continuity poses the problem of nominalism – we must ask "What here is continuous?" because if it is only the name or only the office, then the claim that an institution provides a confirmed contact point with reality is dubious. Continuous practice and continuous form might be signs of order, but what matters for order itself is continuous success.

Secondly, *growth* is a sign of order. The prudent application of established practical knowledge assimilates new contingencies as they arise. This is an idea that we have seen in both Oakeshott and MacIntyre too, but without the appropriate emphasis on the realness of the knowledge being applied. Both retain the sceptical fear that the new will entirely contradict the old. Yet growth is not a defence against change, but a rising to take new opportunities, to thrive in new environments, and to positively

[362] Though in this example, it might further our impression that defects and evils are more easily recognised than improvements and goods if we note that among our most durable words are our popular swear words. I enter no judgement as to whether this is significant or merely amusing.

shape the future towards known goods. A simple example: when a family grows by adding a child, this is a positive act that leaves behind one situation and seeks out another. To say that the child is "intimated" in the status quo or that the child is an elaboration of the existing family seems to elide that this is a new life that has been created, and not out of fear, but out of love and hope. Similarly, an economy that is in order, in which businesses successfully generate supply that matches demand (an example of internal order) and in which new capital is created and circulated throughout the economy (an example of external order) will grow, and this growth is not merely continuous with the status quo ante, because it involves the creation of new and improved institutions.

But growth is also not sufficient as a description of order, because growth can be malignant. We do not cheer, for example, the growth of addiction, or crime, or mental illness, since these phenomena cut across so much else of what we know to be good for beings like us. Similarly, the pursuit of growth for its own sake can supervene upon order. This is particularly the case where the source of the growth is exogenous to order. For example, one way for a country to grow its population is immigration, but this is different from providing an environment within which families tend to have more children. Or, perhaps less controversially, there is a difference between taking steroids to stimulate muscle growth and straining your body just past its limit; the former disrupts the organism because the stimulant is thrust upon it, the latter encourages the body to get stronger by directing its native resources to growth.

Thirdly, *preparation*: actions like saving for the future, making plans, committing to longer-term payoffs, and putting down roots. To prepare means to rely on the stability of your world picture, to be confident that you know something about how the world really is such that you can anticipate how it will be. Again, the example of having a child is apposite, and along with it, the buying of a house, the pursuit of a career, and saving for retirement. In policy terms, a society that understands the good of order will aim to see preparation in government and in society, so it will be, for example, wary of monetary inflation devaluing savings and disincentivising saving, will pay careful attention to home ownership rates, business formation rates, and birth rates (among other things), and be strongly

committed to both policing crime and defending its territory. (One might begin to see here how defining order as a basic good can illuminate some otherwise rote-sounding parts of political conservative ideology.)

Again, however, preparation is not by itself sufficient for identifying order, because preparation might only be a reaction to a sense of impending, or rising, disorder. Building a bomb shelter does not suggest stability and certainty, but its opposite. While even that might be seen as an attempt to 'save what we can', this is not the same as 'conserving that which is true and good', which is what order aims to do, in the ideal case.

Finally, *restoration*: to restore is to hold onto the image of what was, of the known and understood, and to use that image to bring something back into order. Whether one is patching a hole in a favourite garment or restoring a line of succession, the instinct is the same: what is left of order provides the basis for improvement. Restoration is an affirmation of an earlier state of affairs, and successful restoration is therefore some sort of confirmation that what was earlier claimed about reality still holds. And because restoration takes place in time, it is also a kind of preparation – it is as much a claim about what we will need or want in the future as it is a claim about the past – and therefore also a desire for continuity and growth.

Yet restoration can be desperate; it can speak to a lack of prudence if it means that something that was rightly discarded (because in fact it did not have a history of success) is restored. Restoration can be dogmatic, rather than based on a reasonable world picture provided by interlinked institutions that are several points of contact with reality. The characteristic mistake in such cases is the failure to recognise that restoration must be forward-looking and confident about the fittingness of the restored object with the view of the future projected by the world picture taken as a whole. Otherwise, restoration lapses into nominalism: the new thing is the same as the old thing only in name and does not perform the same function. Trivially, you might think here of a remake of a successful movie or television show. Or 'Coke Classic'. More seriously, you might ponder such constructions as 'New

Roman Empire' or even, perhaps, question whether the constitution that Burke was defending, which took shape after the 1688 Glorious Revolution, was really the same as England's ancient constitution, given the diminished status of the monarchy it brought about.

Each sign of order, then, leaves room for some doubt, but they function together, in various combinations, as different tests for the presence of order. However, they are not, I think, one single compound test – it is possible that some or all may be present together and in varying intensities, and so the test of order is ultimately a matter of prudential judgement.

5.3.2 Disorder Among and Within Institutions

Not only is order good, but disorder is bad. Just as we flourish by access to established practical knowledge, so we also suffer by its absence. Indeed, conservatives have generally been more explicit about disorder than order, perhaps because of conservatism's roots in Burke's response to the French Revolution, and because, as Kekes argues, the good is more multifarious than evil. Thus, for example, Burke describes the revolution as bringing: "Laws overturned; tribunals subverted; industry without vigour; commerce expiring; the revenue unpaid, yet the people impoverished; a church pillaged, and a state not relieved; civil and military anarchy made the constitution of the kingdom…".[363] Likewise, Matthew Arnold, writing in the mid-19th Century, holds that modernity threatens to undermine all existing sources of authority in society. And James Fitzjames Stephen argues that the liberalism of that time, by ignoring the necessary situation of the individual in society, and thus his or her interest in the actions of others, misses the purpose of authority, which is to enable the achievement of recognised goods.[364]

Here, I want to briefly incorporate these concerns into the theory I am developing by providing a breakdown of what constitutes disorder and how it is experienced by the individual. Importantly, for

[363] Burke, *Reflections*, 29-34.
[364] I follow Muller in pairing Arnold and Stephen – Muller includes excerpts from both in his anthology. Muller, *Conservatism*, 167-209.

substantive conservatism, disorder is a specific kind of harm or deprivation. Institutions can be judged bad simply *because they are disorderly*: they stand athwart the flourishing of humans, understood as beings who need an orderly constitution. As such, they are to be condemned by substantive conservatism's own logic; the judgement requires no outside information.

Disorder is characterised by arbitrariness: in place of an orderly constitution with confirmed links to reality, under the conditions of disorder, institutions do not contain reliable information and so their directive and coordinative prescriptions do not conduce to flourishing. At the system level, arbitrariness can be seen in two distinct but logically compatible forms of disorder: tyranny and anarchy.

Tyranny can be understood as obtaining when the desirability of external order and coherence trumps institutions' internal orderings. It is will supervening on reality. Rather than historical experience demonstrating that a rule corresponds to reality, tyranny is an abuse of power that purports to substitute a mere assertion for what we really know. This is the worry that animates George Orwell in his novel *Nineteen Eighty-Four*, in which a totalitarian regime imposes a new language to restrict the thought of the public by limiting the number and content of the words. It is a language designed to take place entirely within the ruling ideology – a closed hermeneutic with no necessary connection to the world as it exists outside human minds. Burke, recall, has a similar view of words as compounds of experiences, and so Ian Harris observes that for Burke, "[t]o interfere forcibly with someone's experientially-based expectations would be to break their mental association between experience and idea or words: and so the idea or the word would become meaningless and cease to influence action".[365] The same fear that our propositional knowledge can become divorced from experience is also what underlies Oakeshott's rejection of rationalism, the replacement of established practice by techniques devised with some mechanistic process in mind.[366] Or, as Scruton puts it, tyranny is "at war

[365] Ian Harris, "Edmund Burke", in *The Stanford Encyclopedia of Philosophy* (Summer 2020 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/archives/sum2020/entries/burke/.
[366] Oakeshott, "Rationalism in politics".

with the very people it [sets] out to govern".[367] For substantive conservatism, tyranny is a form of totalitarianism in which institutional autonomy is crushed, nominalist fallacies proliferate and are sustained by force, and thus individuals are progressively separated from knowledge of reality.

Anarchy, by comparison, obtains when institutions press their internal claims too far, leading to a loss of external order and coherence. Under anarchy, the beneficial constitution breaks down as competition between institutions swamps coherence. While some competition between institutions is necessary for coherence to emerge, it is imprudent to push this so far that no hierarchy is possible. To make this more concrete, consider some forces of anarchy we see in society from time to time: monopoly, which destabilises many other institutions in society by excluding competitors and customers from the market; general strikes, which disrupt the rest of society in service of particularistic ends; and at the margin, military coups d'etat, which involve one political institution effectively conquering the others. But anarchic forces can be less grand than all this. People who exempt themselves from custom are generally called 'anti-social', but it is anarchism all the same, notwithstanding its trivial scale. For substantive conservatism, anarchy prevents the establishment of a beneficial constitution, or world picture, and provides only a fragmentary vision of reality and thus impairs humans' ability to flourish.

For the individual, constitutional disorder might be experienced as *oppression*, which also comes in two kinds. External oppression is when constitutional disorder (of either kind) arbitrarily interferes with an institution one is using. It is the opposite of being left in peace. Think here of failures of religious or multicultural toleration, in which practices experienced by individuals as beneficial are disrupted in the name of constitutional coherence. Conversely, internal oppression is when disorder causes a failure to intervene in an institution when a reason to intervene obtains. Here, hierarchy and authority, as Stephen fears, fail to assert themselves because the system in which they are viable is broken. An example here might be the overlooking of domestic abuse and its effects on women and

[367] Scruton, *Meaning*, 13.

children. In an orderly system, internal oppression is addressed by external order, which sets the internal working of institutions into coherence with the knowledge about flourishing that exists across the constitution (see 4.4.3 above), within the limit that such intervention cannot entail changing the function of the institution itself (in the next chapter, I will suggest that abolition is preferable to this kind of nominalism). Likewise, under orderly conditions, external oppression is limited by the system's interest in maintaining its points of contact with reality, that is, its institutions: the beneficence of the system as a whole is derived from its accuracy to reality. Disorder, then, is the failure of the mutually limiting relationship of internal and external order. This robs individuals of the benefits of order, namely, of reliable prescriptions upon which to base their decisions and actions.

This point about oppression is important, because it might be thought that order itself is oppressive, in the sense that it prevents or limits individuals from pursuing their own self-determined ends. But seen properly, the conservative claim is that order supports individuals in their flourishing, and that disorder, because it is antithetical to flourishing, is what is truly oppressive. This is what Burke means when he says that both restraint and liberties are among people's real rights (see 3.3.1). The overarching commitment to flourishing is fulfilled only by an orderly system, and thus oppression, conceived here as an arbitrary and illegitimate prevention of flourishing, consists in those forces of disorder that separate individuals from the wisdom of the species.

More broadly, though, oppression is just one way in which disorder might be experienced by individuals. Oppression is specifically a kind of internal disorder (that is, within an institution) that is caused by some systemic (constitutional) failure. But institutions can fail for different reasons. The use of or involvement in an institution that does not track reality (well or perhaps at all) will cause *frustration* – the purpose of the individual will not be achieved or aided by this institution. Poorly designed tools are like this, as is bad advice. Conversely, an institution might track reality but not (or not yet) be recognised as doing so – it might not be established, or it might have recently been disestablished, we might say. This will cause *alienation*, a feeling of distance between the individual and the constitution of society. Reformers and innovators, in politics and elsewhere, are, I think, likely

to experience the feeling that their confidence in their ideas is sometimes overmatched by the coherence of the constitution, but so too are those who are adherents of older ideas and practices. All these feelings can be experienced together or separately. However, it is worth noting that while these are all signs of disorder – that is, signs that the constitution and various institutions are not in fact beneficial – they are not dispositive, for exactly the same reasons that the signs of order are not dispositive either. Rather, they are signs to be interpreted prudentially.

Therefore, for individuals experiencing disorder as institutional dysfunction, a prudential question arises as to how deferential to purported authority they ought to be. In the case of an institution like slavery, deleterious (in Burkean terms) to those enslaved, we would not say that those enslaved owe any moral duty to their enslavers, nor do they owe any respect to the broader constitutional system of which that institution is part so long as their enslavement persists. But not all cases of disorder are like this. If someone is playing music on the train, we do not say the other passengers can justifiably exempt themselves from buying tickets, nor from the laws preventing them from using force in service of peace and quiet. Just after his famous words on the social contract, Burke tells us: "It is the first and supreme necessity only… which alone can justify a resort to anarchy. This necessity is no exception to the rule; because this necessity itself is a part too of that moral and physical disposition of things, to which man be obedient by consent or force…".[368] He means that the test of a constitution is its beneficence, and it fails that test where it threatens the lives of its subjects (death being the supreme necessity in question), and there anarchy, a breaking away from the constitutional system, is justified, as a reaction to manifest disorder, and a seeking anew of order. In any event, the prudential questions of how societies might reform disorderly institutions and how individuals might register their experience of disorder, are all approachable from within the substantive conservative argument. Oppression and the like, far from posing challenges to conservatism, are precisely the kinds of social problems – the kinds of *disorder* – to which conservatism, as political philosophy, is addressed.

[368] Burke, *Reflections*, 82-3. I noted this also at fn 183 above.

Arbitrariness undermines the beneficence of society – it turns order into disorder. Whether it takes the form of tyranny or anarchy, or one then the other, or both together, disorder might be experienced by individuals as oppression, that is, as undue interference with the institutions and practices on which they rely, or as an absence of authority to assure that beneficence is experienced where it is due. In turn, this raises the question of who is due what – the question of justice. I will take this up in the next chapter, but I flag here that order and justice stand, for conservatism, in much the same relation as the good and the right. The latter is an institutional and constitutional matter that tracks the former, and where this tracking does not obtain, neither does any obligation of authority. But other questions are posed by disorder too: frustration and alienation among individuals are also signs of disorder that are relevant to the beneficence of the constitution. In any event, conservatism, as the commitment to the ordering of institutions towards what is good for beings like us, will not only pursue the signs of order, but, through reform and conservatisation, seek to avoid disorder too.

5.4 Order is Conservative

I have argued that order is a basic good because it provides access to, and makes familiar through the process of formation, historical experience as established practical knowledge. We therefore have reason to bring about order properly understood, and this is what it means to be conservative. In effect, I have defined order as the state of affairs in which historical experience is conserved, and I have defined conservatism as the commitment to this kind of conservation. I want to finish this chapter by defending these definitions.

5.4.1 Defining Conservatism in Terms of Order

On the substantive reading of Burke that I have developed, conservatism is the conjunction of the epistemic claim that historical experience is real knowledge (distinct from theoretical or speculative ideas) that links propositions to practices and the normative claim that given the kinds of beings that we are, having access to this kind of knowledge through orderly institutions is a basic good for us.

The two claims are linked in a non-vicious circle: we are to trust historical experience because other

purported sources of information are not real, this gives rise to our idea of order including what we know of the good, and then we use the concepts given to us by order to inquire into historical experience in contemplating what to do. The circle is saved from viciousness by common sense: among our original apprehensions of the world is the realness of other minds and the likeness of historical minds to our own.

This definition of conservatism is recommended by its coherence. We saw earlier that conservatism is vulnerable to two charges of incoherence, both of which were borne out in the case of the procedural definition of conservatism, but which fail against the substantive definition.

First, there was the objection (made by Hayek and Mill, and also Vermeule) that conservatism's normative claim is self-undermining because if followed it would prevent the development and use of the practical knowledge that it purports to value. But there are two errors about conservatism in this objection that are revealed by the connection between conservatism and order. The first is that, as just noted, the knowledge that is valued by conservatism is not mere experience but established practical knowledge. The error here lies in adopting the individual rather than institutional perspective. Conservatism can coherently hold that it values historical-experiential knowledge while also advising (with varying degrees of stringency) that individuals and groups do not bother experimenting with departures from propositions that have been institutionalised and time-tested. In terms of conservatism's confirmationist epistemology, there is little to be gained by, say, dedicating your whole life to flouting society's conventions, and indeed, there is plenty to be lost. Imagine walking around on the wrong side of the road babbling to yourself in a language no-one understands, just 'to see what happens'. The second error lies in the implication that accepting, in general, the proposition that there are legitimate authorities means abandoning any individuality or desire to experiment that you might possess. In fact, established practical knowledge is there to be applied for your own purposes, within the bounds of order as a basic good. This is necessary both for prudence, which entails the application of a rule that is not something you just made up, and for innovation, because originality draws upon, and builds on, historical standards – it cannot be identified otherwise.

Conservatism not only preserves the individual point of view, but it also enables it by conserving the information on which it runs.

Secondly, there was the objection (made by Alexander, Robin, and Gray) that conservatism contradicts itself by making an abstract normative claim while purporting to dismiss abstraction in favour of familiarity. The mistake here lies in understanding the conservative commitment to familiarity as a commitment to specific, concrete circumstances, rather than as the claim that familiarity, defined as historical experience, is a distinct kind of knowledge that bears upon what we ought to do. The commitment is not, in the first place, to any particular state of affairs, whether the status quo or status quo ante, but to that which has been learned over time and the means by which that learning can be accessed and used. The normative claim follows directly from the recognition that we are capable of discovering and confirming this knowledge through order properly understood – the truth and value of established practical knowledge are discovered together.

A consequence of this is worth noting. The claim of Burkean historicism is that concepts like virtue and good are intelligible only when situated within a constitution. As such, you cannot be motivated by pure abstractions – values are always concrete or else you would not know what to do. But if this is so, then it is not always possible for radical value claims to be dismissed on the grounds of their abstractness. For example, Cohen points out that Oakeshott's notion of changes intimated within the status quo being preferable to innovations would not seem to rule out an event like the Russian Revolution, which is presumably what it is supposed to do.[369] This is right. Conservative opposition to revolution is not merely about the abstractness of the revolutionary motivations, it is a dispute about values: the revolutionaries value order too little, and attribute too much value *either* to some dream of theirs *or* to some phenomenon they have encountered through order and misunderstood. This is important to the extent that conservatives, in politics and elsewhere, convince themselves that their disputes with non-conservatives are about methods, or about the best path to maximising some

[369] Cohen, "Rescuing Conservatism", 170.

agreed upon value. In a dispute framed this way, both sides are generally ignoring that they do not, in fact, agree about the value of order or the information to which it provides access.[370] Thus, from the conservative point of view, revolutionary arguments are not merely pressed too far, they are false, and harmful for that reason.

So substantive conservatism is coherent. It is also, I want to claim, obviously *a conservatism* – it captures much of what conservatives have tried to say. In Chapter 1, I argued that the habit in the literature of compiling litanies of conservative concepts was not an approach that would answer our question. But now, having identified order as the reason to be conservative, we can briefly revisit the litanies and see that conservatism's key themes are largely systematic. We can also clarify some of the recurrent claims. Among the items that regularly recur on such lists (see 1.1.2) are matters like the preference for history over theory (though, as we have seen, it is mistaken to interpret this as a suspicion of abstraction or propositional knowledge per se), trust in prejudice (though only where it is formed by orderly institutions), institutional autonomy (as the sites within which formation occurs), the importance of private property (for securing the autonomy of institutions), the role of religion in society (an important site of formation and a trustee of virtue), moderation and prudence (in the face of the intricacy of human nature), and the naturalisation of social institutions (which can be understood as the possibility of contingent but non-arbitrary institutions confirmed by experience). It would be possible to inquire into this further and to try to refine or exclude some of these themes. But for present purposes, I think this is sufficient to show that there is nothing wildly counterintuitive

[370] For example, Deneen endorses a view he attributes to David Sidorsky: "[Sidorsky] rightly understands conservatism not implicitly to be a defense of the *opposites* of 'liberty, equality, and fraternity' (that is, tyranny, inequality, and parochialism), but rather as criticisms of their ideological and monistic *excesses* (that is, disorder and instability, a hostility to justifiable discrimination in the form of merit, and the neglect of particular obligations and duties)." But on my view, order represents a commitment prior to those values, and so the revolutionary use of them is nonsensical and harmful, not merely excessive. Patrick J. Deneen, "Conservatism in America? A response to Sidorsky" *Nomos* 56 (2016), 144. The paper to which he is responding is David Sidorsky (2016) "An interpretation of American conservative thought: political issues, conceptual differences, and attitudinal disjunctions" *Nomos* 56 pp. 55-139. In part, Sidorsky argues that liberty and order are among the plural values that conservatism seeks to balance within the constitution – i.e., he does not go as far as I have in suggesting that the conservative claim is that order is prior to liberty because the latter requires the information contained in the former. (At 70-78).

in the definition of conservatism I have proposed, and, indeed, that it is a definition most conservatives can support.

5.4.2 Defining Order in Terms of Conservatism

At the same time, *order is conservative* is also a cogent definition of order, because it offers a unique answer to an important question in political philosophy: is society merely a *modus vivendi*, and if not, what is the relationship between its reasonable foundation and its evident pluralism? Here, I want to argue that the conservative idea of order is a uniquely reasonable monism that is both more than *modus vivendi* but also compatible with the diverse ways of life possible under modern conditions.

There is in modern political philosophy what we might call *the pluralist assumption*. It is the widely held belief that, as Rawls puts it, the "diversity of reasonable comprehensive religious, philosophical, and moral doctrines found in modern democratic societies… is a permanent feature of the public culture of a democracy".[371] Broadly, pluralism means that within society there are diverse and incompatible views of what is good and worth doing. It is, as Kekes says, the idea that there is no "overriding value".[372] George Crowder tells us that the question of conflicting values "arises at different levels of human experience… [for] and individual there may be conflict between incommensurable values of work and family, or between loyalty to friends and allegiance to one's country… [and for] society or culture, religious and secular values may collide, or tradition and change… [and] in politics, values of freedom and equality are often opposed".[373] While pluralism is often associated with liberalism, this is not always the case, and there have been various

[371] Rawls, *Political Liberalism*, 36.
[372] John Kekes, "Pluralism versus Liberalism", in *Against Liberalism* (Ithaca: Cornell University Press, 1999), 160-2. By "overriding", Kekes means a value that always and everywhere takes precedence over all other values. For Kekes, there is no such value, but there are values that track, better or worse, what humans need to flourish (i.e., that are non-arbitrary). In his *Case*, Kekes suggests that pluralism provides a "universal and objective reason in favor of those political arrangements of the conservative's society that protect the minimum requirements [of good lives]". But what I am suggesting in this section is that the means by which that non-arbitrariness is known and evaluated, namely historical experience within order properly understood, must be prior to other value claims, and this reveals that conservatism is, indeed, monistic. Kekes, *Case*, 36.
[373] George Crowder, "Value Pluralism, Diversity and Liberalism", *Ethical Theory and Moral Practice* 18, no. 3 (2015), 551.

communitarian defences of pluralism as well, including many by conservatives like Kekes (who denies that pluralism and liberalism are compatible at all). Oakeshott's politics, recall, are mostly about reducing "collisions" between free individuals. Rawls himself notes the similarity of his view and Oakeshott's in this respect.[374]

Pluralism is a challenging question for political philosophy because if people are possessed by their own values and projects, it is not obvious why they should agree to be bound by shared institutions, above and beyond merely contingent agreement, or *modus vivendi*. As Gray writes of Rawls's attempt to resolve this problem, there is a seeming contradiction between holding that society might be founded on a shared value, like justice, and also affirming value pluralism.[375] Gray's conclusion is that *modus vivendi* really is good enough. Many conservatives have also been attracted to pluralism because it seems to reflect human nature and to head off attempts to refashion society based on political theory. As Patrick Deneen writes, "Because reality is 'given' – including the family, city, culture, language, and the tradition into which one is born – conservative realism is reflected in an embrace of political and cultural pluralism…".[376] Similarly, Kekes holds that pluralism follows from the recognition that while it is "obvious that good lives depend on the satisfaction of basic physiological, psychological, and social needs" it is also obvious that "satisfying these minimum requirements of human nature is necessary but not sufficient for good lives" and that there is a "plurality of conceptions of a good life". These conceptions are transmitted to individual by various traditions, and therefore a good society will foster "a plurality of traditions".[377] Nonetheless, *modus vivendi* is often considered undesirable because it is inherently unstable – there is nothing other than the force of law holding it together. This is why Rawls goes to quite elaborate lengths to explain how reasonable pluralism means everyone accepts his theory of justice, which therefore provides ballast to society's

[374] Rawls, *Political Liberalism*, 42. (As noted above: note 146)
[375] John Gray, "From Post-Liberalism to Pluralism", *Nomos* 38 (1996), 345-362.
[376] Deneen, "Conservatism in America?", 141. See also Sidorsky, as above.
[377] Kekes, *Case*, 35-40 (*c.f.* note 353 above).

basic structure or social and political institutions.[378]

Because I have tied conservatism to a distinctively conservative value, I cannot retreat to *modus vivendi* in the face of the pluralist assumption. This is one marked difference between my definition of conservatism and others in the literature. In fact, my argument is unashamedly monist. I hold that not only is order a basic good, but that it is *the most basic* good. This is so because, as we have seen, the content of other goods, like virtue and liberty and justice, is given by historical experience, and so our first interest is in capturing that content as established practical knowledge. The loyalty of individuals to society is therefore based on the constitution's claim to track reality. Not only does the epistemic claim of historical experience preclude the reasonableness of exogenous (that is, simply invented) critiques of society's constitution, but it is testable against the signs of order. Loyalty is owed so long as people are "happy, united, wealthy, and powerful". There cannot be any other test, and the test is only answerable by reference to established practical knowledge.

Yet it does not do conservatism any favours to pretend that, as we have seen, conditions of mass literacy, mass communication, ease of movement and so on do not obtain. So, what the conservative must stress about pluralism is that it is better thought of as being about *projects* than about *values*, in the sense that what people do is various, yet what they value is diverse but ultimately derivative of the good as captured by established practical knowledge. Project pluralism takes place (or is meaningful only) against the backdrop provided by order, which therefore supervenes upon projects that, like Burke says about the revolution in France, strike at the very foundation of civilisation. More positively, this background is useful for people, and so they have an interest in its maintenance and its accuracy to reality. Plural projects (and persons), as Scruton puts it, are "subject to another and higher value, the authority of established government".[379]

In this way, order succeeds as a the most basic good where other contenders fail. For Rawls, order is

[378] Rawls, *Political Liberalism*, sections 1-6, 4-1, 4-2.
[379] Scruton, *Meaning*, 8.

justice, in that once the proper principles of justice are recognised, they can be adhered to by individuals and groups regardless of their moral commitments; for Hayek, order is liberty, in that the recognition of the individual's privilege over his or her mind permits individuals to act freely, forming an order that emerges spontaneously from the interactions between them; and for Sandel, order is participation, in that the achievement of equal citizenship permits legitimate collective decision-making. But because all start with the assumption of pluralism – because they all take the individual perspective – they run into Gray's objection. Conversely, conservatism starts with the institutional perspective and provides reasons for institutions being ordered properly, and this means that it can both assert itself as basic and still accommodate plural projects.

Order is a uniquely reasonable monism, because it includes in-built limits that prevent it from, as Gray fears, leading to the total remaking of society. Order is self-limiting in two ways. First, order includes the autonomy of institutions – institutions function as connection points with reality because they prescribe practices that reliably work. As we saw, internal order places a limit on external order, which means that the demands of society for coherence among institutions cannot displace the practices that make them veracious and therefore valuable in the first place. Order is not totalitarian. Coherence is not good for its own sake; it is good when it confirms the propositions contained in institutions. Secondly, order is intrinsically valuable, that is, good *for beings like us*, which is to say, it serves human interests, including our various projects, but it is not merely a device for balancing individual interests. This definition of good is objective, located in established practical knowledge, so it does not encounter a paradox when it seeks to overrule individual interests or abolish harmful, disorderly institutions.

The limits of order are sometimes framed by conservatives as matters of human imperfection, whether epistemic or moral. This is the basis of Quinton's conservatism as well as that of Noel O'Sullivan, who writes that "In order to oppose the ideal of radical change it was necessary for conservative thinkers to show, in the first place, that the world was by no means as intelligible and malleable as men had come to assume; and, secondly, that pain, evil and suffering were not purely

temporary elements in the human condition, originating in an unjust organisation of society, and therefore capable of being eliminated by sweeping away kings and tyrants and enthroning the will of the people…".[380] But by now we should be able to see that this is the wrong framing. To say that conservatism is about imperfection is to imply that, were these limits ever overcome, conservatives would drop their objections and embrace the maximisation of whatever values define the supposedly perfect state that was otherwise unobtainable.[381] Yet, as I have endeavoured to show, conservatism has its own positive vision of human life.

This vision includes the epistemic claim that society is not able to trump (by some sort of collective action) the knowledge contained in institutions, and it includes the normative claim that humans should use historical-experiential knowledge rather than deductive systems. Conservatism does not have to be merely defensive. We know, with certainty, the kinds of beings we are and what we need to flourish. We do best when we accept this.

5.5 Conclusion

In this chapter, I have tried to show that there is a reason to be conservative, which is also a distinctively conservative value. Order is a basic good. It is intrinsically valuable because as social beings we have an inherent interest in receiving accurate information about the world and forming our habits and projects accordingly. It is instrumentally valuable because whatever we might wish to do as individuals or as societies through collective means is more likely to be good for us and more likely to be achieved if we have access to accurate information about the world.

The proper name for the commitment to realising the good of order is conservatism. The function of order is to conserve historical experience as established practical knowledge. This knowledge is the substance of the claim that order is a basic good and its conservation by order is what conservatism is

[380] O'Sullivan, *Conservatism*, 11-12.
[381] Just as Robert Nozick wonders whether, if Hayek's knowledge problem were ever overcome, we would be obliged to bring about a system of justice that makes useful for others what individuals exclusively know. Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), p.158.

about. The claim, then, that order is conservative supplies superior definitions of both conservatism, which can now be rendered coherently as the commitment to a distinctively conservative value without losing much fidelity to familiar conservative themes, and order, which when defined as the means of conserving established practical knowledge provides a sound foundation for society that is more than mere *modus vivendi* but not so demanding as to trump project pluralism.

I am conscious of the possibility that order is now a concept stretched too thin. However, I think that order as a basic good is saved from triviality by the specificity of order properly understood and by the epistemic claim that it is only established practical knowledge that gives concepts their content. It seems to me that not everyone in political philosophy would be able to accept these claims without at least tweaking their theories. In any event, I also want to claim that order and conservatism defined this way are useful in politics and generally. So I will take up that task in the final chapter by considering how conservatism defined this way might apply to various philosophical debates – and I think that this will provide enough concreteness to the ideas to avoid the charge of triviality.

6 Political Conservatism Reconsidered

At the outset of this thesis, I announced that my intention was to develop a viable political conservatism, that is, a distinctively conservative approach to the political philosophical task of identifying the kinds of institutions that we should have. I have argued that conservatism should be understood as a commitment to conserving historical experience through institutionalisation. This definition comprises two claims: first, an epistemic claim about the conditions under which institutions might be considered authoritative, which conditions I called order properly understood; and secondly, the normative claim that order properly understood is a basic good because it contains established practical knowledge about worthwhile ends and expedient means to those ends. On this view, conservation is the purpose of order, and order is therefore what conservatism aims to create and maintain. Call this the *conservative theory of order*. Now, turning back to my original ambition, I want to explore in more detail what this theory suggests for political philosophy and politics.

My claim here is that *political conservatism* provides a distinctive and useful contribution to political philosophy. To demonstrate this, my strategy will be to consider from the perspective of the conservative theory of order five questions that are prominent in political philosophy. This is consistent with the positive approach I have taken throughout the thesis: I have tried to show that conservatism is the pursuit of a distinctively conservative value, rather than merely a reaction to or amelioration of value claims advanced by others. So, while I might have framed this chapter as a series of responses to objections to the conservative theory of order – that it is, say, insufficiently democratic or libertarian – it seems to me the more constructive approach is to illustrate what the central claims of this thesis mean in practice and to let the theory stand (or fall) on its merits. In what follows such objections are canvassed obliquely, in that they emerge from the political philosophical questions being considered, which have been selected, in part, because they challenge aspects of the conservative vision of society that I have outlined. But it is important to note that rather than seeking to surmount the doubts and concerns of non-conservatives, my main, and humbler, aim is to place

conservatism in dialogue with the broader field of political philosophy, to show that conservatism can address political philosophical questions in a reasonable and non-dogmatic way, and thereby to tease out some implications of my theory.

6.1 The Features of Substantive Conservatism

In his essay on conservatism, Oakeshott first proposes a general definition of conservatism, the kernel of which I have described as pragmatic moderation, and then discusses its relevance to politics. In Chapter 2, I noted that Oakeshott's conservatism has four features: its *object*, which is maintaining present enjoyment; its *scope*, which includes those institutions that are not easily improved; its *operation*, which is cost-benefit analysis under uncertainty based on the relative weight of the status quo; and its *result*, which is continuity in practices, the maintenance of identity, and *modus vivendi*. Of course, I have argued that Oakeshott's conservatism runs into various problems. But here I will follow Oakeshott in stating generally the features of the conservatism I have proposed, which will be the definition I will apply to the political philosophical problems below. These features tell us what a distinctively conservative approach to each problem will look like.

The object of conservatism is established practical knowledge – the information encoded in orderly institutions that provides direction about worthwhile ends and coordination of means to ends, and between ends, for individuals formed by them or by their use, which information is held to be accurate because of its history of successful correspondence to reality. Established practical knowledge supplies the key concepts by which to approach problems like those below, and the content of those concepts, and conservatism means the reasonable preference for using those concepts rather than untested, ahistorical alternatives, which preference is the full meaning of Burke's principle of inheritance. As such, it is not enough for conservatism that there are historical concepts to be deployed; the concepts deployed must follow systematically from the demands of order as basic good.

The scope of conservatism is the constitution. On the conservative theory of order, a society is governed by a set of linked institutions, which, severally and together, conserve established practical

knowledge, and so conservatism applies across the board because it is interested in the world picture those institutions constitute. In application, this idea of the constitution of society prompts us to consider how institutions work and work together, including how they are arranged hierarchically, and whether and how concepts identified by established practical knowledge apply to them. Importantly, this means that political institutions are linked to the rest of the culture – this is what establishment means – and this limits what can be done through politics. For conservatism, all else equal, the entire constitution should prefer common sense notions, those suggested by established practical knowledge, to merely empirical or theoretical notions.

The operation of conservatism is establishment, reform, and (what I have called) conservatisation. Broadly, establishment is the process by which institutions come to be ratified as parts of the constitution – basically, their record of successful correspondence with reality – while reform goes to modifying the external order of institutions and conservatisation goes to modifying their internal order towards the principle of inheritance. The object and scope of substantive conservatism therefore give rise to a more expansive and positive set of actions than merely the defence of present contingent arrangements against change. The political question is how institutions and the constitution use, or should use, established practical knowledge to track reality and thereby benefit society and its members.

Finally, the result of conservatism is order, or rather, certain signs of order, which are distinct but related: continuity, growth, preparation, and restoration. It is also the absence of the malignant forms of these signs, and the absence of tyranny, where power imposes rules that do not correspond to reality as understood by the constitution, and anarchy, where coherence between institutions is lost. The signs of order provide guiding lights for the operation of conservatism as it seeks to realise order properly understood and the benefits that flow from it, and they are what successful conservatism looks like.

This definition is unavoidably political. Not merely because it is extracted from Burke's political

writings, but by definition: because this is conservatism conceived as the pursuit of a specific value, it is political in that realising this value might clash with other values that others hope to realise through the same institutions or competing institutions. It is for this reason that, as I have argued in the previous chapter, there is a deep conflict between conservatism and the values of the revolution to which Burke was responding – broadly, the republican idea of the free and equal being realised by egalitarian democracy is met with the competing vision of the properly formed individual under a mixed regime. But here I want to be more specific. In fact, the conservative theory of order is rich enough to provide meaningful engagement with a wide range of political philosophical problems.

6.2 Applications of Substantive Conservatism

To the above end, I have selected five prominent problems in political philosophy that I will consider from the substantive conservative perspective. For each application, I first place the problem within its field, before considering how it has been generally considered by conservatism (if it has been), and then apply my own theory, showing how the features appear in each case.

6.2.1 Environmentalism

On the substantive conservative view, order means an alignment between the artificial society that beings like us naturally create and the natural world – reality – in which we live. Implicit in this idea is that the value of the natural world resides in how it can be turned, through our institutions, to our benefit. Yet, I want to suggest, it also follows from this that conservatism includes a concern for the natural environment as the underlying enabler of the human social world – and this places conservatism in dialogue with environmental philosophy, and, specifically, with philosophical arguments for seeking to evaluate the natural environment in its own terms, rather than through the lens of the human world picture.[382]

[382] See, e.g., Andrew Brennan and Norva Y.S. Leo, "Environmental Ethics", in *The Stanford Encyclopedia of Philosophy* (Summer 2022 Edition), ed. Edward N. Zalta. https://plato.stanford.edu/archives/sum2022/entries/ethics-environmental/.

In the terms of environmental philosophy, we can say that conservatism includes a kind of *anthropocentric environmentalism*. *Anthropocentrism* can be distinguished from *ecocentrism*. The former holds that all value is human, and so the moral status of the environment and animals is determined by reference to human needs and wants.[383] The latter holds that, as Andrew Dobson puts it, "[T]he environment has an intrinsic value in the sense that its value is not exhausted by its being a means to human ends – and even if it cannot be made a means to human ends it still has value".[384] Similarly, environmentalism, as a concern for a sustainable relationship between humans and the environment can be distinguished from *deep ecology* or *ecologism*, which is built on a commitment to ecocentrism. Going beyond the melioration of human impacts on the world, ecologism, as presented by Arne Naess, argues for erasing the distinction between the flourishing of human and non-human life, the concomitant desirability of a reduction in the human population, and an ideological shift away from notions of material progress and consumption towards "life quality (dwelling in situations of inherent value)".[385] Ecologism is therefore a critique of political philosophies like conservatism that only consider the natural environment from the human perspective.[386] But the conservative theory of order suggests some reasons for why we ought to prefer the human and meliorative perspective.

Conservatism's *object* is human experience. Thus, conservatism is inherently anthropocentric. But this is not inconsistent with recognising the intrinsic value of natural objects. Indeed, because the conservative position holds that our value judgements emerge non-arbitrarily from objective states of the world, it cannot dismiss ecocentrism out of hand, and, indeed, has a necessary interest in the natural environment and how humans relate to it. However, on examination, ecocentrism is founded

[383] For a discussion of the different senses in which value might be anthropocentric, see Ben Mylius, "Three Types of Anthropocentrism", *Environmental Philosophy* 15, no. 2 (2018), 159-194. Mylius analyses anthropocentrism that is "perceptual" (the human point of view), *descriptive* (relates non-human things to human interests), and *normative* (privileging human interests). In what follows, I mean to suggest that conservatism's approach to the environment is anthropocentric in all three senses.

[384] Andrew Dobson (2007), *Green Political Thought 4th edition*, 15, 29-30.

[385] Arne Naess, "The Deep Ecological Movement: Some Philosophical Aspects", in *Environmental Philosophy: From Animal Rights to Radical Ecology*, ed. Michael E. Zimmerman et al (New Jersey: Prentice-Hall, 1983/1993), 197.

[386] For an overview, see Freya Mathews (2001), "Deep ecology" in Jamieson (ed.), *Environental Philosophy*, 218-232.

on a mistake: it overlooks that value is meaningful only within a coherent world picture. The environmental philosopher Holmes Rolston gets close to a recognition of this when he cites the pragmatist C.I. Lewis on the difference between intrinsic and extrinsic value – the latter being good things that are discovered to be good by experience.[387] It is important to be clear that here, as elsewhere, conservatism is not reducible to pragmatism: the conservative claim is not that what works is good, but that what is good works. This idea is captured by Burke's discussion of natural rights, which, he says, come to be understood "refracted" through our culture and institutions.[388] Similarly, because experience is the only way that we can confirm what the world is like, then environmental values must be experienced and institutionalised if they are to be visible in politics at all. Ecologism may seek to transcend the human perspective, but its effect is to deny that perspective altogether, and to retreat from political consideration of those matters it claims to care about. By contrast, conservatism will aim to capture, in an orderly way, environmental values as they are discovered and confirmed by historical experience.

But as this implies, not all purported intrinsic values in the environment will cohere with the constitution. In cases of conflict, conservatism will side with established human interests, because the flourishing of humans through orderly society is the most basic good. The potential for conflict between order as a basic good and environmental values sets the *scope* of conservatism's interest in this case. The most sustained conservative treatment of this question is Roger Scruton's *Green Philosophy*. [389] There, Scruton's defends the idea of *home*, as a concrete and local place that motivates an interest in the environment and making the sacrifices needed for its conservation. He calls this motivation *oikophilia* (love of home). As Scruton notes, there is a symmetry between environmentalism and conservatism's concern for "the maintenance of the social ecology" and its goal

[387] Holmes Rolston III, "Are Values in Nature Subjective or Objective?" in *Environmental Philosophy: A Collection of Readings*, ed. Robert Elliot and Arran Gare (St Lucia: University of Queensland Press, 1983), 162.
[388] Burke, *Reflections*, 52.
[389] See generally, Roger Scruton, *Green Philosophy: How to Think Seriously About the Planet* (London: Atlantic Books, 2012). For the discussion in this section, Chapters 6 and 7, along with Chapter 10, are most relevant.

of "pass[ing] on to future generations, and if possible to enhance, the order and equilibrium of which we are the temporary trustees".[390] But this symmetry should not be overstated, as in Torbjörn Tännsjö comment that it can seem like environmental ethics and conservatism both hold that "What has come about or evolved in a certain way ought to be preserved, period".[391] Seen properly, because conservatism is motivated by *oikophilia* – which is a species of order as a basic good, in that its value resides in the connection between historical familiarity and human flourishing – its interest in the environment is only second-order, limited to how the recognition of environmental values supports the maintenance of a beneficial artificial society.

The *operation* of conservatism in respect of the environment, then, is a question of whether and how environmental values can be established in the constitution in an orderly way. Establishment is not an automatic process, nor is it simply a matter of political will. Any environmental institution will need to demonstrate its successful correspondence to reality (internal order), while, as noted in 4.4.3 above, external order, the ratification of successful correspondence through coherence, is partly emergent and partly intentional.

Regarding internal order, and its concomitant conservatisation (the process of aligning institutions with historical experience), the test is, as always, benefit for humans, within the context of the constitution. Here, the general point is that mere 'scientific' evidential support for an environmental value will not be dispositive unless confirmed by historical experience. So, we might say, for example, that the Country Fire Authority is very good at fighting bushfires, which makes it a much more successful environmental institution than the expression *global warming*, which apparently had to be replaced. Similarly, scientific assurances about the safety of genetically-modified foods need to be buttressed (if possible) by some substantive arguments in terms conservatives will recognise – say by

[390] Roger Scruton, "Conservatism" in Andrew Dobson and Robyn Eckersley (eds.), *Political Theory and the Ecological Challenge* (Cambridge: Cambridge University Press, 2006), 8. See also Scruton, *Green Philosophy*, 9-10.
[391] Torbjörn Tännsjö, "Environmental Ethics", in *Understanding Ethics* (Edinburgh: Edinburgh University Press, 2013), 133.

analogy to established diets or food technologies. Conservatisation will take especial notice of the built environment, including technology, over which we have a high level of control. Just as our institutions connect to reality through practice, so our physical shaping of the world can better or worse for us and for the environment.[392] Beyond this, conservatism suggests attention to environmental harms and risks that go to the basics of our health as embodied beings – for example, pollutants, like plastics or pesticides, that have wide-ranging effects on the environment, literally feeding through to us. The principle of inheritance is relevant here as the process by which populations become adapted to their local environments and the duties of stewardship that they find in them. Think here of easements, and other laws and privileges that sustain historical land use patterns and practices. While the capturing of these interests is, as with all others, a matter of prudence, the conservative vision of a beneficial artificial society that is connected to physical reality suggests that a good constitution will take notice of them in some form.

External order (and *reform* as the action by which it is realised) tells us that environmental interests need to be *real* to be recognised; they must be consistent with the world picture of the constitution. So, for reasons of hierarchy, conservatives will deny that *all* institutions must take notice of environmental values. For example, while the complex system of the environment is itself something of value (because it sustains our lives), it does not follow from this that we must change the words we use to describe the environment or that the local milk bar should have a climate change action plan or that each person should have to account for his or her personal carbon emissions. Likewise, merely transferring the designation of 'rights' from humans to animals does not amount to an argument – it is perversely anthropocentric to assume that language that serves human interests will capture non-human interests – nor will giving certain groups standing at law to represent those interests

[392] Scruton chaired the United Kingdom government's Building Better, Building Beautiful Commission, which produced a report that, among other things, recommends the "re-greening" of towns and cities as part of bringing together the built and natural environments for better living. Building Better, Building Beautiful Commission, *Living with Beauty: Promoting Health, Well-Being and Sustainable Growth* (London: United Kingdom Government, 2020.) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/861832/Living_with_beauty_BBBBC_report.pdf

necessarily amount to justice. We can neither assume that activism on behalf of supposed environmental interests will be orderly, nor can we make it so simply by decreeing it to be. Instead, there must be a good faith effort to present interests in a way that is intelligible to the constitution, and a prudential (that is, based on historical common sense) judgement made about whether and how those interests fit. That said, it is nonetheless desirable that, where discovered, environmental values are established in the constitution. As Scruton argues, for conservatism this suggests a kind of localism. Scruton rejects international schemes for managing climate change and is suspicious of international non-governmental organisations, both of which he holds to be too distant from the homes that people have made to be reliable sources of direction. Instead, Scruton's localist environmentalism prefers that institutions representing environmental interests be closely connected to the environments in question and, crucially, to those who have made a home in them. This is complemented, at the system level, with a proposal for tort reform to make sure those who damage the environment are held responsible. But in practice, the upshot is that an orderly environmentalism will deny that *all* institutions must take notice of environmental values. Rather, it might be the case that some institutions' functions are beneficial despite the recognition of environmental values.

Finally, the orderly recognition of environmental values should produce a certain result, manifest in recognisable signs of order. On its face, continuity suggests that, ideally, an equilibrium would be established between the social order and the natural order. But, as Scruton notes, "The major difficulty, from the environmental point of view, is that social equilibrium and ecological equilibrium are not the same idea, and not necessarily in harmony".[393] For Scruton, Burke's concept of trusteeship suggests a reconciliation: the people of the present are not entitled to use of all that they have received and all that their descendants will need. An orderly society will extend this trust from the artificial to the natural, noting their connection, and avoid shifting the costs of our use of the natural environment onto future generations (in the form of, say, ruined landscapes or exhausted fisheries).

[393] Scruton, "Conservatism (2006)", 9.

However, this picture is complicated by the desirability of growth, which is limited by the environment. Environmentalists have proposed the concept of "sustainable development", defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[394] As a piece of international policy, this also recognises that for at least some countries, development is the only way to afford environmental protections. But, going further, it is important to remember that growth is part of what it means for beings like us to live and flourish: for beings like us, the chance to have children, to progress and improve in our work, to build, create, and share with others are fundamental to the meaning of *good* itself. Here, Scruton is too generous in his engagement with environmentalism. So, for example, while raising the cost of energy for consumers is, as Scruton says, one way to get them to cut consumption, this may be terribly disorderly as food prices rise and as home electricity bills soar, and the prospects of family formation and individual development fall. In this case, Scruton's localism obscures rather than illuminates external order: families are generally subject to decisions made by institutions higher up in the social hierarchy, which institutions are supposed to consider families' interests. It is a legitimate conservative concern to hold that a family-friendly government policy on electricity generation would seek to realise other interests (like, say, the reduction of carbon emissions) without making family formation and growth more difficult – starting, perhaps, with the assumption that any 'energy transition' should secure for families the opportunity to continue using reliable and affordable energy. As we will see, the relationship between continuity and growth – between change and improvement, as Burke would have it – is a persistent concern for conservatism, but it is especially acute here.

The conservative view becomes clearer when we look to the other two signs of order. Preparation is, in effect, the identification of the resources that continuity and growth will require. It is where the symmetry between conservatism and environmentalism is most apparent. Scruton says both conservatism and environmentalism are ultimately about the "husbanding of resources". Extending

[394] Brennan and Leo, "Environmental Ethics", as above.

the timescale of human planning is an interest they have in common, even if, as I claim, conservatism has a greater interest in growth than a straightforward environmentalism might have. But we can identify orderly growth by its expenditure of resources that have been saved for that purpose, rather than drawing down on society's inheritance or relying on exogenous sources (a point to which I will return in a subsequent discussion). In the case of environmental values, this suggests a concern for, say, building objects to last, with materials that are replenishable and less likely to end up as waste. Similarly, continuity and growth are illuminated by the sign of restoration: building from precedent and reconnecting with the natural world as historically understood is likely to be a true improvement. Think here, perhaps, of older farming practices (and the distribution of farm ownership) as against modern factory or industrial farming, but also of the styles and materials used in our built environment, and how we plan our settlements.

Proceeding from its understanding of reality as intelligible through the established practical knowledge and history-orientation of an orderly constitution, conservatism entails a kind of anthropocentric environmentalism that ties care for the environment to the relationship between nature and artificial society on which the beneficence of the constitution rests. Conservatism on this view supports a wide range of environmental concerns but is ultimately incompatible with ecologism or any argument that purports to capture the value of the environment in terms that are not reducible to the human perspective. This dispute helps concretise the conservative normative claim that order is a basic good, by showing some of the kinds of trade-offs that this claim forces upon us, but it is also a contribution to environmental philosophy to show why we might resist its more radical claims about value.

6.2.2 Transhumanism

Moving from nature to human nature, I want next to consider the debate about *transhumanism*, the claim that, technology permitting, we ought to, or ought to be free to, enhance or improve or simply modify the kind of being that we are. Transhumanism provides an interesting test case for the

conservative claim that orderly growth is secured by authoritative institutions that might reasonably restrict this kind of experimentation. As such, it is also a concrete example of the tension between the conservative theory of order and liberal theories that proceed from the epistemic privilege of individuals over their own minds and a related scepticism about institutional knowledge. Along these lines, then, in this section, I want to argue that the conservative theory of order provides some ballast to the claims of *bioconservatism*, understood as a defence of the dignity of human beings against technological innovations in biology and medicine, and through this prism, to discuss what this defence tells us about the relationship of order to liberty.[395]

Transhumanism can be read as a further interrogation of the claims about growth made in the previous section. Like the Mill-Hayek critique of conservatism seen earlier, transhumanism's basic claim is that having technologically progressed this far we have no reason to stop now, or ever. On this view, humans are reasonable and tool-using beings, and we generally seek to improve or enhance our positions in the world. New and speculative technologies like amniocentesis, in vitro fertilisation, preimplantation genetic diagnosis, pharmaceutical mood and mind function interventions, human-machine interfaces, gene therapy, genetic engineering, and so on, are continuous with earlier developments like clothing, shoes, glasses, sanitation, and, perhaps most importantly, language and symbol use.[396] Transhumanism has been described as an "intensification" of humanism and especially of its main impulse, namely, the radical enhancement through technology of our physical and mental faculties, eventually leading to the transcendence of the human condition as historically understood.[397] So the conservative response to the claims of transhumanism will also suggest a more

[395] Helga Kuhse and Peter Singer, "What is Bioethics? A Historical Introduction" in *A Companion to Bioethics*, ed. Helga Kuhse and Peter SInger (Chichester: John Wiley & Sons, 2009), 31-40.
Bioethics, it is sometimes noted, emerges from the consideration of difficult cases that highlight tensions in our understanding of ethics. Margaret P. Battin, "Bioethics" in *A Companion to Applied Ethics*, ed. R.G. Frey and Christopher Heath Wellmann (Chichester: John Wiley & Sons, 2005), 297.
[396] As Nick Bostrum and Julian Savulescu note, this is a common argumentative strategy for transhumanists, to expand the definition of "human enhancement" to include technology generally. Nick Bostrum and Julian Savulescu, "Introduction: Human Enhancement Ethics: The State of the Debate", in *Human Enhancement*, ed. Nick Bostrum and Julian Savulescu (Oxford: OUP, 2009), 2-3.
[397] Wolfe, *What is Post-Humanism*, xv. Also: Francesca Ferrando, "Introduction: From Human to Posthuman", in *Philosophical Posthumanism* (London: Bloomsbury Academic, 2019), 3.

general understanding of the claims about human nature on which order rests, and how that bears on the conservative understanding of improvement.

The trade-off here is between order and experimentation. But what is valuable about order that is placed in doubt by transhumanism? What is the object of conservatism here? As we have seen, for conservatism, order is a basic good because we have an inherent interest in being formed by the historical experience of beings like us. This historical connection between us and our forebears, our understanding of it, and the fit of our society's institutions to that understanding together make up the content of *human dignity*. That is, the quality that makes us subjects of moral concern emerges from our status as beings with history. I want, then, to go a little further than the standard bioconservative view. For example, Leon Kass writes, "At stake [in this debate] are the dignity of the human being – including the dignity or worth of human activity, human relationships, and human society – and the nature of human flourishing". For Kass, transhumanism puts in doubt our very understanding of ourselves as human and our very motivations for acting, and what is needed in response is a substantive defence of "the worthiness of embodied human life".[398] Similarly, Michael Sandel argues that transhumanism misses something important about human life, namely, the appreciation of it as a "gift". This appreciation underpins "three key features of our moral landscape – humility, responsibility, and solidarity". Sandel worries that as we come to see ourselves as more and more in control of our place in the world, we will lose the humility that takes things as they come, just as our sense of responsibility for everything that happens increases to a crippling degree, with a corresponding disdain for those whose circumstances are worse than our own.[399] To this, the conservative theory of order adds that these considerations are made intelligible by established practical knowledge and the role that it plays in our flourishing. The full stakes in this debate, then, include both our historical understandings of what is good for being like us, and the very trait,

[398] Leon Kass, "Defending Human Dignity", in President's Council on Bioethics, *Human dignity and bioethics* (Washington DC: United States Government, 2008), 297-332.
[399] Michael Sandel, *The Case Against Perfection: Ethics in the Age of Genetic Engineering* (Cambridge: Harvard University Press, 2007), 85-92.

characteristic of beings like us, of being formed under the influence of historical experience.

The recognition of human dignity in this sense will have quite far-reaching constitutional implications. The scope of conservatism is set by the trade-off between dignity and other demands of order, as well as the benefits that human enhancement promises (which, again, conservatism cannot reject out of hand – more on this below). In the previous section, I noted that novel value claims might, under certain conditions, be institutionalised and incorporated coherently into the constitution. But transhumanism poses a tougher question: if, say, a truly posthuman being were created, it is not clear that the institutions they create could cohere with our own. Think here, perhaps, of the historical development of mass literacy, which led to the creation of new institutions, ranging from the Protestant denominations to universal suffrage. As disruptive as this was, it pales next to the potential disorder created by the presence of super-intelligent or super-strong or super-long-lived beings, whose capabilities would likely exert a disproportionate influence over all of society. This is a reframing, I think, of Sandel's concern for the loss of solidarity – but whereas Sandel is concerned that without any sense of our qualities as contingent we might not extend respect to one another, instead judging others as culpable for what we perceive to be their failings, substantive conservatism questions whether it would be possible to have a coherent, beneficial constitution comprising institutions that anticipate qualitatively different beings. This concern is rooted in the historical illegibility of these new beings – that is, their disconnection from our history and institutions. And so, the possibility of a qualitative break in human nature puts in question the entire conservative project of developing, over time, a beneficial artificial society.

For conservatism, then, establishing an orderly and therefore dignifying constitution means recognising the normativity of human dignity as an extension of order as a basic good. That is, conservatism here will operate on the basis that it is good to affirm established historical standards and formation by them, and that the meaning and desirability of human enhancement must be understood in relation to that claim.

Thus, on the conservative view, it is conceivable that the internal order of our institutions might be improved if enhancement means more frequent expression of already recognised human goods. That is, where technology reinforces our historical standards of virtue, then it might be put towards conservatisation. Indeed, one might argue that this is in fact the point of institutions: to encourage in individuals those behaviours recognised as beneficial. Yet as Norman Daniels points out, technology alone is unlikely to qualitatively change human nature as such. Human nature, as is true of any species, encompasses a wide range of environment-influenced phenotypical expressions of underlying genotypes. Individual outliers, even those produced by artificial interventions, by themselves will not change human nature itself, nor will changing our environment to change the mix of phenotypes in the population. So while we generally assume some measure of plasticity in the traits expressed, since we invest in "good parenting, teaching, and friendship", a true change in human nature itself would need to work at the population level *and* generate some traits that are atypical for the species.[400] Put in the terms we have been using, because conservatism holds a dual-natured view of humans, and because it also holds that we can accurately identify virtue, conservatism must also admit that human enhancement is possible, while insisting that enhancement does not, and cannot coherently, mean a change in human nature itself. For example, established practical knowledge makes concrete *honesty* and *courage*, and thus might allow us to increase our stock of them, and physical interventions, perhaps analogous in their effects to exercise, are even more plausible. To the extent that these are enhancements of recognised human virtues then they are, at least superficially, consistent with the desirability of order – so long as they do not purport to realise a new kind of being or sever humans from historical standards.

Which is to say, of course, that the pursuit of such improvement is constrained by external order. This is where considerations of solidarity, as Sandel puts it, enter the picture. Because the measure of whether transhumanism is orderly is whether the constitution continues to track reality and thereby

[400] Norman Daniels, "Can Anyone Really be Talking About Ethically Modifying Human Nature?", in Savulescu and Bostrom (eds.) *Human Enhancement*, 26-42.

benefits beings like us. Guy Kahane, Jonathan Pugh, and Julian Savulescu rightly hold that this argument is really about humans' justifiable partiality to humans as a specific kind of being, based on our mutual participation in the "history over the course of which we have developed and exercised the very capacities that separate us from other animals". They add that the flourishing of these capacities generally happens within societies "constructed by the contingent features and relations we have with other human beings that allow us to engage in these terrestrial traditions".[401] On this basis, conservatism might limit individual and institutional experimentation with enhancement technologies where their use might conceivably compromise the value that lies in the broader constitution, whether deliberately – in, say, a program of genetic modification that succeeds in separating participants from the rest of society – or inadvertently – through, say, the unintended consequences of such programs. Here, what is being asserted is the value that lies in humanity as historically understood, captured by our institutions and referred to by the word *dignity*, which value lies in the process of formation under historical, established authorities rather than in the raw material of the human animal. That is, the transhumanist emphasis on biology seems misplaced when set against the historical understanding of humans as creatures dignified by the world of meaning that we develop for ourselves, namely, our second nature.

Yet it might not be very persuasive to transhumanists to argue that their aspirations are constrained by the desires of others for them to 'stay human' – transhumanists might ask what is in it for them. The proper conservative response to this objection is not to adopt the framing of the questioner. Instead, recall that conservatism adopts the institutional perspective. The test both of what is known and what is good is met by established practical knowledge. As such, from the conservative point of view, the reassertion of the reality of human nature serves to justifiably deflate transhumanism, reminding transhumanists of the constraints that reality places on their ambitions. So, for example, when Savulescu argues elsewhere for "procreative beneficence" (basically, the idea that, to the extent

[401] Guy Kahane, Jonathan Pugh, and Julian Savulescu, "Bioconservatism, Partiality, and the Human-Nature Objection to Enhancement", *The Monist* 99, no. 4 (2016), 406-422.

we can control it, we ought to have children with the best chance of the best life), he is not really talking about *children* or *family* in a way that makes historical-experiential sense.[402] The motivation to have children – let alone the 'best children' – is undermined by the bio-medical intervention interposed between parents and children. Are these really *my* children? Am I obliged to support any child with a better chance at a better life than my own? Why not? Savulescu and the transhumanists confront the problem of nominalism – divorced from institutional standards, their arguments can have no purchase. Ahistorical claims about the freedom to enhance oneself or others, or to pursue a revolutionary break with human nature, are ultimately unintelligible to order – they cannot be incorporated into the constitution without undermining society itself. This is more than a question of solidarity between individuals; it goes to the meaning of being human. In short, the answer to this objection is that it fails to understand that order is more basic than dignity, and it is ultimately in the name of order that transhumanism's ambitions may permissibly be curtailed.

The practical effect of all this is that conservatism will more easily support *treatment* than enhancement. Or, rather, that it will define the latter in terms of the former. This distinction is sometimes controversial in bioethics. Broadly, treatment restores or brings humans up to normal functioning, while enhancement takes them beyond that mark. The controversy surrounding the distinction is about how we settle what is normal and to what extent normality is normative.[403] But this controversy is settled by order as a basic good: our standard of what is good for beings like us is revealed by established practical knowledge and so it is a nominalistic fallacy to claim that a change that is unintelligible in that frame is truly an enhancement. Order, then, motivates the kind of argument that Daniels makes: that for any medical intervention, "there must be a reasonable risk-benefit ratio", such that we might think that it is acceptable to take greater risks in treating someone

[402] Julian Savulescu, "Procreative Beneficence: Why We Should Select the Best Children", *Bioethics* 15, no. 5-6 (2001), 413-426; Julian Savulescu and Guy Kahane, "The Moral Obligation to Create Children with the Best Chance of the Best Life", *Bioethics* 23, no. 5 (2009), 274-290.
[403] Norman Daniels, "Normal functioning and the treatment-enhancement distinction", *Cambridge Quarterly of Healthcare Ethics* 9 (2000), 309-322.

looking at a "catastrophic outcome" than we would take in trying to enhance someone beyond the normal level of health and wellbeing.[404] But, importantly, because what is good for beings like us is known by order, then all true enhancements must follow from what we know – and so to use what we know to treat defects as we find them is really the only kind of enhancement that counts.

With this focus on treatment, conservatism will suggest the following actions. The establishment of historical norms in respect of health will lead to conservatives supporting institutions, like sports, that affirm and celebrate human nature as traditionally understood. Conservatisation will mean a policy of focusing on population health. On this view, a positive policy agenda for conservatives would seek to provide treatments for the sick, food and energy for growth, and institutions that affirm the value of life as comprehended by the constitutional world picture. One can glimpse here why even secular conservatives tend to be wary of abortion and of procreative interventions generally, which are changes in the way we think of human life as much as or more than changes in the way that institutions act upon what is known about human nature. Reform, the relationship between institutions, will entail that institutions that depart from those historical standards are brought back into alignment (just as buoyant swimsuits and aluminium cricket bats, equipment changes, were banned from those sports, so have been performance enhancing drugs, which promote physiological changes). Consistent with the institutional perspective, the goal of conservatism will be to enhance the quality of life that society provides by connecting institutions to historical experience, rather than by hoping that ahistorical experimentation will redound to the common good.

Similarly, once the definition of enhancement has been settled, the signs of success for an orderly policy are readily identified. Regarding continuity, an orderly society will seek to prevent transhumanist discontinuity and instead affirm and reinforce what is known about beings like us. For the same reason, an orderly society will project this understanding into the future by preparing for human nature to remain continuous over time, even as it adapts to new circumstances and

[404] Daniels, "Can Anyone Really be Talking About Ethically Modifying Human Nature?", 38.

technologies. Indeed, it is arguably a sign of disorder that transhumanism has any appeal at all, if it is motivated by an ahistorical sense that human life is somehow deficient and must be escaped. Conversely, restoration can be found in steps taken to, for example, repair the integrity of sport, or even, perhaps, in the resources dedicated to ameliorating the problems confronting those experiencing disease and disability. This speaks to confidence in our historical understanding of human dignity.

As noted at the beginning of this section, the real challenge posed by transhumanism for conservatism is in relation to growth. Yet we have seen that transhumanism fails to reckon with the dual nature of humans. By suggesting that we might use our second nature to overcome our first nature, transhumanism is profoundly self-undermining, because it is only the stability of *beings like us* that gives meaning to the tools and institutions that we create, use, and improve. That is, there is a deep conflict between transcendence and enhancement: the latter can only be known where the former is eschewed. Or, put differently, order as a basic good says that artificial society is itself a technology for human enhancement – and it is the best one that we have.

The discussion in this section draws out some important aspects of the conservative theory of order. As noted, transhumanism is a species of the liberal conflict with conservatism: put simply, transhumanism asks why we should not be permitted to experiment in pursuit of enhancing those aspects of human nature that we already know to be good or, indeed, in the pursuit of new goods. Yet as the name 'transhumanism' suggests, the argument is about something more than enhancement: it is about the nature and value of humanity itself. In turn, then, this answer suggests something about the relationship of order with the liberty of individuals to pursue their own values and interests. Transhumanism shows that the difference between the institutional and individual perspectives has real, practical consequences: it suggests that human dignity is not a matter either of the freedom to experiment or of solidarity with other, similar beings, but rather a claim about the connection between individuals and the order in which they are formed, and on this basis, it tells us that human attempts to overcome human nature itself are both unwise and undignified. Transhumanists would do better

to narrow their focus to the treatment of readily defined human problems. To do so is both in the interests of others who benefit from order but also of the transhumanists themselves, in the sense that it is better to engage with reality than live in a dream. This, then, is an example of Burke's claim that the duties of individuals are among their "real rights": to be duty-bound to preserving human dignity follows from one's duty to order, which is a concomitant of one's right as an individual to be formed by what society knows of reality. Moreover, the way in which order is good, emerging from humans' dual nature, suggests how society might itself be improved through a policy that takes the connection between dignity and order seriously, and this takes us closer to an understanding of the kinds of change that conservatism might motivate and endorse. That is, closer to understanding the Burkean notion of improvement, which builds on existing value, and not merely as the unfolding of the status quo, but as something that is sought through prudent action – the vindication of which has been, of course, the central undertaking of this thesis.

6.2.3 Feminism

In the previous section, I argued that dignity is part of the basic goodness of order, in that it is the possibility of forming a virtuous second nature under the influence of historical experience that makes humans worthy subjects of moral concern. Our interest in conserving this process of formation might, in cases like those of human enhancement technologies, create trade-offs between order and individual experimentation. But what if the underlying epistemic claim here, that historical experience is accurate to the reality of beings like us, is compromised because it captures only the experience of a subset of beings like us? In such a case, this process of formation would not be normative – indeed, it would be oppressive, in both the senses discussed earlier (5.3.2 above), because the institutional prescriptions might not in fact conduce to the flourishing of those beings whose experiences have not been established.

This is the challenge posed to conservatism (and to philosophy generally) by feminism. Feminists claim that historical institutions (both in the West and elsewhere) are products of the deliberate exclusion

of women and women's experiences, and that consequently our understanding of women (and men, and the relationship of the two) is distorted. This distortion causes, and obscures, costs that fall disproportionately upon women, including, when compared to men, less freedom, fewer opportunities to prosper, and increased exposure to coercion and violence. As Noelle McAfee writes, on this view, women are systematically disadvantaged *because* they are women – because being a woman is causally connected to the disadvantage in question, or because being a woman is part of an *ex post facto* rationalisation of the disadvantage in question, or both.[405] Normatively, then, as Jane Mansbridge and Susan Moller Okin put it: "Feminism has one obvious, simple and overarching goal – to end men's systematic domination of women". This goal is to be achieved in three ways: by deflating claims about the realness or salience of differences between men and women; by defending the virtues and achievement of women; and thirdly, by extending the application of justice, so that ostensibly private institutions, like the family, are obliged to effectuate gender equality.[406]

For conservatism, this last point is especially germane. As we have seen, the process of formation on which conservatism's normative claim rests begins in the family home, but for feminism, the family home is especially compromised by the oppression (or subordination) of women. Thus, for example, Okin argues that Western philosophy has generally overlooked the family as a site of justice: "[U]nless the first and most formative example of adult interaction usually experienced by children is one of justice and reciprocity… they are likely to be considerably hindered in becoming people who are guided by principles of justice". Whereas figures like Rousseau, Hume, and, more recently, Sandel have argued that questions of justice do not arise within the family – because, supposedly, the members of families share an identity and a set of interests – Okin argues that "however much the members of families care about one another and share common ends, they are still discrete persons

[405] Noelle McAfee breaks down feminism's descriptive and normative components in her encyclopedia entry: Noelle McAfee, "Feminist Philosophy" in *The Stanford Encyclopedia of Philosophy* (Fall 2018 edition), ed. Edward N. Zalta, https://plato.stanford.edu/archives/fall2018/entries/feminist-philosophy/.
[406] Jane Mansbridge and Susan Moller Okin, "Feminism" in Goodin et al (eds.) *Companion*, 332.

with their own particular aims and hopes, which may sometimes conflict".[407] She concludes, "family is the lynchpin of gender, reproducing it from one generation to the next" and as such, abolishing the oppression of women begins with reforming the family "to facilitate the equal sharing by men and women of paid and unpaid work, of productive and reproductive labor".[408]

Because of this critical view of the family and of the broader critique of received institutions of which it is part, feminism and conservatism are generally seen as necessarily antagonistic. In this vein, Daniel O'Neill uses Burke and Mary Wollstonecraft (a critic of Burke) to illustrate the dispute between conservatism and feminism: whereas Burke sees what O'Neill calls "deep democracy" (the democratisation of all social institutions, public and private), the animating principle of the Revolution, as threatening the end of civilisation, Wollstonecraft sees the Revolution as heralding an expansion of freedom for men and, especially, for women.[409] Nonetheless, there have been attempts to identify 'conservative feminism'. For example, Judith Stacey uses the label for feminists, including Betty Friedan, whose work is "profamily", "affirms gender differentiation" and especially motherhood, and holds that "struggle against male domination is a distraction" from a more fruitful political agenda.[410] And in practical politics, conservatives have sometimes identified as feminists. As Ronnee Schreiber notes, when in 2008 the American conservative politician Sarah Palin described herself as a feminist, it sparked a debate within feminism about whether this was accurate or merely appropriation of the label.[411] More generally, it has also been noted that women play an increasingly active role in conservative politics, and this suggests some sort of accommodation of women's ambitions by

[407] Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), 3-39.
[408] Okin, *JGF*, 170-1. Going further than perhaps other feminists would, Okin writes, "A just future would be one without gender" – meaning that differences between male and female simply should not bear upon the kinds of institutions we have. But it is enough for the feminist argument to get off the ground if the present institutional differences between men and women are unjust.
[409] O'Neill, "Conclusion" in *The Burke-Wollstonecraft Debate*, 257-261.
[410] Judith Stacey, "The New Conservative Feminism", *Feminist Studies* 9, no. 3 (Autumn 1983), 563-573.
[411] Ronnee Schreiber, "Is There A Conservative Feminism? An Empirical Account", *Politics and gender* 14 (2018), 56-79.

conservatism.[412] However, given the inherently critical perspective of feminist philosophy, Jessica Valenti probably captures the true feminist position when she writes that "[Feminists] have a new task: protecting the movement against conservative appropriation… Because if feminism means applauding 'anything a woman does' – even hurting other women – then it means nothing".[413]

It is better, then, to ask what *women's conservatism* might be. Is there an argument that conservatism benefits women? Conservatives have generally made two claims about this. First, that traditional gender roles are contingent but non-arbitrary institutions of historical utility. Secondly, that however these roles are worked out in a time and place, they are most beneficial when they track the underlying biological reality of the difference between males and females. The uniting idea here is *complementarity*: that gender roles reflect and "humanise", as Scruton puts it, biological differences, permitting civilised coexistence.[414] Among women philosophers, Elizabeth Fox-Genovese has been called, by Amy Baehr, a "traditional conservative" who holds that traditional gender roles are akin to collective goods: men and women play essential but different roles in establishing a good society within which human flourishing is generally available. For Fox-Genovese, this "perfectionist" view of human well-being means that while she also holds that (in Baehr's words) "Small government is often good", she also supports a wide range of policies, like family and childcare subsidies, that support women in managing both family commitments, especially in having and caring for children, and the pursuit of their own flourishing.[415] So conservatism, by contrast with feminism, will seek to vindicate the family and the complementary roles that men and women play there and in society generally.

The object of substantive conservatism in this case, then, is the historical understanding of the

[412] See, e.g., Melissa Deckman, "Freedom Feminism: Individualism, Conservatism, and Gender Roles" in *Tea Party Women* (New York: NYU Press, 2016), Ch 5. Deckman shows that in American politics, women conservatives tend to put their conservative commitments (like opposition to abortion) first.
Writing earlier, Camille Paglia supports the freedom of conservative women to advocate for traditional gender roles, though she does not agree with them. Camille Paglia, "Feminism Past and Present: Ideology, Action and Reform", *Journal of Humanities and the Classics* 16, no. 1 (2008), 1-18.
[413] Jessica Valenti, "The Myth of Conservative Feminism", *New York Times*, 19 May 2018.
[414] Roger Scruton, "Modern Manhood", *City Journal*, Autumn 1999.
[415] Amy R. Baehr, "Conservatism, Feminism, and Elizabeth Fox-Genovese", *Hypatia* 24, no. 2 (2009), 101-124.

complementarity of men and women, understood as integral to the flourishing of beings like us and therefore something that a beneficial constitution should reflect. Note that here, as in the case of environmentalism, empirical findings – as in, say, the field of evolutionary psychology – are not of primary importance, as against historical experience.[416] Feminist critics claim that the scientific approach is circular.[417] But conservatism's epistemic claim does not rest on this evidence. Historical common sense provides access to positive information about established modes of women's excellence: those roles that women have tended to play that are known to contribute to the good of society, which reveal the kinds of virtues women (tend to) possess. In modernity, it can be the case both that women are suited to various professions and that there are certain functions to do with the formation of children, care, advice and so on for which we might reasonably believe women are best (or even uniquely) suited. The claim is just that we should not expect any set of institutions to ever produce the outcome that men and women will do in equal proportion the same things with the same degree of success. And, moreover, that some measure of gender differentiation is good, and a world without it would not be a good world – indeed, in that world, human beings would either not be flourishing or not be recognisable as human beings. The prudential question then becomes a matter of how to balance women's various interests and excellences (and here we might point to women's prominence in fields like nursing, paediatrics, charities, non-governmental organisations, law, and large parts of the public service as reflecting some sort of combination of the two imperatives).

The key point is that we are entitled to say that we know something about women and men and their flourishing together. In a somewhat notorious essay, David Stove mocks Mill's claim that no-one knows anything about women, noting that, if historical experience is not revelatory of anything essential, there is no reason to think that any "experiments in living" would yield more reliable data.[418]

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[416] One prominent advocate of evolutionary psychology re sex differences is Helena Cronin. See, e.g., Psychology Insights (2018) "Helena Cronin: Feminism is ignorant about modern science": https://www.youtube.com/watch?v=P7Q9GvR1Mnk

[417] Lynn Hankinson Nelson, *Biology and Feminism* (Cambridge: Cambridge University Press, 2017), Chapter 8 (esp. 215-218).

[418] David Stove, "The Subjection of John Stuart Mill", *Philosophy* 68, no. 263 (1993), 5-13.

But Stove goes too far in mocking the idea of "externalism" – the idea that "performance" is shaped by "education or other external influences". Various of Stove's interlocutors took issue with this point.[419] And as noted above, conservatives are, but only to a certain degree, committed to human plasticity, since the idea of second nature makes little sense without it. As such, historical experience does not say that women cannot do better in many activities now than their opportunities in the past permitted, nor deny that this would overall be conducive to a good society. It says, rather, that we should not expect men and women to be the same, and that it would be bad if they were.

This becomes clearer when we consider the scope of conservatism's concern with this question. Like feminism, conservatism takes an especial interest in the family, and for this reason, does not assert a simple public/private distinction. For conservatism, the family is (supposed to be) a site of flourishing. It is autonomous to the extent that it is beneficent. For all the reasons discussed earlier in the thesis, the function of the family is to secure the entry into the world of children – this is its meaning for men and women and for society, and includes the child's birth, formation, and eventual passage into adulthood. In its fulfilment of this function, the family is externally ordered by its relationship with gender roles, which structure the relationship between men and women that eventually leads to children, with marriage, which formalises the commitment of men and women to one another and their role as trustees of their children's futures, various other institutions that bear on the formation of children through, say, education and religious instruction, and laws that aim to protect family members (especially women and children) from abuse.[420] But, crucially, these other institutions cannot redefine the essential function of the family.

[419] Bob Brecher, "Why Patronize Feminists? A Reply to Stove on Mill", *Philosophy* 68, no. 265 (1993), 397-400. Inari Thiel, "On Stove on Mill on Women", *Philosophy* 69, no. 267 (1994) 100-101. F. Gerald Downing, "A Cynical Response to the Subjection of Women", *Philosophy* 69, no. 268 (1994), 229-230.

[420] Visible here is an important contributor to conservatism's objection to same-sex marriage, which is that, since men and women are different, and since marriage is connected to the having and formation of children, the designation of any same-sex relationship, no matter how beneficial for the couple themselves, as a *marriage* is simply a nominalist fallacy. See Robert P. George, *Conscience and its Enemies: Confronting the Dogmas of Liberal Secularism*, (Newburyport: Intercollegiate Studies Institute, 2016), Chapters 9-13 for a discussion of this point from a natural law, substantively conservative perspective.

By contrast, Okin, and Iris Marion Young would repurpose the family for justice. Young describes an idealised family in ways that conservatives would recognise, as a home in which people find meaning, but subjects this vision to the claim that the traditional role of women in making and preserving the home and its meanings should be "degendered" because "part of the creative and moral task of preservation is to reconstruct the connection of the past to the present in light of new events, relationships, and political understandings", which rather assumes its own conclusion.[421]

Underlying this dispute, I think, are different evaluations of life *outside* the home. For feminists, holding to an essentially republican view of public life, it seems that women have been subordinated to men and relegated to the home. But for conservatives, citizenship, work, and all the other activities that take place outside the home are not *especially* valuable – there are no great debates being held in the *agora*, and there is no glory in spreadsheets and garbage collection, or at least, whatever virtue there is here is not necessary for a good life. Moreover, elevating these kinds of activities elides the importance of children and their formation, both for society and for fulfilling lives, ironically de-emphasising the unique role that women play, and have always played, in society. While conservatism and feminism agree that the public and private spheres have implications for one another, feminism starts with the premise that equality is the meaning of justice and all institutions are implicated in realising equality, whereas conservatism starts with the institutional perspective, and holds that society – those links between institutions that I have called external order – comes second to the meaning that resides within those institutions, defined by their own autonomous functions.

The last point brings us to the operation of conservatism in respect of complementarity and institutions like the family. Above all, conservatism will aim to establish complementarity throughout the constitutional order, starting with the family and radiating outwards. The constitutive role that family plays in individuality suggests that there are indeed questions of justice that take place within that institution (and, moreover, that a beneficial complementarity is itself required by justice). So, for

[421] Iris Marion Young, "House and Home: Feminist Variations on a Theme" in *On Female Body Experience: 'Throwing like a girl' and other essays* (New York: Oxford Academic Online Edition, 2005), 144.

example, this suggests strong measures against domestic violence, as in, say, accepting battered woman syndrome as relevant to the defences of self-defence and provocation, on the premise that to leave such a situation is not simply a matter of individual will. More broadly, various informal customs – like letting women go first, holding doors open, and men refraining from swearing and shouting around women – should be seen by conservatives as reasonable accommodations of the average difference between males and females in terms of size and aggression, and tolerance of children in public places (what is sometimes called being 'family friendly'). Conservatives will, or should, also take an interest in gendered institutions, and side with those who argue for distinct women's spaces, like sports, that reflect the underlying biological reality, while also highlighting the value of men's spaces, like clubs, sports, and single-sex schools. In the workplace, complementarity might mean as little as forgoing policies like gender quotas and targets, to permit an equilibrium to emerge organically. But the importance of family and child formation to conservatism also motivates some positive measures like maternity leave and flexible working arrangements, not with the aim of maximising women's participation in the workforce but rather to making it possible for women and men to have stable and growing families.[422] In short, the question for conservatism is not how society might reshape the family or gender roles, but how we might reshape society to better reflect the needs of families, women, and men.

Finally, then, what are the signs of an orderly dispensation between men and women, and families and society? First, continuity will mean that historically stable gender roles remain identifiable in society, though with some prudent adaptation to changing circumstances. For example, with so many families now dual-income, and the attendant increase in prices that follows from this, it must be recognised that married women and men are generally both obliged to work – and this is quite apart from the educational and technological changes that have given women more chances to work and,

[422] There has been recent interest in some sections of American conservatism in making the single-income family a reality again: e.g., Oren Cass, *The Cost-of-Thriving Index: Re-Evaluating the Prosperity of the American Family* (New York: Manhattan Institute, 2020.

indeed, to work in fields they choose. As I noted earlier, mere continuity in form can be a misleading sign – it is not enough that the words *mother* and *father* persist, we are looking for continuity in *mothering* and *fathering*, and work arrangements need to sustain those practices. Secondly, then, and perhaps more straightforwardly, an orderly society will grow by making it possible for families to form and have children. All else equal, institutional arrangements that lead to children being born are orderly; the present dispensation, in which birth rates are chronically low, is presumptively disorderly. Thirdly, again, children are a sign of preparation for the future, and again, a lack of children suggests a lack of societal and individual confidence in the future. Finally, a sign of order would be, as noted, the restoration of gendered institutions that are known to be conducive to human flourishing. Importantly, complementarity imposes duties on both women and men to not only play certain mutually reinforcing roles, but also to respect the institutional supports of those roles, like gendered institutions.

Following the example of feminist philosophers, I have here accepted the definition of feminism as a specific commitment to remaking society on the premise that men dominate women unjustly. But these terms are narrow and leave room for a kind of women's conservatism, that is, an argument for conservatism as committed to a substantive vision of women's flourishing with concrete, identifiable benefits for women, men, children, and society.

6.2.4 Social Justice

In the previous section, I noted that the feminist critique of the traditional family is an example of a wider-ranging political philosophical dispute about the distinction between public and private, specifically, whether the former's interest in justice extends into the latter. In this section, I want to take up this larger question, under the rubric of *social justice*. Whereas order properly understood is a claim about the arrangement of institutions that is accurate to reality and thereby beneficial, social justice holds that institutions and the system they constitute must meet another, prior test, which is that the goods they produce should be distributed fairly among the people they serve. Social justice

therefore seems to present a potential conflict with order if the principle in question, when applied, motivates the ahistorical modification of the internal or external ordering of institutions. But, as I argued in the case of the family, the desirability of order does open institutions to the question of justice, and so here, I want to argue for what justice means on the conservative theory of order. There is a sufficientarian idea of justice as opportunity that follows directly from order as a basic good.

Social justice is an extension of the classical conception of justice as an individual virtue: the ability to balance the different drives of one's soul is analogised to the balance of competing interests in society.[423] The classical legal formulation of that principle is that justice delivers to people what they are due.[424] Two questions follow: who is due what, and how should they get it? On the first, various *distributive principles* have been advanced. These include, among others, strict equality (everyone should have the same benefits), moral desert (the quality of people's actions determines their due benefits), Rawls's difference principle (that the distribution ought to conduce to the benefit of the least well-off), Marx's ability/needs principle (that people ought to contribute what they are able and receive what they need), and sufficiency (that people ought to have what they need and, perhaps, not much more than that).[425] On the second question, the scope (or *reach*, as I will call it to avoid confusion) of justice is wrapped up in the distinction between public and private, and whether and to what extent the institutions of the state (which impose obligations backed by sovereignty) can oblige other institutions, like the family, to conform to the distributive principle in question.[426] These other institutions, which are associations that stand between the individual and the state, are *civil society*, and may be may be chosen (like clubs, unions, workplaces and so on) or unchosen (like family or

[423] This is Plato's strategy in *The Republic*, of course.
[424] David Miller, "Justice", in *The Stanford Encyclopedia of Philosophy* (Fall 2021 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/archives/fall2021/entries/justice/.
[425] Julian Lamont and Christi Favor, "Distributive justice", in *The Stanford Encyclopedia of Philosophy* (Winter 2017 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/archives/win2017/entries/justice-distributive/.
[426] As GA Cohen writes, the feminist claim that the personal is political suggests, contra Rawls, that justice applies not only to the institutions that make up the 'basic structure' of society, but also to the actions of individuals within that structure. GA Cohen, "Where the Action is: On the Site of Distributive Justice", *Philosophy and Public Affairs* 26, no. 1 (1997), pp. 3-30.

religion).[427] Social justice, then, is a critical view of the distribution of goods in society and, by extension, of the kinds of institutions that operate in society.

Against all this, libertarians deny that social justice is coherent – no distributive principle can be just, and so the question of its reach resolves itself. For example, FA Hayek argues that justice refers to a relationship between persons, and that since no person or persons can be accountable for the distribution of goods in society, the question of how we should design that distribution is "nonsense".[428] Likewise, Robert Nozick holds that distributions "patterned" after a rule make little sense because the rule will impinge on the ability of individuals to dispose of their "holdings", effectively implying that all holdings are in fact unjust.[429] The libertarians agree that social justice will require continual central redistribution of goods, which is inconsistent with individual or group ownership of goods, and thus with just intercourse between individuals.[430]

But despite – as we will see – a shared interest in private property, the conservative view is not the libertarian view. Because order properly understood connects all of society's institutions, conservatism cannot reject out of hand that justice reaches into the functions of, and relations between, society's institutions (as we saw in the case of the family). Thus, Scruton combines a view of "natural justice" that, like Hayek's, "is a concept of 'just dealing' [that] arises naturally between people" with the conservative view that such justice only takes place within a settled constitutional order. Order and justice must sometimes be traded-off. For Scruton the family home is the basis of

[427] Liberals might want to reduce civil society only to chosen associations, but Michael Walzer is right, I think, to note that this is too simplistic given the importance of family and other unchosen facts about people. That is, we cannot avoid the question of the reach of justice simply by stipulating a qualitative difference between chosen and unchosen associations. But I mean here to argue (consistent with the difference between conservatism and republicanism) that while it may be true that "A decent civil society requires state action", the continuity between chosen and unchosen associations reveals more about the limits of the state within the constitution than serves as a call to arms for wide-ranging state interference in civil society. Michael Walzer, "Equality and Civil Society" in *Alternative conceptions of civil society*, ed. Simone Chambers and Will Kymlicka (Princeton: Princeton University Press, 2002), 34-49.

[428] Hayek, LLL, p. 241

[429] Nozick, *Anarchy, State and Utopia*, 160-4.

[430] But note that Nozick (*c.f.* note 362) argues that to the extent that Hayek's overall system reduces to the claim that the free use by individuals of their own knowledge will conduce by spontaneous order to the general good, then to that extent he also is proposing a pattern of distribution, since actions that do not so conduce are presumptively unjust. Nozick, *Anarchy, State and Utopia*, 155-160.

humans' connection to their society, and so: "It follows that conservatives must be concerned with the distribution of property, and not only with its accumulation". Note though that for Scruton it does not follow that distribution is always a concern of government. There are different methods by which this goal might be achieved, but also there are certain means, like simple egalitarianism (pursued by "socialists"), that would abolish property altogether, likewise denying families and society its benefits.[431]

Going further, John Kekes argues for moral desert as the core of justice. He rejects the sceptical claims of Hayek, Rawls, and Hume that desert is impossible to measure. For Kekes, it is much easier to observe people's "relations, agreements, and actions" than this admits – "families, teachers, coaches, selection committees, employers, musicians etc." all routinely make determinations based on such observations. Since we can judge desert, we must accept that "the worth of human beings depends on whether they act on their capacities, whether the capacities they act on are good or evil, and whether their patterns of actions over time contribute to or detract from the betterment of the human condition".[432] Kekes observes elsewhere that the result of justice properly understood will necessarily be an unequal distribution of goods.[433]

It is worth noting that neither Kekes nor Scruton deny the need for impartial judgement in the administration of justice. They are defending the autonomous interests of persons and institutions, not claiming that those interests are arbitrary or unjustifiable.[434] Kekes distinguishes egalitarianism as a "vision… of a world in which all human beings live as autonomously as possible" from institutions like universal suffrage and the rule of law, which are about procedural impartiality but do not entail a commitment to egalitarianism thus understood. Against egalitarianism, Kekes suggests a kind of sufficiency principle, the "autonomy level" – the level at which it is possible to live autonomously –

[431] Scruton, *Meaning*, 78-80. Scruton here argues that natural justice (or natural right) "can generate a criterion of validity that applies beyond the status quo".
[432] Kekes, *Illusions*, 59-63, 206.
[433] Kekes, *Case*, 179.
[434] Kekes has been misunderstood on this point – e.g., Serena Olsaretti, "The Illusions of Egalitarianism", *Mind* 114, no. 455 (2005), 750-753.

and notes (citing Harry Frankfurt) that "It is poverty that matters, not inequalities of income; disenfranchisement, not politicians have more power than professors; racial prejudice, not the recognition of different levels of achievement; inadequate medical care, not the ability of a few to buy cosmetic surgery".[435]

In what follows, I want to tie these different ideas together by connecting them to the conservative theory of order. Like Kekes, I hold that conservatism supports a sufficientarian commitment to what I will call the *opportunity threshold*, which emerges from the historical understanding of the key concepts raised by him and Scruton – desert, sufficiency, and institutional autonomy.

Conservatism's object here will be to support a system of moral desert in which individuals can rightly be held responsible for their own successes and failures. This system is given by our historical experience of desert (as the principle of distribution) and sufficiency (which sets the reach of justice). Under conservatism, the test of virtue is whether an individual's actions support the good as understood by the constitution, and desert attaches to those whose actions are virtuous in this sense and to those who follow relevant prescriptions. That is, if it is known that certain actions generally redound to the benefit of all, then benefits that accrue to individuals who perform those actions are deserved – and the converse is true too.[436] The meaning of sufficiency (as *opportunity*) follows from this idea of desert. Basically, the operation of desert is moral only if people can in fact accrue merit and demerit – for morality there must be agency and accountability (and this is one reason, I have claimed, that order is a basic good). But unlike, say, Frankfurt, who argues that people ought not to have much more than they need, conservatism is interested not in curtailing success but in forming individuals properly, so that they may be reasonably accountable for their actions.[437] Therefore, the

[435] Kekes, *Against Liberalism*, 91, 98.
[436] If we have a robust understanding of human nature, then we are entitled by historical common sense to make claims about virtue, desert, and justice. While feminism goes directly to whether our picture of human nature is accurate, critiques of the present distribution do not pose the same challenge.
[437] Frankfurt: "Our basic focus should be on reducing both poverty and excessive affluence". His concern for affluence is based on its "antidemocratic effects". This is less salient in a conservative society, unencumbered as it is by republican dreams of political life. Harry Frankfurt, *On Inequality* (Princeton: Princeton University Press, 2015), 5-6.

claim here is not that people should all equally develop the same objectively valuable capabilities, that is, functions that all truly autonomous people can perform.[438] Rather, it is that people should have a reasonable opportunity to flourish. Just as the process of formation raises people to the competence required for life in society and not simply to dictate to them what they must do, so justice means raising people above the threshold at which they can flourish on their own.

Note then that this commitment is not merely pragmatic. For a society to claim to be orderly, it must be beneficent, meaning its people must be flourishing. A society in which many people are suffering deprivation will fail the test of order, just as surely as someone coming back from the field with a blue flower has failed the test of 'red'. The opportunity to flourish is included in the definition of order; it is part of the motivation of conservatism.

But given conservatism's commitment to institutional autonomy, the question of conservatism's *scope* is also a question of how far justice should *reach*. On this question, it is important to resist identifying order with justice. The distribution of goods in society is not the only factor relevant to the overall beneficence of that society's constitution. So, order is prior to justice. Scruton's point is that redistribution towards justice might be disorderly if it cuts across various functions necessary for orderly society, like property ownership. Kekes's point is that in a range of circumstances, we might want to give some people more or less than they strictly deserve, for reasons like love and friendship (which deliver excess benefits) or mercy (which delivers less harm than is deserved).[439] While by itself, desert is a far-reaching principle with potential implications for all goods in society, it is mitigated by considerations of internal and external order.

Internal ordering, secured by institutional autonomy, places a limit on justice. For example, viewed from the outside, we might question whether, within a given family, the members are all receiving

[438] A claim found in, e.g., Martha Nussbaum's reading of Amartya Sen. Martha Nussbaum, "Capabilities as Fundamental Entitlements", in *Capabilities Equality: Basic Issues and Problems*, ed. Alexander Kaufman (Taylor and Francis, 2005), 44-70.
[439] Kekes, *Case*, 171.

their just deserts. But the relevant question here is whether this injustice is disorderly. We do not intervene in a family because the father has a favourite son, but we do if he is physically abusing his wife.

External order evaluates institutions' internal operations in terms of their beneficence rather than their justice. For example, Rawls holds that slavery is unjust because justice comprises those rules that reasonable people can justifiably assert as normative based on their comprehensive commitments.[440] He therefore admits that the key fact about slavery is that it is *bad* for beings like us, however badness is understood. But since this is the case, the question must be, first, whether the constitution recognises that it is bad (and we would, as noted, question one that did not), and secondly, whether anyone might ever deserve to suffer under that institution (unlikely, given slavery's severity, though of course, deprivation of liberty is a common punishment in the criminal law of most places). The relationship of external order and justice, then, is that the former enables the identification of manifestly bad institutions and requires they be abolished. Justice is relevant to what follows this judgement. If order demands that bad institutions be abolished, then justice requires they be abolished in such a way as to deliver just deserts to implicated individuals (doling out compensations and punishments as required) and to implicated institutions (through reform).[441]

Similarly, for beneficial institutions, the function of justice is to see that everyone who deserves to benefit does so, and those who do not deserve to benefit do not. But all else equal, it is not a question of external order or of justice whether an autonomous institution only benefits members or those who follow its prescriptions, because that is, in fact, the function of institutions. It is not unjust that only I may use my property, nor that only believers go to heaven, nor that you get jostled if you fail to keep left on the footpath, nor that you are misunderstood if you use a word incorrectly.

It is in this sense, then, that justice is inherently *public*. Not because private institutions are exempt

[440] Rawls, *Political Liberalism*, 122, 482-484.
[441] Hence Burke tried – perhaps unsuccessfully – to balance his commitments to the abolition of slavery and prudent, expedient reform. As noted above (note 246).

from justice, but because justice is the public (external) view of how institutions work and relate to one another. For this reason, justice is, seen properly, a function specifically of the public institutions within the constitution: the state, which is characterised by its authority and position in the hierarchy and, in part, by its role in reinforcing standards of desert and maintaining the opportunity threshold. But the state's power is constrained by the constitution, and so the reach of justice is also limited. This is sometimes overlooked by those who hold that all value is *derivative* of the "public value" produced by, say, the rule of law, community safety, or government spending, which (it is claimed) justifies a kind of *dirigisme* in which the state directs all institutions towards its (ostensibly democratic) ends.[442] Such a course of action can only be destructive of order as a basic good. Order includes other values apart from public value. Mirroring the difference between republican virtue and conservative virtue, public value properly understood lies in the especial role of the state in the administration of justice as a function of order and contribution to its beneficence, not in realising perfect justice (even desert).

The operation of conservatism in respect of justice, then, aims to achieve the opportunity threshold without undue interruption of the production of value and identification of desert by autonomous institutions. Central to this vision of justice is property, which is the physical expression of the establishment of value. As Scruton argues (citing Hegel), the development of artificial and second nature begins with humans acting in and appropriating the world: ""Through property an object ceases to be a mere inanimate thing, and becomes instead the focus of rights and obligations…".[443]

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[442] Public value was coined by Mark H. Moore, *Creating Public Value: Strategic Management in Government* (Cambridge: Harvard University Press, 1995). Moore has an example in Chapter 1 that captures the difference between his point and mine: he suggests that the managers of government garbage collection can and should maximise public value through preferential hiring practices that contribute to egalitarian social justice. Maybe. But the collection of the garbage always comes first. For Moore, any negative effects of "entrepreneurial" public management are the responsibility of government and resolved democratically; but conservatism suggests a narrower reading of institutional functions will reduce the burden of litigating trade-offs, and this will, in the end, be better for the public.
Mariana Mazzucato has developed the idea of public value into an economic theory that holds that the delivery of democratically expressed collective preferences is a public good that justifies the state completely reshaping markets. Mariana Mazzucato, *The Value of Everything: Making and Taking in the Global Economy* (London: Allen Lane, 2018). On the essentially republican nature of this idea see Amitai Etzioni, "The bankruptcy of liberalism and conservatism", *Political Science Quarterly* 128, no.1 (Spring 2013), 39-65.

[443] Scruton, *Meaning*, 92-3. It is worth noting here the similarity in Scruton and Iris Marion Young's *description* of the home and property (see the discussion in 6.2.3).

But, because opportunity is included in the beneficence of order, establishment does not imply a "merely liberal" understanding of property and the market. So, Scruton also notes that "[I]t is absurd to think that a merchant has some indefeasible right to throw his grain into the sea, or even to withhold it from the market, in time of famine… naturally no-one doubts that his behaviour is immoral; but surely a state that refused to make it also illegal would be refraining from the very power vested in its constitution, the power to ensure the continuity of a human society".[444]

To improve external order, then, reforms will aim at what we might call *moderate distributism*. Distributism is an idea conceived by Hilaire Belloc and GK Chesterton that seeks to give political expression to the Catholic Church's idea of *subsidiarity*, which holds that institutions should not interfere with the internal workings of other institutions lower in the hierarchy, even as institutions should coordinate with the rest of the social order.[445] For the distributists, this principle suggests that, ideally, families should be capable of supporting themselves, and so society should aim to make self-sufficiency possible through the widespread distribution of skills and capital. A moderate (or perhaps simply secular) version of the idea is that the distributive role of government is to encourage widespread property and business ownership, and to support people and families to be as self-sufficient as possible.[446] Scruton seems to have this in mind when he writes that because of the social and political importance of the family, conservatives "must desire the distribution of property through all classes of society". Elsewhere, conservatives have often defended this principle as *localism* or *decentralisation* which entails support not only for private property but for competition and anti-monopoly policy, industrial policy (or tariffs), and even federalism.[447]

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[444] Scruton, *Meaning*, 67.
[445] For a brief history of distributism see: Carol DeBoer-Langworthy, "Distributism", *Modernist Journals Project* (2000), https://modjourn.org/essay/distributism/.
[446] For some of the political conservative implications of distributism and subsidiarity see: Joseph Pearce, "What is distributism", *The Imaginative Conservative* (12 June 2014), https://theimaginativeconservative.org/2014/06/what-is-distributism.html.
[447] Scruton is sceptical of imposing federalism where it has not previously existed, like the United Kingdom, and sees all federations as tending towards the centralisation of power over time. Scruton, *Meaning*, 149-152.

Notably, however, all this extends only to the distribution of the material supports of family life: a house, a job, a decent neighbourhood, and so on. A broader agenda might seek to raise people to a threshold at which, for example, they could participate meaningfully in politics – but as we have seen, this republican virtue is not necessarily a conservative virtue.[448]

A further consideration for reform is historical injustice. Broadly, this is the claim that the present distribution was brought about by injustice and requires correction. Historical injustice is a problem for libertarian views. Nozick, for example, argues that the results of just exchanges are necessarily just, but he also proposes a principle of rectification for cases where the holdings being exchanged are the products of unjust exchanges or unjust original acquisition. He suggests a "scheme of transfer payments", of unjust acquisitions and transfers where it is possible to identify parties who are better or worse off than they would have been but for those injustices.[449] But this is not the conservative view, for two reasons. First, Nozick's counterfactual reasoning encounters a non-identity problem: because of the process of formation, it is impossible to imagine what an individual would be like *but for* the existence of the constitution.[450] Secondly, it follows that the establishment of the constitution

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In the United States, localism is a longstanding critique of the libertarian-inflected American conservative movement, but it predates that movement, being associated first with the Southern Agrarians, who wanted to prevent the industrialisation of the southern states, and surviving in the works of figures like Wendell Berry, Robert Nisbet, and Christopher Lasch. A recent critique animated by this idea is Deneen, *Why Liberalism Failed*. For conservatism as I have described it, however, a lot of this literature will seem too enamoured of republican ideas: localism is often connected by these writers with the virtue of self-government.
The anarcho-capitalist movement takes the idea in a slightly different direction. Hans-Hermann Hoppe argues for an identification of libertarianism and conservatism, holding that only a regime founded on inviolable property rights can secure conservative ways of life. But figures like Hoppe are less republican than the localists – Hoppe, in fact, offers a novel defence of monarchy. Hans-Hermann Hoppe, *Democracy: The God that Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order* (New Brunswick and London: Transaction Publishers, 2007), Ch 10.
For overviews of both these movements see: George Hawley, *Right-Wing Critics of American Conservatism* (Lawrence: University of Kansas Press, 2016), Chapters 3 and 6.

[448] This is another difference from Nussbaum's view, which extends to "people's needs for various types of love and care". Nussbaum, "Capabilities as Fundamental Entitlements", 64.

[449] Nozick, *Anarchy, State and Utopia*, Ch 7.

[450] This, I note, will largely count against any definition of justice as the amelioration of the effect of luck on the distribution, where luck is understood as an individual having advantages or disadvantages stemming from "morally arbitrary" features like race, sex, or class. Space dictates that I do not pursue this point too far, but all such *luck egalitarian* arguments, like those of Ronald Dworkin, seem to encounter this problem. On the conservative view of order, the relevant question is not whether people with such attributes are unjustly deprived of an equal share of goods (since in the counterfactual egalitarian world, these people do not exist)

itself cannot have been *unjust* (as opposed to *bad* or *evil*). While natural justice, as Scruton calls it, emerges from human nature and sociality, like any other value, it must be institutionalised and filled out by established practical knowledge – "power has [always] been necessary to make justice possible".[451] As we will see, this is an important consideration when discussing minority rights and interests. But here the point is that historical injustice may (likely) factor into the work needed to raise people above the opportunity threshold, but it is not, by itself, an indictment of the total distribution or the constitution that supports it. It does not compel ongoing rectification beyond the demands of opportunity.

In this context, conservatisation means strengthening the institutions implicated in moderate distributism or localism, like families and small businesses. Here Burke's principle of inheritance finds its most literal application: since property is an extension of institutional autonomy, which is an abstraction from the family as the basic institution of society, the multi-generational accumulation, transmission, and use of property should be encouraged. Inheritance is generally an expression of familial partiality, which is the function of families properly understood and vital for the process of formation – and while prudence might suggest certain orderly expedients for managing this institution in line with the opportunity threshold, in principle, conservatism does not (and, given its theory of human nature, cannot) recognise any moral limits on familial partiality. If, say, a successful family business is inherited by an incompetent who eventually puts all its employees out of a job, the problem here is the incompetence, not the inheritance. For reasons like these, in lieu of redistribution, conservatism suggests some form of safety net for those individuals and families falling below the opportunity threshold. This is conceivable as a form of insurance, and thereby avoids the non-identity problem. It is possible to motivate a form of social insurance by realising that any of us might suffer an adverse event that cruels our chances of flourishing, and, at scale, widespread events of this type

but rather they are at or above the opportunity threshold – and it is easy to imagine a society where people possessed of these attributes are, by definition, below that threshold, which (as I argue below) stands as a refutation of a society's claim to be orderly.

[451] Scruton, *Meaning*, p. 84.

that are not ameliorated will suggest disorder, and, in the form of lawlessness, over time diminish the beneficence of the constitution for everyone.

Finally, then, we must ask what the signs of order look like in respect of desert and opportunity. First, an orderly society will forestall calls for massive redistribution of goods. Continuity in the laws that govern markets and other mechanisms of distribution, and not necessarily in the distribution of goods itself, will result if people rightly believe that following the prescriptions of society will provide a realistic opportunity to flourish and accumulate wealth for themselves, their families, and their interests. Likewise, a growing society will see more people owning more things, including the means of creating wealth, namely businesses and the skills required for producing value. In practical politics, conservatives have tended to support the market economy, and this is mainly because it is effective for growth. Of course, growth can be malignant, so markets are subject to policy. But policy cannot change how markets really work, which is by revealing, aggregating, and disseminating preferences. Too much regulation undermines growth by destroying markets. Much less risky in this respect are simple bans on things that an orderly society views as detrimental to flourishing and so does not want to grow and spread (think here of various vice laws, or Sunday trading prohibitions).

Secondly, an orderly society will seek a stable equilibrium between the state and civil society based on preparation and restoration. The institutions of an orderly society will, by permitting the accrual of goods over generations within orderly institutions, support an increase in savings and will, overall, be a lower time preference in society. The stability of these institutions and their freedom from the demands of redistribution will permit resources to be committed to longer-term and multigenerational projects. Likewise, the state will focus on the administration of justice as desert and achieving the opportunity threshold. As part of this lower time preference society, people will become more attached to what they own – their lives will be more filled with meaning – and so they will be more motivated to restore and repair that which has been valued.

For conservatism, order and justice are distinct, because justice takes place within order and is filled-

in by a standard of desert rooted in established practical knowledge. The principle of justice, then, is desert, but the reach of justice is limited by order, because the just distribution of goods in society is only one factor in the overall beneficence of the constitution. The implication of this is, I have argued, that an orderly system of justice will seek to maintain everyone above the threshold at which it is reasonable to believe that they have the opportunity to earn merits and demerits and be accountable for themselves, but it will not otherwise interfere with the internal and external orderings of the institutions within which individuals find and create value.

6.2.5 Nationality

The foregoing discussion distinguishes between order and justice and holds that it is ultimately the beneficence of a constitution, and not the way it distributes those benefits, that matters most. In turn, this claim raises the question of *who* benefits (or should benefit) from the constitutional order. One entry point into this discussion is to note that Rawls's discussion of justice has often been criticised for underemphasising his assumption that justice is enacted within states by certain peoples.[452] In political philosophy, this question is often debated in terms of *nationality*, which, it is claimed, motivation for individuals to give their loyalty to one another and to the institutions by which they are governed. Similarly, the conservative theory of order, with its emphasis on reality and prescription, might be critiqued on broadly republican grounds as too dismissive of the capacity for peoples to collectively determine questions of governance and culture, rather than defer to inherited institutions and practices. I want here to argue that nationality is relevant to the beneficence of a constitutional order, because it describes the people for whom constitutional prescriptions are likely to be beneficial, but that because the basic goodness of order lies in its accuracy to reality, a more expansive republican nationalism based on some purported collective will is disorderly.

Nationalism is the position that nationality bears on the kinds of institutions that are desirable.

[452] For an overview, see the discussion in Will Kymlicka (2007), "Community and Multiculturalism" in Goodin et al, *Companion*, 471-3.

Descriptively, the *nation* can be defined by civic or ethnic ties, that is by political activity or by unchosen bonds like common origin, language, traditions, and culture. However, prescriptively, the value of nationality is generally connected to its political potential – say, in realising liberal democracy – and so recent defenders of the position have tended to elide common origins, which exclude some from full participation in politics.[453] This view, *liberal nationalism*, holds that liberal ends and national identity go together.[454] For David Miller, one of its leading theorists, "[N]ational identities are *intrinsically valuable* because they answer to a deep-seated need of humans to belong, and they're *instrumentally valuable* because of the role they play in supporting democracy on one hand, and social justice on the other".[455] For Miller, national identity is distinct from other sources of identity because it is tied to place and history, and bound up with political institutions.[456] Importantly, nations have shown a capacity to change over time to incorporate more diverse populations and practices without losing their identity, which is secured by a people sharing a home, political institutions, and a set of myths or founding stories.[457] Thus, Miller stresses that this process is enabled by "republican citizenship" – participation in collective determinations of national goals – and as such, nationality is "anathema to the conservative view of politics as a limited activity best left in the hand of an elite who have been educated to rule".[458]

Despite this emphasis on inclusivity, nationality necessarily raises two related questions. On one hand,

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[453] Nenad Miscevic, "Nationalism", in *The Stanford Encyclopedia* (Fall 2020 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/entries/nationalism/.

[454] The discussion in this paragraph is based in part on research undertaken for my master's thesis at Linköping University, with the support of the European Union's Erasmus Mundus program. I will not spend any time discussing how my views have changed in the interval. Andrew Bushnell, *Assimilation and Nationality in the Modern State* (Master's Thesis, 2009), http://www.diva-portal.org/smash/record.jsf?pid=diva2%3A223769&dswid=5098.
It is also based in part on research undertaken during the coursework section of my doctoral studies.

[455] David Miller (2018), "Nationalism and immigration control: one view", Janus Lecture at Brown University, 16 February 2018, given again at the University of Melbourne, 19 April 2018, 4 [emphasis added].
It is worth noting that in Miller's earlier work, he describes his position as "left-communitarian", but he has subsequently adopted the liberal nationalist name – e.g., David Miller, "The coherence of liberal nationalism", in *Liberal Nationalism and its Critics: Normative and Empirical Questions*, ed. Gina Gustavsson and David Miller (Oxford: Oxford University Press, 2021).

[456] David Miller, *On nationality* (Oxford: Clarendon Press, 1995), 27.

[457] Miller, *On Nationality*, Chapter 2, Sections II and III; Chapter 3, Section V.

[458] David Miller, *Citizenship and National Identity* (Malden MA: Polity Press, 2000), 43; Miller *On Nationality*, pp. 127-9.

at the supranational level, *cosmopolitanism* holds that duties are, or ought to be, owed to all humans universally, which raises a question about the need for supranational institutions that may or may not supersede nationality.[459] This leaves considerable room for debate about where the line between these duties is drawn and how nationalism might conduce to the flourishing of the broader cosmopolis.[460] On the other hand, at the subnational level, *multiculturalism* suggests that nationality, when established in the state, may conflict with the rights and interests of minority cultural groups. Will Kymlicka tells us that multiculturalism is a demand for "the right to participate without having to assimilate… In the absence of multiculturalism and minority rights, nation building inevitably leads to the systematic marginalising and stigmatising of minorities".[461] Multiculturalism therefore entails support and protections for minority cultures and their members, like exemptions from laws, improved access to public institutions, increased political representation, and the rectification of historical injustice.[462] For nationalists, the question is how the state might be partial to the nation without conflicting with duties that exist to non-members, both outside and inside the national territory.

The classical conservative position has generally been to defend patriotism (the love of one's country), as distinct from nationalism.[463] For Kenneth Minogue, the intrinsic and instrumental values claimed for nationality are incoherent. He writes, "Nationalism… appears to be a love for the abstraction of the nation, and that abstraction may have none but the most tenuous connection with the concrete national life".[464] The conflict between the concrete way of life of a place and nationalists' dreams for

[459] Thomas Pogge, "Cosmopolitanism" in Goodin et al, *Companion*, 312-331.
[460] Pauline Kleingeld and Eric Brown, "Cosmopolitanism" in *The Stanford Encyclopedia of Philosophy* (Winter 2019 edition), ed. Edward N. Zalta, https://plato.stanford.edu/entries/cosmopolitanism/.
[461] Will Kymlicka, "Community and Multiculturalism", 474.
[462] Sarah Song, "Multiculturalism", in *The Stanford Encyclopedia of Philosophy* (Winter 2019 edition), ed. Edward N. Zalta, https://plato.stanford.edu/entries/multiculturalism/.
[463] A common citation for the distinction between patriotism and nationalism is George Orwell's essay, "Notes on nationalism", in which he describes the former as "devotion to a particular place and a particular way of life" and the latter as "the habit of identifying oneself with a single nation or other unit, placing it beyond good and evil and recognising no other duty than that of advancing its interests". George Orwell, "Notes on Nationalism", Orwell Foundation, https://www.orwellfoundation.com/the-orwell-foundation/orwell/essays-and-other-works/notes-on-nationalism/.
[464] Kenneth R. Minogue, *Nationalism* (London: Batsford, 1967), 23.

what that place may become tends to become violent, as nationalists seek to purge the nation of those lacking enthusiasm for the nationalist project.[465] More recently, Stephen B. Smith has argued that patriotism is endangered by both nationalism and cosmopolitanism. The former is a "deformation of the patriotic spirit" that turns a love of one's own into an enmity against all others, including "ethnic and religious minorities". And the latter is a "deficiency of patriotism" that "tends to confuse politics with morality", meaning that its purist understanding of justice and reason leaves no room for discussion and prudent decision-making.[466] On this view, patriotism and conservatism are linked by a concern for recognising what is good in the concrete and actual.

This remains the dominant view, despite attempts to connect conservatism to nationality and nationalism. Scruton, for example, seeks to import nationality into his conservatism, arguing for a "systematic policy of cultural conservatism" that reconnects Western political institutions to their civilisational heritage, on the premise that these institutions have only ever appeared within nation-states.[467] But he had earlier written (without contradiction) that "[W]e should distinguish nationalism and its inflammatory, quasi-religious call to re-create the world, from national loyalty, of the kind that we know from our own historical experience".[468] Similarly, Yoram Hazony has defended nationalism on grounds that are "conservative… or traditionalist", founded on the biblical standards of "national independence and the biblical moral minimum for legitimate government", and associated in particular with the "Anglo-American conservative tradition" of Fortescue, Selden, and Burke.[469] But Hazony's defence of nationalism turns on his narrow construction of the term as a preference for a world of sovereign nation-states, as against cosmopolitan "imperialism". Hazony has subsequently

[465] Kenneth R. Minogue. "Nationalism: the poverty of a concept", in *European Journal of Sociology* 8, no. 2 (1967), 332-343.
[466] Steven B. Smith, "Nationalism and cosmopolitanism", Chapter 4 in *Reclaiming Patriotism in an Age of Extremes* (New Haven: Yale University Press, 2021), 106-142.
[467] Roger Scruton, *Conservatism: an Invitation*, 150.
[468] Roger Scruton, *England and the Need for Nations* (London: Civitas, 2004/2006), 1-3, 18. NB: Scruton describes all non-arbitrary government as "republican", which, he says in an endnote, is "not to be contrasted with monarchy… but with absolute rule, dictatorship, on-party rule and a host of other possibilities that fall short of participatory administration. Not are republican governments necessarily democratic on my definition" (at 50).
[469] Yoram Hazony, *The Virtue of Nationalism* (New York: Basic Books, 2018), 52-54.

become the founder of an international political movement called 'national conservatism' (and not 'conservative nationalism').[470]

But as I have noted, it is a mistake to reduce conservatism to a defence only of concrete particulars and not of the knowledge gleaned from those particulars and their history. So, the interaction of nationality and conservatism is more complex than merely the distinction between the nation as it now exists and what nationalists hope it might become. The historical national identity is bound up with order properly understood, because the information encoded in the constitution is beneficial for the people of the nation, and perhaps not for others. In a way, then, the conservative theory of order clarifies the connection that Scruton and Hazony seek between conservatism and nationality.

Nationality, the object of conservatism here, is defined by established practical knowledge. The nation is historical, in that the institutions, territory, and people to which it refers are products of history. But, going further, this also means that the nation is, in a sense, precisely those people for whom an order is (or aims to be) beneficial. Thus, the question for conservatism is to what extent institutional recognition of the historical national identity conduces to good lives. Nationality is valuable if, as part of the process of formation of second nature, it helps to explain the institutional perspective and to motivate people to follow and make use of historical prescription. And people so formed constitute the nation as such: as Scruton puts it, the nation comprises the people for whom this place, under the constitution, is a *home*, because history has suited it to them, and them to it, and it is to this home that they are loyal.[471]

The connection, then, between the constitution and the nation is that the established practical knowledge of a constitution belongs to the nation. But this should not invite the republican claim that the nation can determine its own good independent of history and pursuing it through the state and other institutions. This misses that order is good because it captures an accurate picture of reality, not

[470] Edmund Burke Foundation, "National Conservatism: A Statement of Principles", *National Conservatism* (2022), https://nationalconservatism.org/national-conservatism-a-statement-of-principles/.
[471] Scruton, *England and the Need for Nations*, 13-18.

merely because it allows public participation. Institutions, especially those of state, abandon their epistemic function if they substitute some construction of national will for what is known to be good for people within the context of the nation's institutions and territory.

In general, then, the problem with nationalism is that the recognition of the nation, including its collective preferences, is only one part of a beneficial order. To put the point in Miller's terms, the constitution defines the proper balance between the intrinsic and instrumental values of nationality: insisting on the intrinsic value of the historical identity at the expense of other values or of changing circumstances might not conduce to good lives as prescribed by the constitution; yet, at the same time, taking Minogue's point, because the national identity is tied to historical experience, it cannot be instrumentalised for new, ahistorical ways of life – doing so creates a non-identity problem, or problem of nominalism, in which one is no longer talking about the nation as such, but some abstract version of it.[472] Instead, nationality is useful for identifying and motivating actions that are likely to be beneficial for the people under the constitution given historical experience. Therefore, an orderly nationalism is only the actions of a nation pursuing what it knows of the good and the right through its constitution – seeking continuity and growth and so on – it is not some project of revolutionising or radically expanding the nation and its territory.

Accordingly, the scope of conservatism asks how nationality should be used within an orderly constitution. Nationality is relevant to hierarchy: order will entail a preference for national institutions over international institutions or cosmopolitan duties and over multicultural interests.

On the conservative view, cosmopolitanism is, at base, an epistemological error. The institutions that make up order properly understood are only as beneficial as their purported authority is epistemically credible. This claim about internal order gets stretched the more removed prescriptions are from the reality of people and place, and, as previously noted, the more decisionmakers are interpolated

[472] With my co-authors, I made a version of this point in Daniel Wild, Zac Gorman, and Andrew Bushnell, *Australian Values and the Enduring Importance of the Nation State* (Melbourne: Institute of Public Affairs, 2019), 23.

between institutional prescriptions and subjects. Thus, cosmopolitanism is presumptively undesirable because, as Scruton notes, accountability should be as local as the practical knowledge it exercises.[473] That is, the decisions of authorities become harder to challenge the more removed are their mechanisms and reasons from the rest of the constitution. Cosmopolitanism and international institutions aim to supervene on the institutions that govern how people, in their various home countries, live and understand the world, and this makes their claims to be internally ordered largely incredible. That said, because conservatism is a claim about order, and not (at least in the first place) about national unity, it is also consistent with constitutional structures that serve more than one nation (as in the United Kingdom or Austria-Hungary) or cultural group (a conservative can support, for example, Quebec remaining part of Canada). This is so because what is really at stake in these societies is the flourishing of the people, and these arrangements may well be generally beneficial. A multinational state is possible where the parties share some set of common reference points – language, customs, history, or even a monarch – such that the constitution provides a coherent world picture that enables the people of those nations to flourish together. Whether such a cosmopolitan order really is beneficial, and whether it should be founded in the first place, is a matter of prudence.

At the subnational level, the situation is more complex. The conservative claim that the constitution reliably tracks reality, meaning its prescriptions conduce to people's benefit, is challenged by the presence within the national territory of people whose interests are not anticipated by those institutions (which, indeed, may have even been established in opposition to those interests). For example, around the world, indigenous minorities tend to have worse average life outcomes than others in their societies, and this has led to various social and political changes that are designed to raise the salience of indigenous interests, whether through reserved seats in parliament (as in New Zealand), a separate territory (as in Canada), or the current proposal in Australia to create a constitutional advisory body for indigenous affairs. Political conservatives have sometimes supported

[473] Scruton, *England and the Need for Nations*, 25.

such changes, as mutually beneficial means for bringing indigenous people and interests into the comprehension of the established constitution.[474]Again, much of this is prudential. Many problems of recognition can be done *ad hoc*, as in, say, the provision of interpreters to increase access to justice.

But when institutions like those of government are implicated, a more systematic approach is needed, and here, the conservative theory of order suggests some limits to the recognition of minority interests. First, institutional changes should not undermine the beneficence of the constitution for everyone else. And secondly, by extension, to the extent that beneficence is bound up with nationality, then that nationality remains justifiably established. In effect, the recognition of minority interests cannot coherently demand the nation to abolish itself, in an historical and institutional sense. Conservatism, then, is likely to distinguish between the epistemic claim that minority interests are often overlooked, and the more contentious normative claim that those interests necessarily or obviously trump the interests of everyone else in a beneficial constitution. Yet this outer limit leaves much room for reasonable accommodation of interests that are comprehensible to the constitution and amenable to recognition in its terms.

The considerations relevant to prudence in these matters are made clearer by contemplation of how conservatism will operate in respect of nationality. For conservatism, the establishment of a beneficial constitution will suggest a mix of integrating recognisable interests and measures to assimilate, where appropriate, people into the nation and its beneficial order. While cosmopolitan interests are unlikely to be integrable, for the reasons noted above, reform does suggest that integration is preferable for indigenous interests. For indigenous peoples, the land that makes up the national territory is already overlain with institutions and meaning – it is already a home. In a way, then, these situations are clashes of conservatisms, based on competing but formally similar institutional understandings of people and place. That is, rival orders. The challenge of statesmen is to reconcile not just the people

[474] For example, see this essay collection: David Freeman and Shireen Morris (eds.), *The forgotten people: liberal and conservative approaches to recognising indigenous peoples* (Carlton, Vic: Melbourne University Publishing, 2016).

but their conceptions of home, to make a shared place a shared home. Conversely, immigrants and refugees are coming into a home, and conservatism suggests that the practices they bring with them should be made coherent with the established order. How this is managed is a matter of prudence, but it is apparent that the capacity of an order for absorbing newcomers will place limits on how much, and what kind of, immigration is desirable for conservatives. Yet at the same time, the conservative idea of second nature does imply that multi-generation assimilation into the nation by adopting its way of life is possible, and may be, under some conditions, an orderly source of growth.[475] The prudence of this will differ from country to country and from time to time.

In this context, conservatisation asks how we can make our constitution and institutions more accurate to our understanding of the historical national identity. On this basis, policy may seek to protect the historical national identity from demographic and cultural changes, from the outside influence of international organisations and foreign countries (for example, Australia has long had regulations requiring television to have a certain amount of local content), and various nation-building projects, within the limits sketched above. This concern also provides the link between conservatism and populism. Populism is generally understood as any politics that claims to speak for the people, however constructed, against the elite that controls the established order.[476] Thus, conservative populism is a movement against elites that have departed from established practical knowledge and that seeks to restore the constitutional order's lost contact points with reality.[477] In this case, conservative populism aims to speak for the nation and its common sense. Hence, for example, conservatives in Australia do not generally support becoming a republic or changing the flag so that it no longer identifies the country as a former colony of the United Kingdom. Under the pressure of changes like these, conservative populism might be mistaken for republican nationalist claims about

[475] I can only flag here the problem that prejudices internal to some ways of life might preclude their adoption by some people. In general, it might be said that a nation should not invite into its territory anyone it is not prepared to properly welcome, but this says nothing about its right to exclude these people.
[476] See Niscevic, "Nationalism", Section 3.4, and Rogers Brubaker, "Why Populism?" in *The Wiley Blackwell Companion to Race, Ethnicity, and Nationalism*, ed. John Stone et al (John Wiley & Sons, 2020), 78-9.
[477] I wrote about this here, and still broadly agree with what I wrote: Andrew Bushnell, "Comfortable and relaxed with conservative populism", *Meanjin* (Autumn 2018).

collective self-determination, but it is a different phenomenon. What is at stake is the historical national identity, the role it plays in the beneficence of the constitution, and how this determines who should rule (that is, provide prudent leadership), not an ahistorical vision of some speculated future national success.

Finally, then, the signs of order as they relate to nationality. Much of this has already been suggested. As to continuity, the aim of an orderly policy will be to cultivate historical remembrance, to explain how and why the constitution works so that people may benefit from it (that is, to assist in the process of formation). Conservatives, then, will support national days that commemorate moments of historical import, like military battles, or which celebrate the country's way of life and cherished customs, rather than days that celebrate causes or ideas. Similarly, in aiming for growth, conservatism will aim for stories that encourage the nation's loyalties and customs – the United States has been hugely successful in generating novels, films, and art forms that express some real but hard to define notion of Americanness, a national mythology. Materially, the aim will be to encourage native growth and prosperity, rather than relying on exogenous sources. A country that mainly creates wealth by, say, adding outsiders to its population, and not by producing anything of value, is likely disordered. All of this supports the nation in preparing for the future with confidence in the wisdom of its world picture, and this confidence, in turn, promotes a sense of national independence, that the nation is up to the challenge of defending its territory and way of life against external threats and influences. Finally, restoration might mean the kinds of conservatisation or populism I noted above, but, more mundanely, it complements continuity, in that the historical sense is useless if it cannot be drawn upon to shape the future, and for nations, this means making sure their founding stories and myths are relevant to people's lives today, so that the future is structured by the past.

In this section, I have attempted to show the place that nationality has within the conservative commitment to realising order as a basic good. For conservatism, nationality is part of the reality comprehended by an orderly constitution – it is a set of facts relevant to accuracy of historical prescriptions and the process of formation. As such, order suggests that attempts to distort or change

(or even abolish) the national identity will not conduce to the good of individuals or the nation, and this is so whether those attempts are done in the name of nationalism (which replaces the nation with an imaginary, different nation), cosmopolitanism (which subordinates the constitution and the nation to institutions that are alien to them), or multiculturalism (which seeks, in at least some cases, to incorporate into the constitution institutions that are necessarily incoherent with it).

6.3 Conclusion

The aim of this chapter was to demonstrate that the conservative theory of order that I have developed over the course of the thesis provides some explanatory and motivating power in relation to political philosophical problems, and so to demonstrate that there is a coherent political conservatism. I sought to meet this aim by looking at five such problems and the debates surrounding them and applying my theory. These discussions, I think, vindicate my claim that it is useful and illuminating for political philosophy to think of political conservatism as an attempt to realise the distinctively conservative value of order. Some discussions suggested new or perhaps counterintuitive conservative positions, while others clarified or extended established conservative opinions and the links between them – and all discussions showed that political philosophical problems can be approached from the perspective I have developed. To conclude the chapter, then, it is useful to briefly review some of the recurrent philosophical moves the conservative theory of order makes in addressing problems like these, and then to note where the theory seems vulnerable to criticism.

The discussions were framed by the application of the different features of conservatism; the idea was to get an image of what conservatism looks like in addressing political philosophical problems. In doing so, the underlying elements of conservatism were clarified too. We find that the epistemic claim – that established practical knowledge reliably tracks reality – supports both the more familiar status quo conserving political conservative actions and, as I have argued, a more substantive and positive set of actions. Political conservatism holds both shield and sword.

Established practical knowledge provides the foundation for political conservatism. It is on this basis

that conservatism insists upon the realness and intelligibility of key concepts like enhancement, dignity, gender, justice, desert, and nationality. The historical-experiential understanding of these concepts is contingent but non-arbitrary, and it is this that explains both the conservative resistance to ahistorical or novel claims made about them and the approach taken to resolve those claims. In practice, this kind of common-sense realism is anthropocentric, in that it suggests that values are real but must be incorporated into the constitutional world picture to be acted upon, because it starts from the position that humans can apprehend reality, including facts about our own nature and our societies.

The shield, then, is raised against arguments that proceed from either the denial of the veracity of historical experience or speculations about the kinds of beings we might become or the kinds of societies we might have. So, we saw that conservatism will react sceptically to claims like the intrinsic value of the environment, or the desirability of transcending human nature, or doubts about the distinctness of the genders, the possibility of identifying moral desert, or the historical identity of the nation. The status quo bias associated with conservatism is here put in its proper place, which is merely a defensive reaction to claims that are, to some degree, incomprehensible for lack of grounding in the established order.

But this is not all that conservatism is. The preceding discussions illustrate the way that conservatism can move from this foundation to support reforms and other steps in the direction of an artificial society that is consistent with what is known about human nature and the natural world from historical experience. Conservatism's sword is used to carve out a home in the world, as Scruton would say. So, for each application, it was possible to imagine not only reforms that would make the constitution more coherent, but policies that would make society more conservative, that is, more aligned with reality, and therefore better for everyone.

Yet while the conservative theory of order broadly succeeds in its own terms, it remains vulnerable to the charge of dogmatism if deployed in an unsubtle way. Conservatism proceeds from claims about

reality itself, holding that conceptual knowledge is (under certain conditions) contingent but non-arbitrary. But this can slide into the claim that institutions cannot change at all without losing their connection to reality. Thus, a recurring theme in the preceding discussions was the problem of nominalism, or the problem of non-identity: that if we change any of the conditions around an institution, it is no longer what it was, and no longer valuable. This charge is strongest in relation to a recurring theme in the discussions, which is that conservatism, when challenged by claims of unjustified differential treatment (or 'oppression'), will seek to deflate those claims and address them in its own terms. In relation to feminism, social justice, minority rights, and even environmental interests and (what we might call) medical freedom, conservatism operates by trading-off claims of maltreatment against the value of order enjoyed by everyone else. It is this moderation that triggers the claim that conservatism is merely defending the status quo, whatever it may be.

In this chapter, I have tried to demonstrate how conservatism might reason through this difficulty, by emphasising the plasticity inherent in humans' second nature and the conservative interest in growth as integral to flourishing. But it is important for critics to understand that conservatism's moderation is not unmotivated or unfounded: it is based on a coherent theoretical justification, which, indeed, would motivate, were any politician ever so inclined, considerable (perhaps immoderate) movement in a distinctively conservative direction. Accordingly, from the conservative perspective, to do more to accommodate conservatism's critics would be both incorrect, in that it would be to depart from what is known about reality, and bad, in that the ultimate conservative claim is that life under conservatism will be better, all else equal.

Nonetheless, the central challenge of conservatism remains, as it first appeared in Burke, how to distinguish the substance of established practical knowledge from the form of the institutions by which it is confirmed – and by extension, how to distinguish identity from name, growth from novelty, and reform from change. Conservatism supports a wide range of institutional fixes, many of which might directly address concerns shared by non-conservatives, but these require a great deal of prudent statesmanship, and this places a lot of weight on the credibility of orderly institutions, the

process of formation, and the legibility of the signs of order.

Conclusion

In this thesis, I have sought to clarify and elaborate the distinctive contribution conservatism makes to the political philosophical problem of determining the kinds of institutions that, for beings like us, are most conducive to good lives and flourishing societies. This undertaking was motivated on various grounds: first, a common intuition that most people, no matter their political preferences, are conservative, in the sense of preferring the familiar, at least about some things, some of the time; secondly, the desirability of this human trait, properly understood, being expressed in the various institutions that govern society; and thirdly, persistent claims within political philosophy that moving from the general or natural sense of conservatism to the political sense is necessarily incoherent. The challenge, therefore, was to clarify what it means to be conservative and then to identify a reason to be conservative in that sense, upon which reason an answer to the political philosophical problem might be proposed.

To meet this challenge, rather than attempting to describe and parse the ideas and actions of ostensible conservatives in politics, I chose instead to analyse the concept of conservatism. Conservatism was seen to conjoin an epistemic claim about the distinctness of familiarity with a normative claim about the value of familiarity to beings like us. However, familiarity is ambiguous, pertaining sometimes to the actual and sometimes to the historical, and this bears upon whether and how our institutions might capture its purported value. So, to clarify the ambiguity, I examined both definitions.

First, I reconstructed the definition of conservatism that predominates in the philosophical literature. On this view, to be conservative is to be favourably disposed towards the actual or *status quo*, and the reason to be conservative in this sense is that *to value* includes a commitment to maintaining that which is valued, all else equal. But, I argued, this *procedural conservatism* (so called because it aims to manage changes thrust upon the status quo) is incomplete: it neither contains, nor is logically compatible with, a universal reason to be conservative, instead being reasonable only in certain

contingent circumstances.

Secondly, then, having established that defining the familiar as the actual leads to this dead end, I inquired into what it would mean to define conservatism as a commitment to the familiar as historical experience. Here, like others who have contemplated this subject, I took my inspiration from Edmund Burke, and I reconstructed his vision of society as a complex artifice (or set of artifices) that benefits human beings by translating the accumulated wisdom of society into institutions that function to develop humans' second nature, that is, their reason and virtues. I called this *substantive conservatism*: the idea that the information encoded in our institutions is *contingent but non-arbitrary* and provides a sound basis for individual and collective flourishing. Yet the Burkean model by itself did not complete the challenge at hand: it lacked a persuasive foundation for its key epistemic claim about the veracity of historical experience, and as such, it did not obviously sustain the substantive conservative claim that a society like Burke imagines is normative.

Thus, the bulk of the thesis was dedicated to re-establishing the Burkean model. To this end, I argued that the epistemic claim is best understood as a claim about common sense. Following Wittgenstein, I claimed that common sense inheres in the way that propositions are tested against reality through practice, and as such, we apprehend immediately both the world external to our minds and propositional knowledge that is given to us and which we can test for ourselves. In this way, Wittgenstein helps to resolve a key ambiguity in common sense, which is whether we are entitled to hold that other beings like us exist. Not only are we entitled to this claim, I argued, but we are also entitled to project our understanding of beings like us into the past. *Historical common sense* tells us that the beings who created (directly and indirectly) the institutions that capture our knowledge were like us and responding to the same world as ours. It is on this basis that substantive conservatism is entitled to the claim that historical experience is accurate to reality and available to us through the system of institutions that govern our society, under certain conditions that I called *order properly understood*. It followed, then, that order is the reason to be conservative. Order is a basic good: it is both intrinsically valuable for beings like us, because of our sociality and capacity for second nature,

and instrumentally valuable for the projects that we might conceive as individuals and societies, which projects are more likely to conduce to our benefit if they are based on what I called *established practical knowledge*, that is, the historical experience encoded in orderly institutions. Going further, I completed my analysis of conservatism by arguing that, properly understood, *order is conservative*, meaning that the aim of being conservative is to create and maintain order and that, moreover, order aims at the conservation of established practical knowledge through institutionalisation.

Conservatism, then, was seen to be a far-reaching claim about the nature of knowledge itself and the way that humans come to, and make use of, a picture of the world in which we live. This satisfies the motivations for the thesis: it is because beings like us make use of historical experience that even non-conservatives seem to act conservatively at least sometimes; it is the basic goodness of order that ought to be reflected in our institutions (indeed, institutions are arbitrary without it); and the reason to be conservative is not a claim about value as such, but a claim about order as something valuable.

In the final chapter, I then applied this conservative theory of order to five current debates within political philosophy, with the primary aim of demonstrating that the theory does provide a coherent and useful way of approaching such debates, and the secondary aim of rendering the theory in more concrete terms. The distinctively conservative value of order was seen to give rise to a range of distinctively conservative contributions to these debates with concrete political and policy consequences. That is, it was seen that conservatism is not merely about melioration (that is, the mitigation of the effects of proposed changes on the existing state of affairs) but is also directed towards a specific end that may clash with, and supervene upon, melioration.

This argument, I think, makes a range of original and clarificatory contributions to political philosophy. The overarching claim I would make here is that the definition of conservatism presented in this thesis is an advance for the field, because it demonstrates that conservatism, despite the position taken in much of the philosophical literature, is formally the same as other political philosophies: it makes a claim about a basic good that society should seek to realise and proposes an idealisation to which

society ought to aspire. Conservatism is – and this is the most coherent rendering of it – a substantive position, directed to a certain end, and not merely a strategy for mitigating or modifying value claims proposed by other theories. Moreover, and perhaps of more general interest, the conservative theory of order that I have developed also presents an original solution to the problem of *modus vivendi*: order as a basic good avoids both the reduction of society to mere *modus vivendi* under pluralistic modern conditions and the assertion of a (different) monist conception of value that commits society to the remaking of all institutions. Because order is a basic good, and order properly understood includes both internal order (the correspondence of an institution with reality) and external order (the coherence of institutions as a constitution or world picture), it includes both an intrinsic value claim that reasonable people will recognise and an instrumental reason for maintaining the autonomy (or separateness) of institutions.

These original contributions are accompanied by two worthwhile clarifications. The argument presented here is based on a reading of Burke that, while it finds some support in the literature, is not the prevailing interpretation. Yet, I have endeavoured to show, Burke's vision is more ambitious than its common reduction to some sort of handbrake on change makes it seem. Similarly, the connection I draw between Burke and common sense is more explicit than is frequently the case, and the reading of Wittgenstein that I adduce in support of common sense is unusual, but, I believe, borne out by a careful examination of his rescue of G.E. Moore's famous arguments. The development, on this basis, of historical common sense as a vindication of Burke's claims about the wisdom of "the species" is, I think, an important clarification of the role that history, and by extension reality, plays and should play in politics, which role conservatism exists above all else to vindicate.

That said, these contributions are accompanied by some noteworthy limitations. I have provided an analysis of conservatism and sought to defend both its coherence and its applicability to political philosophical problems. That is, I have approached the task positively, with a view to elaborating a theory. The path not taken, then, is to ask why so many people – political philosophers especially – are not conservatives and do not see order as a basic good (and sometimes, not as a good at all). While

I have sought, in various places, to distinguish conservatism from rival ideas (like liberalism and republicanism), the critiques of conservatism to which I have responded in the most detail are critiques of its coherence, rather than its desirability. Instead, I sought to address this kind of normative critique obliquely in the final chapter, by noting a range of critical perspectives within political philosophy and how conservatives might engage with them. Nonetheless, I do not expect to have satisfied these critics, only to have offered them an explanation of why conservatives might disagree with them and what that disagreement might entail.

Another limitation of my approach is that in eschewing a descriptive or historical approach to my conceptual analysis, I have said little about how my theory connects to political conservatism as it is and has been practised in politics. It is left to the reader to consider whether and to what extent a given politician or political party has been conservative – noting, of course, the problem, inherent in politics, of parsing sincere commitments from practical expedients.

Finally, along with these limitations, the thesis suggests some other directions for future research. As to the epistemic element of conservatism, more work might be done to clarify the meaning and role of prudence in a good society. In the opening chapter, I noted Hayek's point that conservatism places too great a weight on leaders (or statesmen), and while I have argued, following Burke, that prudent leadership is a matter of the process of formation and reflection upon historical experience, I also noted that more might be said about how this should work in practice, especially in relation to the form of political institutions themselves under modern conditions. As to the normative claim, the sketches undertaken in the final chapter provide entry points into larger engagements with critical perspectives, which might clarify the desirability of order as I have described it here. More broadly, the contrast that I have drawn between conservatism and republicanism might also motivate further research to sharpen the distinction between the conservative interpretation of the public sphere and the virtues it requires and the republican notion of active citizenship and participation.

In sum, conservatism is a commitment to order, understood as the means by which historical

experience, the human understanding of reality, is captured, and this is motivated by the kind of being that we are, namely, a being that is formed by the influence of the social institutions into which we are born and raised, and which therefore has an interest in receiving true information about our nature and the world in which we live. The reason to be conservative, then, is simply that it is best, for beings like us, to live in reality.

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