A Conservative Theory of Political Obligation

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Introduction

Along with the quest for the 'just' political order, political obligation is one of the oldest and most fundamental problems of political philosophy.

Politics is the art of arranging life in community; political organization requires the exercise of power; the legitimacy of authority and the corresponding duty to obey its commands are therefore two basic questions to which political theory may be expected to provide an answer.

All the more, the right to command and the duty to obey are problematized in the context of Western liberalism, where individual freedom and autonomy are considered so central that any restriction thereof requires a proper justification.

And in fact, while different solutions to the problem of political obligation had been contrived by ancient as much as medieval philosophers, it is with the rise of modern liberalism that a variety of principles came through as an endeavour to elaborate a moral justification (if any at all) of people's duties towards political authority. However, practically all these efforts have been targeted, especially from the Seventies of the XX century onwards, by profound and accurate criticisms issued by the so-called 'philosophical anarchists', that is to say, philosophers who believed that political obligation has in fact no moral justification, and nonetheless did not recommend rebellion or revolution.

In particular, theories of political obligation have been dismissed because they failed to match a series of basic requirements as they were established by A. John Simmons: accuracy,

completeness, content independence, particularity, generality, and singularity in ground.

Eventually, the idea of a moral duty to obey the law proved fundamentally inconsistent with the strict application of the principle of autonomy, and with the idea that obligations should either be self-assumed or that, although involuntary, they can nevertheless be somehow reduced to voluntary commitments.

The shortcomings of the efforts to build a theory of political obligation are apparent, first and foremost, in case of theories based on the perhaps most obvious candidate to account for the duty to obey the law – that is, consent.

As to explicit consent, evidently, with the exception of very few people, like public officials, almost nobody can be said to have consented to the State. As to hypothetical consent, it is doubtful that those acts (like voting, or utilizing public facilities) identified as sources of assent to the State by thinkers like John Plamenatz, Peter Steinberger, or David Estlund, actually mean voluntary adherence to the law. As David Hume already noted, the alternative to obey political authority's commands might be so poor that talking about consent would be a delusion\.

Other moral principles do not fare better. The principle of gratitude, defended, for instance, by David Ross and A.D.M. Walker, raises a series of objections. First, it is not obvious that one can be grateful to entities like a State. Second, States generally force onto citizens the benefits for which they might require gratitude in return. Third, as George Klosko observed, obligations of gratitude are weak and diffuse, therefore unapt to function as the grounds of political obligation.

The principle of fairness has been evoked by H.L.A. Hart, John Rawls, and more recently by Klosko. However, critics remarked that

States produce nonexcludable goods, like order and security, for which participation in a cooperative scheme that would require an equal share of the burdens tends to be indifferent. Others insisted on the irrelevance of the notion of fairness, for modern States, even if they were depicted as cooperative enterprises, are sufficiently big so as to make occasional disobedience negligible. Above all, the principle of fairness fails to match the particularity requirement: if country B were more effective in providing the inhabitants of country A with public goods, then the inhabitants of country A would be obligated towards country B, rather than towards their own.

Theories grounded in the natural duty of justice, both in the form of democratic consent (defended especially by Jeremy Waldron, Anna Stiltz, and Thomas Christiano) and Samaritanism (the duty to rescue those in need if this can be done at a reasonable cost for oneself, a principle employed by Christopher Wellman) undergo similar difficulties. They can hardly be particularized; they fail to establish that obedience to the law is in fact the only way to discharge those duties; and they are weak, that is, too easy to be overridden by other considerations.

Differently from liberal and democratic authors, conservative philosophers have much less discussed the problem of political obligation. Many of them simply took for granted that citizens do have a duty to obey the law *qua* law. Others framed the problem in an alternative way: they contested the very notion that political power has to be transparent, that its actions and demands require a public moral justification, and maintained that the concept of authority implies a sense of reverence and mystery as to the foundations on which it lies. What is important is not that people's obedience is morally defensible, but that the reverential esteem in which they keep political authority persuades them that obeying is the right thing to do.

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Naturally, a theory of political obligation grounded in a sort of 'noble lie' would have low appeal in times in which democracy, at least in the West, is fortunately regarded as an acquired value, and persons claim the right to a sphere of freedom and independence from governmental encroachments. So, what does conservatism has to say? Does elaborating a conservative theory of political obligation represent a purely academic exercise of some historical interest, the effort to systematize the row material produced by conservative authors across the last two centuries and a half, or does conservatism have the theoretical resources to provide a successful theory, one capable of overcoming the objections of the anarchist position?

The idea underlying this thesis is that, while the purpose of identifying a conservative solution to the conundrum of political obligation is *per se* a worthy endeavour, the specificities of conservative political philosophy may also offer us the tools to prove that citizens of modern nation-States are in fact morally required to obey the law *qua* law.

Differently from a major trend in liberalism and democratic theory, conservatives not regard autonomy as the most important value to which political philosophy should be committed. They do not think that our obligations should be voluntary or reduced to the paradigm of voluntary commitments; to the contrary, they maintain that many of the most significant duties in our lives simply befall us. For them, historical continuity, the cultivation of an intergenerational spiritual connection, the preservation of traditions, and the nourishment of a lively sense of communitarian bonds, are the most important principles to be defended.

Interestingly, conservatives do not regard these values as incompatible with the achievements of modern politics. Even if they appreciate the role of community, they are also advocates of

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individual liberty. Furthermore, they understand that modern polities are not collective enterprises held together by the pursuit of a single, gigantic, societal purpose, but rather a form of mutual engagement for which what counts is the sharing of a set of rules of conduct that can make daily interactions mutually valuable. A political community is based on a language of reciprocal intercourse in which each speaker has to acknowledge the same 'grammar'. It is a common undertaking to which persons participate not for instrumental reasons, but for the sake of mutual engagement in itself. It is a 'game' played for the sake of playing, and playing in connection with other players.

This is why the model of political obligation I eventually advocate is moulded on the Oakeshottean notion of 'civil association'.

It relates to the duty of membership in a polity interpreted as a *formal* association of *cives*, persons connected not by the pursuit of a common purpose, but by the acknowledgment of the same general rules of conduct (*lex*) expressed by the law.

It is a mode of relationship in which associates cooperate as players in a game, joint not in a single enterprise with a recognizable end that they must serve, but in a *conversation* in which participants share a language and its grammar, but do not utter the same words and phrases.

In this sense, the idea of a 'civil association' fits for the character of modern nation-States, and while it endorses an understanding of the self that emphasizes the social constitution of personal identity, it need not fictitiously depict society as a substantive association with a common purpose. While citizens of a nation may certainly cultivate stronger bonds stemming from patriotic identification, for political obligation to hold one needs only that the formal mode of relationship identified by the civil association be effective, as a *necessary* and *sufficient* condition.

The model of the civil association is connected to conservatism's key values. As I will argue, conservative political philosophy is committed to the preservation of historical value and traditions – which epitomize the existence of a diachronic, intergenerational, community – and therefore, politically, it ends up establishing the primacy of community over the atomized individual assumed by liberal theory, and the primacy of order over the abstract liberty and autonomy of this unencumbered subject.

Membership in the civil association develops a 'civil conversation' involving past, present, and future generations: it embodies a community that is both synchronic and diachronic. And since abiding by the rules constitutive of this community is the condition for the latter to subsist, conservatives may conclude that citizens do have a political obligation.

It is not hard to see in what the conservative model of membership differs from the liberal versions. In general, liberals are restricted from embracing a fully-fledged version of the principle, whereby the obligation is finally understood as involuntary, and yet binding. Therefore, they subtly appeal to other, more fundamental, values.

For instance, Ronald Dworkin resorts to to the notion of the "equal concern" shown by the society for the well-being of all members (Dworkin is also wrong in comparing the polity to the family, a misinterpretation that the Oakeshottean scheme, and the distinction between civil and enterprise association, avoids). Yael Tamir, on her part, is unclear as to whether, on her account, political obligation is contingent on the fact that a member identifies himself with the community, or on the fact that such identification is autonomous, actively and consciously undertaken by the subject. The

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ambiguity demonstrates how it is hard to balance the commitment to autonomy and the idea of duties of membership.

These problems are simply of secondary importance in the conservative perspective. Of course, liberals may claim that autonomy cannot be dismissed, and that one cannot neglect the issue of how to preserve it in the face of other, community-oriented, values. There is certainly a variety of questions on which liberalism and conservatism may reasonably clash, and a set of counterarguments that both can address to the opposite view in order to prove it wrong. This is not the path I want to pursue here. The present work develops a conservative theory of political obligation; but while it cannot avoid highlighting the main points of disagreement with liberal interpretations, and while it tries to prove that such theory is capable of matching the requirements set out by Simmons, it does not aim to show that the conservative alternative is by all means better than the liberal one. This would be a different kind of theoretical endeavour, one that would deserve a separate treatment.

This thesis is divided into three broad portions. In the first one, I provide a set of basic definitions, and I recall the conditions that a theory of political obligation should satisfy.

The second one is dedicated to an in-depth analysis of conservatism. I argue that conservatism has a *non-political core* constituted by the status quo bias, articulated into the notions of historical value (HV) and epistemic scepticism, and traditionalism. The non-political core is connected to *political* theses: the *primacy of order over liberty* and the *primacy of community over the individual*.

In the final part I bring to completion the elaboration of the conservative theory of political obligation, by developing the Oakeshottean idea of civil association. Here, the key arguments are commitment to the preservation of historical value, guaranteed by the

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interpretation of the polity as a diachronic community, and the two political values of order and community. Since the question of community is so central to the argument, this part is preceded by a defence of the notion of associative duties from the three main objections that philosophers use to address to it: the voluntarist, the distributive, and the moralist objection.

Eventually, I will add an Appendix to hypothesize how a conservative could cope with the problem of civil disobedience, that is to say, with those cases in which the law demands citizens to perform acts that deeply clash with their conscience, their moral and/or religious views. I will argue that conservatives might subscribe to a slightly modified and integrated version of the Rawlsian model.

Chapter 1. The problem of political obligation

In this chapter, I provide a definition of political obligation, I identify the criteria of success for theories of political obligation, and I offer a critical examination of philosophical anarchism.

In the first section, I define political obligation as the *prima facie* duty to obey the law. I explain why one need not assume the distinction between the concepts of obligation and duty, and in which sense the duty to obey the law is a *moral*, not a *legal* duty. Against philosophers who claim that, in order to be *political*, such obligation should entail more than mere law-abidance, I argue that obeying the law is a *necessary* and *sufficient* condition for political obligation to hold, although citizens may support their country also in other additional ways (like cherishing the flag, voluntarily enlisting in the military, etc.). Eventually, following Simmons, I single out the following conditions of success for a theory of political obligation: it has to establish a *prima facie* duty; it has to be *content independent*; it has to be *particularized*; it has to be *general*; it has to be grounded in a *single* principle.

In the second section, I analyse the anarchist challenge to the notion of political obligation. I specify the differences between *political* and *philosophical* anarchism, and I distinguish between an *a priori* and an *a posteriori* philosophical anarchism. I target both versions with objections: *a priori* philosophical anarchism (Wolff, Smith) is based on controversial premises, like radical individualism, or a conception of autonomy as persons' 'primary obligation'; *a posteriori* philosophical anarchism (Simmons, Huemer) declares not to make morally problematic assumptions (and yet, Simmons

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avowedly adopts a Lockean framework, while Huemer's anarcho-capitalism refers to political intuitions that are at least debatable), but it is likely to have disruptive effects on social order. Moreover, *a posteriori* philosophical anarchism may be rebutted simply by elaborating a successful theory of political obligation, which is what I try to do in the following chapters.

1. *What is political obligation?*

The problem of political obligation is one of the classic issues in political philosophy. It was confronted by ancient thinkers like Plato, by medieval theologians, from Saint Paul, to Saint John Chrysostom and Saint Thomas Aquinas, by modern theorists of the social contract like Thomas Hobbes and John Locke, although the first appearance of the phrase 'political obligation' dates back only to Thomas Hill Green's *Lectures on the Principles of Political Obligation*, published in 1895, but delivered at Oxford University in the years 1879-1880.[1] In those writings, Green described political obligation as including "both the obligation of the subject towards the sovereign, of the citizen towards the state, and the obligation of individuals to each other as enforced by a political superior". In this sense, the purpose of his analysis of political obligation was to discover "the true ground or justification of obedience to law".[2]

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[1] See Plato, *Crito*; *Republic*; *Laws* (various editions); St. Paul, Romans 13:1-2; St. John Chrysostom, Homilies V, VI, XXIII, XXIX, and the IV Discourse on Genesis; Aquinas, *S.Th.*; Hobbes (1991) [1651]; Locke (1967) [1689].

[2] See Green (1999) [1895], p. 5.

Political obligation can be concisely defined as the moral duty to obey the law. This definition, however, requires some clarifications as to the following points: the difference (if any) between obligation and duty; the *moral* scope of the obligation, in contrast with its *legal* character or other more demanding interpretations of concept of the *political*; the relation between the law and its content; the subjects to which this obligation is owed; the conditions that a theory of political obligation should match.

1.1 Obligation or duty?

According to some theorists, notably R.B. Brandt and H.L.A. Hart, there is a fundamental difference between the concepts of obligation and duty: while the former must be voluntarily undertaken, duty may simply befall us.[3] So, for instance, if we promise to do something, or sign a contract, we have an *obligation* towards the person to whom we promised, or the other party in the contract; but our *duty* not to harm other people, or to rescue them from perils if it does not impose unduly costs on us, exists regardless of our wilful actions and/or utterances to assume it. John Rawls consequently maintains that while citizens of reasonably just States have no general obligation to obey the law, they nevertheless have a natural duty to support just institutions.[4]

Along these lines, Margaret Gilbert suggests to distinguish between two senses of the term obligation. In the first sense, obligation amounts to *being subject* of a moral requirement; in the second sense, it refers to the fact of *owing* something to other persons,

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[3] See Brandt (1964); Hart (1958).

[4] Rawls (1971), p. 99.

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in analogy with the case of promises.[5] According to Gilbert, political obligation is an *obligation* precisely in this second sense: it is an obligation we *owe* to other citizens, members of our same polity, with whom we have undertaken a 'joint commitment' as a result of our wilful acts.

Accepting this subtle distinction, in fact, would consistently lead one to privilege theories of political obligation based on explicit, tacit, or hypothetical consent, which, however, present some faults that theories in which the voluntary character of the obligation plays little or no role are likely to overcome: think, for instance, about the principle of membership, which need not resort to the notion of 'commitment', as if membership in the political association were a result of deliberate acts instead of the simple fact of being born within a community in which an on-going practice of mutual engagement as citizens, who subscribe to the same general rules of conduct, is already in place.

That political obligation is an obligation in a strict sense eventually refers to an understanding of the self as a subject for whom autonomy is the most important value, and who can consequently acquire a genuine associative obligation only so far as he gets voluntarily committed to the group or the polity. But such an interpretation of the self is liable to be challenged, and supplanted by a depiction of the subject as one who defines his own identity in terms of the associative bonds he already finds himself imbued with, bonds that are not willingly chosen but, to the contrary, shape and address even his capacity to make free choices.[6]

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[5] See Gilbert (2014), pp. 391-392.

[6] On this, see Part 2, chapter 3, in which I discuss the communitarian critique of the liberal conception of personal identity.

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After all, it is doubtful that one should resort to the conceptual differentiation between obligation and duty. On the one hand, this would counter our common intuitions and the way we employ our ordinary language: regularly, we speak of contractual *obligations*, but also of the *duty* to keep our promises and/or oaths. Naturally, ordinary language might simply fail to recognize a distinction of which philosophers should be aware. And yet, even authors, like John Horton, Yael Tamir, or Ronald Dworkin, who elaborate on the concept of membership, adopted the classic formula 'political obligation', which came to mean the duty to obey the law issued by political authority, regardless of its self-assumed or involuntary character.[7]

1.2 Moral, *not* legal *obligation*

It is important to stress that political obligation is a *moral* duty, not simply a *legal* obligation. The fact that State X issues a law L, and that citizen Y has a legal obligation to comply with L is only a descriptive claim: as a matter of fact, if a statement qualifies as a law it requires obedience on the part of those it addresses. What inquiries on political obligation try to understand is whether Y is *morally* required to obey L, which is a *normative* question.

That we have a duty to obey the law when it sanctions actions we would be in any case morally required to perform (or avoid) is uncontroversial: refraining from killing or harming other people, not stealing, etc. But in this case we would not speak of *political* obligation: it is not the fact that those laws were enacted by our government to give us conclusive reasons to abide by them, but the

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[7] See Horton (1992); Tamir (1993), p. 130; Dworkin (1986), chap. 6.

most basic independent moral principles they sanctioned. The story is different when laws are either indifferent from a moral point of view (e.g.: a law that commands to drive on the right), or even unjust. As Rawls put it:

> There is quite no difficulty in explaining why we are to comply with just laws enacted under a just constitution. […] The real question is under which circumstances and to what extent we are bound to comply with unjust arrangements. Now it is sometimes said that we are never required to comply in these cases. But this is a mistake. The injustice of a law is not, in general, a sufficient reason for not adhering to it any more than the legal validity of legislation (as defined by the existing constitution) is a sufficient reason for going along with it. […] In trying to discern these limits we approach the deeper problem of political duty and obligation.[8]

The purpose of the law is not simply to provide reasons for or against a potential course of action that subjects may weigh against other competing considerations. The law aims to exclude at least some of the considerations that the agent would otherwise be authorized to take into account.[9] Therefore, the moral obligation to obey the law (political obligation) is necessarily *content independent*. And yet, political obligation is usually conceived as only a *prima facie* duty: namely, there may be cases in which other more fundamental moral considerations trump the agent's duty to obey the law (the dimension of conflicts between law and morality studied by theories of civil disobedience).

At the same time, the concept of political obligation as the moral obligation to obey the law has to be differentiated from the idea that one's obligation towards the State, being *political*, requires something

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[8] Rawls (1971), p. 308.

[9] See Raz (1979), chaps. 1 and 2.

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more than mere law abidance. Joseph Raz, for instance, deems that political obligation demands to support actively one's polity's security and safety, while Bhikhu Parekh contends that it is the wider "obligation to respect and uphold the legitimately constituted civil authority", which he calls *civil* obligation, to include the more restricted obligation "to obey the laws enacted by the civil authority".[10] To the contrary, my assumption is that while political obligation may certainly admit of many additive ways to discharge one's duties towards the community (like voluntarily registering for the military, bowing to the flag, not discrediting one's country abroad, etc.), obeying the law is the *necessary* and *sufficient* condition for an exhaustive definition of the requirements of political obligation. In this respect, I follow Chaim Gans, who concedes that

> [...] good citizenship can be expressed through channels other than obedience to the law. [...] However, it is doubtful whether there is any point in discussing these and similar acts as part of political *obligation*. If any values exist that justify this duty [...], then a distinction should be drawn between actions whose performance is in some sense [...] necessary in the service of these values, actions which are thus considered duties, and actions that further these values but lie *beyond the call of duty*. Surely, the actions ensuring a necessary minimum for the furtherance of such values must be classified as the duties that serve them. Obeying the law is an action that meets this condition. [...] We shall find [...] that obeying the law [...] is the central and most solid core of this obligation.[11]

The meaning of *political* in the formula 'political obligation' has rather to be found in the specification of the subjects to which law-abidance is due: that is to say, the State to which one belongs, or

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[10] Parekh (1993), p. 240.

[11] Gans (1992), p. 8.

precisely the legitimate political authority in charge, and one's fellow citizens in that State as the co-members of one's community.

1.3 The conditions of a theory of political obligation

Let us rephrase the definition of political obligation, in light of the preceding discussion: political obligation is the *prima facie* moral duty to obey the law *qua* law, regardless of its content, a duty owed to the State (the legitimate authority) and to other citizens (as co-members of the polity).

A theory of political obligation has to respect a set of conditions discussed by A. John Simmons.[12] First, it has to be *accurate*, that is to say, it has to identify "as politically bound those individuals falling within the *proper* scope of the principle(s) it utilizes". Second, it has to be *complete*, in the sense of identifying "as bound all and only those who are so bound".[13] Then, beyond the fact that such theory has to establish a *prima facie* duty (that is to say, one's political obligation is not a *conclusive* reason for action), and that the obligation need be *content independent*, there are other three criteria: the *particularity* requirement; the *generality* requirement; and *singularity* in ground.[14]

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[12] The most recent discussion, particularly focused on the particularity problem, can be found in Simmons (2016), pp. 70 and following.

[13] Simmons (1979), p. 55.

[14] To these conditions, Huemer (2013), pp. 37-38, adds *comprehensiveness* (the fact that the State is entitled to regulate a wide range of human activities) and *supremacy* (the fact that the State is the highest authority within its sphere of action). However, the range of activities that the State is entitled to regulate is not necessarily broad. Even though the size of government has uncontestably increased especially in the post-war period, States may get

The particularity requirement asserts that a theory of political obligation has to demonstrate that citizens owe their duty of law-abidance only to the State to which they belong.[15] Some philosophers have contested this point. For instance, Kevin Walton complains that while Simmons is prompt to acknowledge the need for rational inspection of other common sense intuitions, first and foremost the belief that citizens do have a political obligation, he readily accepts the widely shared conviction "that people have moral connections to specific communities", and that, therefore, a theory of political obligation makes sense only so far as it demonstrates that citizens owe the duty of law abidance only to their particular State.[16] Similarly, William Edmundson comments that "it is not obvious why the particularity intuition should be any more sacrosanct than the prereflective intuition that political obligations exist – an intuition that Simmons himself repeatedly warns against taking at face value".[17]

Walton suggests that Simmons's insistence on the particularity requirement is contingent on his "anxiety" for the moral predicament of persons torn between their allegiance towards two different States. But as the case of double citizenship proves, such anxiety "is perplexing", and Simmons seems to forget that since political obligation is only a *prima facie* duty, that is, the "moral obligation to

committed to liberal economic policies, and consequently restrict the area covered by regulations without diminishing the strength of the obligation to obey the law. Furthermore, the notion of supremacy is already entailed by the very concept of political obligation (though, being a *prima facie* duty, the obligation to obey the law might be trumped by other more important moral considerations).

[15] See Simmons (1979), pp. 31-35; Simmons (2001), pp. 68-69; Simmons (2005), p. 110; Simmons (2007), p. 19.

[16] Walton (2013), p. 11.

[17] Edmundson (2004), p. 232.

obey the law is not a conclusive reason for action", even in presence of a particularized duty agents may weigh different moral considerations, and decide that their political obligation ought to be trumped by them.[18]

However, the notion of political obligation implies by definition that one's duty to obey the law is directed towards the community of which one is a member. That there may be some exceptions to the stringency of this condition, like migration or double citizenship, does not prove that the particularity requirement is ill-conceived. To the contrary, in this work I contend that there is, in fact, a special bond between co-members of a polity: the political identity of an individual is shaped by his connection to the community, to its culture, its traditions, and its practices. Obligations towards foreign States may be perfectly accounted for by the recognition of basic duties of justice and/or fairness sanctioned by international law.

The generality requirement demands that political obligations apply to all, or at least the majority of the citizens of a State.[19] It is important to stress that legislation by categories, which imposes different burdens on different parts of the citizenry, is not *per se* incompatible with the generality of the obligation to obey the law: for instance, progressive taxation imposes different tax rates to different income classes, and it may even provide for some exemptions in favour of individuals below a certain threshold of yearly revenues, but all citizens are equally subject to the same obligation to abide by what the law demands them to do.

Some theorists, like Rawls and Raz, denied that there is anything like a general obligation to obey the law. Simmons himself

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[18] Walton (2013), p. 13.

[19] See, for instance, Simmons (1979), p. 55.

qualifies this condition, which he contrasts with the stricter universality requirement, and argues that a successful theory need only tell us what class of people are bound to their governments, and why, in case it concludes that not all citizens in a State have a duty to obey the law. The position I adopt here is that, although political obligation may be stronger (in the sense that it will tend to be much weightier when evaluated against other competing reasons) for some categories of persons (for instance, policemen, people in office, public officials, etc.), membership in the civil association is common to all citizens, and it imposes on them the same *prima facie* duty of law-abidance.

Singularity in ground is another requirement that has been disqualified as over-demanding. According to this principle, there has to be only one single ground of political obligation, capable of accounting for the duty owed by all citizens to the State.

As a matter of fact, several philosophers have advanced theories based on a combination of two or more principles, either to explain why all citizens have a political obligation, or to justify the duty to obey the law that different classes of citizens owe to the State. Some of them (for instance, Margaret Gilbert and Peter Steinberger) propose in fact a hybrid theory but do not present it as such. Others do it explicitly: for instance, Dorota Mokrosinska openly declares that her "argument from civil justice combines elements of both natural duty accounts and associative theories"; [20] Christopher Wellman deliberately combines Samaritan duties with the principle of fairness;[21] George Klosko, Jonathan Wolff, Dudley Knowles, and

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[20] Mokrosinska (2012), p. 174.

[21] See Wellman (2005).

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Massimo Renzo, are all advocates of a multi-principle approach to the problem of political obligation.[22]

Simmons has called for attention on these pluralistic theories: his concern is that principles, which taken singularly are incapable of providing a satisfactory justification of political obligation, will not be more successful if grouped together.[23] The position adopted in this work is that, of course, it is perfectly possible that at least the obligation of some categories of citizens may be explained by more than one principle: for instance, public officials have an obligation of membership as parts of the polity, but by accepting to be in charge they have also implicitly or explicitly consented to submit themselves to the law of the State. However, a good theory also has to economize the principles to which it resorts; its purpose is to identify a single principle capable of accounting for the political obligation of all citizens, rather than to recommend a maze of principles that apply differently to different classes of citizens.

2. *The anarchist challenge to political obligation*

Until the early Seventies of the XX century it was not uncommon to read *conceptual* arguments on political obligation: authors contended that there was no necessity to justify political obligation, and maintained that it was the concept of political society

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[22] See Klosko (2005); Wolff (2000); Knowles (2010); Renzo (2012).

[23] See Simmons (2007).

itself to involve the existence of a duty to obey the law.[24] In the last four decades, to the contrary, a totally dissimilar approach concluded not only that States are illegitimate, but also that societies may exist without political obligation.

Differently from full-fledged *political* anarchism, this weakened form of anarchism, thereby called *philosophical*, has typically denied that the illegitimacy of existing States entails "a strong moral imperative to oppose or eliminate" them.[25] Philosophical anarchists do not invoke permanent revolution, and usually sustain that the refusal of political obligation will not have disruptive effects on social order. Their position is that obedience is due only as long as the State enforces moral obligations we have independently of the law, while obedience in other ambits is a matter of "purely prudential and pragmatic considerations for the particular individual involved" (that is to say, there is not a moral obligation to disobey either). [26] Naturally, philosophical anarchism may be coupled to political anarchism (especially in the form of anarcho-capitalism): for instance, Michael Huemer accurately describes the steps he deems may realistically lead to a "subminimal" State, from the outsourcing of court and police duties, to the abolition of standing national armies, to the suppression of the legislature.[27]

The anarchist challenge to political obligation has been framed in diverse ways. The main difference is between *a priori* and *a posteriori* philosophical anarchism.[28]

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[24] See, for instance, MacDonald (1951), p. 192; Pitkin (1966), p. 39; McPherson (1967), p. 64.

[25] Simmons (2001), p. 104.

[26] Rothbard (1982), p. 184. See also Huemer (2013), p. 164.

[27] See Huemer (2013), chap. 13.

[28] See Simmons (2001), pp. 104-106.

The former, like in Robert Paul Wolff's case, moves from a strong value assumption and shows that the existence of States is incompatible with the fulfilment of that core value.

The latter, like in Simmons's works, takes the form of a review of the several existing theories of political obligation and the principles on which they are based, to conclude that since none of them is successful political obligation remains unjustified.

2.1 The incompatibility between autonomy and authority

Wolff, who adopts the *a priori* view, argues that there can be no general obligation to obey the law because it would violate the fundamental value he regards as our "primary obligation", namely, autonomy. According to Wolff, there is a substantial incompatibility between autonomy, which is "the refusal to be ruled", and authority, which implies the surrender of one's capacity for free judgement and choice, for it is "the right to command, and correlatively, the right to be obeyed".[29] Only in a direct democracy where each law were approved unanimously political obligation would not violate individual autonomy.

Matthew Noah Smith proposes a slight variation on Wolff's argument, and insists, rather than on the value of autonomy, on the centrality of "the moral status of the subject's self".[30] In this sense, acknowledging authority would require, on the part of individuals, a form of "self-effacement" in order to recreate oneself in the image of heteronomous values. On Smith's view, the law is a foreign force

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[29] Wolff (1998) [1970], pp. 18, 4.

[30] Smith (2011), p. 2.

committed "to fix who one is", thereby violating the moral primacy of the self as the source of his own values and purposes.[31]

2.2 *Philosophical anarchism and the failure of theories of political obligation*

Differently from *a priori* philosophical anarchists, Simmons avoids strong value assumptions, except for a Lockean presumption in favour of consent as a source of obligations. His strategy to uphold philosophical anarchism runs the other way round: that is to say, Simmons moves from a thorough criticism of all other theories of political obligation, and tries to demonstrate where and why they fail in respect of the criteria of success (particularity, generality, etc.) he had established. Philosophical anarchism, consequently, is the upshot of the failure of all competing accounts of political obligation. Beyond the case of the few people who have willingly acquired a political obligation (say, by accepting a public office, by enlisting in the military, or through an oath of allegiance to the State), there is nothing like a general duty to obey the law.[32]

Analogously, Huemer avowedly gives up any "comprehensive moral theory", and shows how the various theories of political obligation clash with uncontroversial, commons sense morality principles.[33] His strategy relies on a subtle distinction between common *normative* intuitions and common *political* intuitions: while the former (e.g.: do not steal from, kill, or otherwise harm other

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[31] Smith (2011), p. 14.

[32] See, for instance, Simmons (2001), chap. 6. See also Smith (1973); Raz (1979); Green (1988).

[33] Huemer (2013), p. 15.

people) should be the starting point of political philosophy, the latter (e.g.: the claim that there are legitimate governments, and that the laws they enact should be obeyed) ought to be submitted to rational scrutiny in light of those widespread normative intuitions.

2.3 Against philosophical anarchism

Criticisms of *a priori* philosophical anarchism have generally focused on the contentious nature of assumptions like radical individualism, or the strong commitment to autonomy exhibited by theorists like Wolff. For instance, John Horton defined as "highly implausible to think that autonomy should invariably override all other values"; that autonomy is our primary obligation is far from being granted as Wolff claims.[34] His conception dismisses the notion of authority too hastily. But first, as emphasized by Richard Dagger, it is arguable that, far from being incompatible with autonomy, authority in various forms is likely to foster the development of autonomy itself;[35] and, second, such a radical understanding of autonomy would render even any kind of promising or contract an illegitimate constraint on individual freedom.

Against the full-fledged individualism displayed by philosophical anarchists, especially proponents of membership theories of political obligation may object that individual identity, as

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[34] Horton (2010), p. 129.

[35] See Dagger (1997), pp. 66-68. That social and political authority (intermediate associations, corporations, churches, and eventually the government) is not an obstacle, but a source of individual moral education, is a commonplace in conservative though as well. See, for instance, Nisbet (1953); Kirk (1953).

communitarians usually maintain, is socially embedded.[36] As long as one estimates its value, therefore, it is not the system of social 'burdens', but the allegedly unencumbered nature of the self, which has to be justified.

Criticisms of *a posteriori* philosophical anarchism may target potential inconsistencies: for instance, despite the refusal to assume core values and to consequently assess the compatibility of other theories of political obligation with those principles, Simmons's Lockeanism commits him to a consent-centred view of obligations which is certainly liable to objections. But above all, counterarguments need make two moves.

First, they have to demonstrate that, differently from Simmons and Huemer's opinion, philosophical anarchism constitutes a threat on social order.[37] For instance, Thomas D. Senor contends that the two principles Simmons regards as sufficient to bind people as political obligation is expected to bind them, that is, the natural duty of justice and the natural duty towards citizens qua persons, are actually unfit to justify fundamental requirements like the obligation to pay taxes. An alleged general *prima facie* duty not to inconvenience others, insofar as the agent is not himself inconvenienced by refraining from the action that inconveniences them, is far from having the same strength of political obligation. Thus, Senor concludes that "Simmons is mistaken in thinking that in absence of political obligations there will be enough other kinds of duties, obligations, and 'reasons' to cover the bare spots".[38] Natural duties are unlikely to do the work that only

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[36] See, for instance, Sandel (1982); Taylor (1989).

[37] See Simmons (1979), chap. 1; Huemer (2013), p. 173.

[38] Senor (1987), p. 268.

governments and laws, dismissed by Simmons as illegitimate, could do.

Huemer, as a supporter of anarcho-capitalism, is prompter to confess that a society in which the illegitimacy of political authority is widely recognized will admit of a lot of practices that the majority of existing States have ruled out: for instance, there would be free prostitution, drugs, and immigration. In general, persons would get rid of the idea of a special bond that connects with each other the members of a community (consequently, as Huemer argues, policies like poverty programs, which presuppose partiality towards compatriots, would be unjustified).[39] But while it is at least doubtful that measures like the abolition of restrictions on immigration would not have threatening consequences on social order (and Huemer merely asserts that, on the basis of the allegedly common sense moral intuitions he defends, limiting it would not be morally permissible),[40] it seems that only accepting the debatable radically individualistic paradigm Huemer presumes one may end up regarding partiality towards compatriots as morally wrong. Far from appealing to common sense, this idea entails a view of personal identity that especially proponents of membership theories of political obligation would vehemently contest.

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[39] See Huemer (2013), chap. 7.

[40] However, the arguments Huemer employs are particularly ineffective. For instance, he declares that it would not be "permissible to use force against another person simply to prevent that person from influencing the culture of one's society in undesired ways" (p. 143). But communities are entitled to claim cultural rights against individuals, especially when they wish to conserve their pre-existing cultural identity, or if they have the reasonable suspicion that an alien culture might threaten the preservation of fundamental values (e.g.: respect for women, the belief in the sanctity of life, a commitment to equality, etc.).

The second move that those who oppose philosophical anarchism may try is to circumvent the anarchist challenge. By developing a theory of political obligation that is morally defensible and meets the standards of success listed above one may prove that *a posteriori* philosophical anarchism is ill-conceived; and this is precisely the endeavour of the present work.

In particular, this essay takes into account conservative political philosophy, and tries to extract from a set of basic principles (the status quo bias, a commitment to the preservation of historical value, the idea of the primacy of community and order over the individual and liberty) a theory of political obligation capable of matching the very requirements established by Simmons. Such theory will be based on a particular interpretation of the principle of membership, developed against the background of the Oakeshottean notion of civil association.

Chapter 2. Conservatism and the status quo bias

Before I try to build an effective conservative theory of political obligation, it is vital to understand what conservatism consists in, which is the aim of chapters 2, 3, and 4.

In this chapter, I analyse one of conservatism's distinctive features: the status quo bias. In the first section, I examine two different interpretations, the first one, *anti-consequentialist*, advanced by Gerald Cohen, the second one, *consequentialist*, advanced by Geoffrey Brennan and Alan Hamlin.

Cohen's anti-consequentialist conservatism encompasses three dimensions. Two of them may be easily inferred from Cohen's essay: the notion of *particular value* (the value of particular existing things); and the notion of *personal value* (the value that particular objects have for specific persons). Differently, the notion of *particular disvalue* may be subject at least to two different readings: either as a resistance to change even in presence of some objects or states of affairs that carry intrinsic disvalue, or as the idea that some apparently non-valuable states of affairs, when analysed as 'organic unities', are actually valuable.

Brennan and Hamlin develop a thorough criticism of Cohen's doctrine, and try to demonstrate that consequentialism is in fact compatible with a genuine form of conservatism. In particular, they contend that conservatism may assume three forms: *nominal* conservatism (a re-elaboration of Cohen's conservatism, in virtue of which conservatives may recognize, differently from non-conservatives, the systematic normative pre-eminence of the stats quo); *adjectival* conservatism (a posture that conservatives assume in respect to values that even non-conservatives might embrace); and

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practical conservatism, an attitude to preserve existing equilibria in social coordination dilemmas.

In the second section, I identify a possible solution to the limits of Cohen's and Brennan and Hamlin's understandings of the conservative status quo bias.

First, I reprise nominal conservatism, and I combine it with Eric Hatala Matthes's notion of historical value (HV): this is the value that states of affairs carry so far as they allow us to establish a connection with our socially relevant past. If the status quo is a carrier of HV, then a conservative has a good reason to systematically rate it above any alternative state of affairs. In these instances, it is HV to explain why, as Brennan and Hamlin argue, to the nominal conservative the status quo as such embodies an additional value in respect of competing states of affairs.

Second, I employ Brennan and Hamlin's concept of adjectival and practical conservatism, and, combining them with the sceptical standpoint advocated by Kieron O'Hara, I show how a form of epistemic conservatism is liable to justify the status quo bias even when the existing state of affairs has no HV. In this case, the key points are the problems of *ignorance* and *uncertainty*, which characterize the permanent predicament of human knowledge, and an insurmountable hindrance to reformism.

Along with a certain form of traditionalism, on which I will dwell in Chapter 2, arguments in favour of the status quo bias, devised along the two dimensions of HV and epistemic scepticism (*ignorance* and *uncertainty*), constitute the *non-political core* of the conservative conception. While the notion of 'status quo' might be itself tightened so as to denote socially and politically relevant states of affairs (and, therefore, to infer the substance of *political* conservatism), rather than, somewhat loosely, affective subjective connections and/or aesthetic

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values, the very concept of the status quo bias as conservatism's core sets out the theoretical basis for *political* theses, on which I will elaborate further in Chapter 3, concerning the *primacy of order over liberty* and the *primacy of community over the individual*. These latter arguments are intended so as to integrate the interpretation of conservatism I want to defend here, and upon which I will build the conservative theory of political obligation.

1. The problem of the status quo bias

Conservatism, as the word itself suggests, asserts that something *ought* to be conserved: that is to say, it is not simply that persons display a natural, spontaneous propensity to stick to the existing states of affairs, practices, beliefs, etc., but that they do have a moral obligation to *conserve*. In this sense, it has been argued that conservatism's most basic characteristc is the *status quo bias*.[41] However, there is disagreement on what this attitude entails, and why the status quo deserves to be conserved. In this section, I am going to discuss two radically different approaches to the problem of the status quo bias: on the one hand, Gerald Cohen's *anti-consequentialist* conservatism; on the other hand, Geoffrey Brennan and Alan Hamlin's *instrumentalist* conservatism.

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[41] See Brennan and Hamlin (2016b), p. 352. But see O'Hara (2016), p. 430, who claims that the conservative's is not a *bias*, intended as "a deviation from a norm, a disposition to hold a partial perspective, or, in a scientific sense, a systematic error". To the contrary, the conservative accuses his opponents to be "partial against the status quo", and hence, biased, regarding his own as the proper, rational, way to evaluate the status quo.

1.1 Anti-consequentialist conservatism

If we ask what we have reason to conserve, a possible reply points to the existing things that have *intrinsic* value independently of their utility for society and/or mankind.[42] This is the basic intuition of Cohen's anti-consequentialist conservatism, which displays a bias in favour of 1) the *particular* valuable things (or states of affairs) that exist; 2) the *personally valued* (of things whose existence embodies an agent-relative value); 3) at least some particular existing non-valuable things (or states of affairs), or, so to say, *particular disvalue*.

1.1a Particular value

According to Cohen, this "small-c" conservatism entails an attitude to retain "what is of value, even in the face of replacing it by something of greater value",[43] and a related set of "*factual* assessments according to which a lot of valuable things have been disappearing lately" due to a consequentialist disposition to focus on value-maximization, rather than on the preservation of the value inherent to existing things.[44]

What is central in this *anti-consequentialist* conservatism is the contention that destroying particular valuable things causes a neat loss of value even if the things with which one replaces them are *per se* more valuable. The fact that one thing exists *adds* something to its

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[42] See Cohen (2011), p. 204.

[43] Cohen (2011), p. 203.

[44] Cohen (2011), p. 204.

value function. If we maintain that $V_{pet} = V + _{existence}V$ (the value of a *particular existing thing* is the sum of the value of the thing in itself and its existence value), we may conclude that: $V_{pet} > V$.

This form of conservatism aims at avoiding the loss of particular value rather than at the consequentialist purpose of maximizing value. As Cohen writes:

> The conservative propensity that I defend […] is to preserve particular intrinsically valuable things, as such. […]
>
> The recommended solicitous attitude to existing valuable things (precisely) does not reduce to endorsing the purposes that the things serve, or the principles that they exemplify, which might be better served or exemplified by things that do not exist and which could be created at little cost, but by which we should nevertheless not replace existing valuable things. […]
>
> The conservative impulse is to conserve what is valuable, that is, the particular things that are valuable. I claim that we devalue the valuable things we have if we keep them only as long as nothing even slightly more valuable comes along. Valuable things command a certain loyalty. If an existing things has intrinsic value, then we have reason to regret its destruction *as such*, a reason that we would not have if we cared only about the value that the thing carries or instantiates. My thesis is that it is rational and right to have such a bias in favour of existing value […].[45]

In Cohen's view, therefore, there is a sharp discrepancy between conservatism and consequentialism, which seems to ignore conservatism's truthful nucleus, to some degree endorsed by "*everyone* who is sane".[46] The consequentialist compares two states of affairs, and in case the ideal end-state is overall more valuable than the existing state of affairs, he thinks he has sufficient reason for achieving it. His purpose is to maximize value. The conservative, to

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[45] Cohen (2011), p. 210.

[46] Cohen (2011), p. 211.

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the contrary, attributes to the existing valuable state of affairs a particular value in addition to the value it has as such: the value that such state of affairs has merely because it exists. If things are intrinsically valuable, the conservative has reason to conserve them as they are. His purpose is to preserve existing value, not to maximize value as such. Cohen's conservatism rejects all consequentialist stances, including those which, unlike utilitarianism, adopt pluralism:

> Unlike the conservative, the utilitarian is indifferent between adding to what we have now got, at no cost, something that has five units of value, and adding something worth ten units of value at the expense of destroying something worth five. […]
>
> A nonutilitarian pluralist value-maximizing consequentialist, who believes in maximizing the aggregate of irreducibly different kinds of value, might regret destroying one kind of value as part of a project which produces more value overall. But, once again, and given that she is indeed a value-maximizing consequentialist, she cannot regret its destruction *as such*, as opposed to the nonappearance of anything that has *that* kind of value within the set of things that are there when day is done: she has no more reason to regret the *destruction* of something which has a specific kind of value than she has to regret no such thing *being there* now, and/or such thing *having been there* in the first place.[47]

Nevertheless, anti-consequentialist conservatism is not consistent with deontological approaches either: for deontologists there is no normative salience in the status quo for the mere fact that it embodies existing value. Deontology, at most, favours the status quo insofar as this entails protecting the rights of an agent against violations, however value-maximizing the latter may be. Set aside the question of rights, deontology and conservatism endorse different conclusions. On the one hand, a deontologist would treat 'protecting'

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[47] Cohen (2011), p. 212.

an existing good and 'creating' a new good as two forms of promoting the good, and would allow an agent to choose the creation of the new good instead of the preservation of the existing one.[48] On the other hand, while a Cohenian conservative would not forbid an agent to sabotage the creation of a good for the purpose of creating a greater good himself (none of the goods is already existent), a deontologist would.[49]

1.1b Personal value

There is a second side to the anti-consequentialist conservatism endorsed by Cohen, that is, the will to conserve things that have value for specific persons. He makes the example of the horror he would feel were he to throw away his forty-six years old rubber, which has accompanied him throughout his career, even if he had the chance to replace it with another one identical to the former. In cases like that of the old rubber, what is valuable, and calls for conservation, is a particular existing thing which someone values *personally*, even if it is in fact substantially indifferent in terms of intrinsic value apart from the agent's commitment. What is at stake is not the objective intrinsic value that the thing has, but the value it embodies for the agent, and which does not depend on particularly valuable properties nor on valuing the experience of being attached to particular things. As Cohen clarifies: "It is not true that I am attached to the particular thing because I value attachments, and *this* particular old thing serves well as something to be attached to. Rather, I am attached to the thing itself, as such, and not for any general reason, such as the general

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[48] See Cohen (2011), pp. 218-219.

[49] See Cohen (2011), p. 219.

reason that it is good to have attachments (which it certainly is)".[50] Nor is the purpose that those things serve, or the benefits they deliver, which justify personal attachment to them: when he makes the example of resistance to "suburban supermarketization", which destroys local shops, Cohen argues that "we deceive ourselves if we think it is only because they deliver specifiable economic and social benefits that we cherish our local shops. It is not only the purposes that they serve that justify our resistance to their destruction. It is also because in all their vagariously caused uniqueness they are part of a social and cultural landscape to which we belong".[51]

The issue of belonging is the key to understand what Cohen refers to when he talks about conservation of personal value: it is conservation of those things that shape, and give meaning to, our ordinary lives, our self-understanding, our embedment in a cultural and social context whence we craft our psychological identity. In Cohen's own words:

We are attracted to particular things because we need to *belong* to something, and we therefore need some things to belong to us. We cannot belong to something abstract. We do not keep the cathedrals just because they are beautiful, but also because they are part of our past. We want the past to be present among us. We do not want to be cut off from it. We rejoice in our contact with the culture of *our* past. We of course value our particular past in the respectful way that we value any past culture, but we also value it in a more personal way.[52]

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[50] Cohen (2011), p. 222.

[51] Ibid.

[52] Cohen (2011), p. 223. Cohen also specifies that he is not as sure that personal value deserves conservation as he is in cases of things with intrinsic value.

1.1c Particular disvalue?

There is also a third, more problematic, aspect to Cohen's anti-consequentialist conservatism. The underlying idea is "that something must be accepted as *given*, that not everything can, or should, be shaped to *our* aims and requirements".[53] As such, this contention seems to clash with other passages in which Cohen declares to be non-conservative when it comes to the problem of justice: in fact, "injustice lacks intrinsic value – and has, indeed, intrinsic disvalue".[54]

One possibility is to conclude that Cohen acknowledges, as full-fledged conservatives use to, that there is a limit to what we might expect or wish for reforms to accomplish. Therefore, anti-consequentialist conservatives may deem necessary to conserve not only particular existing valuable things and/or states of affairs, but also at least some particular existing non-valuable things and/or states of affairs (or, so to say, *particular disvalue*). Anti-consequentialist conservatives may affirm that at least "when we are subject to an unreformable unjust practice, the right thing to do is to conserve it".[55] There is, however, another possibility, which may be apt to settle the potential contradiction in Cohen's position.

Let us take incarceration as an example of a state of affairs that involves injustice to some extent. One may argue that, all things considered, the disvalue of the sufferance caused by imprisonment (being deprived of one's freedom, attracting social stigmas, etc.) is overridden by the value that punishment brings about (retribution for

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[53] Cohen (2011), p. 207.

[54] Cohen (2011), p. 204.

[55] Wall (2016), p. 159. Conservatives may, and, in fact, do disagree as to the interpretation of justice as the main virtue of a society, but also as to the particular conception of distributive justice advanced by non-conservatives.

the crime committed, the likelihood to correct deviant behaviours, etc.). In any case, this *aggregative* reckoning of the value entailed by sending criminals to jail is not available to Cohen, who has explicitly rejected consequentialism. And yet, instead of conceding that some injustice has to be tolerated, a Cohenian might resort to G.E. Moore's tenet of 'organic unity'.

In his *Principia Ethica*, Moore observed that the value of a whole "*bears no regular proportion to the sum of the values of its parts*", or that the "*value of a whole must not be assumed to be the same as the sum of the values of its parts*".[56] Therefore, the overall value of a state of affairs may not be understood as the result of an algebraic sum of its constituents (the positive value of each single elements plus the negative value of non-valuable components); to the contrary, it may be far greater than the value of such a plain aggregation. Think about a landscape: its value is not given by the mere sum of the single elements which compose it (trees, clouds, mountains, etc.), but by the relation between those elements and the overall effect this relation engenders.

In the case of imprisonment, one should not weigh the apparent injustice (disvalue) of depriving persons of their freedom, exposing them to social stigma, etc., against the value of retribution or correction of deviant behaviours, to conclude that the former overrides the latter. It is possible to argue that, as a whole, the system of punishment is far more valuable than the value that apparently results from the sum of its positive features minus the negative ones. If this is true, a Cohenian conservative might not be committed to injustice, and be simply more attentive to weighing a state of affairs which involves some degree of disvalue as a whole (as the result of a

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[56] Moore (1922) [1903], pp. 27, 28.

particular relation between his component parts), rather than as an aggregate whose total value has to be calculated by an algebraic sum of its constituents.

1.2 *Consequentialist conservatism*

Against Cohen's differentiation between conservatism and consequentialism, Brennan and Hamlin try to demonstrate that a *consequentialist* conservatism is perfectly defensible. In its turn, this form of conservatism is articulated into three branches, two of them internal to the realm of ethics, and the other one related to the role of conventions in political life: *nominal conservatism*, if the conservative "identifies a distinctive ethical value (or set of values) not recognized by non-conservatives"; *adjectival conservatism*, if the conservative "takes a distinctive posture towards underlying political values"; and *practical conservatism*, if the conservative status quo bias is focused on "the role of conventions in political life".[57] But the primary step is to highlight the points of disagreement between Cohen, on the one hand, and Brennan and Hamlin, on the other hand.

1.2a *Brennan and Hamlin: a criticism of Cohen's anti-consequentialist conservatism*

Brennan and Hamlin emphasize some faults in the arguments advanced by Cohen to defend his anti-consequentialist conservatism, and in the analysis of particular value. Their evaluation raises four major points.

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[57] Brennan and Hamlin (2016a), p. 336.

First, they note that in Cohen's analysis it is particularly difficult to understand what is it that qualifies for the status quo. Referring to particular value as PV, and to the intrinsic value that the object or state of affairs carries as such as 'basic value', BV, they suggest two interpretative possibilities. The first possibility is that if we have competing elements of the status quo each of which carries BV and so qualifies for PV, what we have reason to conserve is the aspect of the status quo which is associated with the greater BV. The second possibility is to focus not just on the mere fact that PV associates with existing carriers of BV, but on the fact that each such carrier must be assigned a specific amount of PV over and above its BV.

The second alternative allows room for greater influence by particular value on the evaluation of a state of affairs, and consequently should be preferred. But there still remains the problem of knowing how to relate PV and BV with each other: does a positive PV associate only to a state of affairs characterized by elements with positive BV? And does, symmetrically, negative PV associate to things of negative BV? Here, Brennan and Hamlin contend, Cohen's reconstruction is contradictory. If negative PV attaches to things of negative BV, they remark, then Cohen's is not a form of conservatism at all, but rather a form of radicalism, for an "individual who attributes negative PV in this way will have even stronger reason to destroy or reform things of negative value than those who recognize only BV".[58] At the same time, Cohen is clear in contending that PV can only attach to bearers of intrinsic value, and so the idea that PV might be attached to things with negative BV, though closer to the conservative intent to discourage reforms in case they threaten PV but offer only

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[58] Brennan and Hamlin (2016b), p. 357.

limited improvements in BV, is tenable only insofar as one abandons Cohen's fundamental claim.

According to Brennan and Hamlin, a second fault in Cohen's examination of the status quo bias revolves around the notion of particular value as an intrinsic value:

It seems clear from Cohen's account that his idea of PV is both non-instrumental and objective: non-instrumental insofar as it explicitly and importantly does not depend on any means-ends relationship to any further value or values; objective insofar as it is not derived from, or calibrated by reference to, the perceptions of any individual. But does PV respond to an intrinsic property of the relevant object or any relation among intrinsic properties? Cohen denies that particular value attaches to 'existence' per se, and the only other feature that is common to all of the things that attract particular value is the fact that they are valuable (in terms of BV). It is difficult to see that 'being valuable' in this sense can be regarded as an intrinsic property of objects. The lack of any clear intrinsic property that grounds PV seems to threaten the interpretation of PV as an example of an intrinsic value.[59]

However, Brennan and Hamlin seem to miss an important aspect here. They contest that Cohen does not connect particular value to any specific intrinsic property beyond the fact that things of PV are valuable in terms of their BV (which is not an intrinsic property). But while intrinsic value *may* stem from a property of the object, it *need not* always derive from that, flowing, for instance, from the internal relations between properties of an object. We may say that Montepulciano wine has an intrinsic value which depends on an intrinsic property (say, its flavour). Now, think of Gerard Depardieu's ugly nose: in itself it is disproportionate and pug, and it has no evident valuable intrinsic property beyond the functional evidence that it

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[59] Brennan and Hamlin (2016b), pp. 358.

allows Depardieu's breathing. And yet, it may have an intrinsic value because, on the face of that particular person (in the context of an internal relation between the properties of Depardieu's countenance) it contributes to give her the captivating aspect that the public admires.

Nonetheless, if one concedes that Cohen does not have in mind a connection between PV and an intrinsic property of an object, but simply means that recognizing a state of affairs as valuable entails that agents have reasons to bring about or to conserve it, according to Brennan and Hamlin the argument is inconsistent with other theses advanced by Cohen himself, like the rejection of deontological theses and the agent-neutral character of PV:

> […] what sort of reason for action could PV provide? The most obvious candidates that do not rely on the identification of a property that is also recognised as a value are deontological and agent-relative reasons, and yet Cohen is explicit in contrasting his discussion of PV (and the conservative disposition that it grounds) with deontological arguments, and it is equally clear from his discussion that the idea of PV is intended to be agent neutral.[60]

Brennan and Hamlin remark that it is also unclear whether, and how, one should take into consideration the future emergence of PV due to reforms likely to bring about valuable (in terms of BV) states of affairs. If decision-making procedures ought to anticipate the appearance of PV, then, as Brennan and Hamlin denounce, Cohen's conservatism would be no conservatism properly: in fact, if PV justifies both the conservation of existing valuable states of affairs and the establishment of new ones, a conservative resistance to reforms would be unwarranted, so far as it is arguable that the latter will bring

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[60] Brennan and Hamlin (2016b), pp. 358-359.

into existence things of BV, to which we can reasonably expect that PV will eventually attach.

A third objection addresses Cohen's criticism of a range of philosophical stances, all of which acknowledge some form of value aggregation, and which would thereby be incompatible with the recognition of particular value. The list includes non-utilitarian pluralist-value-maximizing consequentialism and other positions, which, though not committed to value maximization, reason in terms of aggregate value. Brennan and Hamlin, who advocate consequentialist conservatism, intend here to demonstrate precisely that Cohen's criticism of consequentialism is wrong-headed. In their view, that criticism "makes good sense if we read 'value' to mean 'basic value', since that simply reminds us that to focus on BV is to ignore PV".[61] But things are different if one reshapes the value function so as to include in the definition of a state of affairs both BV and PV. If one thus changes the method of aggregation it becomes legitimate to employ a pluralist value-maximizing value function:

> To suggest that folding PV into a general calculus of value amount to treating the bearers of value as if they do not matter as such seems mistaken; just as it would be mistaken to argue that combining the values associated with, say, welfare and equality, into some all-things-considered evaluation of a state amounts to treating welfare (or equality) as if they do not matter as such. The real issue is the specification of the method of aggregation and the extent to which it captures the true nature of the relationship between the identified values and the trade-offs amongst them.[62]

Eventually, Brennan and Hamlin focus on the ambiguity of Cohen's position on the question of justice. On the one hand, Cohen

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[61] Brennan and Hamlin (2016b), p. 360.

[62] Brennan and Hamlin (2016b), p. 361.

seems to claim that since PV can only attach to valuable things, then, being injustice an intrinsic disvalue, PV cannot attach to states of affairs involving injustice. On the other hand, he suggests that when one trades off PV against other values, considerations of justice always take priority over particular value. However, Cohen somewhere else apparently admits that although injustice lacks intrinsic value, some states of affairs involving at least some degree of injustice may nevertheless be valuable. Brennan and Hamlin quote the line where Cohen concedes that "something that is unjust can also have value, and even in a fashion that is linked to the very thing that makes it unjust".[63] One may also observe that granting, as Cohen does, that "not everything can be shaped to our aims and requirements" may imply that the anti-consequentialist conservatism Cohen defends be prompt to tolerate injustice in some instances.

Yet, as we have seen, an alternative interpretive possibility would lead us to hypothesize that what Cohen has in mind is to account for apparent injustices via the tenet of 'organic unity': a state of affairs which involves some degree of disvalue should be considered as a whole, defined by the relation between its constituents, and as such its value may actually be greater than what would result on an aggregative reckoning, which compares all its parts with each other, and eventually determines whether the valuable ones override or not the non-valuable ones. If this were the case, Brennan and Hamlin's objection would be misplaced, and although Cohen is not particularly clear in explaining this point, his thesis would have no internal inconsistencies.

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[63] Cohen (2011), p. 224.

1.2b Nominal conservatism

Brennan and Hamlin reformulate Cohen's arguments on the status quo bias so as to justify the position they call 'nominal conservatism'. Differently from adjectival or analytic conservatism, which "formalises a distinctively conservative attitude to widely recognized values", and practical conservatism, which "formalises an empirical claim about the nature and distribution of values in the world that supports general conservative action", this stance focuses on distinctively conservative values, overlooked by non-conservatives.[64] In particular, they contend that Cohen's analytic framework should be "separated from some inessential and dubious arguments about value aggregation and, in particular, about the relationship between conservatism and justice".[65]

Brennan and Hamlin's proposal is based on two claims: that the normatively appropriate structure of valuation is state-relative and not state-neutral, and that the state-relative valuation of the status quo is always higher than the state-neutral valuation of that state. They thereby introduce the notion of a state-relative value. This means that if A is the status quo, a nominal conservative will acknowledge that some additional value will attach to some of A's characteristics: for instance, he will claim that at least some carriers of BV present in state A will also bear PV.

Brennan and Hamlin describe such state-relative value function as V|A(.), which means 'the all-things-considered value of (.) conditional on recognizing A as the status quo', whereas a state-neutral normative valuation would be written simply as V(.), with no

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[64] Brennan and Hamlin (2016b), pp. 366-367.

[65] Brennan and Hamlin (2016b), p. 367.

reference to A as the status quo. Having assumed a state-relative valuation structure, the nominal conservative advances the following crucial contention: that if $V(A)>0$ (if the status quo carries some value), then $V|A(.)\geq V(A)$, that is to say, the status quo has an additional value simply in virtue of its being the status quo, a value which a state-neutral valuation structure would overlook. Nominal conservatism is therefore altogether counterposed to radicalism, whose state-relative valuation structure would be the exact reverse: $V|A(.)<V(A)$, that is to say, the value of the status quo is systematically lower. The specifically conservative normative dimension relates precisely to the recognition of the priority of the actual status quo: "Reasons for action, for the conservative, correlate with state-relative evaluations. While evaluation may legitimately be undertaken in a variety of ways, including both state-neutral and state-relative ways, only evaluations based in the recognition of the actual status quo are truly normative and correlate with genuine reasons for action".[66]

1.2c Adjectival/analytic and practical conservatism

Differently from Cohen, Brennan and Hamlin maintain that there need not be any contradiction between consequentialism and conservatism in principle. They illustrate this claim by reformulating Cohen's arguments to build what they call nominal conservatism, and by elaborating two other forms of conservatism: adjectival/analytic and practical conservatism.

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[66] Brennan and Hamlin (2016b), p. 364.

Adjectival/analytic conservatism relates to the posture assumed by conservatives in respect to underlying values, like equality, which may be acknowledged by non-conservatives as well. Brennan and Hamlin employ the tools of "normative analysis that is characteristic of contemporary economics",[67] and revolve their evaluation around two dimensions: first, a separation between 'feasibility' and 'desirability' of the elements of normative reasoning, and second, a predominant focus on feasibility issues. In their view, the pre-eminence of feasibility over ethical desirability, which is a recurrent feature of economic reasoning in the field of public choice, is liable to ground a conservative status quo bias:

[…] there may be a strong relationship between the economist's concern with feasibility and the conservative status quo bias. The thought here is that taking feasibility seriously may influence the posture one adopts when considering political institutions and policies. This is, in any event, the claim we wish to interrogate: that taking feasibility seriously is a key idea that serves to justify the conservative disposition. Alternatively put, the primary reason for treating the status quo as if it had an intrinsic normative authority is rooted in the way the world is, in a proper sense of the feasible. Recognizing this role of feasibility considerations, and trying to isolate those features of the world that give feasibility concerns their status quo orientation, is a key task that we set 'analytic conservatism'.[68]

The basic assumption in Brennan and Hamlin's interpretation of adjectival/analytic conservatism is the recognition of 'ignorance': ignorance due to the complexity of social processes (most of which display a marked path dependence: big, often unintended, consequences stem from small causes), to the width of the information required to manage those processes, but also ignorance of ethical

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[67] Brennan and Hamlin (2004), p. 680.

[68] Brennan and Hamlin (2004), p. 681.

ends. Another factor is the structure of incentives to interventionism on the part of political representatives, for though ineffective their action is bound to be. As to this point, in fact, Brennan and Hamlin observe:

Politicians have to stand for something; and they reveal much of what they stand for by the policies they adopt and promote. They have to invent policy platforms even if such platforms do not swell up within them. Furthermore, politics tends to attract persons with a desire to 'get things do', if not for the sake of those things in themselves then for the sake of the public standing of the politician. […]

In short, the nature of democratic political institutions encourages both activism and rhetorical defences that will rationalize such activism.[69]

Brennan and Hamlin's point is based on a 'substantive' and a 'descriptive' claim, moving from the analysis of risk aversion within a 'convex' evaluative scheme, that is, a structure characterized by diminishing marginal utility, and a *utilitarian* assumption on 'preference satisfaction' as a good that has to be maximized by agents:

The substantive normative claim is that 'preference satisfaction' is a good thing and hence something to be maximized *ceteris paribus*. The descriptive claim is that individual preferences themselves are convex; that they exhibit generalized diminishing marginal utility. This means that as an agent is moved further from his or her ideal consumption bundle, the welfare losses endured by that agent increase at an increasing rate. In cases of this sort, the potential welfare losses from moving in the 'wrong' direction systematically exceed the potential gains from moving in the 'right' direction, so that there is an asymmetry between gains and losses.[70]

Brennan and Hamlin note that if one is incapable of determining with certainty the effects of a policy in terms of marginal utility (say,

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[69] Brennan and Hamlin (2004), p. 683.

[70] Brennan and Hamlin (2004), p. 685.

if an expansion in the output or consumption of a commodity will be likely to increase or decrease marginal utility), since losses incurred in were the policy ill-advised will outweigh (at an increasing rate, the more one moves in the wrong direction) gains obtained in case the policy works (or, in easier terms, since potential gains will grow at a much lower rate than potential losses), risk-aversion will qualify the maintenance of the status quo as the rational option: "If citizens are risk averse, and policy makers recognize the normative relevance of that fact, the uncertainty about policy should imply a conservative approach in precisely the sense of a bias in favour of the status quo; and the greater the uncertainty, or the stronger the underlying risk aversion, the greater the status quo bias will be".[71] Our condition of ignorance, the impossibility to determine whether, and/or to what extent a policy will drive society in the right direction (gains), in combination with the awareness that marginal utility decreases at a higher rate than when it increases (so that a risk averse agent will be more sensitive to avoid disastrous losses than to secure gains), grounds the conservative status quo bias.

According to Brennan and Hamlin, this is a form of *utilitarian* conservatism: the conservative status quo bias is rooted in the recognition of certain facts concerning policy makers and citizens, namely, that both of them experience a condition of "abundance of ignorance", that they are more or less risk averse, and that their preferences ought to be maximized.

Brennan and Hamlin specify that conservatives, compared to radicals or idealists, reason in terms of diverse value functions. The idea is that both the conservative and the idealist might acknowledge exactly the same ideal point (for instance, a state of affairs

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[71] Brennan and Hamlin (2004), p. 686.

characterized by a certain degree of equality), but whereas, once one moves away from the ideal point, the conservative's value function falls at an increasing rate, the idealist's one falls at a decreasing rate. As to the idealist's evaluation, therefore, it is also possible to figure out a "limiting case", where "the ideal point would be the only position that is valued at all, with all other positions having zero value".[72] Less radical idealists might give value to points other than the ideal, but that value will be much lower than the value attributed by the conservative to different positions on the evaluative slope, a value that decreases at an increasing rate the more one moves away from the ideal point. To be clear:

An idealist is essentially risk-loving with respect to the achievement of the ideal. If there is some chance that a policy or institutional change will achieve the ideal, that fact will tend to be decisive; down-side risks are relatively unimportant because they simply involve the second-order comparison of points (including the status quo) all of which are non-ideal.[73]

Or, to put it differently:

For the idealist, […] the important thing is to secure the ideal, because the value of the ideal vis-à-vis all non-ideal point is in general very large. Small departures from the ideal reduce value significantly. In the extreme, one might imagine that all value is concentrated at the ideal point […]. For the idealist, the further you are from the ideal, the less there is to lose.[74]

Note, indeed, that for the idealist "the further you are from the ideal, the less there is to lose": this why the idealist's value function, unless the idealist is a hard-core radical and all points other than the

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[72] Brennan and Hamlin (2004), p. 687.

[73] Brennan and Hamlin (2004), p. 687.

[74] Brennan and Hamlin (2006), p. 288.

ideal one have zero value, decreases at a decreasing rate. Value losses, which are much higher than in the conservative's evaluation when one moves a little bit away from the ideal point, tend to be smaller the more one departs from it.

Conservatism displays a different attitude:

> For the conservative, by contrast, the important thing is to avoid disaster. Getting close to the ideal is almost as good as the ideal. But each step away from the ideal gets progressively more costly. In the extreme, one might imagine that value is equal at all points in the domain other than […] where disaster beckons. For the conservative, the further you are from the ideal, the more there is to lose.[75]

The conservative's value function decreases at an increasing rate: differently from the idealist, the conservative does not give much weight to slight departures from the ideal, but the more "disaster", a situation of complete disvalue, gets closer, the more his value function decreases – on the opposite, the idealist seems to locate disaster very close to the ideal point, and once he has departed from ideal, further departures have less influence on his normative evaluation: the dice has been already casted.

Adjectival/analytic conservatism, according to Brennan and Hamlin, embodies therefore a status quo bias not grounded in the recognition of values different than those endorsed by non-conservatives, but in a different shape of the slope associated to normative evaluation. But conservatism has something more to say, something that stems from the priority it attributes to feasibility over desirability, and to the recognition of abundant ignorance about social and normative facts. What if, in fact, there were not only uncertainty

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[75] Brennan and Hamlin (2006), p. 288.

about policies, but uncertainty about ends as well? What if our view of "the ethically relevant end" was mistaken? [76]

Brennan and Hamlin compare, for the sake of argument, utility and equality. Even if the effect of a policy on each of the two specific ethical measures were known with certainty (which, in general, is not), assuming that one is uncertain as to which, between utility and equality, is the ethically relevant end, the status quo bias will be reinforced, since we will have to evaluate not only the impact of a policy on each of the two ends taken separately, but also the impact on the aggregate of both in a situation of uncertainty about their relative relevance.

Uncertainty about ends and 'convexity' of value functions are, according to Brennan and Hamlin, two distinct arguments, but two interacting dimensions of adjectival/analytic conservatism:

> The status quo bias deriving from uncertainty about ends is essentially independent from the first argument concerning convexity of the value function with respect to outcomes; but the two arguments can be expected to interact. If we adopt a valuation function that is both convex relative to outcomes in a particular dimension of ethical relevance and convex relative to the comparison across ethical dimensions, the status quo biases will be mutually reinforcing. We will need to be convinced not only that a particular policy will produce a good outcome as measured by our preferred ethical criterion with sufficient probability to overwhelm our convexity in that dimension, but also that this result is robust to a range of changes in the specification of the relevant ethical criterion.[77]

Another form of conservatism, whose status quo bias stems from no normative priority of the sort underscored by nominal

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[76] Brennan and Hamlin (2004), p. 688.

[77] Brennan and Hamlin (2004), pp. 689-690.

conservatives, and which is avowedly consequentialist, is practical conservatism.

Brennan and Hamlin's interpretation moves from two assertions. First, that conventions in society arise and are stabilized as a result of a conservative tendency to stick to an existing equilibrium and of a conservative belief on other agents' conduct (namely, that they too will behave as they did in the past, provided this will secure an equilibrium). This statement, as it is evident, implies no ascription of normative pre-eminence to the status quo. Second, that the presence of agents motivated to stick to the status quo by conservative convictions (say, a religious veneration for traditions, a sceptical/anti-foundationalist attitude towards reformism, or else) will nonethtless reinforce the maintenance of conventions. The more people will be animated by a status quo bias grounded in the recognition of its ethical primacy, the more conventions will tend to be stable.

Brennan and Hamlin, who employ the theoretical framework of game theory, note that when, in an iterated game, a Nash equilibrium arises, one may think that players have reason not to alter their action. "But the truth is that neither player has any reason to stick to her previous action either – no reason, that is, based on expected pay-off maximization". If any reason exists, it has to be found elsewhere: it "depends on the structure of beliefs", that is to say, on the players' tendency to maintain a line of conduct if it was satisfactory, even if not Pareto-optimal (in a two players setting), or to adhere to the coordination scheme on which the majority of players converged (in a multiplayer setting).[78] This behaviour, as Brennan and Hamlin stress, cannot be explained merely in terms of maximization of pay-offs: the equilibrium on which players settle might be less than optimal, but

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[78] Brennan and Hamlin (2016a), p. 340.

players will adopt a conservative strategy, and perpetuate their action in order to secure the existing equilibrium. If in the community there are individuals who also have independent reasons to follow a conservative strategy, and if their 'conservativeness' is known to other members, than the relevant beliefs necessary to ground the attachment to past conduct are reinforced (but they are not explained by that presence):

> As far as the maintenance of any established practice goes, the primary forces making for compliance seems to be: rationality (interpreted in terms of the desire to maximize one's pay-offs); and the belief that other players are more rather than less likely to act consistently with any practice that becomes 'established'. […]
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> In any such situation, individuals will be observed to be *behaving* 'conservatively' – *as if* the status quo had independent normative force. But it need not be the case that any of the participants in the interaction has any independent inclination to follow the status quo simply because it's the status quo. Participants do what they do simply because they are rational and hold the relevant belief. If there are some in the community who *do* have an attachment to the status quo for independent reasons and if that fact is common belief among the players, that may help account for the belief that (most) others are likely to adhere to the prevailing practice. And the presence of those with an independent attachment to the status quo may bolster the stability of the outcome against any random shocks.[79]

The role of practical conservatism is particularly apparent, in Brennan and Hamlin's view, once one moves on to consider games wherein some players have reason to break with established practices.

In cases of this sort, agents may experience a tension between retaining the convention based on the lower pay-off and changing their action so as to achieve a Pareto-optimal equilibrium. But "the very fact that the prevailing equilibrium *is* an equilibrium provides it

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[79] Brennan and Hamlin (2016a), pp. 342-343.

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with salience and some grounds for sticking with it".[80] In absence of a third party with mandatory powers over the behaviour of individuals, in fact, there would be no reason to believe that change from the lower pay-off equilibrium to the Pareto-optimal one will be fast and smooth – and even if any agency, say, the State, had in fact the power to coerce individuals, one would expect compliance issues, at least during transitional periods, and so he will be still motivated to abide by the prevailing practice.

What is characteristic of practical conservatism is the attitude to focus on the stability of conventions that make social coordination possible, rather than on the optimality of established practices. On the one hand, the conservative may wish to stick to the status quo since he deems that moving from the existing to an ideal state of affairs implies losses in terms of stability and reliability of rules (waste of information on which members of the community might base their actions);[81] on the other hand, the conservative status quo bias is justified as adherence to established, although non-optimal, conventions for the mere fact that they embody an equilibrium that grants positive pay-offs to all players. In practical conservatism, the status quo need not be cherished for independent normative reasons, but is the object of a realistic understanding of how social coordination works, even if, at the end of the day, its acknowledged salience makes practical conservatives side with adjectival and nominal conservatives (who adopt the status quo bias for different motivations). As Brennan and Hamlin comment:

> Progressives, so the conservatives would argue, attend exclusively to how the world could be under different circumstances; they attend too little to the costs of

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[80] Brennan and Hamlin (2016a), p. 345.

[81] See Brennan and Buchanan (1985), pp. 10-11.

change; they conduct their analysis as if the choices were simply ones between alternative social equilibria. Conservatives by contrast are inclined to emphasize that society typically starts 'somewhere' – in a location that involves prevailing practices on the basis of which agents are able to coordinate their activities. On this view, conservatives and progressives alike share the same basic consequentialist values: they perceive the payoffs under the different equilibria similarly. But conservatives think that progressives are guilty of an intellectual error – that they take a 'view from nowhere'; they abstract from transition costs, or they under-estimate their size. But this error has significant normative upshots: and so practical conservatives of this type will have some common cause with adjectival conservatives and nominal conservatives who will stand against change in such cases for independent reasons.[82]

2. Conserving the past, taking the present seriously

It may well be true, as Brennan and Hamlin argue, that conservatism, even as understood by Cohen, is not in principle incompatible with consequentialism. However, it is doubtful that a consequentialist approach may provide conservatism with a solid normative foundation. Moreover, in their description of nominal conservatism, Brennan and Hamlin simply observe that conservatives attribute to the status quo an additional value, contingent on its being the status quo, but do not explain *why* they do so. Is it just an instinctive reaction? Is it an attitude that mirrors 'epistemic laziness', the human propensity to stick to existing states of affairs because they offer some degree of certainty in comparison with the investment of cognitive energies that bringing about an ideal state of affairs would require? And what is the role, if any, of practical and adjectival conservatism?

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[82] Brennan and Hamlin (2016a), pp. 345-346.

One has to operate some distinctions, especially with regard to the meaning of the notion of 'status quo'. What we are interested in here are primarily states of affairs that have some relevance from a social and political point of view. Of course, one may display an attitude to conserve due to an affective connection with an object, or to the aesthetic value one attributes to artefacts and/or natural environments.[83] Arguments for the status quo bias as such represent, therefore, the *non-political core* of the conservative conception. But the idea of a normative commitment to conserve the status quo is liable to to be politically and socially qualified, and, as I will try to do in Chapter 3, to be associated with at least a basic set of *political* values.

When we think of a status quo with some social and political relevance, we might refer either to a state of affairs that designates the past of our community or civilization, or to the presently existing state of affairs, regardless of its possible antiquity (such state affairs may in fact be the result of rather recent developments). Hence, the reasons one may invoke to justify a status quo bias may be different.

In particular, if the status quo is a state of affairs made up of institutions, traditions, and/or practices inherited from the past, the theoretical framework analysed above needs to be expanded by the notion of 'historical value' (HV). This is the value we attribute to things of the past for the fact that they connect us with foregoing generations and epochs relevant to our self-understanding as communities and civilizations. Here, the key element to understand where the conservative status quo bias is headed for is the

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[83] In this respect, while Cohen's idea of personal value raises several interesting points, like the problem of cultural identity and social embedment, or the notion of irreplaceability, it applies those arguments to objects, like the old pencil, with no relevance for a civilization as such.

commitment to *conserve the past*, and not to interrupt the chain of continuity that ties together subsequent ages and generations.

Alternatively, when what we identify with the status quo is merely the state of affairs in which we find ourselves *here and now*, e.g., a particular distribution of entitlements, a newly issued constitution, a certain political regime, etc., the reasons that would be liable to justify the status quo bias may be tied to the recognition of our condition of ignorance, to the role of conventions, to epistemic precaution, "strategic adherence", etc.[84] In this case, the key point is *taking the present seriously*, that is to say, giving up the reformist ingenuity according to which everything "can be shaped to our aims and requirements", and taking into account path dependencies, transition costs of reforms, the primacy of stability over ideality, and so forth.

2.1 The normative (non-consequentialist) dimension: conservatism as a philosophy of continuity

Eric Hatala Matthes offers a series of arguments that may help us see that in order to ground a conservative status quo bias we need not just recognizing that particular objects, carriers of an intrinsic value, deserve to be preserved simply because they exist. There is another dimension one has to take into account: it is the notion of what we can call historical value, HV, which attaches to what Cohen identifies as *the given*, but is not contingent merely on its *giveness*. Rather, what is at stake when we are confronted with objects with

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[84] See Beckstein (2014), p. 22.

historical properties is the fact that they provide us with "a genuine connection to the past".[85]

As Matthes observes, the past is a temporal dimension we cannot explore directly: we cannot travel back in time, and we can neither reproduce or "engineer" the historical properties that objects from the past possess. Hence, carriers of HV embody a distinct class of value: "The fact that historical features cannot be fabricated is what secures the distinctiveness of their value, but the value accentuated is the connection with the past".[86] Historicity singles out a specific category of value whose importance lays in the chance it offers us to 'visit' the past. But why is this possibility so meaningful, and why should conservatism accommodate for HV in its evaluative function?

Matthes explains that HV pushes us "beyond the boundaries of our own lives and allows us to connect with persons and events from the distant past". This may entail an *instrumental* advantage, since it "can facilitate learning, understanding, and discovering"; but first and foremost it grants us "a sense of unity with the significant moments that have shaped both the earth and ourselves", a value we should appreciate *per se*.[87]

The point is that men are beings characterized by an intrinsic tension between their finiteness and their craving for infinity.[88] Such apprehension for eternity might take unsatisfying secular routes (as in Blaise Pascal's concept of *divertissement*), or a religious form, as the acquisition of awareness of the need to be in communion with God,[89]

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[85] Matthes (2013), p. 61.

[86] Matthes (2013), p. 62.

[87] Matthes (2013), p. 62.

[88] See, for instance, Pascal (2002) [1623-1662], n. 425.

[89] See, for instance, Aquinas, *S.Th.*, I-II, qq.1-5; Augustine, *Confessiones*, I, 1.

but in its earthly, social, expression it is the quest for a connection with our forerunners (and a projection of our own limited lives towards the generations to come, in the guise of a cultural and spiritual legacy).

Communitarians are right in arguing that personal identity is informed by the bonds one shares with kin, fellow citizens, etc.; however, persons cultivate those bonds not only in a *synchronic*, but also in a *diachronic* dimension, as the search for some form of relationship with the past of one's own civilization. And in fact, as Edmund Burke observed, men experience their society as "a partnership […] between those who are living, those who are dead, and those who are to be born".[90]

Let us go back to the value function described by Brennan and Hamlin as $V|_A(.)$, that is, 'the all-things-considered value of (.) contingent on recognizing A as the status quo'. Now, according to them, the conservative would systematically value the status quo over and above another state of affairs that is not the status quo: therefore, if $V(A)>0$ (if state A is a carrier of value), then $V|_A(.)>V(A)$ (the value of A as the status quo will override the value of an alternative state which is not the status quo). Including the concept of HV in the evaluative function helps us understand why this is so. In fact, if the status quo A is constituted by a set of given practices, traditions, institutions, or any other endowment inherited from the relevant past of our civilization, then $HV(A)>0$, and $V(A)=HV$: that is to say, the value of the status quo A will be a function of historical value, a value that a state which is not the status quo would lack. Consequently, it is the presence of HV that accounts for the primacy of the status quo over competing states of affairs.

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[90] Burke (1790), p. 80.

Hitherto, however, nothing has been said about the political meaning of the recognition of HV. The latter may well be connected with objects, artefacts, monuments, as much as with beliefs, practices, traditions, etc., with a definite political character. As we analyse the political scope of the argument for HV, we are pointing to a sense of connectedness not with *any* past, but with the *relevant* past of our society.

This also means that not every practice, tradition, institution, etc., although inherited from the past and politically oriented, necessarily qualifies as a carrier of HV. This predominantly (but not exclusively) attaches to endowments that come from those epochs whose contribution to the shaping of our civilization's identity was more significant. Thereby, in the evaluation of HV an *objective* and a *subjective* element are involved. Establishing which periods of our shared past have had more influence on our present societies means, on the one hand, assessing the *objective* width of the relative contribution that each historical phase has given to the form our society currently displays, and, on the other hand, investigating into the self-understanding of our society, which is conditioned by subjective *interpretations* of the past. In this sense, although the status quo bias is, as such (as a *bias*), firstly an unreflective disposition to acknowledge that the endowments conferred upon us by our forerunners ought to be preserved, and that the burden of proof lies with the advocates of change, the *justification* of the status quo bias entails an *active* participation on the part of those who wish to uphold it, in order to build up the historical account in virtue of which a particular connection with that past is deemed valuable (as we shall see in the next chapter, an analogous attitude relates to the transmission of 'living traditions').

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For instance, a strong historiographical trend, which dates back to the Enlightenment, provoked a profound underestimation of the contribution by the Middle Ages to the shaping of European identity, and to many traditions, cultural, and political institutions of present-day nation-States in the Western world. Consequently, our societies may have been less *biased* towards medieval inheritances than they were, say, towards the legacy of the Romans or the Renaissance. Changes in the interpretive paradigms of history might alter the degree to which a society perceives certain epochs as relevant to the constitution of its identity. However, what is fundamental in conservatism's normative structure is the disposition to resist change and replacement of practices, traditions, and institutions, bequeathed on us by our ancestors. The intensity of the status quo bias may vary, but the positive appraisal of *connectedness* with the past remains the same: HV confers to the status quo an additional value, even if the *magnitude* of this value is contingent on the *relevance* of the historical period at issue.

Consequentialism may not be incompatible with this form of conservatism, which represents an elaboration on Cohen's idea of a 'small-c conservatism', and on Brennan and Hamlin's *nominal* conservatism, at least as long one understands HV as the sum of the intrinsic value of *connectedness* with the past and instrumental values, like the fact that elements which qualify for HV facilitate learning, or, especially in the case of social institutions, help us solving social coordination problems and other political predicaments. And yet, it is evident that what distinguishes the properly conservative attitude is the emphasis on the intrinsic value that HV represents. In consequentialist terms, in fact, the status quo would be more valuable than a competing state of affairs only insofar as the former were likely to fulfil those instrumental purposes better than the latter. One may

include consequentialist considerations within the value function that defines HV, but what grounds the *systematic* pre-eminence of the status quo is the intrinsic value we identified as 'connectedness with the past'.

In this perspective, Cohen's "small-c" or Brennan and Hamlin's nominal conservatism, reshaped on the basis on the idea of HV, displays itself as a philosophy of *continuity*, that is to say, a theory on how to cultivate the bonds that link with each other different generations, across a wide span of time, providing a civilization with a self-understanding, a self-narrative, and a self-consciousness, by means of connection with its relevant past. This form of conservatism may be described, rather than as fully 'anti-consequentialist', more feebly, as 'non-consequentialist' (in the sense that it might *indifferently* admit or not admit of instrumental candidates for the determination of HV).

2.2 The epistemic dimension: conservatism as a philosophy of change

Adjectival and practical conservatism point to two important aspects of conservatism: the posture that a conservative is likely to exhibit towards values recognized by non-conservatives as well, and a certain attitude to preserve attained equilibria in social coordination dilemmas, that is to say, the incentive not to challenge existing conventions, which even persons who in other respects do not embrace conservative values may retain. Following Kieron O'Hara, I will firstly concentrate on adjectival conservatism as a form of conservatism connected to a sceptical view on epistemology and value.

In their interpretation of adjectival conservatism, Brennan and Hamlin insist on the role of *ignorance*: ignorance due to the complexity of social processes (most of which display a marked path dependence: big, often unintended, consequences stem from small causes), to the width of the information required to manage those processes, but also ignorance of ethical ends. In his 2011 book *Conservatism*, O'Hara writes 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 rightly uncertain".[91] He labels this assertion as the 'knowledge principle' (kp).[92] However, O'Hara suggests that uncertainty is not enough to justify conservatism: on the one hand, policy makers are often pressured by the demands of the public to act anyway;[93] on the other hand, as Brennan and Hamlin observe, if one is equally uncertain as to whether a policy will have positive or negative effects, no univocal normative indication would follow from the fact of ignorance, either in the sense of implementing or in the sense of blocking a certain policy.[94] Consequently', O'Hara couples the knowledge principle with the change principle (cp), which states that

because the current state of society is typically undervalued, and because the effects of social innovations cannot be fully known 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. It therefore follows that societies should be risk-averse with respect to social change, and the burden of proof placed on the innovator, not his or her opponents. It also follows that change,

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[91] O'Hara (2011), pp. 49-50.

[92] See O'Hara (2016), p. 428.

[93] Ibid.

[94] See Brennan and Hamlin (2004), p. 684.

when it does come, should ideally be (a) incremental, (b) reversible where possible, and (c) rigorously evaluated before the next incremental step.[95]

According to O'Hara, it is such combination of kp + cp to ground an "epistemologically based conservatism", which "not only raises the bar to innovation, but also strongly challenges the calculable cost/benefit view of politics put forward by the rationalist".[96] This form of conservatism may apply when the status quo is not represented by any relevant historical feature capable of triggering HV. In these cases, the status quo bias (though O'Hara refuses this label) is justified by a sceptical attitude towards the human faculty to implement successful reforms in the face of *ignorance* and *uncertainty*, two constitutive epistemic predicaments of the human condition which justify prudence and reluctance to alter the status quo.

Suppose, for instance, that the status quo amounts to a certain distribution of resources. As such, the latter carries no historical value; moreover, a reformist may detect injustices in the present state of affairs, and he may be prompt to recommend measures to amend it. Applying kp + cp, the adjectival/epistemic conservative would insist 1) on the complexity of the social processes which led to the current distribution of wealth (for instance, free market forces); 2) on the reformist's inability (a) to effectively bring about the wished-for change, and (b) to avoid unintentional, undesired consequences of reforms (say, seriously hindering the operation of the market). Therefore, even if he shared the same concerns about injustice, he

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[95] O'Hara (2011), pp. 88-89.

[96] O'Hara (2016), p. 429.

would be either reluctant to undertake changes, or would demand that they be rendered slow, gradual, and possibly reversible.[97]

In other cases, considerations on HV and epistemic scepticism may both concur to determine the status quo bias. Suppose, for instance, that the Italian government is dealing with a huge reform of the 1946 Constitution. A nominal conservative may argue that the Constitution is a carrier of historical value: it dates back to a relevant epoch of Italian history (the re-foundation of the country after its defeat in the Second World War and the end of fascism), and it would be reasonable to keep a connection to that past in high esteem. To the contrary, an adjectival/epistemic conservative may remark that the Constitution was an exercise of rationalist politics, what Friedrich Hayek would have dismissed as constructivism.[98] And yet, precisely for this reason even the adjectival conservative would be averse to changes in the existing Constitution, and demand would-be reformists to be prudent: the complexity of society has possibly increased, and politicians' capability to design effective plans is much lower than seventy years ago. That the Constitution is an exercise of political constructivism is not sufficient enough to justify other constructivist changes.

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[97] This is the core of Hayek's 'instrumental' defence of liberalism: although he subscribed to many of the values embraced by the socialists, he maintained that the nature of the spontaneous order of the market, as much as the constitutive limitations of our knowledge and capacity to control impersonal social processes contingent on the spontaneous coordination of millions of individuals, made any effort to implement 'social justice' not only doomed to failure, but also dangerous to those market forces which were after all responsible for the highest material achievements of our civilization. See Hayek (1960), chapters 1-6; Hayek (1982), Volumes 1, 2; Hayek (1988); Kukathas (1989); Kley (1994).

[98] See Hayek (1982), chap. 1.

Practical conservatives would be equally hostile to full-fledged reformism although they need not share the nominal conservative's appraisal of HV nor the adjectival/epistemic conservative's risk aversion motivated by the human condition of ignorance and uncertainty. What is fundamental to practical conservatism is an attitude to stick to the existing equilibrium in social coordination problems simply because it is *an* equilibrium. The practical conservative would focus on transition costs from the existing to the ideal state of affairs, and on the importance to *preserve* rather than *amend* rules for the sake of social cooperation. In the example of the Italian Constitution, he would probably emphasize that 'bygones are bygones', that it may be more risky and costly to try to ameliorate basic rules than to keep them as they are, and the set of expectations on the distribution of rights and duties, fostered by the existing Constitution, on which ordinary citizens depend for a successful social coordination.

When it comes up in the adjectival/epistemic or practical guise, conservatism displays itself as a philosophy of *change*, that is to say, a theory on the character that change should have in order to avoid destruction of important institutions, and to limit transition costs, the violation of people's expectations on their entitlements, and loss of the information provided by existing rules as guides to social cooperation. Evidently, conservatism need not oppose change as such; to the contrary, it acknowledges that precisely in order to *conserve*, most of the times one has to let things *change*. The problem of the so-called 'conservation paradox' is particularly evident in the case of traditions, on which I focus in the following chapter.

3. Conclusion

To sum up, it is helpful to recall the core elements of conservatism, and to emphasize its potentially dual nature. A fundamental trait of the conservative position is the status quo bias, which might be justified either as a normative commitment to preserve carriers of HV (generally speaking, in a non-political sense, and, as well, in a politically determined meaning, when one points to those practices, traditions, institutions, etc., which put present generations in connection with the relevant past of their civilization), or as a prudent reluctance to reforms, in the face of the human condition of ignorance and uncertainty.

This composite justification of the status quo bias proves how conservatism might be interpreted as a normatively stronger, non-consequentialist, philosophical posture (as Cohen's "small-c conservatism", as Brennan and Hamlin's *nominal* conservatism, or, as I am suggesting here, as a *philosophy of continuity*), or, in a weaker sense, and possibly in a consequentialist mood, as an attitude towards reformism characterized by epistemic scepticism. These two arguments are not reciprocally contradictory, and a conservative might typically employ both of them, at least when it is possible the to conceive the status quo as a carrier of HV.

Chapter 3. Conservatism and tradition

In this chapter I analyse another important feature of conservative social and political theory, that is to say, the concept of tradition.

In the first section I argue that traditions are constituted by a *normative* and a *functionalist* dimension. In *normative* terms, they are carriers of historical value (HV); in *functionalist* terms, they are cognitive devices to overcome the structural epistemic limitations of human reason, and to solve social coordination problems.

I define traditions as sets of *beliefs* and *customs*, which *inform* and *shape practices* and *institutions*, and are transmitted as *habits*, *constraints*, or explicit *teachings*. Their transmission entails a *temporal* and an *operational* element: traditions have to be received, employed, conserved, and passed on (operational dimension), and this can only happen when more than one generation is involved (temporal dimension).

Traditions are directly related to the realm of morality. Beyond this, not everything is traditional, but traditions influence many activities, including science, literature, poetry, professions, and games. Traditions are usually adhered to unreflectively, but they are liable to be rationally evaluated.

In the second section I discuss the ways in which traditions can be transmitted from tradents to recipients. Being aware of the 'conservation paradox', that is, the idea according to which the only way to *conserve* is to allow for some change, I present Martin Beckstein's 'model of a living tradition', and I emphasize its faults. Consequently, I propose a set of criteria to evaluate the 'authenticity'

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of change in transmitted traditions. One set of criteria is *internal* to the tradition under examination, and includes the following options:

- *assessing whether change/changes affects/affect the pursuit of tradition-dependent and tradition-independent principles*;
- *assessing whether change/changes distorts/distort the 'continuity', the 'canon', or the 'core' of a tradition;*
- *assessing whether change/changes alters/alter the distribution of role obligations within the tradition.*

The other set of criteria is *external* to the tradition at issue, and includes the following options:

- *assessing the 'authenticity' of change in the context, understood as the set of alternative and/or competing traditions contiguous to the one at issue*;
- *assessing the character of change, viz., whether it was spontaneous, gradual, limited in scope, or coercively imposed, abrupt, comprehensive, instable, and destabilizing to the people involved.*

In case change and reforms do not meet these standards, one has *prima facie* reasons to assert that, on a conservative perspective, they were illegitimate.

1. Tradition: the normative and the functionalist dimensions

There is another fundamental aspect to conservatism that needs to be examined here: the concept of tradition.

Reverence for tradition is somehow connected to the status quo bias: tradition is in fact an endowment inherited from the past; and

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yet, in order to endorse the role of traditions in society, conservatives used to resort to arguments independent of those developed with regard to the status quo bias.

A defence of tradition need emphasize both a *normative* and a *functionalist* dimension.

From the *normative* point of view, tradition qualifies as a carrier of HV (in a sense, it is *the* carrier of HV *par excellence*): it connects a society with the relevant past of the civilization to which it belongs. Consequently, conservatives have reasons to prompt its preservation, and to maintain that it is up to reformists to prove that it has to be amended.

On the *functionalist* perspective, tradition turns out to be a form of authority conservatism acknowledges as a remedy to the limits of individual reason. As Jerry Muller observes:

> Conservatives have often stressed the cognitive element of human imperfection, insisting upon the limits of knowledge, especially of the social and political world. They warn that society is too complex to lend itself to theoretical simplification and that this fact must temper all plans for institutional innovation. Such epistemological modesty may be based upon philosophical scepticism as in the case of Hume, or a religiously derived belief in the limits of human knowledge as in the case of Burke or de Maistre, or on some general sense of the fallibility of human knowledge, as in the case of Friedrich Hayek or Edward Banfield.[99]

Tradition, in a functionalist sense, is a cognitive contrivance whereby society overcomes the structural epistemic limitations of human reason. By relying on a stock of authoritative truths, beliefs, principles, and patterns of action, men need not waste cognitive energies in reinventing afresh what has been already discovered by

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[99] Muller (1997), p. 11.

their ancestors. Grasping at traditions, the mind no more needs to operate in an epistemic void. It is with this spirit that Edmund Burke uttered a famous apology of 'prejudice', the sort of common sense morality that the English system he cherished and advocated against French radicalism openly encouraged:

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 men of speculation, instead of exploding general prejudices, employ their sagacity to discover the latent wisdom which prevails in them. If they find what they seek, and they seldom fail, they think it more wise to continue the prejudice, with the reason involved, than to cast away the coat of prejudice and to leave nothing but the naked reason; because prejudice, with its reason, has a motive to give action to that reason, and an affection which will give it permanence. Prejudice is of ready application in 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.[100]

According to conservatives, what makes life worth living, and society prosperous, that is to say, conduct according to rules, morality, intellectual and spiritual achievements, an effective market system, etc., would all be unlikely to attain if the mind were to start afresh each time, instead of being biased towards the existing "general bank and capital of nations and of ages".

While, normatively speaking, conservatives would deem a moral abnormity the reformist's systematic undervaluation of tradition as a carrier of HV, the source of connectedness with the past of our civilization, in functionalist terms conservatives would regard as an

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[100] Burke (1790), pp. 72-73.

act of *hubris* the pretension to rule regardless of the authority of traditions. Thus, while the reformist would subscribe to Thomas Jefferson's statement according to which "*the earth belongs in usufruct to the living*", [101] the conservative would argue that tradition "means giving votes to the most obscure of all classes, our ancestors. It is the "democracy of the dead", the means whereby we secure the continuity of the past in the present.[102]

1.1 Defining tradition

How can we define tradition? Samuel Scheffler adopts a broad interpretation of the concept and maintains that "a tradition is a set of beliefs, customs, teachings, values, practices, and procedures that is transmitted from generation to generation"; a tradition may, but need not, encompass all of these elements.[103]

In order to avoid overinclusiveness, we may restrict such comprehensive definition so as to understand tradition as a set of *beliefs* (be they descriptive or normative claims) and *customs* (namely, unreflective patterns of action), which *inform* and *shape practices* and *institutions*, and are *transmitted* in the form of *habits* (which condition behaviours), *constraints* on the ideas and actions of individuals, groups, and societies (institutions, for instance, settle procedures for the resolution of conflicts and coordination problems), or explicit *teachings* (written or unwritten, depending on whether the tradition has a ratified *canon*).

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[101] Thomas Jefferson to James Madison, September 6, 1789.

[102] Chesterton (1908), p. 30.

[103] Scheffler (2010), p. 290.

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Now, the Latin word *traditio* entails that the most central feature of tradition is its transmission. This, in turn, involves two dimensions, the *temporal* and the *operational* one: a tradition is something that has to be received, employed, conserved, and passed on (operational dimension), and this can only happen when more than one generation is involved (temporal dimension).

Typically, only one or two generations are not sufficient to turn a certain material into a tradition; nonetheless, it is extremely hard, if not altogether impossible, to determine precisely the number of acts of transmission after which a tradition may be born. Edward Shils, for instance, suggests that traditions need at least three generations to become established, though he admits that the question is hard to settle:

How long must a pattern go on being transmitted and received for it to be regarded as a tradition in the sense of an enduring entity? This question cannot be answered satisfactorily. Obviously a belief which is forsaken immediately after its conception and which has no recipients when its inventor or exponent presents or embodies it, is not a tradition. If a belief or practice 'catches on' but survives only for a short time, it fails to become a tradition, even though it contains, in nucleus, the patterns of transmission from exponent to recipient which is at the heart of traditionality. It has to last over at least three generations – however long or short these are – to be a tradition […], at a minimum, two transmissions over three generations are required for a pattern of belief or action to be considered a tradition.[104]

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[104] Shils (1981), pp. 15-16.

1.2 The scope of traditions

Beyond the problem of defining them, a question arises as to the extent to which traditions operate in society: in what ambits do individuals find themselves embedded into traditions, and in what ambits, if any, do they act following practices, institutions, etc., not informed and shaped by established traditions? The question concerns the relation between traditionality and morality as well, as James Alexander remarks:

> The sociologist stands back from traditions, which are endless in number, and studies them. But this involves the sociologist in a fundamental contradiction. For if traditions are everywhere, and condition all activity, then the understand of the sociologist, the set of rules by which he studies traditions, and even his definition of tradition, themselves emerge from a tradition, of which his method of study is only an abridgement, or an abstraction.
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> […] Tradition is either nowhere, somewhere, or everywhere. If it is everywhere it necessarily calls rationality into question, since it is a general condition of all activity. If it is merely somewhere or nowhere, it does not necessarily call rationality into question, but then there is the question of whether it should be separated from rationality or reconciled with it.[105]

Those who argue that everything is tradition tend to deny that there can be anything truly 'anti-traditional', or fully independent of traditions. Even a critical stance towards tradition, even the very act of rejecting traditionalism, is itself a way to reaffirm the conceptual primacy of tradition (in order to distance oneself from a tradition, one needs the tradition first). Shils, for instance, remarks that

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[105] Alexander (2012), pp. 22-23.

traditions of one kind or another in any field of intellectual activity are always sought out, even when they are contemptuously rejected. The workings of the imagination and of reason are intensified by contact with the imagination and reason of other persons, living and dead. The need for intellectual conviviality draws together minds with similar, strong propensities and they benefit from each other's constructions. The works of the mind from the past drew them as much as the works of their living contemporaries who are also formed on the anvil of past works. Such minds are drawn to the visible works of the past in their search for intellectual conviviality and communion. There they find prototypes of the kinds of actions they wish to perform and of the works they wish to create. Thus, even if cultural traditions were avoidable, they would still draw the minds of those who seek to dwell in the midst of symbolic constructions.[106]

If every field of human activity were characterized by traditionality, this fact would have consequences on our conception of rationality as well: reason would not be describable as the source of purely abstract and detached though, but would emerge from within traditions, so that even the exercise of one's critical faculties would require a tradition to refer to. On this view, the alleged dualism between reason and tradition would be oversimplified: there would be no 'pure reason' that works as an unconditioned system of calculation, in opposition to the unreflective attitude displayed by blind followers of established traditions. Just like reason is itself embedded in a social, historical, and cultural context, so there would be no contradiction in arguing that a tradition might nurture an anti-traditional intellectual practice: having relinquished the tradition one finds immediately available to him, he is not liberated from traditions in general; rather, he adheres to alternative or competing traditions.[107]

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[106] Shils (1981), pp. 162-163.

[107] See Popper (1972) [1948], p. 122; see Eliot (1997) [1919] for an application of this idea to the problem of tradition in literature.

However, that rationality structures itself along with tradition does not mean that tradition has necessarily to be regarded as a body of unreflective beliefs or practices. Alasdair MacIntyre, for instance, "is ostentatiously hostile"[108] to the view of tradition defended by Burke,[109] and epitomized by the latter's apology of prejudice. In MacIntyre's interpretation, traditions are pre-eminently related to the realm of morality: a tradition is connected to an end, that is, the realization of a good, and therefore it requires a reasonable justification, not blind devotion. According to MacIntyre everything is traditional, for traditionality involves "the view that rational inquiry is only possible within a community in which certain values are already recognized and shared",[110] and in which certain standards of authority (certain 'canons') are already at disposal.[111]

At the same time, the ambit of traditionality essentially revolves around morality, and traditions are oriented to the pursuit of a good that has to be rationally argued for, and calls for correction, improvement, and reformulation, though not *in abstracto*, in respect of arbitrary and external standards, but from within an historical chain of transmission, in a sort of communitarian diachronic enterprise:

[…] it is central to the conception of such tradition that the past is never something merely to be discarded, but rather that the present is intelligible only as a commentary upon and response to the past in which the past, if necessary and if

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[108] Alexander (2012), p. 38.

[109] See MacIntyre (1988), p. 165, where he speaks of a conception of tradition "bastardized" by modern political conservatism, and p. 353, where he criticizes Burke for having ascribed to traditions 'wisdom without reflection', leaving no place for "rational theorizing as a work of and within tradition".

[110] Alexander (2012), p. 40.

[111] See MacIntyre (1990), pp. 80-100.

possible, is corrected and transcended, yet corrected and transcended in a way that leaves the present open to being in turn corrected and transcended by some yet more adequate future point of view. Thus the notion of a tradition embodies a very un-Aristotelian theory of knowledge according to which each particular theory or set of moral or scientific beliefs is intelligible and justifiable – insofar as it is justifiable – only as a member of an historical series. It is scarcely necessary to say that in such a series the later is not necessarily superior to the earlier; a tradition may cease to progress or may degenerate. But when a tradition is in good order, when progress *is* taking place, there is always a certain cumulative element to a tradition.[112]

Now, it is certainly true that reason and tradition are deeply interwoven with each other. Moreover, traditions may be open to rational scrutiny, as long as one does not consider such evaluation as the establishment of a set of abstract criteria to which traditions ought to adjust. To the contrary, one has to adopt a view of rationality as entrenched in a socially structured background, which would be influenced by other traditions. It is only by giving up a naïve understanding of how reason works that one can make rational validation of traditions sound. But there are two points to clarify.

First, since traditions include a functionalist side, adherence to them is partly, if not above all, contingent on unreflective knowledge. One need not neglect that rational inquiries on tradition are possible and even desirable; but although the latter may be a praiseworthy philosophical exercise, that is not the way traditions usually operate in society. The fact itself that one ponders his adherence to a tradition

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[112] MacIntyre (1985), p. 146. According to MacIntyre, since tradition mediates between history and rationality, it is possible to identify that as an alternative both to the Enlightenment's faith in agreement between men based on purely rational arguments and on cognitive standards common to all reasonable people, and to the nihilist rejection of the very possibility of such agreement (to put it with Nietzsche, the idea that there are no objective facts, but only subjective interpretations).

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before enacting it would call into question the functionalist dimension of traditionality.

Second, traditions surely have a direct impact on the realm of morality, and on other cultural undertakings like literature, poetry, and, as Popper remarked, even epistemology and science, but they may more or less indirectly influence even activities like professions and games. In particular, the latter mode of action (and of association) is bound to have an important effect on politics. As we shall see more in detail in Part 3, following Joan Huizinga and John Finnis, the play element structures several ambits of human culture, and it comprises embryonic forms of legal and political institutions. Games, like ancient rituals (which always contained a play element), provide persons with an understanding of how to engage in a disinterested, cooperative, and yet purpose-oriented and competitive activity, how to cultivate rule-abiding behaviour, and with a sense of connectedness with the members (both the contemporaries and the ancestors) of their community.

Furthermore, it is not hard to see how traditions may influence practices and institutions related to politics. Think, for instance, of a written constitution as the concurrence of different comprehensive political ideologies, based on values which are in turn moulded by tradition-dependent principles. Or consider present-day parliamentary regulations as the gradual and incremental precipitate of old practices, informed by beliefs, customs, and even prejudices in matters like etiquette, the principle of fairness in a competitive enterprise, mutual respect between peers, commitment to freedom of expression, etc.

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2. *Transmitting traditions, or the 'conservation paradox'*

Traditions constitute a 'material' that has to be handed down by a generation and taken on by the following one, in the two dimensions, operational and temporal, mentioned above. But along the chain of transmission such traditional material does not stand inert, insensitive to modifications, adaptations, innovations, due to unavoidable alterations that occur across time, or to the results of rational criticism and conscious pushes for reform.

Conservatives are aware that preserving the status quo does not mean leaving everything unchanged, and that transmission of tradition is not an archaeological activity oriented towards the resurgence of 'dead and gone' practices. And in spite of the status quo bias that qualifies the most basic attitude of all forms of conservatism, they may even explicitly advocate some reforms. It is indeed the constitutive paradox of conservatism, intended as a particular philosophy of change, to be prompt to enact transformations and amendments. What is central to the conservative outlook is not that change be suppressed, but that it be not regarded as the means whereby present-day generations might get rid of the inheritance bequeathed to them by their forebears. To the contrary, a certain amount of innovation should be introduced precisely in order to conserve, and to keep *alive*, a society's stock of traditions.

The so-called 'conservation paradox' was firstly formulated by Burke, who famously recognized that a "state without the means of some change is a state without the means of its conservation", and praised the English system for having balanced, at the two critical

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points of its history (the Restoration and the Glorious Revolution), the "two principles of conservation and correction".[113]

The question, then, arises, of what it means to transmit a tradition: what is the role of tradents and recipients? What is it that is handed down? What, in the bequeathed material, has to be left unaltered, and what can legitimately be subject to change? Are there 'authentic' and 'inauthentic' ways to transmit a tradition?

2.1 Beckstein: the 'static model' vs. the 'model of a living tradition'

Martin Beckstein discusses this issue at length, and he elaborates an evaluative standard for the transmission of traditions. He moves from Karl Popper's prominently functionalist 'rational theory' of tradition, which, in his view, leaves unanswered a multiplicity of crucial questions:

[…] how much may a tradition be modified before it has effectively been abandoned? What criterion allows us to distinguish between permissible and impermissible modifications? How much of the founder's attitude must persist in later generations' ways of thinking and acting to qualify as an authentic continuation of a tradition? Will traditions, if their meaning changes over time, still warrant the long-term proper functioning of institutions? And if not, might they be of relevance for institutions in other ways?[114]

Beckstein observes that there are different ways to modelize the transmission of traditions. The first, and most basic, interpretative framework is offered by the *static model*, which is characterized by a

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[113] Burke (1790), p. 18.

[114] Beckstein (2017), p. 5.

linear linkage between tradents and recipients, where the tradition material handed down from one generation to another is left wholly unaltered:

> It [the static model] takes the form of a one-many chain of transmission: a generation of recipients acquires a tradition material and passes it on (even though not every member has to participate) to another generation of recipients. The tradition material in the chain is of transmission is conceived in terms of causal (numerical) identity. Hence, whilst the recipients and tradents are many, the tradition material is one, and it is one and the same for each link of the chain of transmission. All faithful members of the tradition share the same set of beliefs, customs, teachings, practices, or procedures.[115]

Invariance, then, is the fundamental trait of the static model: an act of transmission is authentic only insofar as the tradition material, its content, undergoes no change. Obviously, this model appears unrealistic: in our societies it is difficult to find traditions, especially the most aged ones, which remained unchanged along the entire chain of transmission. If the static model is conceived as a *descriptive* tool, then it surely fails to capture the reality of the multiplicity of traditions in actual societies; if is meant to address *normative* prescriptions, all it can show is that none, or only a very restricted minority, of the existing traditions have been 'authentically' transmitted.

According to Beckstein, an alternative model allows for some change in the tradition material, and the chain of transmission need be no more linear, but it may involve several contributions by different recipients and tradents at the same time. This is the *model of a living tradition*, where "tradition takes the form of a many-many chain of transmission: there is more that one co-existing recipient and tradent, and the set of beliefs (or customs, etc.) that faithful members of the

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[115] Beckstein (2017), p. 7.

tradition hold may differ in certain regards".[116] However, there are two distinct versions of the model of a living tradition, two different ways to interpret the legitimacy of change in the tradition material.

In the first one, the characteristic feature is represented by *qualitative similarity*: here "the tradition material of one generation of recipients needs to be (only) qualitatively similar, to a very high degree, to the preceding generation's tradition material. The tradition material received by simultaneously existing adherents may also merely display a high degree of qualitative similarity".[117] Beckstein argues that the criterion of qualitative similarity tends to be too loose a standard to be applied to the authenticity issue: qualitative similarity may still hold even if a tradent wishes to alter salient elements of the original tradition. Moreover, qualitative similarity ends up being overinclusive in the long-term: the alleged 'similarity' between the original and the handed down tradition fades away the farthest one goes from the first tradents along the chain of transmission. Eventually, "a late recipient might not share a single aspect of the original tradition material".[118]

Beckstein endorses a second version of the 'living tradition' in which the criterion of qualitative similarity is replaced by the notion of *equivalence*:

That is, a tradition act is successful if the set of beliefs (or customs, etc.) held by recipients/tradents have the same overall point or prima facie purpose in the recipients'/tradents' respective contexts of living. This allows us to explain why a recipient's tradition material (M') may, under certain conditions, differ from the tradent's version (M) but nevertheless be true to it and in some sense even be the

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[116] Beckstein (2017), pp. 8-9.

[117] Beckstein (2017), p. 9.

[118] Beckstein (2017), p. 10.

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same, as well as how and how much M' may legitimately differ from M. The guiding idea is that a later generation must express its continuing fidelity to an earlier tradition material by the identical tradition material (M=M') if the context of living has not changed significantly, whereas it has to express its continuing fidelity to this earlier tradition material by a distinct tradition material (M≠M') if the context of living has actually changed in relevant aspects.[119]

Two ideas inform this interpretation of the authenticity issue. First, that what lies at the core of the conservation paradox, and hence of Burke's contention that some degree of change is the only means for conservation, is the recognition that significant alterations in the context wherein traditions operate might make the latter ineffective, and doom them to vanishing, unless appropriate changes are implemented within those traditions as well. Second, that the role of the generations which inherit a set of traditions is not that of passive receptors, but entails an endeavour to make sense of the received material, and to adapt it even to radically modified contexts. Beckstein explains that

tradition materials are polysemic, just like texts in the narrow sense of the word; they lack a discrete and objective structure of signification. Thus, the meaning of a tradition material (or text) is pre-structured, but not entirely predetermined, by its originator (or author). Recipient necessarily play a co-constitutive role in the creation of meaning by resolving ambiguities and specifying vagueness in some form or another. The process of internalization of a tradition material, therefore, is one of making sense rather than one of listening. Recipients are active interpreters […] regardless of whether they are consciously aware of their active role in receiving tradition materials. In consequence, there is always more than one conceivable way of carrying on a tradition. Two or more persons can be equally

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[119] Beckstein (2017), p. 11.

faithful adherents of one and the same tradition despite having diverging understandings of the tradition material.[120]

The model of a living tradition based on the equivalence criterion warrants, in Beckstein's view, that no arbitrary change be made in the tradition's material, and that in the long term traditions be not completely altered by subsequent modifications.

2.2 Living traditions or betrayal of traditions?

Conservative theorists, ever since the publication of Burke's *Reflections On the Revolution in France*, have shown they were aware of the 'conservation paradox'. This shelters conservatism from the misplaced criticism of being substantially ineffective as a style of political action (or, so to say, political *inaction*). Take, for instance, Hayek's fierce rejection of the allegations to be a conservative, which condemns conservatism as a stubborn resistance to change with no prospect of success:

> Let me now state what seems to me the decisive objection to any conservatism which deserves to be called such. It is that by its very nature it cannot offer an alternative to the direction in which we are moving. It may succeed by its resistance to current tendencies in slowing down undesirable developments, but, since it does not indicate another direction, it cannot prevent their continuance. It has, for this reason, invariably been the fate of conservatism to be dragged along a path not of his own choosing. The tug of war between conservatives and progressives can only affect the speed, not the direction, of contemporary developments.[121]

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[120] Beckstein (2017), p. 10.

[121] Hayek (2011) [1960], p. 520.

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Differently from what Hayek thought, conservatism does not refuse change *per se*. It rebuffs reformism as the ideology of change at any cost, and advances its own proposal on the character that change should display. Beckstein's 'model of a living tradition' is indeed an effort to determine how traditions can be transmitted avoiding both the oversimplified static model, which assumes that no change in the tradition material may occur, and the loose criterion of qualitative similarity, which eventually leads to inauthentic modes of transmission. However, Beckstein's proposal presents some serious faults, particularly its excessive focus on the role of the context as a justificatory source for change in the tradition material – faults which make it unsatisfying. These limits become apparent as one looks at the examples Beckstein himself employs so as to illustrate his point.

Take the case of Christian *caritas* compared to secular humanism: would an atheist who embraces enlightened humanism be a true continuator of the Christian tradition of *caritas*? The answer, according to Beckstein, depends "on whether the acknowledgement of God's existence is essential for the understanding of the original version of *caritas*", so that if the context has changed significantly enough to make it possible to understand *caritas* in secular terms, the latter "could therefore legitimately and authentically be rearticulated in terms of an atheist humanism".[122] But then, is not Beckstein's 'model of a living tradition' as overinclusive as the ones it was intended to supplant? In fact, if a change in the context (say, the spread of secularism) is enough to let radically antithetical cultural paradigms (like atheist humanism is in respect of Christianity) become 'true successors' of a tradition, then the problem of overinclusiveness has been circumvented, not solved.

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[122] Beckstein (2017), p. 13.

There are at least three difficulties in the example of *caritas* chosen by Beckstein. First, it shows that the 'model of a living tradition' leaves us with no criterion to distinguish the multiplicity and diversity of traditions in society. It may be true that there are connections between traditions which are different in many other important respects; and it may be true that secular humanism was partly (and perhaps unintentionally) influenced by the pre-existing tradition of Christianity. However, exponents of secular humanism would be likely to understand themselves as *opponents*, not as *inheritors* (let alone *true successors*), of Christian traditions. By adopting Beckstein's framework, one would be led to stretch a tradition's heritage so as to include, among its 'true successors', almost any set of beliefs which was partly moulded by the pre-existing tradition. But if one wants to eschew over-inclusiveness, the fact that certain traditions have shaped the cultural context so as to 'contaminate' even those traditions that stand in open contrast with them, cannot be a sufficient reason to conclude that one is witnessing an authentic act of transmission. If a tradition is essentially a set of beliefs, and if the relevant beliefs have changed so radically, as it is the case with the shift from Christian faith to atheism, it would be more sensible to maintain simply that a new, *competing* tradition arose, maybe prompted by alterations in the context.

But, second, suppose that an atheist humanist conceived of himself as the true successor of Christian *caritas*. Beckstein's 'model of a living tradition' leaves us with no criterion so as to determine whether the humanist's claim is correct on the basis of its doctrinal content. What the example tells us is that a change in the context did occur (humanism has taken over Christianity, so that the belief in a transcendent God is no more regarded as indispensable to ground morality), and that such change proves that atheist humanism is the

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true heir of Christian *caritas*. At the same time, this should also demonstrate that, within the Christian tradition (assuming there is no meaningful difference between the Catholic and the Protestant interpretation of *caritas*, which is in itself controversial), modernism, which advocates an encounter between modernity and Christian theology/moral philosophy, is the true successor of the Christian tradition (something that, for instance, Catholic traditionalists would contest). And yet, one may challenge the idea that 'love' in the secular sense is analogous ('equivalent') to *caritas* in a truly Christian perspective.

In the first place, Christian *caritas* is deeply rooted in love for God, a love that men immediately address to Jesus Christ, the Son. Contextual changes doubtfully justify the secularist's dispensing with the belief in a personal, incarnated, Divinity. Conversely, in the tradition of atheist humanism love stems from the recognition of a common humanity. This quality may be based on several diverse sources (say, the fact that every human individual has a reason, the fact that we all share the same psychological structure, the fact that we are all members of the same species, etc.), but in no way an atheist may confess that common humanity depends on our being all God's sons. Moreover, even the adoption of the notion of 'humanity' by Christian believers may be disputed.

For instance, it seems that the Church, after a prolonged resistance to this product of the deist, if not anti-religious, component of the Enlightenment, begun to embrace the doctrine of human rights only after the spread of Jacques Maritain's 'personalism',[123] while the acknowledgement of negative and positive rights to be granted to all men, issued at the times of Leo XIII as a response to the growing

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[123] See Moyn (2010).

influence of socialism, still entailed a clear discrepancy between the Catholic and the secularist reading of human rights, at least until the Second Vatican Council and Paul VI's Apostolic constitution *Gaudium et spes*.[124] In many respects, the Church's magisterium is incompatible with the full-fledged globalism that international institutions and theorists of human rights assume. While secularist love for humanity tends to overlook any special bond likely to diminish the demands of global justice, Christian *caritas* is grounded in the concept of the 'neighbour', it involves an ordering of the agents to which love is owed, and it requires the mediation of local institutions in virtue of the principle of subsidiarity.[125] Furthermore, it is arguable that while Christ's message in the New Testament (differently from the Old Testament) is open to all peoples, it is precisely the faith in the Son of God that founds a new distinction among humanity. The Gospel is for all to welcome it, but men are free to reject it. And there are evidences to think that believers and those

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[124] See *Rerum novarum* (1891), Encyclical of Leo XIII; *Dignitatis Humanae* (1965) and *Gaudium et spes* (1965), promulgated by Paul VI. See also *Address of His Holiness Benedict XVI to the Members of the Roman Curia at the Traditional Exchange of Christmas Greetings* (2006), where the pope criticizes the Enlightenment for its effort to ground human rights on positivist and sceptical foundations; Carrozza and Philippot (2012).

[125] See *Catechism of the Catholic Church*, III, 1914; Aquinas, *S.Th*, II-II, q. 26, a.4, a.6 and following; *Quadrigesimo anno* (1931), Encyclical of Pius XI, 139; *Centesimus annus* (1991), Encyclical of John Paul II, 43; *Caritas in veritate* (2009), Encyclical of Benedict XVI, 7; Finnis (1998), pp. 117 and following.

who freely refuse Christ should not be equal to God's (and to the Christian's) eyes.[126]

Beckstein's example is proof of a third drawback as well. The 'model of a living tradition' is not only incapable of offering criteria to assess the authenticity of allegedly 'equivalent' traditions; it also underscores the task of assessing changes in the context. What it does is to take such contextual transformations as given. In this sense, conservatism is apparently reduced to a strategic adaptation to external forces which resembles the '*Leopard* attitude': "If we want things to stay as they are, things will have to change".[127]

In *On Human Conduct*, Michael Oakeshott defines tradition[128] as "a set of considerations, manners, uses, observances, customs, standards, canons, maxims, principles, rules and offices specifying useful procedures or denoting obligation or duties which relate to human actions and utterances".[129] In his view, traditions determine the transcendental conditions of human actions, which take place only in a framework already oriented by the existing body of traditions. Free conduct, that is to say, conduct in terms of self-chosen ends, occurs in the midst of a social world shaped by a multiplicity of traditions. As James Alexander puts it: "We are related […] not through actions, but through practices, that is, through the conditions to which we subscribe when we act. We are not at the beginning: we are in the

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[126] See Matthew 15:21-28; Matthew 10:11-15; see also John 12:36, for a distinction between the 'sons of light' and the sons of darkness, reprised in Paul, 1 Thessalonians 15.

[127] See Tomasi di Lampedusa (1960) [1957].

[128] Actually, Oakeshott employs the term 'practice', but there is a wide consensus among scholars that he means 'tradition', the word he used in previous works like *Experience and its Modes*. See Franco (1990), p. 171.

[129] Oakeshott (1975), p. 55.

middle"[130] of an existing set of traditions, which characterize the context of our conduct as human beings. What we find in society is a broad range of traditions, some of them in competition with each other, so that most of the times, when we are confronted with an attitude we are used to label as 'anti-traditional', we are actually witnessing a clash of adhesions to competing traditions.

Consequently, the *context* is not a set of conditions foreign and unrelated to traditions, which are expected to adapt themselves to 'contextual' changes; to the contrary, the *context* is itself made of traditions, so that a change in the context amounts to a change in the traditions which compose it. Such change (change in the traditions that are part of the context) ought to be evaluated, for, as MacIntyre insists, adherence to traditions is compatible with rational scrutiny calibrated in respect of the standards of morality and authority set out by a particular community, its 'canons', and its body of established practices.

Beckstein apparently resorts to the notion of change in the context in order to justify the need for change in traditions. If this is the case, his 'model of a living tradition' is affected by a *circularity* problem: an *explanandum* (that change in the context, namely, change in the traditions which characterize it, in fact met criteria of authenticity) is used as the *explanans* of another *explanandum* (that change in a particular tradition met demands of authenticity).

Now, these faults are no evidence that the 'model of a living tradition' has to be relinquished altogether. Beckstein is certainly right in arguing that traditions are not handed down as an inert substance, with inheritors as passive receptors. Their mode of transmission is closer to the interpretative process of texts, in which reader/recipients

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[130] Alexander (2012), p. 32.

play an active role to make sense of the received material. Additionally, the *normative* dimension of traditions relates to the question of historical value, HV. Traditions put in contact with each other different generations, in "a conversation where past, present and future each has a voice";[131] and in a true conversation, no participant remains only silent. As Oakeshott explains, it is precisely the capacity to partake in such "conversation of mankind" (which is actually mostly an *intra-civilizational* conversation) to single out the distinctive trait of human civilization, even if what counts is, so to say, not to the ability to invent and introduce new arguments, but the aptitude to add one's judgement to the on-going dialogue:

> As civilized human beings, we are the inheritors, neither of an inquiry about ourselves and the world, nor of an accumulating body of information, but of a conversation, begun in the primeval forests and extended and made more articulate in the course of centuries. […] Of course there is argument and inquiry and information, but wherever these are profitable they are to be recognized as passages in this conversation, and perhaps they are not the most captivating of the passages. It is the ability to participate in this conversation, and not the ability to reason cogently, to make discoveries about the world, or to contrive a better world, which distinguishes the human being from the animal and the civilized man from the barbarian.[132]

No doubt, therefore, that the very process of transmission of traditions entails some sort of change as the cumulative contribution that each generation provides to such temporally extended enterprise. It remains to understand whether we may have at disposal reliable criteria to assess the 'legitimacy' of each change, and to integrate the 'model of a living tradition'. My suggestion is to identify two distinct,

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[131] Oakeshott (1991) [1962], p. 388.

[132] Oakeshott (1991) [1959], p. 490.

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but concurrent, set of criteria: the former *internal*, the latter *external*, to the particular tradition under examination.

2.2a Internal criteria

Assessing whether change/changes affects/affect the pursuit of tradition-dependent and tradition-independent principles.

A first step urges upon us to reconsider the relation between tradition and morality.

As Steven Wall recalls, there may be two contrasting ways to conceive morality.[133] On the one hand, there is the view he calls *determinate universalism*, which affirms that "there is a universal political morality consisting of a single principle or set of principles that are determinately ordered";[134] such principles are therefore tradition-independent. On the other hand, the view he calls *strong traditionalism* contends that "each political tradition has its own standards, standards that are internal to the tradition and do not apply to other traditions. Moreover, there are no tradition-independent standards to justify traditions or rank some as superior to others".[135] Via an intermediate position, which Wall calls *bounded universalism*, one may find two evaluative criteria of change:

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[133] Wall's discussion revolves around the problem of political morality (and therefore, it should concern the ambit of those that I have defined 'first order traditions'). However, I think that his arguments can be applied to the relation between traditions and morality in general, and not only to political morality and political traditions in particular.

[134] Wall (2016), p. 143.

[135] Wall (2016), p. 141.

This alternative view affirms universal principles of political morality, but denies they are fully determinate. It denies, first, that the universal principles determine what ought to be done in all circumstances. It holds, second, that there is a plurality of tradition-independent principles, that these principles yield conflicting directives in a range of circumstances, and there is no comprehensive ordering of the principles. […]

Notice […] that if bounded universalism is true, then political societies will have a need for tradition-dependent principles to guide them in circumstances in which tradition-independent principles provide insufficient guidance. Given this need for determinate guidance, political traditions can become normatively significant in virtue of the fact that they concretize political morality for actual societies.[136]

Political traditions, in Wall's view, carry out three different tasks. They *specify* the tradition-independent principle that is valid for a particular society; they *complete* tradition-independent principles, that is to say, they provide criteria so as to solve conflicts over tradition-independent principles; and they *rank* the conflicting directives that may come from tradition-independent principles.[137]

Assume, then, that morality is thus structured: people's lives are mostly ruled by tradition-dependent principles, for traditions shape a society's identity, and represent the source of people's moral education. And yet, there is a plurality of tradition-independent principles, say, the general values and purposes to which a society is committed, which fluctuate at a somewhat abstract level, and need to be specified, completed, and ranked by resorting to traditions (for though these principles, conversely, contribute to set the boundaries of permissible tradition-dependent principles, and provide guidance so as

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[136] Wall (2016), pp. 143-144.

[137] See Wall (2016), p. 144.

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to order and evaluate traditions). Consequently, the two evaluative criteria may be determined as follows.

First, one has to establish whether changes in the tradition material negatively affect the 'intimations', to use Oakeshott's formula, which that tradition pursues, that is to say, whether they obstruct the realization of *tradition-dependent principles*.

Second, one has to verify whether those changes prevent recipients of the tradition from pursuing *tradition-independent principles*, principles which may function as general constraints on the intimations which that tradition may permissibly pursue, or as the universal values which that tradition is expected to fulfil.

If change in the tradition material affects the intimations related to tradition-dependent and/or tradition independent principles, then there is a *prima facie* reason to consider that change illegitimate from a conservative perspective. Let us reprise the example of Christian *caritas* and atheist humanism.

Suppose that the tradition-dependent principle (or one of the tradition-dependent principles) pursued by Christian *caritas* is sanctification by means of the theological virtue of love. By definition, atheist humanism rejects the tradition-dependent principle of sanctification, and all the moral-theological apparatus of virtues on which that purpose is built. It may well be that changes in the cultural context (which, however, ought to be evaluated in their turn) made faith in God and Christian theology unnecessary; but it is doubtful that love deprived of that theological apparatus is the 'true successor' of Christian *caritas*, and not an altogether different kind of value or virtue.

Suppose also that the tradition-independent principle (or one of the tradition independent-principles) pursued by Christian *caritas* is love of one's *neighbours*, to be realized in concrete acts of charity,

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mutual assistance, self-sacrifice, and orderly directed to God, oneself, one's closest, and strangers. Atheist humanist is likely to transform *concrete* love for one's *neighbours* into *abstract* love for a fleeting tenet such as *humanity*, altering the ranking mentioned above. Consequently, atheist humanism seems not to be the heir of Christian *caritas*. It has to be interpreted either as a different, competing, tradition (if the old notion of *caritas* lives on through orthodox believers), or it is a new tradition that supplants the vanished one (if Christians disappear, or if they end up embracing a humanitarian conception of love).

Assessing whether change/changes distorts/distort the 'continuity', the 'canon', or the 'core' of a tradition.

According to James Alexander, there are three distinctive elements in a tradition: 'continuity', 'canon', and 'core'. If a tradition is only characterized by continuity, "then it exists only in the form of present ritual", and does not "require us to be conscious that we have a tradition".[138] In these cases, assessing whether change in the tradition material is or is not legitimate is by means of an *a posteriori* analysis of three different aspects of that tradition: its *content*, that is to say, the specific set of beliefs and customs it conveys; its *function*, that is to say, the particular social problem/problems it solves; and its *purpose*, that is to say, the values it pursues and realizes. Clearly, a change in the content and in the purposes of a tradition is more likely to affect authenticity than a change in the function the tradition performs. Here, change may be prompted by contextual innovations, which, although they ought to be evaluated in their own respects, may

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[138] Alexander (2016), pp. 10, 11.

well be deemed desirable (e.g.: technological advances, or an improvement in the quality of life and life expectancy).

If a tradition has a canon, that is, an unmistakeably identifiable, possibly written, set of articles of faith, or texts, or sacred books, then it becomes more rigid, but change becomes easier to be evaluated. At the same time, change becomes to some extent programmable, for "a canon establishes standards by which we are judged, but at the same time, reflexively, enables us by our acts to judge those standards, so that the entire canon remains continually critically open to change",[139] even if no planned change should modify altogether the nature and structure of the canon. Most of the times, change in this area occurs in the vest of a more thorough analysis of the 'message' delivered by the canon (e.g.: biblical exegesis is not a way to amend, but to achieve a deeper understanding of the content of God's revelation).

The question is more complicated when it comes to the problem of the 'core'. It is not easy to establish whether a tradition includes a restricted set of beliefs or customs that tradents regard as essential, and therefore strive to keep intact along the chain of transmission. The idea of a core entails that recipients should be inclined to play a more passive role. According to Alexander, in fact, the existence of a core either prevents change from occurring altogether, or it addresses any deviation from that essential nucleus as a betrayal of the tradition. In this sense, it is the elder generation to be entitled to the prominent position: recipients are expected to abide by its authority, for transmission of a tradition with a core encompasses "a distinction in rank, as the older is also superior in status, and the younger listens to him because there is some truth to be taught".[140] This may obscure the

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[139] Alexander (2016), p. 15.

[140] Alexander (2016), pp. 18-19.

fact that, even though the moral authority of the ancestors requires at least a partial *surrender of judgement* on the part of the younger, and charges them with a responsibility of *stewardship* in respect to their inheritance, recipients are never only passive enactors of orders issued by their forerunners. Transmission of traditions is always a joint enterprise, a continuous inter-generational dialogue in which even the younger have a say.

Conservatism may well be ready to acknowledge that a tradition does have a core. At the same time, it is committed to maintain that recipients play a co-creative role in the structuration of that core. Thus, understanding the core of a tradition is but an *a posteriori* endeavour. By looking at the history of a tradition, one has, so to say, to put the pieces together: to examine the disputes around the content and the intimations of the tradition; to see how the tradition has been understood by tradents and recipients in different historical periods; to assess the tradition-dependent and tradition-independent values pursued by enactors of the tradition, etc.; and eventually, in light of the elements so collected, to retrace the possible core of that tradition.

Think of a fictitious trade union, the League of Workers. This is a social institution based on a political tradition, viz., a set of beliefs on social justice, the distribution of wealth, the rights of working classes, etc. Imagine we examine the history of the League of Workers: the political actions it has undertaken, the way it used to be perceived by activists, the slogans it launched, the values it declaredly pursued, etc. Assume that the result of such historical scrutiny was to identify the 'defence of the dignity and interests of workers' as the core of the tradition embodied by the League of Workers. Now, suppose that at a certain point in its history, the League of Workers begun to interpret the mission '*defend the dignity and interests of workers*' as '*make sure that wages are systematically higher than the*

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market price', so as to contribute (though, by hypothesis, unintentionally) to increase the unemployment rate.[141] If this is the case, one may argue that the core of the tradition on which the League of Workers is based has been unduly transformed; and that defending the workers does not mean simply to obtain wage increases above the market level, but also to balance the well-being of the working population with the right of the unemployed to sell their job at a lower price. Thereby, one may have reasons to affirm that the new League of Workers is no true heir of the traditions it was expected to foster.

Assessing whether change/changes alters/alter the distribution of role obligations within the tradition.

As Oakeshott underlined in the definition quoted above, traditions denote "*obligation* or *duties* which relate to human actions and utterances" (emphasis mine). In fact, traditions are sets of beliefs and customs which inform practices and institutions, and engaging in a social practice or with a social institution implicates the acquisition of role obligations.[142] Consequently, it is possible to evaluate how change in the tradition material affected the way in which obligations and responsibilities are distributed among the people who partake in that tradition.

For instance, suppose that scientific research and the scientific method were the offspring of a cultural and moral tradition grounded in the principles of transparency, publicity, verifiability, etc. Imagine a political turmoil occurs, and a tyrant seizes power, imposing the exploitation of science for political purposes, and determining a consequent change in the role obligations of scientists: they should be

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[141] On this effect, see Mises (1996) [1929], p. 9.

[142] See Hardimon (1994); and Part 3, chap. 1, of the present work.

no more transparent, but keep their methodologies of inquire, experiment records, data, and results, secret. The change might have been triggered by a political revolution, but one would undoubtedly deny that scientists in the new regime are 'true successors' of the tradition of scientific scholarship.

2.2b External criteria

Assessing the 'authenticity' of change in the context, understood as the set of alternative and/or competing traditions contiguous to the one at issue.

As we have seen, the context is not to be trivially intended as the environmental conditions in which the examined tradition operates. To the contrary, the context is itself constituted by a multiplicity of alternative, or competing, traditions. A change in the context, in this sense, amounts to a change in the traditions which compose it.

Therefore, it is possible to resort to the *internal* criteria advanced above in order to evaluate the 'authenticity' of change in the context so understood. That is to say, one may analyse at least the contiguous traditions, and determine whether their change, which produced variations in the 'context', was legitimate in respect of the internal criteria discussed in the previous section.

Let me go back to the example of Christian *caritas* and atheist humanism. Beckstein contended that changes in the context made belief in God no more influent to the exercise of love. But those changes in the 'context', like modifications in the relation between the Church and the State, in the relative weight of theological teachings in the universities, etc. correspond to changes in the traditions which informed those institutions (e.g.: the substitution of modern

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individualism for the Medieval communitarian understanding of the person; the spread of the liberal political tradition; the success of the scientific scholarly tradition, etc.). Thus, as changes in the contiguous traditions that may have had an influence on the shift from Christian *caritas* to atheist humanism, they are liable to be evaluated in light of the internal criteria hereby proposed.

Assessing the character of change, viz., whether it was spontaneous, gradual, limited in scope, or coercively imposed, abrupt, comprehensive, instable, and destabilizing to the people involved.

Another evaluative criterion relates to the analysis of the character of change, which is particularly important on a conservative perspective. One has to determine whether changes in a tradition were the result of spontaneous processes of social coordination, gradual, limited in the scope they served at first (although, after a certain span of time, they might have ended up being huge), or whether they were forced by empowered elites against the will of recipients (or a majority of them), abrupt, comprehensive, and so massive to be destabilizing to the persons involved, but also instable and ephemeral, subject to other additional changes implemented by the same coercive means.

An example is the differentiation between law and legislation established by Bruno Leoni and Friedrich Hayek.[143] While the common law tradition favoured slow, incremental change, according to the logic of *stare decisis*, and thereby it registered those changes occurred in the wider context of technology, economy, class divisions, or morals, only gradually, legislation largely related to the idea of laws as political instruments to be employed mostly, though not

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[143] See Leoni (1961) and Hayek (1982).

exclusively, to achieve short terms purposes, chiefly in the field of economic planning. Compared to the common law system, legislation, combined with the democratic ideal according to which laws should have no source other than the will of the majority, tended to encourage interruptions in the chain of 'true transmission' of a tradition.[144]

Eventually, let me stress that the criteria just outlined provide *prima facie*, not *conclusive* reasons to claim that change or changes have violated the 'authenticity' of an inherited tradition. For instance, a change may be implemented by coercive means, and it may affect the tradition-dependent or tradition-independent values pursued by a tradition, and yet, out of a rational scrutiny, one may conclude that in fact the tradition has been morally improved.

Suppose that a religious tradition prescribed that widows had to be burned into their husband's funeral pyre so as to pursue the tradition-dependent value of full spousal communion. And suppose that a law *coercively*, and *abruptly*, imposed to enactors of this tradition to relinquish it. Nevertheless, we would be surely inclined to assert that such change was desirable and justifiable.

That the internal and external criteria discussed in this section set out *prima facie* reasons against change means that, according to conservatives, the burden of proof lies with advocates of change itself.

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[144] Notice, for instance, how demands for reforms have increased in number and intensity, even among conservative parties and voters, in all countries based on the civil law system, but also in common law countries, once statue law has begun to supplant courts' decisions. On the question of change and evolution in the common law according to Leoni's thought see, for instance, Aranson (1988), p. 670. On the importance of the formal characteristics of change for conservatism see Burke (1790), pp. 18-19; Scruton (1980), p. 11; Honderich (2005) [1989], pp. 6-14.

However, the majority of the quarrels concerning change in traditions take place only when change has occurred. Part of the 'conservation paradox' is that conservatism, as a political theory, appears when reformers have already threatened the status quo. Burke's *Reflections*, for instance, were published one year after the burst of the French Revolution. The conservative political theory makes sense as a bulwark against unwarranted change of a revered social and political order; but when such order is supplanted (and there is nothing left to *conserve*), conservatism is likely to turn into the ideology of *reaction* and *restoration*.[145] The gravest challenge for a conservative, therefore, is not to end up as the 'owl of Minerva', which "spreads its wings only with the falling of the dusk".

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[145] With regards to this, writing when the French Revolution was at its acme, Joseph de Maistre stated that "the counter-revolution will be not a *contrary revolution*, but the *contrary of revolution*". See de Maistre (1994) [1796], p. 105.

Chapter 4. Conservatism and political principles

In this chapter, I investigate on the political values that nominal conservatism, which endorses a normatively grounded status quo bias based on the recognition of HV, may potentially commit itself to.

In the first section I emphasize that there have been wide disagreements among theorists about the nature of conservatism as simply a mode of political conduct, or a true ideology, with its set of defining principles. Assuming that it is possible to identify at least two basic normative claims that characterize conservative political theory, I thereby concentrate on the *priority of order over liberty* and the *priority of community over the individual*.

In the second section I explain how conservatism, which supports the liberal principle of negative freedom, nevertheless considers that a stable legal order is the fundamental condition in which liberty can thrive. Conservatives are in fact concerned about the prevalence of evil in society, and they think that the need for authority is a consequence thereof. However, political authority, which is subject to error, and to a tendency to abuse of, or misuse, its power, has to be limited by other forms of authority as well: moral, intellectual, and epistemic authorities, but also traditions, which counterbalance the latitude of governmental agencies.

In the third section I focus on the question of personal identity. Conservatism sides with communitarians who insist that the self is structured by a web of connections to the social environment (family, kin, intimates, friends, local associations, and eventually the nation). At the same time, conservatives reject collectivism, and maintain that an effective net of intermediate bodies is one of the bulwarks against the encroachments of political power, to the perilous dualism between

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the atomized individual and the State, which threatens freedom by leaving isolated persons harmless in the face of political authorities, and to the alienating effects of globalization, which is coupled with the process of 'de-politicization', the increasing disaffection towards ruling classes, and the rise of democratically unaccountable technocratic elites.

It is important to stress that the two political principles defended in this chapter maintain a close relationship with the core elements set out beforehand (the status quo bias and traditionalism, both developed in respect of the notion of HV).

In particular, the *primacy of order* has an *instrumental* correlation with the recognition of HV. Order is in fact the pre-condition for the preservation of practices, institutions, etc., which carry HV in a political sense. In lack of social order, one might be able to conserve HV as it applies to particular objects, part of the subject's personal sphere (like in Cohen's example of the old pencil). It would be harder to preserve the HV of objects and artefacts whose existence has some sort of social and political relevance (say, monuments). But, in an anarchic society, or one subject to recurrent upheavals, it would be virtually impossible to conserve, by means of political institutions and political traditions, a connection with the relevant past of one's civilization: the threat of a permanent revolution would hamper by definition the possibility to maintain the chain of continuity.

The *primacy of community*, which retains an *intrinsic value*, since it nurtures the fundamental need for socialization that each human being feels, is also tied to the preservation of HV, in that the kind of communitarian bonds conservatives endorse are both *synchronic* and *diachronic*. In the latter sense, a traditionalist society,

in which political and institutional continuity is unspoiled, may give life to a community between past and future generations.

1. 'Disputed' conservatism: ideology or political conduct?

As we have seen, the normative dimension of nominal conservatism entails the recognition of historical value (HV), that is to say, the value of objects and/or states of affairs that offer us a sense of connectedness to the relevant past of our society. It is on this feature that nominal conservatives ground the status quo bias; and HV has a role in the normative justification of the importance of traditions as well. Beyond this core, built up around the notion of HV and the commitment to the status quo and traditions (which might be fostered by the acknowledgement of *ignorance* and *uncertainty*, the epistemic predicaments into which humans are stuck), conservatism endorses a set of specific political principles, which are at the same time independent of (or additional to) the arguments that rely on HV (and on epistemic scepticism as well), and closely related to the problem of preserving HV.

The question as to whether conservatism may grant at least a basic set of political principles is not redundant, if one considers that while many other political ideologies immediately relate to a specific defining value (e.g.: liberalism to liberty, social democracy to social justice in a democratic regime, Nazism to socialism with a nationalist and authoritarian leaning, communism to the collectivization of the means of production, etc.), although, of course, there have been disagreements on how those fundamental beliefs had to be interpreted, conservatism has often been merely regarded as a *mode* of political

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conduct – viz., a somewhat idiosyncratic hostility to change. Moreover, conservative theorists' opinions have systematically diverged as to the opportunity to describe conservatism as an ideology.

For instance, Robert Nisbet overtly pursued the task to establish and advocate the content of a fixed conservative ideology;[146] to the contrary, Michael Oakeshott focused on scepticism and anti-rationalism as the distinctive features of a conservative *attitude*;[147] Russell Kirk, though he tried to list some basic conservative principles at least twice, [148] was particularly reluctant to concede that conservatism could be understood as an ideology; and while Samuel P. Huntington, as a political scientist, in fact treated conservatism as an ideology,[149] he criticized Kirk's endeavour to build up a sort of American conservative 'pedigree' constituted by political thinkers, activists, novelists, poets, etc., and he qualified the conservative ideology as chiefly *situational*, a form of strategic defence of a cherished political order – in this case, liberal-democracy.[150] On this view, conservatism was deemed substantially contingent on a specific institutional framework, which, being threatened by disruptive forces (like socialist and communist movements), deserved to be defended. Once the menace was extinct, conservatism could be surrendered (and conservatives could turn back to be what they had been before, namely, classical liberals and democrats).

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[146] See especially Nisbet (1986).

[147] See Oakeshott (1947) and Oakeshott (1956), both in Oakeshott (1991).

[148] See Kirk (1953); and Kirk (1993).

[149] Among political scientists who worked on the definition of conservatism as an ideology with "core elements" and a "recognizable morphology" one certainly has to mention Michael Freeden. See Freeden (1996), pp. 317-414.

[150] See Huntington (1957), pp. 458-459.

What all conservatives seem to agree upon is that, historically, the foundational moment of conservatism as a distinct political position was represented by reaction to the French Revolution, in particular after the publication, in 1790, of Edmund Burke's *Reflections On the Revolution in France*, which already encompassed many of the ideas employed by posterior conservative writers. The adjective 'conservative', however, came out only in the 1820s, and was associated to the French periodical review *Le Conservateur*, which was, not by chance therefore, one of the intellectual reference points of Catholic traditionalists and counter-revolutionaries in the post-Napoleonic context, with René de Chateaubriand as one of the most renowned contributors.

The fact that the conservatism of several thinkers, theorists, philosophers, polemists, and politicians, each with slightly different cultural backgrounds and sensibilities (some of them religious, others agnostic or atheist; some sympathetic to aristocratic societies; others more favourable to democratisation; some champions of the British legal system, others with a *forma mentis* shaped by the civil law tradition; etc.) constantly displayed a stubborn enmity to revolutionary and/or radical politics (that which led conservatives in the XX century to unanimously condemn communism), is probably what persuaded many scholars of political ideologies to conclude that conservatism was little more than an instinctive suspicion of progressivism's naïve enthusiasm, an attitude lately systematized as a form of anti-rationalism (either triggered by lay epistemic scepticism or by a religiously inspired pessimism).[151]

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[151] Compare, for instance, David Hume's doctrine on the mutual twine between 'reason' and 'passions', and Joseph de Maistre's criticism of the perfectionism, geometrical idea of politics held by supporters of the French Revolution.

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Broader discrepancies between conservative theorists and analysts emerge practically on all other philosophical points: the role of religion in politics, the social function of social and intellectual aristocracies, the interpretation of human nature, natural law, the understanding of modernity, either rejected or, if not glorified, at least accepted,[152] the judgement on liberal-democratic institutions, and so forth.

In this chapter, I would like to focus on two principles, which I think could integrate the normative landscape of nominal conservatism, as they combine with considerations on HV and traditionalism. These two principles should also prove helpful in building up a conservative theory of political obligation. The two principles are the *priority of order over liberty*, and the *priority of community over the individual*.

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[152] Blaming modernity was one of the leitmotivs of traditionalist Catholic thought, from de Maistre, to Juan Donoso Cortés, to Plinio Corrêa de Oliveira. See de Maistre (1994); Donoso Cortés (1862); Corrêa de Oliveira (2002). Here, the line between conservatism and reactionarism is blurred. Thorough criticisms of the main traits of modernity were formulated within the milieu of the German 'conservative revolution': see at least Jünger (2017); Jünger (1951a); Jünger (2013); Heidegger (1977). To the contrary, especially British sceptical conservatism, like the one advocated by Michael Oakeshott, embraced, though not in the radical form held by liberals, the notions of modern individualism and individual liberty. See Okaeshott (1975).

2. The priority of order over liberty

Conservatism shares the liberal ideal of negative liberty.[153] At the same time, conservatives are persuaded that liberty cannot be attained unless there is an ordered society. As John Locke hypothesized, while men's natural freedom spontaneously leads to an order, the latter proves too frail not to be backed by a legal authority. Therefore, conservatives would sign up to the Lockean view that "where there is no law there is no freedom",[154] and maintain that, far from restricting it, true liberty can be attained only when order is secured.

Order is a condition in which likely social dilemmas are prevented by the intervention of general rules, sanctioned by punishments for noncompliance, which have to be effective though not exceedingly costly. Liberty has to be regulated by the law, and consequently the law calls for obedience on the part of those subject to it. A working legal system is also necessary for the proper functioning of other important social institutions, like a market economy.[155]

Since order is the transcendental condition of negative liberty, it is possible to assert that conservatism commits itself to the model of "freedom under the law",[156] and that it acknowledges the (conceptual) *priority of order over liberty*. But where does the need for order come from? Why do social dilemmas arise?

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[153] On the concept of negative liberty, see Berlin (2002) [1969], pp. 166-217.

[154] Locke (2017), p. 20.

[155] See Boettke and Candela (2014).

[156] Hayek (2011) [1960], p. 221.

2.1 The prevalence of evil

One need not assume a comprehensive doctrine on human nature, say, Machiavelli and Hobbes's gloomy pessimism, to notice that in society 'evil' tends to prevail. Conservatism may not embrace any specific philosophical anthropology, and yet contend that most of the times men do enact the bad, though not necessarily the worst, propensities of their nature.

John Kekes observes that evil may originate from two sources: the abnormities of 'moral monsters', of which history provides a long list of renowned examples, and common people's actions.[157] But while moral monsters are exceptional figures, the prevalence of evil is mostly the result of ordinary behaviour. There are three main reasons why everyday people, with no pronounced inclination to viciousness, nonetheless generate evil.

First, persons might fail to abide by moral standards they themselves proclaim. For instance, they might betray their values out of hypocrisy, or simply prove incapable (not brave enough, not firm enough, etc.) of fulfilling the principles they believe in.

Second, persons might give up criteria of justice for the sake of their immediate interests, especially when they may reasonably suppose that their misconduct will not be sanctioned. The case of *free riding* is a typical instantiation of self-interested behaviour, in which agents exploit their fellows' good faith and/or cooperative attitude to maximize their payoffs. The entire Hobbesian reasoning on the justification of political authority seems to be based on a prisoner's dilemma situation, in which free riding behaviours reinforce themselves, and the incentives to cheat on other agents eventually

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[157] See Kekes (1998), pp. 68 and following.

make cooperation inconvenient. In a condition in which individuals are altogether prevented from trusting each other, the only way to secure social cooperation is by introducing positive laws backed by sanctions issued by an absolute centralized authority. After Hobbes, several theorists tried to 'moralize' the depiction of social actors, to show that there is room for spontaneous coordination, or to introduce corrective contrivances so as to restrain the arbitrary power of political authority.[158]

Conservatives may admit that in society one is in fact likely to encounter significant instances of spontaneous cooperation. Practical conservatism, as intended by Brennan and Hamlin, maintains that once any equilibrium, even less than Pareto-optimal, is achieved, agents are inclined to retain it (a disposition which is strengthened by the presence of nominal conservatives, who attribute a normative pre-eminence to the status quo). However, although they do not support full-fledged Hobbesianism, conservatives are also concerned for the permanent menace of free riding, which may reduce the likelihood of spontaneous coordination, by decreasing the payoffs of cooperative conduct and increasing the payoffs of cheating.

The third reason why evil tends to prevail is that ordinary people may simply go wrong. They might be substantially consistent with the

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[158] See, for instance, Locke (1690), for an understanding of the 'state of nature' as a condition in which social cooperation is already in place, even if litigations are impossible to settle; and Rawls (1971), for the introduction of the 'veil of ignorance' (in virtue of which the bargaining parties should not have any information on the talents, abilities, and social positions they will have in a social order), and the application of the 'maximin' principle (in virtue of which the system should be designed so as to maximize the position of the worst-off). See Moheler (2010) for a scheme of distributive justice which moves from Rawlsian premises, but rejects the maximin principle in favour of a 'Nash bargaining equilibrium'.

values they confess; they might be animated by good intentions, and well inclined towards cooperation; and yet they might choose a course of action that leads to bad (possibly unintended) consequences.

These three circumstances explain why societies face social dilemmas, that is to say, situations in which individuals profit from selfish conduct at the expense of their fellows. Free riding may stem from self-interested behaviour prompted by the existing structure of incentives; alternatively, social cooperation might fail due to people's incapability of realizing the values they themselves profess, or simply due to valuation mistakes on the part of otherwise cooperative agents.

This commits conservatives to an urgent task: restricting evil as much as possible. Therefore, conservatives are ready to concede that the goods of civil society, negative freedom above all, cannot be enjoyed unless political authority establishes a working legal system. Naturally, not all evil can be avoided. A structure of laws and punishments, and a system of moral education which conveys a sense of 'communitarian connectedness' in order to counterbalance egoistic tendencies, may in fact intervene on the set of payoffs that social actors have to take into account. But there will always be 'cheaters' who take the risk of punishment, as long as they can reasonably expect to maximize their rewards and escape sanctions. Moreover, human beings are fallible, and they keep on committing mistakes, regardless of their disposition to act rightly; even authorities are liable to errors. And it is precisely the sceptical component of conservative philosophy, the distrustful attitude towards human faculties, to recommend some limitations even on political authority's latitude.

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2.2 Moderate scepticism and limited government

One may assume two radically contrasting stances on the interpretation of the nature of morality. On the one hand, rationalists may be persuaded that there are universally valid moral truths, that they can be discovered, univocally determined, and eventually imposed on reluctant people. The degree of coercion that 'correction' of dissenters requires need not entail ruthless violence, imprisonment, or enslavement, and yet if the content of uncontroversial moral obligations is fixed, political authorities are certainly invested by the task to prevent deviations.

On the other hand, relativists may affirm that there is no universally valid moral truth, and that the multiplicity of opinions in the realm of ethics is the offspring of this lack of undisputable principles. Consequently, no authority may be entitled to employ its coercive powers in order to fulfil a particular set of moral precepts. All it can do is to avoid that conflicts between personal understandings of the same rules, or incompatible moral codes, end up endangering peaceful coexistence. For the rest, political authorities ought to be neutral.

Conservatives, as Kekes remarks, do not deny "that there is a rational and moral order in reality. They are committed only to denying that reliable knowledge of it can be had", being "far more impressed by human fallibility than by the success of efforts to overcome it".[159] Conservatives accept pluralism as the result of the individual exercise of intellectual freedom, and of personal judgement in moral issues. It may well be that some of these people reach wrong conclusions, or adopt wrong principles. The point is that human

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[159] Kekes (1998), p. 31.

reason is such a feeble guide that one can hardly assert with certainty he has in fact discovered a moral *truth*. The risk to go wrong is so remarkable that conservatives are far more worried about the danger that someone might resort to coercion in order to impose mistaken moral principles, than that someone else might be allowed to pursue freely self-chosen misconceived values.[160] In this sense, conservatism is prompt to endorse a form of 'moderate scepticism': it is willing to share the claim of moral absolutism, that there are universal moral truths, but it is also aware that human rational capacities are weak, and that, given the high likelihood to reach wrong judgements, it is more urgent to thwart the possible misuse of coercive powers than to prevent people from following inappropriate moral precepts.

This is why, although conservatives invest political authority with the paramount mission to administer the legal order, which secures the condition for the exercise of negative freedom, they also insist that the powers and arbitrariness of that authority should be subject to definite limits. After all, even if political authority is an institution, and institutions are impersonal complexes of rules and procedures designed so as to contain the flaws of people in charge, it is embodied by human persons, who are subject to selfishness, greed, vainglory, or simply to errors. Therefore, authorities may find themselves operating in the context of a structure of incentives which pushes them to misuse their power, and to abuse of it the more it turns out to be discretional and unaccountable,[161] or they may be liable to

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[160] This fact is also apt to justify the quest for a space of 'conscientious objection' and 'civil disobedience', in which individual conscience is exempted from legal demands, or openly challenges established laws.

[161] From this point of view, conservatives would subscribe to Lord Acton's famous saying: "Power tends to corrupt and absolute power corrupts absolutely". See Lord Acton (1907) [1887], p. 504.

evaluative mistakes that will eventually lead them to implement bad policies.

Furthermore, in case those in charge were moved by wicked purposes, it is also possible that the simple fact of their being the recognized authorities persuaded persons to perpetrate evil deeds, simply as a result of abiding by the orders they were issued. This is the eventuality famously explored by the two American social psychologists Stanley Milgram and Philip Zimbardo. What, if anything, these experimental inquiries on the 'banality of evil' did prove, was at the same time that a top-down relationship of authority might blur people's moral codes, and, conversely, that persons might well be tempted to abuse of their power.[162]

Consequently, the priority of order over liberty means not that order has to be pursued by every means and at all costs. It does not imply that political authority, which has the function to promulgate and apply the law, and to punish noncompliant subjects, has to be as discretional as in the Hobbesian system. Human beings are fallible; they may be incapable of discovering moral truths, and the fact that a moral rule is dignified by the sanction of law does not entail that the rule is *true* or *right*. In light of the inescapable limitations that affect human knowledge in ethical matters, conservatism endorses a limited authority, which is the way to avoid that securing a legal order turns into the exploitation or the abuse of coercive powers. This is also the reason why conservatism emphasizes the functionalist dimension of traditions. Sticking to inherited traditions amounts to granting recognition to the wisdom of previous generations, whose 'immaterial' (spiritual and intellectual) authority sets limits to the authority of existing governments.

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[162] See Milgram (1974); Zimbardo (1972); Zimbardo (2007).

The example of the papacy illustrates this point well. The authority of the pope is in fact higher than that of bishops and cardinals; moreover, when he exercises his office as the supreme authority of all Christians, the doctrine he defines in matters of faith or morals is to be held by the whole Church, as the the dogma of Papal infallibility, established by Pius IX, clearly states.[163] However, papal authority and the Church's 'living magisterium' are limited by the mandate to convey the *depositum fidei*, which is constituted by God's word as it was interpreted and transmitted by the apostolic teachings.[164]

Analogously, not only conservatism advocates the primacy of order over liberty in a context in which governmental authority is itself limited by the law; it also argues for the primacy of tradition over political authority, as a bulwark against abuses of power. Next to political authority and traditions, then, conservatives place 'spiritual' aristocracies, be they the source of moral or epistemic guidance (e.g.: religious leaders, scientists, experts, etc.). In fact, conservatism remarks that men are naturally unequal, and that this inequality, far from being morally 'undeserved' and from calling for legislative corrections,[165] urges recognition of excellence and talent upon a civilized order. As Kirk asserted, in fact, "civilized society requires orders and classes".[166] The authority of intellectual, moral, and epistemic authorities may contribute to counterbalance the influence of centralized political authority. This also leads us to discuss the role of intermediate bodies, whose importance relates to the problem of

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[163] See First Vatican Council, Session 4, at http://www.ewtn.com/library/COUNCILS/V1.htm#6

[164] See Catechism of the Catholic Church, Part 1, I, art. 2, 83-86.

[165] See Dworkin (1985), pp. 206 and following.

[166] Kirk (1953), p. 8.

restraints to political power, and to the social constitution of individual identity.

3. The priority of community over the individual

Conservatism rebuffs collectivism, and surely denies that individual rights and liberty should systematically be trumped in the name of the alleged interests of the community (which, by the way, are often liable to conceal the interests of a particular privileged class). And yet conservatism, though it adheres to the ideal of negative freedom, is equally concerned for the atomistic implications of liberal individualism. The challenge that conservatives accept is to preserve liberalism's achievements while sidestepping its negative influences. As Nisbet explained, the "liberal values of autonomy and freedom of personal choice are indispensable to a genuinely free society, but we shall achieve and maintain these only by vesting them in the conditions in which liberal democracy will thrive – diversity of culture, plurality of association, and division of authority".[167]

In this sense, conservatives side with communitarians who insist that the constitution of personal identity is chiefly a social process, which takes place within a certain community, and embeds individuals into a web of connections with their neighbours. To the contrary, as Michael Sandel complained, liberalism tends to understand the subject as the 'unencumbered self', whose autonomy is conceptually prior to the social influences that inevitably affect him. According to liberalism, therefore, what is essential to our personhood

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[167] Nisbet (1953), p. 279.

"are not the ends we choose but our capacity to choose them":[168] autonomy displays itself as our capacity to choose who we want to be, the values and the purposes we want to fulfil, regardless of the dispositions we have acquired from the environment in which we were born and grew up. But the subject so depicted "assumes a kind of supra-empirical status, essentially unencumbered, bounded in advance and given prior to its ends, a pure subject of agency and possession, ultimately thin. Not only my character but even my values and deepest convictions are relegated to the contingent, as features of my condition rather than as constituents of my person".[169]

This is a fundamental misconception that Charles Taylor blamed as well, lamenting that modern "culture has developed conceptions of individualism which picture the human person as, at least potentially, finding his or her own bearings within, declaring independence from the webs of interlocution which have originally formed him/her, or at least neutralizing them".[170] But the framework itself from within which individual identity emerges is in fact determined "by some moral or spiritual commitment", and when people acknowledge this fact, what they say "is not just that they are strongly attached to this spiritual view or background; rather it is that it provides the frame within which they can determine where they stand on questions of what is good, or worthwhile, or admirable, or of value".[171]

Consequently, and contrary to liberalism, conservatism asserts the (conceptual) *priority of community over the individual*. The self is not an isolated particle, an unbounded entity that operates in the void, prior to the attachments and ends that define his perspective. The self

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[168] Sandel (1982), p. 86.

[169] Sandel (1982), p. 94.

[170] Taylor (1989), p. 36.

[171] Taylor (1989), p. 27.

is situated, at a particular time and in a certain place, in a particular community, which sets the boundaries and at least partly determines the features of his own identity.

Such openness to community has, first and foremost, an *intrinsic* value, in that it satisfies a fundamental need that can be deduced from a careful consideration of the constitutive sociability of human nature. When Aristotle labelled man as a *zoon politikon*, he meant to depict precisely the attitude to associate, and to undertake cooperative and deliberative procedures so as to carry on the business common to the entire group.

Of course, that each man is entrenched in a web of mutual relationships, and that his self-understanding is moulded by a sense of attachment and belonging to a net of concentric communities (from the family, to friends, to the wider society, to the nation, etc.), need not also entail that persons are naturally good or naturally amicable. Quite to the contrary, reciprocal aggressiveness and a spontaneous impulse to gather and cooperate are both inscribed in man's basic instincts. In this sense, even the propensity to go to war might be regarded as a fundamental constituent of human nature.[172] However, war assumes its meaning for civilization only when it is interpreted as a clash of antagonist groupings – and precisely this enmity, which involves a sense of the others' otherness, and identification with one's fellows – is what confers to a simple aggregation its *political* feature.

That men are intrinsically sociable beings, in the Aristotelian sense, is generally assumed by social psychologists as well.[173] But while the birth of an association means that each member, in this communal endeavour, is granted a say, and a socially mediated position (from whence one mostly draws the image he has of himself),

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[172] See Gat (2006), Part 1.

[173] See, for instance, Fiske (2003), Chapter 5.

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and therefore grouping in fact relates to a basic human need, it has to be noticed that the existence of a community has a direct influence on the temporal dimension as well, as it extends not only *synchronically*, but also *diachronically*.

Part of the intrinsic value that the principle of the primacy of community engenders depends on its multigenerational perspective: for the human species, being in a community means to keep oneself in touch not only with one's contemporaries, but also with gone generations, and with those yet to come.

It is this form of intergenerational partnership that singles out, according to Burke, the only sensible social compact of which philosophers might write about: the partnership between the living, the dead, and the unborn. As Roger Scruton emphasized, this means that we, the living, "are not here to plunder our inheritance, as though it were our exclusive property. We have no right to divide and distribute the goods of society as we please, without regard for those who follow us or who went before. […] We, the living members of society, are its trustees, bound by the duties of our tenacy. The real duties of social membership are owed not only to other living members. They are owed 'transcendentally', to people whom we can never know and whose numbers are uncountable".[174]

As it is clear, the diachronic connection society and community consist in bear a direct impact on the nature of our moral obligations: it dispenses a duty of stewardship that cannot be shelved for the sake of individual appetites.

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[174] Scruton (1996), https://www.city-journal.org/html/communitarian-dreams-12144.html

3.1 The State as a 'community of communities'

Conservatism believes that individuals are entangled with the community to which they belong, and which describes "the subjects and not just the objects of shared aspirations",[175] that is to say, the horizon of meaning and the ultimate purposes which the person identifies herself with.

This is why the idea of the State as a 'community of communities', in which central political authority secures a common legal system, but is in its turn checked upon by small-scale communities that contribute to structure the identity of their members, is at odds with the liberal notion of the 'procedural republic', that is to say, a State justified by a "public philosophy […] of fair procedures" and by a "politics of right".[176]

In the former case, in fact, individuals, who as persons are members of a plurality of associations, as citizens are members of a political community that monitors the likely trespasses of general laws, which should coordinate the co-existence of that multiplicity of smaller associations, and defines their identity as participants to the life of the polity. The restraints that laws impose on them, and other sacrifices they might be called to endure, are thus justified not by "the abstract assurance that unknown others will gain more than I will lose", as in Rawls's maximin principles chosen by bargaining parties who stipulate a social compact behind the veil of ignorance, but by the "notion that by my efforts I contribute to the realization of a way of life in which I take pride and with which my identity is bound".[177]

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[175] Sandel (1982), p. 62.

[176] Sandel (1984), p. 93.

[177] Sandel (1982), p. 143.

As a matter of fact, insofar as the conservative interprets society as the offspring of a chain of continuity between subsequent generations, made of people who may not know each other directly, and yet are linked together in a vivid sense of spiritual connectedness via the mediation of traditions and institutions endowed with HV, the very device of a 'veil of ignorance' must end up disqualifying the moral reach of the argument. What a legal framework has to regulate is not the plurality of unrelated courses of actions undertaken by right-bearers, and their relative entitlements. To make the social bond significant, the veil of ignorance is precisely what has to be removed.

This calls into question the voluntary character of the political association as well: in fact, a community so intended describes not what persons "*have* as fellow citizens but also what they *are*, not a relationship they choose (as in a voluntary association) but an attachment they discover, not merely an attribute but a constituent of their identity".[178] But how can it be that people experience such a communitarian constitution of their personhood in the context of modern nation-States, where individual behaviours have a diminished impact on other people's lives, and are apparently devoid of collective purposes?

First, it has to be clarified that personal identity is structured by a sort of hierarchy of special bonds, along a chain that goes from families, kin, intimates, confraternities, to professional associations, and eventually citizenship, which is the arrival point of the process of communitarian identification. These small-scale associations are the primary source of moral education, and the cradles of one's feelings of connectedness and belonging. As Nisbet observe, they represent

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[178] Sandel (1982), p. 150.

the area of association from which the individual commonly gains his concept of the outer world and his sense of position in it. His concrete feelings of status and role, of protection and freedom, his differentiation between good and bad, between order and disorder and guilt and innocence, arise and are shaped largely by his relations within this realm of primary association. What was once called instinct or the social nature of man is but the product of this sphere of interpersonal relationships. It contains and cherishes not only the formal moral precept but what Whitehead called 'our vast system of inherited symbolism'.[179]

The polity is constituted by this maze of smaller associations, and by administering the law it provides the conditions in which an ordered interaction between the different spheres of personal attachment, and the general framework whereby it is possible to coordinate with each other the activities of 'multifaceted' individuals, who structure their personal identity on the basis of the several associative bonds they have established, may take place.

The purpose of the political community, therefore, is to secure the conditions in which people's multiple connections with groups and associations may flourish.

Thus, personal identity is the product of a complex geography of belongings, but the coordination of this net of partial attachments depends on the implementation of a general order, a comprehensive form of association in which persons, who are otherwise involved in a reticulum of small-scale groupings, partake as citizens, members of an association which is in this sense *political*.

Consequently, the laws of the polity are *formal* not as in the 'procedural republic', where they fix fair procedures to harmonize the conduct of free agents motivated by individual conceptions of the good. On the communitarian interpretation conservatism endorses, personal identity is shaped by a multidimensional web of attachments,

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[179] Nisbet (1953), p. 50.

and citizenship, that is to say, participation in the political association, identifies an additional and comprehensive modality of membership that encompasses all other small-scale associations by providing them with a stable legal order in which they can thrive.

Moreover, the *formality* of laws and membership in the polity must not be mistaken for *neutrality*. This idea relates to the 'procedural' understanding of the State as well, and to the principle of the priority of right over the good. But the State, as a comprehensive community that encompasses all other smaller associations, need not be neutral in the sense of giving up its right to address the most general principles and values to which a society is committed as a whole.

The political association should not be interpreted as "one among other associations"[180] either. For instance, according to Chandran Kukathas, one of the liberal theorists who appreciates the importance of associative bonds, a liberal society can be in fact depicted as one in which individuals are free to join and leave a multiplicity of associations, and one in which the State does not subsume all other associations, but defines a space of allegiance and jurisdiction contiguous to, and competing with, other small-scale groupings. To the contrary, conservatism grants both the pluralist conception of society as a collection of small-scale associations, and the idea of national sovereignty, with the State guaranteeing legal order and providing a sense of connectedness between persons who define themselves in respect of their ties with intimates, neighbouring groupings, and national belonging.

What gets lost in Kukathas's model is the *political* character of the State. Liberal and/or libertarian associativists, as we shall see in

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[180] Kukathas (2003), p. 4.

the chapter about associative duties, tend to overestimate the voluntary reach of the human propensity to join groups. A fault that is apparent in Murray N. Rothbard's effort to provide a libertarian account of nationalism. In fact, Rothbard properly blames libertarians' assumption "that individuals are bound to each other only by the nexus of market exchange". He reproaches them for forgetting "that everyone is necessarily born into a family, a language, and a culture. Every person is born into one or several overlapping communities, usually including an ethnic group, with specific values, cultures, religious beliefs, and traditions. He is generally born into a 'country'. He is always born into a specific historical context of time and place, meaning neighbouring and land area".[181] And yet, Rothbard ends up embracing the delusion that nations might be rebuilt upon the principle of consent.

Consequently, the associativism displayed by these thinkers frequently suffers from a form of *hypercontractualization*: each human mode of relationship is eventually reduced to, and interpreted in light of, the scheme of a contractual agreement, with the State turning into a referee of private covenants.

Such liberal and/or libertarian reading need not deny that people are moved, in their associative endeavours, by a sense of intergenerational connectedness, but what this view obliterates is that those motives are not contingent on the contractual skeleton of the associative pact: the focus of political theory is on the stylized structure of the associative move, instead of on the *nature* of the human being as one whose identity is the result of a synchronic and diachronic social mediation.

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[181] Rothbard (1994), pp. 1, 2.

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This is why conservatism, to the contrary, is capable of retaining both a commitment to the role of civil society in its manifold configuration as a web of small-scale *communities* (plural), and the *political* character of the State as the steward of the legal system and of institutions, carriers of HV, with an impact on *community* (singular) as a whole.

3.2 Against the atomized individual: small-scale associations as the 'ramparts' of freedom

Conservatives are struck by the prevalence of evil as the result of ordinary people's actions. They thereby contrive a series of remedies to reduce as much as possible the negative influences of misconduct on the social order. And yet, they are also aware that authorities appointed with the task to constrain evil might themselves be subject to deviations. When officials are inspired by nasty purposes, moreover, the very existence of a relationship of authority between people in charge and their subjects might make otherwise good persons more inclined to overstep their moral constraints. This is one of the reasons why conservatives insist on the importance of traditions, and on the role of (properly formed, properly educated, and properly selected) intellectual, moral, and epistemic authorities as checks against potential encroachments on the part of civil authority.

Small-scale associations are a source of defence against abuses or misuses of power; and, again, the way conservatism conceives of their mediation testifies about a cleavage in respect to the liberal viewpoint.

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According to Nisbet, for instance, the crisis of intermediate bodies caused by the combination of "social individualism and political power"[182], that is to say, by the spread of liberal individualism and the centralization of power fuelled by the disappearance of partial associations in democratic massification, left a void that was filled by the overrunning influence of the 'omnicompetent State'.

Post-modern societies experience a dualism between the atomized individual, severed by his attachments to groups, associations, nations, and possibly social and moral restraints (and well-exemplified by the Rawlsian 'unencumbered self'), and political power, which becomes more pervasive, and less accountable, the more small-scale associations drop their function as counterbalances to government's enlargement.

Globalization has possibly augmented this effect, and the sense of estrangement that comes with it. In fact, on the one hand, in democratic regimes people still harbour great expectations in respect to politics, to which they have progressively delegated the tasks and responsibilities intermediate bodies lost. On the other hand, the increasing complexity of nowadays world leaves political elites unequipped in respect of the big challenges of contemporary society, economy, and global scenarios. This process has forwarded 'de-politicization', the rise of technocratic elites, and the influence of supra-national organisms, with a diminished democratic accountability,[183] heralds of a mode of governance where sovereignty as the exercise of 'decision' has been replaced by the management of

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[182] Nisbet (1953), p. 157.

[183] See Flinders (2012), p. 32.

necessitated megatrends.[184] Consequently, people feel even more disappointed by the failures of ordinary politics,[185] disempowered by the dominance of new technocratic ruling classes,[186] fundamentally harmless in the face of such 'alienated' power with a global scope, and devoid of a reference point due to the weakening of their small-scale allegiances.

Conservatives believe that only by a recovery of intermediate bodies liberal-democratic societies, especially in the era of globalization, may erect solid ramparts of negative freedom, a value they esteem in spite of their refusal of radical individualism.

Liberty is in fact threatened by the encroachments of the 'omnicompetent State', which enjoys a monopoly on political authority vis-à-vis isolated, and hence exposed, individuals; and by the multiplication of new subjects of power, which emerge from the tangles of global economy or international politics, and therefore end up being more influential but less checkable.

The presence of a lively net of intermediate bodies amounts to a true subdivision of power, which depends not merely on a differentiation of offices and governmental branches, but to a diffusion of authority among accountable centres of allegiance, which shape personal identity as the result of social connections (while the contribution of traditions warrants a diffusion of authority in

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[184] In this sense, globalization fulfilled the mechanism of 'neutralization' foreshadowed by Carl Schmitt as the essential trait of liberal modernity. See Schmitt (1996) [1929], pp. 80-96; Mouffe (1993); Žižek (1999), in Mouffe (1999), ed., p. 30.

[185] See Flinders (2014).

[186] Supporters of the technocratic model have argued that the solution is not to re-politicize democratic regimes, but to build up participatory technocracies. See Khanna (2017).

diachronic terms). The priority of community over the individual, therefore, amounts not to the suffocation of individual liberty in the name of collectivism, but to the recognition that only in a lively social environment, defined by a manifold layout of associative bonds, free personality may find true realization.

Chapter 5. Defending associative duties

Political obligation is hereby interpreted as a duty of membership in the polity (which, following Michael Oakeshott, I call *civil association*), which stems from participation by citizens in a practice of mutual engagement as members of that association (the *practice of civility*). The enactment of this practice entails the fulfilment of the values endorsed by conservatism: the realization of HV, the establishment of a synchronic and diachronic community, and the stabilization of social order. And yet, since what is at stake is a political *association*, the purpose of the present chapter is to demonstrate that the most pressing objections philosophers usually address against associative duties should be refuted, and that in fact persons normally incur a genuine class of duties grounded in their membership in families, groups, institutions, political societies, etc.

In the first section, I provide a definition of associative duties as special duties we owe not to people in general, but to specific persons, groups, institutions, associations, etc., only by virtue of the relationship that binds us to them. I also contend that associative duties, particularly the duties we owe to compatriots, should *not* be defended by utilitarian arguments. The latter, in fact, assert that people may discharge obligations towards their fellow citizens only as a means to facilitate, by a subdivision of responsibilities, the fulfilment of general duties.

In the second section, I examine the first objection to associative duties, that is, the voluntarist objection, which targets the involuntary character of associative duties. I show that: 1) the voluntarist objection, in the different forms in which it is advanced, is untenable; 2) the efforts to reframe associative duties so as to prove that

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associative duties are voluntarily incurred are unsatisfying, but also unrequired. I argue that associative duties are in fact non-voluntary, and that far from being a fault, this characteristic captures a paramount, if not the most prominent, aspect of our morality, shaped by our attachment to the place where we were born, the family we have, the community we live in, with the non-voluntary sets of obligations that our nets of belongings entail.

In the third section, I analyse the second objection to associative duties, that is to say, the distributive objection, according to which discharging those duties implies that one's associates shall enjoy a morally arbitrary advantage vis-à-vis non-members, and that the fulfilment of associative duties prevents the agent from discharging general duties owed to persons *qua* persons (with a negative impact on global justice). Thereby, I survey the arguments advanced by proponents of the distributive objection, and I try to show that they are indecisive or ill-conceived. I suggest to adopt the following guidelines regarding the relation between general and associative duties (with due exceptions): in most cases, *negative general duties* will take priority over *positive special duties*, while *positive special duties* will take priority over *positive general duties*.

In the fourth section, I evaluate the third objection moved to associative duties, which I call the 'moralist' objection. It remarks that if associative duties stem from the bonds that connect us to our families, friends, or fellow citizens, then some people could find themselves obligated towards immoral groups (like criminal gangs, or States ruled by bloodthirsty dictatorships). I admit, following Yael Tamir, that immoral groups might sometimes claim genuine duties on us, but I also contend, with Alasdair MacIntyre, that it need not be the case that we are required to act immorally. If this can be done at a reasonable cost, other things being equal, a way to discharge our

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duties of membership towards a wicked association is by trying to amend it, by contributing to its moral redemption.

1. Associative duties: definitions and objections

Associative duties are duties we owe to persons, groups, institutions, etc., by virtue of the relationship we entertain with them.

Seth Lazar defines associative duties as "non-contractual duties owed in virtue of a valuable relationship":[187] thus, he rightly emphasizes that they are non-voluntarily incurred and grounded only in the relationship to which they pertain (but reference to such relationship's valuableness will be questioned later on).

Jonathan Seglow maintains as well that the relationship must be the genuine source of the duty, so that one might be able to differentiate associative duties from other kinds of special duties, namely, duties we owe not to people in general, but to specific groups: "All special duties only obtain between certain groups of people, but only associative duties are justified by the relationship those people share. […] Other kinds of special duties are grounded in moral principles such as contribution, compensation or contract".[188]

Diane Jeske reformulates associative duties in terms of *objective agent-relative reasons*: associative duties refer to reasons for actions related to an agent, not grounded in subjective states of affairs of the duty-bearer. In this sense, they count as *fundamental*, not *derivative* reasons (that is to say, such reasons do not stem from sources other than themselves).[189]

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[187] Lazar (2009), p. 90.

[188] Seglow (2010), p. 55.

[189] See Jeske (2009), pp. 8-42.

Michael Hardimon provides an institutionally focused interpretation of associative duties: he draws a distinction between personal commitments, related, for instance, to biological facts (e.g.: being siblings), and institutional roles (e.g.: the social meaning of brotherhood). The latter imply that persons involved carry a 'role obligation', that is, "a moral requirement, which attaches to an institutional role, whose content is fixed by the function of the role, and whose normative force flows from the role".[190] Now, it may appear unsound to argue that persons envisage their responsibilities towards parents, sons, siblings, or friends, in terms of institutionally fixed obligations. But while associative obligations may be interpreted as flowing from natural sentiments of emotional attachment to one's intimates rather than from socially determined roles, it has to be emphasized, as Robert Nisbet does, that the moral significance of human groupings like the family or the corporation relates not to the feelings which nurture them, but to the *functions* they perform in response to communal needs, which take priority over individually and voluntary acquired commitments.[191]

In conclusion, it is possible to define associative duties as *agent-relative* duties, owed to particular persons, groups of people, associations, or other institutions, which derive from the special relationship we entertain with those agents, and whose nature does not depend on subjective psychological conditions of duty-bearers, but on *objective reasons*, with no other normative ground then themselves. It is also appropriate to add that associative duties, while remaining agent-relative and objective, might come forth in the form of 'role obligations', that is to say, as duties connected to the socially

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[190] Hardimon (1994), p. 334.

[191] See Nisbet (1953), pp. 50 and ff.

characterized *stance* that an individual occupies (for instance, as the chief of an academic Senate, as the member of military corps, as a citizen, etc.).[192]

In order to advance a proper defence of associative duties, I am persuaded that one has to avoid the 'utilitarian trap'. Utilitarians acknowledge only general duties; and yet, in consequentialist terms, it could be reasonable to accommodate to associative duties, insofar as it is proved that people's (false) belief in the moral requirements those duties impose on them provides persons with incentives to perform the actions that eventually maximize the overall wellbeing. Suppose, for instance, that people have a general duty to improve the condition of the least well-off, and that it would be difficult to implement redistributive policies on a global scale. If patriotic solidarity encourages people to support the least well-off in their societies, so that eventually in each country the most disadvantaged will gain from a system of internal redistribution, then the consequentialist could accept the idea of an associative duty owed to compatriots. Let us recall Robert Goodin's 'assigned responsibility model' as an example. As he writes:

A great many general duties point to tasks that, for one reason of another, are pursued more effectively if they are subdivided and particular people are assigned special responsibility for particular portions of the task. […] Whatever the reason, […] it is simply the case that our general duties towards people are sometimes more effectively discharged by assigning special responsibility for that matter to some particular agents.[193]

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[192] Several juridical systems acknowledge this socially determined dimension of special obligations in the form of the 'general clauses' that function as conceptual premises of the law (for instance, the notion of a 'good father of the family').

[193] Goodin (1988), p. 681.

However, on a conservative perspective, a utilitarian justification of associative duties may be regarded as one that undermines 1) the authenticity of associative duties, which in fact cease altogether to be *genuine* duties,[194] and 2) the notion of membership, so important in the development of a theory of political obligation, but substantially reduced to a mere pretext to facilitate the implementation of general duties.

Ever since the paradigm of global justice and ethical universalism has taken over in moral and political theory, associative duties have undergone serious criticisms. The aim of this chapter is to prove that we do owe to each other associative duties, by defending them from the three main allegations that philosophers usually address to them: the voluntarist objection, the distributive objection, and the 'moralist' objection.

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[194] David Brink contends that consequentialism is altogether incompatible with the recognition of associative duties: "I do not think that our intuitions about associational duties can be accommodated by the consequentialist, and I will suggest that they do admit of a philosophical rationale at least as plausible as anything the consequentialist has to offer […]". See Brink (2001), p. 153. Richard Arneson argues instead that consequentialism "need not oppose special ties but must deny partiality": Arneson (2003), p. 382. Discharging duties towards one's associates is morally permissible insofar as it brings out consequences no worse than would be brought about by any alternative. Thus, Arneson (differently from Jeske) reframes associative duties as agent-neutral duties.

2. *The voluntarist objection*

Assume that one conceives of associative duties as grounded in a special relationship and not in a wilful act or an implicit commitment by the duty-bearer; and that he regards membership in political societies as the offspring of one's birth in a particular time, place, and community, rather than as the result of a contract, be it actual or hypothetical, or of any other act signifying acceptance of the duties that citizenship entails. If that is the case, associative duties may be subject to the 'voluntarist objection': they would be judged untenable since the agent did not voluntarily acquire them.

Voluntarists, in fact, argue that associative duties "constitute an involuntarily acquired burden on the bearer, thereby undermining his negative liberty – his freedom from constraints";[195] and since one of the core values of the liberal conception of the self is autonomy, admitting that there are duties befalling the agent's will would seriously infringe such principle.

Associative duties supposedly rely on the agent's identification with his *role*, or his *stance*, in an institutionalized relationship with another subject. In that respect, Simmons affirms that "people can mistakenly identify with certain social roles (and feel obligated by the locally assigned requirements for those roles). I could, on the basis of confusion, lies, or bad information, falsely believe myself to be of Croatian descent or to be the father of a particular child or falsely believe some particular person to be a neighbour".[196] Feelings of belonging to a group, or of attachment to persons, and the relative

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[195] Lazar (2010), p. 2.

[196] Simmons (2001) [1996], p. 83.

obligations, might be sustained by manipulation, deceit (even self-deceit), brainwashing, or simple delusion.

In order to rebut the voluntarist objection, one may employ two strategies: either he demonstrates that associative duties are in fact voluntarily acquired, or he tries to show that, although non-voluntary, they may nevertheless impose genuine moral requirements. I will opt for this latter solution.

Samuel Scheffler criticizes theories that try to demonstrate that associative duties are "legitimate only in so far as they can be assimilated to other, putatively less problematic types of duties",[197] contractually acquired (a position he calls *wholesale monistic assimilation*): monistic assimilationism can only accommodate a limited range of the associative duties people normally perceive. The alternative is to adopt pluralistic assimilationism, which seeks "to assimilate different classes of associative duties to putatively less problematic duties of several different types".[198] However, according to Scheffler, pluralistic assimilationists merely multiply the difficulties in finding the different rationales to which associative duties might be reduced: in fact, "the voluntarist's reason for objecting to associative duties would seem equally to be a reason for objecting to any special duties that cannot be construed on a broadly contractual model".[199]

Coping with the voluntarist objection, and with the problem of 'impressment' (the potential deception that would lead the subject to falsely identify with a role), Hardimon explores two solutions. On the one hand, he reduces the range of contractual role obligations

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[197] Scheffler (2001), p. 54.

[198] Scheffler (2001), p. 56.

[199] Scheffler (2001), p. 56.

(associative duties which the subject has voluntarily incurred) to the realm of civil society:

'Civil society', as I understand the term, refers to the domain of private association distinct from the family and the state. It includes, but is by no means limited to, the marketplace. It also comprises the network of voluntary associations which includes unions, professional associations, private clubs, social movements, and neighbourhoods. This sphere is governed by a norm of voluntary association. The way in which people enter roles in civil society is by signing on for them.[200]

On the other hand, regarding non-voluntary (non-contractual) role obligations (which one owes to family members, or, in the political arena, to fellow citizens), he introduces the *principle of reflective acceptability*, which states that "noncontractual role obligations are not morally binding unless the roles to which they attach are reflectively acceptable",[201] that is, unless one would accept them upon reflection.

Incidentally, notice that reflective acceptability overcomes the moralist objection as well, by excluding that the subject may ever subscribe to obligations owed by virtue of an immoral stance he occupies. Most importantly, reflective acceptability circumvents the voluntarist objection without turning non-contractual role obligations into contractual ones. As Hardimon writes:

I should point out that the introduction of the principle of reflective acceptability does not make noncontractual roles contractual. Noncontractual roles – including those which are reflectively acceptable – are roles into which we are born. They are roles we did not choose – and could not have chosen – to enter. My determining that a noncontractual role is reflectively acceptable does not alter the fact that it is a role into which I was born. Nor does reflection transform the basic

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[200] Hardimon (1994), p. 352.

[201] Hardimon (1994), p. 350.

character of noncontractual role *obligations* (that is, make them contractual), for they still derive from (and flow through) noncontractual roles.[202]

What reflective acceptability does is to change the subject's relation to the roles and their relative obligations by inviting the agent to investigate more in depth the meaning of his stance, the moral requirements it entails, and its authenticity (its being not the product of self-deceit or manipulation). Thereby, role obligations remain unchosen, but they are actively (reflectively) assumed. The subject recognizes and internalizes obligations he already had.[203]

Nonetheless, Jeske criticizes anti-voluntarist attempts to defend associative duties. As to Hardimon's principle of reflective acceptability, she advances two remarks. First, she contends that his account of role obligations "gains plausibility in relation to his voluntarist opposition because of his simplistic dichotomy between impressment or coercion and choice, and also because of an ambiguity in what counts as a 'social role'".[204] That is to say, Hardimon would improperly postulate that, according to voluntarists, role obligations, if they are not self-assumed, are the result of manipulation. Moreover, he is never clear about what counts as a social role, and how to evaluate the allegedly socially fixed content of the role.

Second, Jeske emphasizes that the notion of 'judgment' employed by reflective acceptability (Hardimon affirms that judging whether a role is reflectively acceptable involves judging whether the role is "meaningful, rational, or good"[205]), although blurred and

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[202] Hardimon (1994), p. 351.

[203] "In determining that a noncontractual role is reflectively acceptable, I come to accept a set of obligations that I already had", Hardimon (1994), p. 351.

[204] Jeske (2009), p. 144.

[205] Hardimon (1994), p. 348.

unclear, plausibly amounts to the idea that any subject, under idealized conditions, would reach the same judgment about the meaningfulness, rationality, or goodness of the role in question. The problem, Jeske argues, is that if 'judgment' is so conceived, namely, as a *true* judgment (for it is the judgment any agent would reach under the same idealized conditions), the reasons for attaching obligations to the roles are only derivative (stemming from the objective value of the roles as meaningful, rational, and good) and agent-neutral (for *any* subject may be prompt to acknowledge them, if she were to judge under the same idealized conditions), whereas associative duties should be understood as fundamental agent-relative reasons for action.[206]

As she discusses the case of friendship, Jeske advances an interpretation of associative duties moulded on the notion of 'commitment'. She recognizes that love and intimacy ground obligations of friendship, but she contends that voluntariness is by no means ruled out, for each good friendship entails a dimension of reflection as the subject's active participation to the growth and development of the relationship. Jeske explains that by the tenet of 'reflection' she does not intend to argue that good friendships are based on calculation, if not cold rationalization, but that as they nurture their relationship day by day, friends redefine, reshape, and enhance it, transforming the purely external circumstances which fostered the conditions of intimacy and love into iterated acts of genuine commitment to the relationship itself.[207] Jeske's words are worth quoting at length:

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[206] Jeske (2009), p. 144.

[207] As to the case of associative political obligation, Thomas Nagel proposes a similar argument: "I believe it [the additional necessary condition in order to make membership in society not involuntary or arbitrary] comes from a special involvement in a political society. Not the will to become or remain a member, for

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Intimacy, as I have characterized it, is a mutual relationship: we can never simply find ourselves in some social structure that assigns us to the role of so-and-so's friend. […] Intimacy demands time, insofar as it is a relationship partially constituted by mutually special knowledge acquired through causal interaction. Although it is also partially constituted by certain mutual attitudes, and we do not always have control over our attitudes (at least not at a time), such attitudes are never sufficient for intimacy. While intimacy is a matter of degree, there is always an interval wherein we can disengage ourselves from a relationship before having any significant level of commitment. We can cease to spend time with another, we can refuse to reveal more of ourselves, we can fail to evidence special concern in our interactions with the other, and we can make it clear to the other that we do not want to know anymore than we already do about him or her.[208]

Of course, Jeske does not deny that we were born in a web of social relationship, and that we are not 'disentangled' subjects, capable of selecting the special bonds we wish to assume, as if they were to be chosen out of a menu. At the same time, she rebuffs the idea that we are merely trapped into non-voluntary connections, for we can choose to increasingly commit ourselves to our intimates upon reflection and aware deliberation, by which we constantly nurture those relationships we deem valuable. Jeske specifies that she believes not such reflective attitude to be incompatible with the common intuition according to which our relationships with intimates and friends would be grounded on love,[209] and in fact declares that the

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most people have no choice in that regard, but the engagement of the will that is essential to life inside a society, in the dual role each member plays both as one of the society's subjects and as one of those in whose name its authority is exercised". Nagel (2005), p. 128.

[208] Jeske (2009), p. 130.

[209] "No amount of reflection rules out acting from love for our friends, sympathy and compassion for strangers, respect for colleagues, and concern for students. It is a

"trend in contemporary ethics", whereby the "supposedly ideal moral agent is seen as one who acts from her love and other affections, in a spontaneous way, never 'one thought too many'", ought "to be resisted without giving up ground".[210] In her view, the fact that in our social life we are liable to be charged with a multiplicity of associative obligations calls for more, not less, reflection – and for genuinely *moral* reasons:

> It is irresponsible to act so that we wake up and discover one day that we have more commitments than we can honour, at least not without stinting on some of them or on our own subjective reasons or our ever-present agent-neutral reasons. […]
>
> Real love, as part of intimacy, takes time to develop, because it is a response to another person as the person who she is and who she understands herself to be, not any sort of immediate response to the luster of her eyes or the seductiveness of her pose. […] This weighing does not happen by itself – it is up to rational agents to do it, perhaps not every minute of the day, but often, and well.[211]

Jeske's theory of associative obligations displays several stimulating intuitions: it agreeably condemns sheer emotivism, and correctly remarks that many intimate relationships are bred by our self-chosen actions, which determine our level or commitment, and therefore the corresponding obligations that our roles require us to discharge in connection with the expectations we feed in other people. And yet, such model is eventually unsatisfying for our purposes, for it is only apt to account for relationships of strict intimacy, like those we entertain with family members, friends, or colleagues; as Jeske herself

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strange psychology that supposes that calm reflection is incompatible with love". Jeske (2009), p. 131.

[210] Jeske (2009), p. 131.

[211] Jeske (2009), p. 131.

admits, the model is not intended to account for political obligation. Moreover, some of her arguments seem inadequate as well .[212]

It may be true that reflection helps the subject not to unwarily acquire obligations he cannot fulfil; but it is not clear why such kind of rational deliberation should allow the subject to nurture only the relationships he endorses, disentangling himself from the ones he wants to reject or 'cool down'. Think of this example: if I am a son, and upon reflection I deem my relationship with my parents not deserving of any particular commitment on my part, am I a responsible agent, one who does not sign in for obligations he cannot discharge, or rather am I one who fails to discharge duties he has by virtue of his *role* as a son (which entails that I *owe* something to my parents just for the fact that they are my *parents*, and I am their *son*)? An interpretation that could be summarized by the formula 'my stance and its duties' seems more fitting to capture our widely shared understanding of the way we acquire and fulfil associative duties, from familial relationships, to friendships, to political obligation.

Similar remarks could be addressed to Massimo Renzo's 'quasi-voluntarist' model, whereby in fact he tries to explain not only the obligations that stem from intimate relationships, but also political obligation.

Renzo maintains that at least a minimal sense of identification with the polity is needed in order for membership in the political community to legitimately claim duties on the part of the citizen. He admits that not only in the case of the hermit, but also with regard to the libertarian anarchist who has genuine and motivated arguments against political obligation, such sense of identification is lacking. Consequently, he suggests to give up the requirement of 'singularity

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[212] Jeske (2009), pp. 134-136.

in ground' established by Simmons as one of the conditions of political obligation. According to Renzo, it is not necessary that the moral principle on which political obligation is based be only one for all members of the state, and it is perfectly legitimate to adopt a multiplicity of principles:

> According to this view, those who actually identify themselves with the practices and the values of the state […] can be said to have political obligation on associative grounds; those who do not meet this condition, might have political obligations on other grounds – say, because they consented to the state, or because they accepted its benefits. In other words, different principles can kick in and complement the associative model by justifying political obligation over those not captured by it.[213]

Renzo's effort to defend 'quasi-voluntarism' is nonetheless perplexing. He explicitly denies that the model amounts to a reintroduction of tacit consent: it is not the fact that we have consented to the obligations that grounds them, but "the fact that we occupy certain roles, to which the obligations are attached".[214] The tool Renzo introduces in order to 'save' voluntariness seems to be the right of exit: that is to say, "our occupying the roles is voluntary in the sense that we could have stepped out of them if we had not endorsed

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[213] Renzo (2012), p. 119. The problem of voluntary identification defines the *subjective* side of the associative argument; Renzo discusses an *objective* side as well, by which he refers to the possibility that associative relationships claim duties on the part of the members even when the association is unjust, or it pursues immoral purposes. Renzo adopts John Horton's solution: the duties we owe to our associates ought to be placed in a wider normative context, and evaluated against that background.

[214] Renzo (2012), p. 121.

them".[215] Therefore, Renzo claims that voluntary identification is a *precondition* of associative obligations, but that, once identification with a role is fulfilled, it is the fact of membership, not explicit or tacit consent, to ground those obligations.

Let me now develop some observations on these points. First, I am not persuaded that Renzo's effort does not amount to a reintroduction of tacit consent. When he affirms that "we could have stepped out of the roles if we had not endorsed them", he recalls the Lockean thesis, according to which one's not leaving the country means that he has consented to the State's authority. It is true that Renzo is not discussing emigration, but the conditions by virtue of which one may surrender his obligations of membership; in this perspective, he conceives of such disentanglement not as the breach of a contract by a single, sudden act of separation, but as a process of self-understanding and in-depth analysis of the relationship with one's political community (it is in this sense that the model is 'quasi-voluntarist'). [216] But the distinction between 'endorsement' and 'consent' is so blurred (or not sufficiently expounded), that occupying the role without stepping out of it seems to be tantamount to having tacitly consented to it. On the opposite, Hardimon's reflective acceptability is clearly based on a moral evaluation of the roles one occupies in civil society, not on a voluntary endorsement.

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[215] Renzo (2012), p. 121. The use of the right of exit made by Renzo should not be conflated with that we find in Chandran Kukathas's 'liberal archipelago', where the central tenet remains consent, and the right of exit is the condition for membership in a liberal association to be morally legitimate: see Kukathas (2003). The subtlety of such differences should throw suspects on Renzo's conviction that he had in fact ruled out consent from his proposal.

[216] See Renzo (2012), p. 122.

But let us concede that voluntary identification and endorsement of an associative relationship are in fact different from tacit consent. The second objection is that if voluntary identification is a precondition of political obligation, political obligation cannot be interpreted as an obligation of membership. If meaningful membership, that is to say, the fact that one occupies a role instead of stepping out of it, ought to be quasi-voluntary, then the ground of the obligation seems to be voluntariness (consent), not membership itself. Renzo intends associative obligations as inseparable from the relationships that agents undertake; thus, once we have endorsed these relationships, we acquire the duties they demand. But again, what is important is that we maintain voluntary control on our associative bonds: while the fact of being members does entail the relative obligations, membership depends on our having consented to (or endorsed) our role in the associative bond. Therefore, we would have an obligation to fulfill the obligations attached to the roles we occupy, which derives from (is *grounded in*) our having endorsed those roles.

The point is that associative duties need not be represented as contingent on our will. There are surely circumstances in which these duties cease to exist: for instance, a record of violence and abuse would surely obliterate filial obligations. In normal situations, however, familial bonds cannot be dismissed upon reflection, however careful it may be, as if they were a matter of choice. A son who gives up his obligations towards his parents is failing to discharge his duties, which, though non-voluntary, are nevertheless genuine.

John Horton proposes an articulated criticism of the three pillars on which voluntarism applied to the problem of political obligation rests: "First, there is the basic assumption that political obligation must be the result of a voluntary undertaking. Second, there is the underlying model of a polity as a voluntary association. Finally, there

is the conception of the person implied by voluntarist theories".[217] Horton denies that voluntary acceptance is either a necessary or a sufficient condition for the acquisition of an obligation. In fact, the voluntarist principle is based on the assumption that we are obligated to act in accordance with the obligation we have voluntarily incurred. But either such obligation is not voluntary, or it is based in its turn on the fact that we have voluntarily chosen to be obligated to act in accordance with the obligation we have voluntarily incurred; and if this is the case, we have *regressus in infinitum*.[218] Furthermore, voluntary acceptance of obligations is incapable of justifying immoral acts: "Consent cannot normally create an obligation to do that which is seriously wrong".[219]

Horton also rebuffs the idea of the polity as a voluntary association. In fact, not only citizenship is in general a condition one already finds himself into, and which is imposed on members of the polity may they will it or not, but the "differences between a voluntary association and a polity are so fundamental that any attempt to transform the latter into the former might be thought to undermine those very characteristics of a polity which seem to be constitutive of it".[220] Horton's argument recalls Oakeshott's distinction between civil and enterprise association, on which I will say more in the next chapter. In fact, he notices that disagreement about substantive purposes is essential to understand the nature of a political association, while voluntary associations of people generally presuppose the recognition of a single common end. Moreover, the role of coercion is different: although voluntary associations may admit of restrictions

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[217] Horton (1992), p. 42.

[218] See Horton (1992), p. 43.

[219] Horton (1992), p. 43.

[220] Horton (1992), pp. 46-47.

and penalties for defectors, the latter are in their turn regulated by the general norms issued by political authority, which provides the normative framework within which other smaller associations operate.

Interestingly, Horton condemns the voluntarist "portrait of persons as possessing natural freedom, in opposition to the constraints imposed by social life". This view displays "a marked failure to appreciate the more specific point, that *particular* persons are in part the products of *particular* societies":[221] therefore, our membership in a community, along with our having been raised in a specific family, having cultivated friendships with these and not other people, in a particular place and time, is part of what makes us the persons we are. Had we grown up in different families, societies, places, or historical periods, we would simply have been other persons.

It is reasonable to conclude, I think, that Hardimon's interpretation of associative duties as duties connected to socially determined roles captures much of common sense truth even when such scheme is applied to the problem of political obligation. Truly, however, as Jeske observes, Hardimon wrongly assimilates all voluntary obligations to contractually acquired obligations, which he places in the ambit of 'civil society' as the sphere wherein people incur them. Actually, even in civil society a wide range of associative duties simply befalls us.

On her part, Jeske might be right in inviting us to a close scrutiny of the actions we perform, the relationships we cultivate, the commitments we assume, the expectations we feed in other people, etc.; and yet, it remains impossible (if not undesirable) to rationalize and control all aspects of our associative bonds. Many of the most

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[221] Horton (1992), p. 48.

worthwhile relationships we experience are not originated nor shaped by reflection.

Suppose, for instance, that I met my 'best friend' when I was a child. He is a person to whom I got committed out of a series of circumstances independent of my will, or at least out of a low degree of reflection; and yet, he might legitimately expect me to love him even as an adult, although life might have distanced us for a long time. Suppose this friend of mine comes to me after fifteen years we have been living in different and distant cities, asking me an amount of money he cannot afford, money he needs for a life-saving surgery, a sum that will not cost to me and my family members (to whom I owe the respective special duties) unduly sacrifices to borrow him.

While there may be room for discussion on whether I do have the moral duty to help my friend, and on whether this duty, if any, originates from our special relationship, or from a general duty to help those in need, in my opinion, it would be at least morally controversial to refuse to help this old friend, dismissing him the way Jeske's conception seems to legitimate: "I am sorry, but have been reflecting on our friendship through the years. My conclusion is that I want to cool it down". Would fifteen years of separation due to the circumstances of life be enough to conclude that our friendship is over? It is not clear, as Jeske assumes, that her invitation to a critical stance towards our special relationships would be sufficient to rescind some of these bonds, or that acquiring that attitude would lead us to the morally appropriate choices.

That associative duties arise independently of our will should not amaze us. After all, proponents of the voluntarist objection are prompt to acknowledge that there is a class of duties, that is to say, duties we owe to persons *qua* persons (general duties), which relate to the negative and positive rights human beings possess as such. Why,

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then, should it be so difficult to admit that associative duties might be non-voluntary as well? Why should morality be a matter of choice only in the domain of special bonds?

Conservatives do not think that the existence of a class of duties that are non-contingent on our will should be questioned. Their readiness to recognize those duties directly relates to the conservative political principle analyzed above: the primacy of community over the individual.

After all, conservatives argue, individual identity is the result of a complex interweaving of special relationships: it is shaped by the family one is born into, by one's birthplace, by the experiences one makes and the people one encounters, people with whom one develops friendships that, for the greater part, are not the product of a fully voluntary choice or of a conscious endorsement. In a sense, individuality (and, hence, voluntariness) would not exist without the person's embedment in this communitarian framework.

Consequently, conservatism denies that liberty has to be intended as autonomy, in the sense of a lack of conditionings by the social environment. From this point of view, the fact that associative duties are non-voluntary does not pose a particular challenge to the conservative theorist, who, in line with the classical liberal tradition, regards liberty as a 'negative' concept, as absence of arbitrary interference by political authority – and even put this way, liberty is regarded as contingent on social order by conservatives: not because it is less important than order, but because in lack of security and peace the exercise of negative freedom would turn out to be a mere delusion.

This is also why Hardimon's notion of 'reflective acceptability', though helpful to rationalize the value of our special bonds, need not be employed as the diriment criterion in the evaluation of an associative duty. Hardimon is certainly right when he notices that

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many of our duties are connected to the socially determined meaning of the roles we occupy. Nevertheless, on a conservative perspective it is not that these duties are legitimate only as long as they are reflectively acceptable; these duties remain genuine even if they befall us, but they can be proven *a posteriori* to be acceptable upon rational scrutiny as well.

Reflective acceptability may be a useful device in case one is called to defend the tenability of a special duty via rational arguments, but it is not that special bonds can claim duties on us only insofar as they are reflectively acceptable. Simply, conservatism retains an understanding of personal identity and liberty that makes the involuntariness of associative duties unproblematic.

Now, if the arguments advanced against the non-voluntarist component of associative duties are inadequate, and if the general duties we owe to persons as such are not contingent on our will nor chosen, then it is reasonable to reject the voluntarist objection and to maintain that associative duties may, and in fact often are, non-voluntary and non-contractual.

3. *The distributive objection*

The existence of associative duties implies the requirement of partiality towards people with whom the agent entertains a relationship: relatives, intimates, friends, compatriots, etc. The consequent potential clash with general duties, and with the obligations imposed by global justice, makes associative duties liable to the 'distributive objection'.

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As Horton stresses, "defenders of the distributive objection typically endorse a strong theory of positive rights".[222] The distributive objection focuses on the legitimacy of the advantages that some individuals, once they have entered the relationship that grounds associative duties, enjoy in comparison with individuals who remain outside such associative bond (briefly, it compares the satisfaction of positive rights within and without the association).

Scheffler raises two points that proponents of the distributive objection might address to associative duties. First, members of an association experience, simply by virtue of the bonds they stipulate with each other, a rewarding relationship, whereas outsiders are arbitrarily excluded from the benefits thereof. Second, insiders enjoy a distributive advantage outsiders lack. As Scheffler puts it:

> […] if A and B derive great value from their membership in the In Group, then they already have an advantage that C lacks. The effect of associative duties is to build a second advantage on the top of this first one. If, in other words, A and B have associative duties to each other, then, in addition to enjoying the rewards of Group membership, which C lacks, A and B also get the benefit of having stronger claims on each other's services than C has. Why should this be?[223]

Naturally, so conceived the distributive objection heavily relies on an individualistic and a universalistic premise, according to which there is no morally relevant criterion whereby one may draw a reasonable distinction between those who have the right and those who do not have the right to be part of the relationship that grounds associative duties. Along this line of argument, there is a bias in favor of impartiality and equality of treatment; the burden of proof is up to

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[222] Horton (2008), p. 2.

[223] Scheffler (2001), p. 57.

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him who contends that boundaries between different groups, and between insiders and outsiders, are not morally arbitrary. That subjects deem their membership significant, and experience their participation in the group as rewarding, proponents of the distributive objection maintain, is not enough to dismiss the requirement of impartiality: "None of these suppositions seems capable of explaining why their membership should, as a matter of morality, work to C's disadvantage in the way that it does if it generates associative duties. Indeed, the distributive objection continues, far from explaining this, these suppositions seem rather to make the need for such an explanation more acute".[224]

Lazar advances three reasonable counterarguments against the distributive objection in the form it is presented by Scheffler. First, he broadly questions "the reduction of all morality to a distributivist paradigm", whereby duties are seen as 'normative resources' "to be made part of the distribuendum of distributive justice, along with interests and resources".[225] Lazar asserts that duties cannot be treated as objects of distribution: in fact, they are usually perceived as grounded only in themselves, not as contingent on the injunction to implement the difference principle across a set of *distribuenda*. Moreover, whereas duties retain their force even when overridden, so that their missed performance implies a moral loss, in a distributivist perspective a duty not consistent with the distributive pattern is not simply liable to be overridden, but it ceases to be a genuine duty altogether.

Second, Lazar challenges the idea that the enjoyments of the rewarding relationship and of the duty it grounds are temporally and

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[224] Scheffler (2001), p. 57.

[225] Lazar (2009), p. 4. I am quoting from a PDF version of the paper.

conceptually separate: to the contrary, as Scheffler himself acknowledges, the duties constitute an integral part of the relationship.

Third, Lazar rebuts the premise according to which special relationships can only be ancillary to general obligations, and ought to be weighed against a situation in which all general duties are already discharged, and there is no partiality in treatment. According to Lazar, to the contrary, at least some of our associative obligations are co-originary with general duties; but even if that were not the case, they would still claim a temporal priority, for not all duties which arose firstly immediately trump the others.

Lazar suggests to classify the interpretations of the relation between general and associative duties into two categories: *compatibilism* and *incompatibilism*. Compatibilism denies that there is a genuine tension between general and associative duties. It assumes either a *compossibilist* stance, which maintains that an agent can discharge each set of duties without compromising the other, or a *generalist* stance, which admits that clashes of duties may arise, but assumes a strongly prioritarian posture, alleging that, in case of trade-offs, general duties trump associative duties. On the other hand, a casuistic approach, advocated by Lazar himself, resorts to rational scrutiny so as to determine whether, in each particular case, the agent has to discharge his associative or his general duties. At the same time, Lazar seems to argue that associative duties can be admitted of only as a second-best, and only insofar as liberal-democratic societies still remain incompletely just, failing to actualize the principles of liberal-democratic citizenship:

Liberal citizens owe each other an associative duty, grounded in the value of the relationship between them, to protect and improve the institutions that constitute the doing of justice between them – and therefore their relationship. If there were no

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risk of non-compliance, if everyone congenitally acted exactly as morality demands, then there would be no need for this duty – the duty would be without meaning, because the imperfect circumstances to which it responds would not be possible. I do not, therefore, think it is constitutive of the relationship of liberal citizenship. Moreover, it is clearly distinct from the good of liberal citizenship – the realisation of justice.[226]

Thus, Lazar ends up making associative duties only conditional on contingent deficiencies of liberal societies. Rather than a casuistic approach, his 'liberal defence' of associative duties to compatriots recalls consequentialism: the ideal would be that no associative duty to one's fellow citizens existed, but in the face of the imperfect reality of existing liberal societies, the only way to pursue justice in the context of liberal citizenship is by fostering people's beliefs in associative duties.

Horton's proposal could be read as a compossibilist argument. Without judging them super-rogatory, he nevertheless sees associative duties "more like permissions than strict moral duties".[227] This view would prevent us from interpreting political obligation, which is conceived by the majority of the existing literature as *mandatory* obedience to the law (not as a *permission* to be law-abiding), as a form of associative duty. But Horton replies that "an exclusive focus on the law can be misleading",[228] and that "not all political duties are as determinate or strict as this [the duty to obey the law]: there are many 'optional' ways in which we can discharge our responsibilities as members of our polity".[229] The problem with this approach is that it seems to conflate different levels of explanation. Political obligation

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[226] Lazar (2010), p. 9.

[227] Horton (2008), p. 12.

[228] Horton (2008), p. 7.

[229] Horton (2008), p. 13.

may surely be discharged, for instance, by cherishing one's country's flag, by displaying pride for one's homeland abroad, etc. But these are indeed 'optional', or *additional*, ways to fulfil such duty; law-abidance remains the *necessary* (and most of the times sufficient) condition to be matched in order to discharge political obligation.[230]

Horton's compossibilism is unsatisfying anyhow, for it seems to rely on the classic consequentialist misunderstanding, according to which it is the imperfectness of reality that makes belief in the existence of associative duties necessary so as to favour the realization of global justice. Horton, in fact, admits that "given the world as it is and is likely to be for the foreseeable future, the only political agencies that can really effectively bring about global justice are states or multi-national institutions whose effectiveness is entirely dependent upon their backing by states".[231]

Seglow's endeavour seems more promising, as he distinguishes between a comparative and a non-comparative paradigm of global distributive justice, against which one may evaluate the stringency of associative duties and the requirements of global justice. He observes that only a strongly egalitarian view is apt to rebuff associative duties for the sake of global justice concerns, as such full-fledged egalitarian compares the state of two societies. Differently, a non-comparative standard of global justice only requires that citizens' basic needs be secured. Seglow adds that it is unlikely that global redistribution pressured by egalitarian demands will be the most effective way to reduce global poverty: "In consequence, it may not be unjust for developed states to spend more per capita on their own citizens than

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[230] See Gans (1992), p. 8, quoted in Part 1.

[231] Horton (2008), p. 11.

people overseas provided they undertake other sorts of measures […] to help developing states help themselves".[232]

However, Seglow's solution, quite similarly to Lazar's, seems to corroborate, rather than overcome, the distributive objection. In fact, although he concedes that "many relationships themselves are morally valuable just because they are constitutive of human flourishing",[233] he also argues that civic associative duties are grounded in the valuable relationship of common membership in a liberal-democratic state, by virtue of which 'engaged', 'participating' citizens become responsible to determine "the conditions of their collective life with each other" and "the nature of their socio-economic provision".[234] Seglow, therefore, not only renounces to give priority to associative duties, but he explicitly submits them to the 'basic duty' "to realize the values of civic community and democracy" (something that could be equated to the natural duty to promote justice, at least as long as justice is made to coincide with 'civic community' and 'democracy').[235] Civic associative duties are thereby transformed into

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[232] Seglow (2010), p. 64.

[233] Seglow (2010), p. 56.

[234] Seglow (2010), p. 68.

[235] Seglow (2010), p. 68. The argument may run as follows: 1) some relationships are valuable in themselves, for they are constitutive of human flourishing; 2) the relationship citizens of liberal-democratic societies enjoy nourishes 'civic community' and 'democracy'; 3) 'civic community' and 'democracy' are part of the concept of 'human flourishing'; 4) civic associative duties ought to be discharged, for they are constitutive of the relationship that promotes the values which, in their turn, breed human flourishing. One may ask whether the relationship is really valuable in itself, or only insofar as it promotes those other values. This seems to be a puzzling dilemma even to communitarianism: in fact, the communitarian may appeal to an argument concerning the agent's personal identity (my relationship with my fellow citizens has to be cultivated, since it is constitutive of the person I am),

derivative duties, and although Seglow senses that they would consequently be trumped by duties of global justice most of the times, he merely observes that "just because associative duties are outweighed by other duties it does not mean they are not duties", and that it would be possible "to outline circumstances in which in fact they are not outweighed".[236]

David Miller challenges the distributive objection in terms of what Seglow would call the comparative view. He argues that duties of global justice ought to be particularized: redistribution according to needs, in fact, requires that the set within which one redistributes resources be specified and that what count as 'needs' be defined (but this can be done only in respect to particular societies and their level of well-being). He writes:

> There are two important respects in which this principle [the principle of distribution according to need] depends for its implementation on identifying a relevant community. First, since the principle is comparative in form – it specifies how people are to be treated relative to one another – it requires that its field of application be identified. Second, we must also know what is to count as a need. As soon as we move beyond indisputable biological needs, a social element enters the definition.[237]

Miller admits that it would be logically possible to seek to extend the field of application of the distributive principle to the entire world, but he also observes that "such an extension would be wildly

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but in order to avoid that morally corrupted associations may exercise claims on the agent, the communitarian needs a criteria to distinguishing between a relationship that nurtures human flourishing, and another one that does not.

[236] Seglow (2010), p. 69.

[237] Miller (1988), p. 660.

implausible. We do not yet have a global community in the sense that is relevant to justice as distribution according to need".[238]

Miller's aim is to warrant a space for 'reasonable partiality' towards compatriots: on this view, compliance with associative duties cannot infringe "two classes of duties […], both of which can be regarded as duties of global justice. The first is the duty to respect the basic human rights of people everywhere. The second is the duty to interact with others on fair terms".[239]

As to the obligation to respect human rights, Miller refers to both *negative* and *positive* commitments, to rights as side-constraints and to duties as provision of resources, that is to say, to "the *absence* of certain factors that prevent people leading minimally decent lives and the *presence* of other factors", which ought to be made available so as to permit a minimal threshold of decency. Miller provides not a specific rule for determining which duty takes priority: it is a matter of circumstances, of weighing the duties at issue in a concrete situation.

As to the duty to interact with others on fair terms, Miller has in mind, again, a *negative* and a *positive* requirement: on the one hand, refraining from exploitation of economically weaker parties in international trade and investments abroad; on the other hand, "to contribute fairly to international collective action aimed at protecting essential human interests",[240] particularly in the case of environmental threats.[241]

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[238] Miller (1988), p. 661.

[239] Miller (2005), pp. 72-73.

[240] Miller (2005), p. 78.

[241] Here, Miller assumes that obligations connected to the state of our environment are by their nature global. Such view is seriously and acutely challenged by Roger Scruton in his essay *How To Think Seriously About the Planet: A Case for Environmental Conservatism*, where he explains why environmental duties should

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In *The Problem of Global Justice*, Nagel frames the quarrel between supporters of associative duties and advocates of global justice as a contrast between a *cosmopolitan* and a *political* conception. According to the former, "the demands of justice derive from an equal concern or a duty of fairness we owe in principle to all our fellow human beings";[242] therefore, the cosmopolitan conception is *monist*, that is, it upholds the idea "that the basic constituency for all morality must be individuals, not societies or peoples, and that whatever moral requirements apply either to social institutions or to international relations must ultimately be justified by their effects on individuals".[243] According to the latter, which Nagel calls the *political* conception, for "it is exemplified by Rawls's view that justice should be understood as a specifically political value, rather than being derived from a comprehensive moral system, so that it is essentially a virtue – the first virtue – of social institutions" sovereign states fulfil the function of putting fellow citizens into an *institutional* relation they do not have with humanity as a whole, and they ground the doing of justice to each other in associative obligations.[244] The political conception is *pluralist*, as shown by Rawls's assertion that different principles apply to different entities, and by his subsequent critique of utilitarianism, whereof Rawls says that it illegitimately tries to apply the same principle (maximization of net benefits), only appropriate

be viewed as stemming from people's attachment to their own territory, their homeland, their intimates, their compatriots, although the problem of pollution and climate change might be global in scope. Consequently, he vehemently criticizes the globalist perspective in which the environmental problem has been framed, and the entrustment of political solutions to transnational elites. See Scruton (2012).

[242] Nagel (2005), p. 119.

[243] Nagel (2005), p. 124.

[244] Nagel (2005), p. 120.

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within the life of a single individual, to the entire society.[245] By adopting 'peoples' as the fundamental moral constituency at the international level, the political conception emphasizes that justice only sensibly applies to the nation-State level, wherein recognizable institutions put into being a particularized relation between fellow citizens, wherein sovereignty is clearly identifiable, responsible for the provision of those political devices and sanctions that sustain cooperation, and wherein a basic structure might be evaluated in terms of how it conforms to the principles of justice.

Now, Nagel concedes that beside the contingent relation created by the institutions of specific societies, "there are also noncontingent, universal relations in which we stand to everyone, and political justice is surrounded by this larger moral context".[246] Although such statement might appear relatively uncontroversial, one may still wonder why, if justice can only be evaluated with regard to the specific institutions to which it applies, the 'larger moral context' ought to be ordered by principles of justice that no sovereign power is capable of, or willing to back up with sanctions.

On the one hand, Nagel proclaims that the duties charged onto us by our political institutions ought to be balanced against a background of respect of "the most basic human rights", both negatively and positively, like the relief of the suffering "from extreme threats and obstacles" to the enjoyment of the freedom to pursue their own ends, "if we can do so without serious sacrifice of our own ends".[247] But on the other hand, he senses that the normative

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[245] "This view of social cooperation is the consequence of extending to society the principle of choice for one man […]. Utilitarianism does not take seriously the distinction between persons". See Rawls (1999) [1971], p. 24.

[246] Nagel (2005), p. 131.

[247] Nagel (2005), p. 131.

force of such humanitarian rights and duties "depends *only* [emphasis mine] on our capacity to put ourselves in other people's shoes".[248] Apparently, he omits the logical outcome of his position: that global justice remains a chimera, if not a form of wishful thinking devoid of a proper normative status, and entrusted to our good will and sensitivity.

Eventually, what Nagel leaves us with is an articulated, but not persuading, defence of the post-Cold War liberal paradigm of international relations. In fact, he observes that "political power is rarely created as a result of demands for legitimacy", that "sovereignty usually precedes legitimacy",[249] and that, therefore, the most likely way to craft effective institutions of global justice is "through the creation of patently unjust and illegitimate global structures of power that are tolerable to the interests of the most powerful current nation-states",[250] which shall gradually evolve into legitimate supranational institutions. No attention is devoted to the fact that hitherto, in the crude arena of international politics, all of this has meant that superpowers with hegemonic ambitions were free to pursue their own interests, and to manipulate human rights doctrines as a picklock, according to the 'international police' logic.[251] At the same time, sovereignty transfers from nation-States to supranational entities have eroded democratic accountability and empowered a transnational technocratic elite, if possible moving even farther from ideal justice.

At this point, it is reasonable to infer that compatibilism is usually not to be expected to provide a convincing defence of associative duties, not only because it assumes almost every time that,

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[248] Nagel (2005), p. 131.

[249] Nagel (2005), p. 145.

[250] Nagel (2005), p. 145.

[251] Two vivid examples are the military campaigns in Iraq (2002) and Libya (2011).

in conflicting cases, general duties trump associative obligations, but also because it tends to subordinate the latter to the former, by arguing that associative duties are only additive.

For instance, William Goodin remarks that common sense morality often employs the so-called 'magnifier' model in order to make sense of the effects that special relationships have on moral duties. Thereby, the relationships we entertain with intimates or fellow citizens are not seen as the roots of a different kind of obligations (of an associative nature), but as tools that simply 'magnify', or "merely make more stringent duties which we have, in weaker form, vis-à-vis everyone at large". [252] Goodin comments that such an account misunderstands the meaning of special relationships, for if the latter "were merely magnifiers of pre-existing duties, then the magnification should be symmetrical in both positive and negative directions". [253] To the contrary, Goodin argues that special relations often have the effect of strengthening our positive duties and weakening our negative duties: that is to say, partiality proves that we owe to our fellows duties which we would regard as super-rogatory if we were confronted with people outside our polity; but sometimes, it also allows us to treat our compatriots worse than strangers (for instance, the government is allowed to tax citizens subject to its authority, but not foreigners). [254]

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[252] Goodin (1988), p. 671.

[253] Goodin (1988), p. 671.

[254] Analogously, Alasdair MacIntyre admits that among the requirements of patriotism, namely, partiality towards compatriots, there is "a willingness to go to war on one's community behalf", see MacIntyre (1984), p. 6: for the sake of the special ties connecting compatriots with each other, the community is thereby entitled to infringe the fundamental duty not to harm people's physical integrity by sending them to war (but it obviously cannot mandatorily enlist citizens of another country).

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Special relationships, therefore, are not only 'magnifiers', but rather 'multipliers', of pre-existing general duties: "That is to say, special relationships do not just make our ordinary general duties particularly stringent in relation to those bound to us by some special relationship; they also create new special duties, *over and above the more general ones that we ordinarily owe to anyone and everyone in the world at large*".[255] Goodin believes that, since relationships are "a two-way affair",[256] the advantages of a strengthening of positive duties and the disadvantages of a weakening of negative ones (or of the increased burdens that the obligation to promote one's fellows' interests impose) balance each other, so that people feel they are on net better off as a result of associative relationships.

However, when he compares two models of society within which associative duties may find a place, Goodin leaves us with a remarkably poor alternative. On the one hand, he criticizes the 'mutual-benefit' model, wherein partiality makes sense only insofar as the burdens it imposes on some may be outweighed by future benefits, for such model is incapable of providing a morally relevant criterion so as to distinguish who has to be inside and who has to stay outside the cooperative scheme (this seems more like an argument against the principle of fairness), and also of accounting for those who are unable to reciprocate the benefits they receive (for instance, handicapped people: as Goodin puts it, on the logic of this model "we have special duties only toward those whose cooperation benefits us, and to them alone").[257] On the other hand, he envisages as an alternative the 'assigned responsibility' model, which conceives associative duties as

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[255] Goodin (1988), p. 672 [emphasis mine].

[256] Goodin (1988), p. 673.

[257] Goodin (1988), p. 677.

mere "devices whereby the moral community's general duties get assigned to particular agents", [258] as in the typical utilitarian argument,[259] by virtue of which associative duties cease to be genuine duties. In fact, as Goodin himself admits, this approach treats associative duties "as much more nearly derivative from general duties than any of the other approaches so far considered", and therefore "susceptible to being overridden […] by those more general considerations".[260] Goodin's disappointing conclusion is that, on a closer inspection, the relationship with our compatriots turns out to be "not so very special after all".[261] And yet, not only the rigid alternative between two basically utilitarian depictions of society (each one is based on an aggregative calculus of net benefits minus costs) seems unsatisfactory, but any morality incapable of appreciating the importance associative duties have in our lives turns out to be somewhat impoverished.

Christopher Wellman offers an instructing example of the implausibility of such universalistic ethics. He tries to make the case of a 'cosmopolitan Einstein' whom, he asserts, we would not blame for living an emotionally impoverished life, or as a selfish person. "I, at least", Wellman confesses, "have a heightened regard for this imaginary Einstein's emotional constitution and moral character";[262] furthermore, Wellman praises impartiality (perceiving only the duties owed to humanity as such, and consistently discharging them, as longs as they do not impose excessive costs on the duty-bearer) as

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[258] Goodin (1988), p. 678.

[259] See Miller 1(988), p. 652.

[260] Goodin (1988), p. 679.

[261] Goodin (1988), p. 679.

[262] Wellman (1997), p. 185.

"supremely selfless and thus maximally laudable".[263] And yet, as Wellman acknowledges that in principle he has "no argument for a theorist who resolutely insists that Einstein is morally deficient because of his failure to form and act upon allegiances to his national and political communities",[264] it is not hard to suspect that Wellman's argument is subtly *ad hominem*, fostered by the reverence that Einstein's name involves, or on the implicit assumption that such a genius must have grasped an aspect of morality which remains unseen by ordinary people.

It has to be recognized, as MacIntyre does, that all morality revolves around two alternatives:

> According to the liberal account of morality *where* and *from whom* I learn the principles and precept of morality are and must be irrelevant both to the question of what the content of morality is and to that of the nature of my commitment to it, as irrelevant as *where* and *from whom* I learn the principles and precepts of mathematics are to the content of mathematics and the nature of my commitment to mathematical truths. By contrast on the alternative account of morality which I am going to sketch, the questions of *where* and *from whom* I learn my morality turn out to be crucial for both the content and the nature of moral commitment.
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> On this view it is an essential characteristic of the morality which each of us acquires that it is learned from, in and through the way of life of some particular community.[265]

Of course, that morality is learned from particular people (our families, our teachers, etc.), and in a particular community, on the basis of the latter's beliefs and practices, does not mean that there are

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[263] Wellman (1997), p. 185.

[264] Wellman (1997), p. 186.

[265] MacIntyre (1984), p. 8.

no general duties, duties we owe to persons *qua* persons.[266] But while this view opens up the possibility that duties we ended up regarding as general are actually extensions or generalizations of duties we have learned to discharge in our special relationships,[267] I would add that the most stringent general duties we have are negative.

I propose to overcome the distributive objection by endorsing an account of associative duties according to which, as a general rule, we are *required* to exhibit partiality towards our intimates and associates, so that associative duties take priority over general duties, although I am prepared to concede, following Miller, that certain hard cases are open to careful weighing, and that priorities may be sometimes reversed.

Let me advance two examples. If I have to choose between a huge amount of money, which can enable my son to live a comfortable life, and letting someone I do not know, somewhere in the world, die, I am surely obliged to prioritize my general duty not to harm people over my duty to provide my son with an amazing future (in other words, my partiality towards my son could be deemed

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[266] Notice that Catholic personalism might be able to square individualism and autonomy with the communitarian emphasis on the role of a social dimension. See, for instance, *Caritas in veritate* (2009), 53, Encyclical of Benedict XVI: "As a spiritual being, the human creature is defined through interpersonal relations. The more authentically he or she lives these relations, the more his or her own personal identity matures. It is not by isolation that man establishes its worth, but by placing himself in relation with others and with God".

[267] An instance might be the duty of 'hospitality', which we usually perceive as a duty owed to persons as such. Ancient Greeks, in fact, insisted on the duty to host foreigners not out of respect of their status as persons, but as people with whom, once an encounter took place, they perceived to share a special relationship of 'extraneousness'.

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'unreasonable').[268] But if I have to choose between spending the money I saved during my lifetime to buy my son a house, or sending them to charitable ONGs, whose work for the development of poor countries is surely commendable, but whose funding is not the one and only way I have to fulfil my general duties towards the needing of the world (actually, by not sending money to the charity I do not violate a negative duty: I simply deny to discharge a positive duty of help), then I am *required* to privilege my son's well being, rather then depriving him of my heritage for the sake of a humanitarian cause, however praiseworthy the latter may be.

In most cases, *negative general duties* take priority over *positive special duties* (and yet, consider a case in which I have to choose between killing an unknown person and healing my son from a mortal disease), while *positive special duties* take priority over *positive general duties* (and yet, consider a case in which I have to choose between inflicting a minor wound to my sister and rescuing a town from a natural disaster).

Notice, however, that Judith Lichtenberg moves an acute criticism to the distinction between positive and negative duties in the era of globalization. The idea is that in historical periods when different communities really subsisted separately from each other, practicing strong partiality towards one's fellows without harming foreigners' negative rights was relatively easy; nowadays, in times of worldwide interconnections, an entire class of so-called "New Harms", especially within the environmental ambit, came through, making the dividing line between general positive and negative duties blurred.

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[268] The example is taken from the movie *The Box* (2010).

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According to Lichtenberg, New Harms need not be directly provoked by any individual's action *per se*: "In the cases we are concerned here […] no individual's action is *the* cause of harm; an individual's action makes at most a causal *contribution* to an overall effect that may be large and significant".[269] Strikingly, therefore, Lichtenberg observes, it may be perfectly reasonable to argue that an individual would be required to prioritize positive duties of aid, rather than refraining from undertaking the actions which make causal contributions to New Harms: in fact, whereas one's self-restraint would be almost indifferent to the overall outcome, aiding poor people perhaps would not. And while she records the increasing reproaches that analysts address to the method of charitable donations and international aid, apparently ineffective as a means to reduce poverty in the Third World, Lichtenberg nonetheless rebuffs the utilitarian viewpoint on the aggregative effects of actions, and affirms, in a deontological mood, that one is still morally obligated not to perform acts intrinsically wrong, as it is required by the tenet of *integrity*.[270]

However it may be, it does not seem that Lichtenberg arguments can undermine the proposal advanced here. On the one hand, the idea that one ought to refrain from performing a class of actions regardless of the fact that they contribute only minimally to 'New Harms' is certainly compatible with the priority of general negative duties over positive special duties. On the other hand, that one might have to prioritize positive duties of aid over the negative duty to avoid his causal contribution to 'New Harms' does not imply also that positive duties of global justice should take priority over positive duties towards one's associates. The other-things-being-equal scheme of

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[269] Lichtenberg (2014), p. 262.

[270] Lichtenberg (2014), pp. 285 and following.

priorities indicated here still holds even in a context in which the distinction between negative and positive duties is more blurred than one may expect.

4. *The moralist objection*

Another objection to the tenability of associative duties states that if associative duties ought to be discharged, then we might find ourselves obligated towards immoral associations. Moreover, a common past of domination and persecution might induce mistreated people to believe that the injustice they suffered, which is by definition illegitimate, is the source of communal solidarity and, therefore, of genuine associative duties. As Simmons observes:

> Oppressed people are frequently brought by long periods of humiliation and indoctrination to identify with their subservient roles and to acknowledge as their own the degrading, locally assigned obligations of second-class members. But this can surely constitute no justification for ascribing to them moral obligations to abase themselves and to selflessly serve their oppressors.[271]

The moralist objection pertains to the 'objective side' of the argument against associative duties described by Renzo: "We normally think that membership in a morally repugnant group, such as racist communities or the mafia, cannot ground genuine moral obligations; particularly obligations to commit immoral acts".[272] The

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[271] Simmons (2001) [1996], p. 83.

[272] Renzo (2012), p. 112.

moralist objection expresses concerns regarding the communitarian idea of personal identity: if who I am is determined by my social and political bonds, and if such associations in which I find myself are immoral, I have to choose between discharging my associative duties towards immoral groups, and giving up those duties at the cost of altering my identity.

Jeske focuses on the problem of injustice as the source of associative duties. She addresses Michael Sandel's conception of the person, which, in her opinion, is incapable of generating objective agent-relative reasons (namely, to ground associative duties), and she denounces that processes of identification might be diverted by manipulation, deceptions, malice, etc., leading the subject to consider himself obligated towards immoral groups, or to act immorally on their behalf. But her objection revolves around the danger that the evil suffered might generate associative obligations:

> I am not rejecting the Sandel-style view of obligations because it leads to the conclusion that people can sometimes have reasons to do bad things. For example, it seems that constitutive attachments may have made it the case that many Germans had reasons to persecute Jews, even if these reasons were outweighed by their objective agent-neutral reasons. Sandel's view certainly has that implication, but I do not think that is enough to sink it. […] What is peculiarly unappealing about Sandel-style views is that they allow that *the evil things that others do to us* generate special obligations for us.[273]

Jeske has two concerns. The first one is the potential legitimation of abuses: if they generate valuable special bonds, someone might be tempted to conclude that those mistreatments were not so bad after all. The second one is the super-rogatory character of some obligations generated by the wrongs people have suffered (two

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[273] Jeske (2009), p. 139.

prisoners in a Nazi camp may in fact have developed a reciprocal attachment due to the evil they suffered, but if after thirty years one is on the edge of a financial crisis, is the other one morally obligated to lend the former some money, only by virtue of their common internment?).

However, Jeske is aware that often, throughout history, a common past of suffering and oppression did in fact contribute to the strengthening of feelings of belonging.

Indeed, I do not find particularly problematic the idea that the wrong suffered might generate special bonds and the relative obligations that relate to them. After all, special obligations may require us to assume burdensome responsibilities, and in some cases even to perpetrate some degree of injustice (for instance, going to war on behalf of our country, thereby accepting the risk to commit potentially unjust acts). That associative duties are sometimes generated by unjust acts might well help us extract value out of evil (say, to create a valuable bond within national community out of a history of domination and persecution); but this does not mean that wrongs cease to be wrongs. If two persons develop something valuable like a true friendship out of solidarity triggered by a shared experience of injustice of some kind, this does not make such injustice just.

What is paramount is that the common heritage of sufferance be not itself the result of a manipulative tale, breeding violent retaliation against groups identified as oppressors (as it is often the case with the so-called 'identity politics'). As long as the evil endured fosters, instead of resentment and purposes of vengeance, a bond of affection and mutual assistance that lasts even when the causes of sufferance are extinguished, it is capable of generating genuine associative duties while still remaining evil and abominable.

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According to Hardimon, the problem of the moral status of the associations towards which individuals would be obligated can be easily dismissed "assuming that role obligations deriving from unjust institutions are void *ab initio*".[274] Thereby, Hardimon denies that there can be a morally dilemmatic situation in case immoral institutions or groups claim associative duties on the part of their members: by definition, these would be no genuine duties at all. The difficulty with a similar approach is to single out a reliable criterion so as to discriminate between good and bad associations. Beyond patent violations of universal moral laws (think of criminal gangs murdering people, or deeply unjust polities in which minorities are butchered), there is a wide range of intermediate cases that would deserve to be weighed singularly: for instance, is a traditionalist or markedly unequal society legitimated to exact associative duties from its members? By applying Rawlsian categories, we could conclude that if this society is at least "decent", then its members do have to discharge special duties owed to their fellows.

But furthermore, supposing that a universally applicable criterion could be found, the authentic source of associative duties would become dubious: would it be the relationship itself, or would it be the moral standard against which we evaluate such relationship? For instance, imagine we establish that an association should respect the autonomy of its members so as to be legitimated to claim duties on their part. Is the associative bond or rather the pursuit of autonomy the true ground of those duties?

Not all theorists are prompt to deny that an agent may in fact have associative obligations towards an unjust group. Yael Tamir sees "no reason to assume […] that only membership in morally worthy

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[274] Hardimon (1994), p. 350.

associations can generate associative obligations". [275] She acknowledges that members of criminal organizations, or citizens of States that carry out unjust wars do have duties to attend to their fellows' needs, although they have not the duty to act immorally. These people might find themselves caught up in between awkward alternatives, and they should consider the hypothesis that the duties they owe to their associates be sometimes trumped at least by the most basic general negative duties owed to persons as such, namely, to people outside their groups.[276] Tamir advances objections analogous to those expressed here above:

> If only morally valuable communities could generate associative obligations, the latter would be a meaningless concept. Our obligation to sustain just institutions is not contingent on our membership in them but rather on the justice of the association's actions. Conversely, our obligation to help fellow members derives from a shared sense of membership rather than from the specific nature of their actions.[277]

If we admit that only 'just' associations can claim associative duties, we make those duties contingent on the pursuit of 'justice', not on the associative relationship in itself. As Richard Dagger puts it: "If membership truly is a ground of obligation, then membership must

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[275] Tamir (1993), p. 101.

[276] Accepting that associative duties may be owed to unjust/immoral associations as well obviously means that views such as Lazar's, according to which associative duties are grounded in a *valuable* relationship, ought to be rejected: associative duties, thereby, would be grounded in a relationship between relatives, friends, compatriots, etc., regardless of its valuableness.

[277] Tamir (1993), p. 102.

count in itself; the morality or justice of the association in question cannot do all the work".[278]

Of course, proponents of associative duties are unlikely to deny that the latter might be fully independent of general duties owed to persons as such. For instance, Horton emphasizes that institutions "which give rise to moral obligations also exist within a wider context of other moral beliefs and commitments".[279] But while the danger that our moral 'entrenchment' in a web of social connections begot a set of associative obligations towards unjust groupings calls for a careful weighing of hard cases, it has to be noticed that discharging our moral obligations towards an unjust association does not mean that we ought to commit morally wrong acts. Displaying one's commitment to these wicked groups might also amount to help members to undertake a process of revision of their beliefs, conduct, and purposes. Before severing our associative bonds, we might be required to try to 'moralize' those groups, if this can be done at a reasonable cost to ourselves.

MacIntyre develops an illuminating analysis of the problem of deeply unjust communities towards which we may nonetheless find a way to discharge our associative duties (in his terms, our loyalty-exhibiting virtues) as citizens. Though MacIntyre recognizes that

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[278] Dagger (2000), p. 111. However, Dagger adds that it is unclear whether in all cases membership is actually the true ground of the obligations. For instance, as to the case of the Mafia, Dagger affirms that "the oaths and rituals that characterize popular accounts of Mafia practices suggest that express consent is a condition of membership". And yet, it seems that oaths and rituals operate like 'magnifiers', or solemn/theatrical proclamations, of duties Mafiosi already have by virtue of their criminal partnership. Moreover, several members of the Mafia might discharge their duties only out of fear of retaliation, and not because they have consented to them.

[279] Horton (1992), pp. 156-157.

something of one's attachment to his motherland lies outside the possibilities of rational reconsideration, he suggests that this does not necessarily mean that one is bound to act immorally. MacIntyre illustrates this point by reporting the example of two couples of patriots: on the one hand, Charles Péguy and Charles de Gaulle, and on the other hand, Otto von Bismarck and Adam von Trott:

> You will notice that in these pairs one member is someone who was at least for a time a member of his nation's political establishment, the other someone who was always in a radical way outside that establishment and hostile to it, but that even those who were for a time identified with the *status quo* of power, were also at times alienated from it. And this makes it clear that whatever is exempted from the patriot's criticism the *status quo* of power and government and the policies pursued by those exercising power and government never need be so exempted. What then is exempted? The answer is: the nation conceived *as a project*, a project somehow or other brought to birth in the past and carried on so that a morally distinctive community was brought into being which embodied a claim to political autonomy in its various organized and institutionalized expressions. […] Only this allegiance is unconditional and allegiance to particular governments or forms of government or particular leaders will be entirely conditional upon their being devoted to furthering that project rather than frustrating or destroying it.[280]

The underlying idea is that a national community is an organism with a common history, a form of self-understanding, a 'self-narration', an interpretation of its own past and of the purposes it has pursued; a 'project', in one word, which is not designed *ab imis fundamentis*, but which unfolds throughout common vicissitudes, struggles, and achievements. It is to that kernel that the patriot is committed. The example of von Trott, the German patriot executed after he attempted to assassinate Hitler in 1944, seems particularly enlightening:

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[280] MacIntyre (1984), pp. 13-14.

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Trott deliberately chose to work inside Germany with the minuscule, but highly placed, conservative opposition to the Nazis with the aim of replacing Hitler from within, rather than to work for an overthrow of Nazi Germany which would result in the destruction of the Germany brought to birth in 1871. But to do this he had to appear to be identified with the cause of Nazi Germany and so strengthened not only his country's cause, as was his intention, but also as an unavoidable consequence the cause of the Nazis.[281]

What made von Trott's enterprise 'patriotic' was the decision to fight for the German national 'project' from within, rather than seeking allegiance with foreign nations, which could endanger Germany's self-determination, and hence the German 'project'. The point, according to MacIntyre, is to acknowledge that "from the fact that the particularist morality of the patriot is rooted in a particular community and inextricably bound with the social life of that community, it does not follow that it cannot provide rational grounds for repudiating many features of that country's present organized social life".[282] MacIntyre is suspicious towards the endeavour to limit or correct loyalty-exhibiting virtues (associative duties) by resorting to universal moral principles; in fact, "I will obliterate and lose a central dimension of the moral life if I do not understand the enacted narrative of my own individual life as embedded in the history of my country".[283] At the same time, he admits that patriotism "is only possible in certain types of national community under certain conditions"; it is meaningless in case the nation based its narrative on "a largely fictitious history", or if relationships between citizens were

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[281] MacIntyre (1984), p. 14.

[282] MacIntyre (1984), p. 15.

[283] MacIntyre (1984), p. 16.

only devoted to self-interest (Goodin's 'mutual benefit' society), and thereby the nation gave up its foundational project.[284]

Individuals, naturally, need not submit themselves to oppressive relationships that undermine their self-esteem, or prevent them from pursuing an ideal of the good life. And yet, they may have the (associative) duty to contribute to the restoration of unjust institutions, groups, communities, of which they are members. Nothings prevents them from weighing the requirements of partiality against a broader context of universal principles; but the injustice of an association, or the fear that a shared experience of sufferance might give rise to associative obligations, thereby legitimating (or redeeming) the evil perpetrated, is not enough to conclude that associative duties should be relinquished. Furthermore, the 'moralist' objection might be addressed to general duties as well: if we owe negative and positive duties to persons as such, could not it be the case that we find ourselves obligated towards evil people? Suppose, for instance, that we have the obligation to aid the least well-off in the global society, and that amongst those disadvantaged people there were thieves and robbers. Should we exclude them from our provisions? Or, to the contrary, would it be possible to argue that, by giving them financial support, we may increase the chance that they be relieved from their criminal conduct?

We might infer that an agent may still have associative duties even if he entertains a relationship with an unjust group; and that this does not mean he is obligated to act immorally, but rather that he can discharge his duties towards his associates by contributing to their moral redemption, if that can be done at a reasonable cost.

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[284] MacIntyre (1984), p. 16.

Since the three main objections to associative duties are flawed, as I am confident this survey has shown, it is possible to conclude that these duties are in fact genuine, capturing an important, if not the most prominent, dimension of our morality, shaped by our attachment to the people we love, the institutions we cherish, and the communities we were born and live in; that they can be defined as duties that depend on our relationships with intimates, family members, friends, or compatriots; that they need not be incurred out of any form of voluntary act, and least of all out of subscription of a contract (although there are cases, like the generation of children, in which there may be a voluntary commitment);[285] that those duties might be understood as 'role obligations', that is, as the result of an institutionalization of socially pre-structured roles; that a relationship need not match optimal standards of justice in order to ground those duties; that a way to discharge associative duties towards unjust/immoral association is by devoting our energies to their relief from the evil they perpetuate, if this can be do at a reasonable cost for us; that the distributive objection can be overcome by admitting that, other things being equal, *negative general duties* take priority over *positive special duties*, while *positive special duties* take priority over *positive general duties*.

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[285] Notice, however, that while voluntariness need not be *the* source of the special duties parents owe to their children: it is the relationship that binds them to ground those duties of parenthood.

Chapter 6. An Oakeshottean theory of political obligation

In this chapter, I advance a conservative theory of political obligation based on the Oakeshottean notion of membership in the civil association.

In the first section, I develop the following points:

1) That the political and legal traditions of a society generate a practice of reciprocal engagement between individuals who share the same general rules of just conduct, the *practice of civility*.

2) That this mode of relationship, that is, participation in the *practice of civility*, which amounts to membership in a *civil association*, generates HV. The *practice of civility* is in fact informed by the society's political and legal traditions, and is transmitted as a political tradition (a system of beliefs, behaviours, habits, etc.). Thus, the *practice of civility* links together the members of a community both *synchronically* and *diachronically*: synchronically, because individual interactions in society are permeated by the common, though implicit, subscription to this practice; diachronically, because, as a society's basic political tradition, it connects with each other subsequent generations. In this feature, one may discover the *conversational* character of conservative politics: a politics interpreted as an on-going dialogue in which each member of the community, dead or living, has a say.

3) That the *practice of civility*, so understood, is therefore the source of an 'internal good', namely, the bond of community that associates (*cives*) establish with each other along three temporal dimensions: the past (our forerunners), the present (our living partners in the association), and the future (our sons and nephews, whom we include in the association as we fulfil our duty of

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stewarding our community and the *practice of civility* we will be handing on to them).

4) That the *good of civility* is also liable to be interpreted in functionalist terms. In fact, since the *practice of civility* permeates all modes of mutual engagement within the community (so to diminish even the distinction between a merely *private* and a merely *public* sphere), then the former is comparable to an 'enabling tradition', one that turns out to be *conditio sine qua non* for the realization of all other essential goods of societal life, be they *primary* (peace, security, etc.) or *secondary* (the development of arts, science, a market system, etc.).

5) That political obligation is a constitutive feature of membership in the civil association: being related as *cives* who partake in the *practice of civility* requires recognition of the authoritativeness of rules (*lex*).

5) That, since the *practice of civility* generates HV and the internal good of civility, citizens do have a moral duty to *conserve* it and *transmit* it. Consequently, they do have a political obligation, that is to say, the duty to obey the law.

In the second section, I remark that the theory of political obligation advanced in this section is compatible with the conditions discussed by A. John Simmons: the *particularity* requirement, the *generality* requirement, the notion of political obligation as *content-independent* and as a *prima facie* duty, and the principle of *singularity in ground*.

I also add an appendix, in which I analyse the problem of civil disobedience moving from John Rawls's paradigm. While I take into account some of the arguments advanced against his model, I propose to maintain his basic argumentative structure.

I notice that conservatives tend to distrust civil disobedience as they dread the disruptive effects it may have on the stability of the legal system (and on the endurance of the civil association). However, there are genuine *political* and *moral* reasons to defend the right to disobey: the political reason is that democracy is no absolute guarantee of justice, and that it might be the case that even in liberal-democratic States laws are enacted which lack democratic legitimacy; the moral reason is that citizens retain the right to abide by their ethical principles, and to dissent from laws they deem illegitimate from the viewpoint of their authentic and deep moral convictions.

I argue that civil disobedience should have the following characteristics: it has to be directed against the government and its agencies, not against private subjects; it has to be public; it has to be nonviolent; its aim has to be the reinstatement of the transcendental conditions of the civil association, which the targeted law or policy have allegedly damaged; it may be either direct or indirect; its purpose should be either the repeal of the contested law or policy, or the obtainment of exemptions for the exercise of legal conscientious objection; civil disobedients ought to be prompt to accept punishment.

1. The practice of civility: civil association, lex, obligation

The theory of political obligation defended in this chapter elaborates on the arguments presented by Michael Oakeshott in *On Human Conduct*. My thesis raises the following points:

1) That the political and legal traditions of each society (the set of shared beliefs on political values, on the nature of the polity, on the way institutions ought to be framed, etc.) engender a practice of mutual engagement between associates in terms of the common acknowledgment of rules of conduct (the *practice of civility*).

2) That membership in this form of 'civil' association, which stems from the enactment of that practice, is a source of HV: the *practice of civility*, which is informed by the political and legal traditions of each society, and is itself handed down from time to time in the form of a tradition (a pattern of beliefs, behaviours, habits, etc.), establishes not only a connection between the presently existing members of the community, but also among different generations, along a chain of continuity and transmission in which past, present, and future are all involved.

3) That the *practice of civility*, so understood, is the source of an 'internal good': the bond of community that associates (*cives*) establish with each other, both synchronically and diachronically, which encompasses a *functionalist* advantage as well. In fact, since the mode of mutual engagement epitomized by participation in the *practice of civility* permeates all individual relationships, then the *practice of civility* works as an 'enabling tradition', by making the realization of all the essential goods in societal life possible, be they *primary* (peace, security, etc.) or *secondary* (the development of arts, science, market systems, etc.) goods.

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4) That the obligation to abide by the rules of the civil association is a necessary and constitutive feature of membership: the relation between participants in the practice of civility is a matter of recognition of the authoritativeness of the law.

5) That, since membership in the civil association and the enactment of the *practice of civility*, a mode of relationship informed by the society's legal and political traditions and transmitted in the form of a tradition, generate HV and the 'internal good' of communitarian connectedness, which involves in its turn a *functionalist* advantage (with the *practice of civility* operating as an 'enabling tradition', which sets out the basic condition for all other *primary* and *secondary* societal goods to be realized), citizens do have a duty to *conserve* the civil association and *transmit* the political tradition connected to the *practice of civility*. Citizens ought to acknowledge the existence of a political obligation that binds all members of the civil association.

1.1 The notion of a moral practice

What is a practice in the Oakeshottean conceptual perspective I am adopting here? As Paul Franco writes, a practice is "any set of considerations, manners, uses, customs, conventions, maxims, principles, or rules that governs or 'adverbially' qualifies human actions and relationships".[286] Let us dwell upon the meaning of 'adverbial'.

What this qualification signifies is that when they partake to a practice (and they always do, for individuals always find themselves

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[286] Franco (2004), p. 150.

'in the middle of' pre-existing traditions, with the practices they inform) agents do not receive prescriptions as to what thoughts to think, what actions to perform, what ends to pursue, etc. To the contrary, practices provide the agent with a series of instructions on how to engage, understand, and act with, other participants in the practice: they define the transcendental conditions of participation in the practice. A practice, therefore, comes to the agent "as various invitations to understand, to choose, and to respond. It is composed of conventions and rules of speech, a vocabulary and a syntax, and it is continuously invented by those who speak it and using it is adding to its resources. It is an instrument to be played upon, not a tune to be played".[287]

In the mutual engagement they undertake, agents are not mere receptors of a *traditum* (a set of beliefs that influence a practice), but re-enactors of a 'living tradition', who re-interpret and re-ordain the practice defined by the inherited traditions. The practice does not issue commands as to what actions ought to be performed, or what ends ought to be pursued, but it provides a common language to be spoken by all participants, who share the same grammar rules, but, so to say, do not pronounce the same words and utterances.

In this sense, one may conclude that a practice, which is a communal undertaking, sets out only the *adverbial*, modal, or transcendental, conditions of individual conduct, just like criminal law does not prescribe specific actions, but simply rules out *modes* of action (for instance, it punishes only killing *murderously*, but not killing in war or for self-defence):

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[287] Oakeshott (1975), p. 58.

[…] to be related in terms of a practice is precisely not to be associated in the reciprocal satisfaction of wants or in making or acknowledging 'managerial' decisions in the pursuit of common purposes; it is relationship in respect of a common recognition of considerations such as uses or rules intelligently subscribed to in self-chosen performances. It is formal, not substantial relationship; that is, association in respect of a common language and not in respect of having the same beliefs, purposes, interests, etc., or in making the same utterances.[288]

The kind of practice described here does not refer to the 'management' of policies for the pursuit of a single, universally acknowledged, purpose. Rather, it is a 'formal' relationship, namely, a relationship in terms of the recognition of grammar-like rules: agents share a language, but the choice as to what to say is up to them.

Now, according to Oakeshott there are two modes of conduct. On the one hand, there are 'transactional' relationships, "in which agents seek substantive satisfactions in the responses of other agents". On the other hand, there are practical relationships, where "transactions are adverbially qualified by procedures", by rules like the grammar of a language.[289] Practical relationships are in their turn subdivided into *instrumental* and *non-instrumental* practices. The former are entered into only as means to achieve wished-for satisfactions. The latter are not contingent on external purposes, but have in themselves their reason to be. Therefore, they have a non-instrumental intrinsic value, and agents engage them for their own sake; they are not contingent on the achievement of an external good, but they realize an internal good, which can be enjoyed only by means of a 'disinterested' participation in the practice. From this point of view, such practices can be regarded as *moral* practices.

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[288] Oakeshott (1975), pp. 120-121.

[289] Franco (1990a), p. 173.

This idea can be clarified by referring to Aristotle's distinction between 'utility' relationships and relationships of 'pleasure'. As John Finnis explains, the latter are relationships "in which the coordination of action is what the parties value, i.e. *is* the objective (or a substantial component of the objective) of each of the parties": this mode of mutual engagement has no end other than the successfully harmonized interaction on which it is based. Interestingly, Finnis suggests to rename them relationships *of play*: in fact, "the central feature and good of play is that the activity or performance is valued by the participants for its own sake, and is itself the source of their pleasure or satisfaction". And since there is no good external to the relationship to be achieved, it is possible to conclude that the 'common good' of relationships of play is only "that there be a 'good play of the game'".[290]

The parallel with play, along Joan Huizinga's same argumentative line,[291] is employed by Thomas J. Cheeseman as well.[292] He notices that the notion of a moral practice is analogous to the conceptualization of the play element in human life: both activities are non-transactional, non-instrumental; both can be conducted only insofar as participants abide by rules that determine the adverbial conditions to which agents ought to subscribe; participation in both activities involve resorting to a set of traditional beliefs, so that agents never invent the game afresh, but, having acquired the grammar of the language spoken by all participants, they engage in an on-going

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[290] Finnis (2011), p. 140.

[291] See Huizinga (1938): play is the embryonic form of all highest forms of human civilization, precisely because it displays an authentically moral character. In fact, it is played primarily for its own sake, not for the realization of another good other than the 'good of play' itself.

[292] See Cheeseman (2014), p. 36.

conversation in which all players, past, present, and future, have a say.[293]

1.2 The civil condition and the practice of civility*: civil and enterprise association*

The civil condition is a mode of human relationship devised precisely as a non-instrumental practice, which Oakeshott calls the *practice of civility*. This is a relationship between agents, or *cives*, which "are not partners or colleagues in an enterprise with a common purpose to pursue or a common interest to promote or protect. Nor are they individual enterprisers related to one another as bargainers for the satisfaction of their individual wants".[294] *Cives* are related in terms of the shared acknowledgment of *lex*, that is to say, a system of "rules

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[293] On this, see Oakeshott's interpretation of the British juridical and political order as "a conversation in which present, past and future each has a voice": Oakeshott (1991) [1962], p. 388. See also the notion of human civilization as a "conversation of mankind", in which each 'speaker' need not invent a new language, but engage other participants in the conversation using the right grammar rules: "As civilized human beings, we are the inheritors, neither of an inquiry about ourselves and the world, nor of an accumulating body of information, but of a conversation, begun in the primeval forests and extended and made more articulate in the course of centuries. […] Of course there is argument and inquiry and information, but wherever these are profitable they are to be recognized as passages in this conversation, and perhaps they are not the most captivating of the passages. It is the ability to participate in this conversation, and not the ability to reason cogently, to make discoveries about the world, or to contrive a better world, which distinguishes the human being from the animal and the civilized man from the barbarian": Oakeshott (1975), p. 490.

[294] Oakeshott (1975), p. 122.

which prescribe the common responsibilities (and the counterpart 'rights' to have these responsibilities fulfilled) of agents",[295] rules that distribute role obligations, responsibilities and burdens among participants to the practice.

Engagement in this practice is an exhibition of intelligence, which proves that *cives* do not passively inherit the tradition they enact by participating in the *practice of civility*, but 'reinterpret' such practice having acquired its grammar, viz., the set of rules (*lex*) which constitute the terms to be subscribed to by agents who partake in it. Human conduct, in fact, although "spontaneous, habitual", is not merely "a genetic, psychological, or otherwise non-intelligent 'process'".[296]

The relationship between *cives* as participants in the practice of civility by means of intelligent subscription to *lex* singles out the condition of membership in a *civil association*. The latter has first and foremost a formal character: it is an association of individuals who constitute a polity by their common recognition of the authoritativeness of general rules of conduct, with no other purpose than such mutual engagement itself, undertaken for its own sake. "Beyond that", as Finnis explains, "neither of the participants need have any interest in the other participant".[297] That "the community of action and interest that exists […] between play-partners […] is to be distinguished from the community of action and interest that exists between *friends* in the full sense" does not mean that citizens in a polity cannot experience a sense of belonging related to a common history, a common culture, reciprocal attachment as compatriots, and

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[295] Oakeshott (1975), p. 128.

[296] Franco (1990b), p. 421.

[297] Finnis (2011), p. 140.

that elements of this sort cannot ground positive associative duties of partiality towards members of one's country.[298]

The point is that there are two modes of relationship that contribute to define a polity, that these modes are theoretically distinguishable, although mingled together in actual societies, and that while the mode of relationship that formally characterizes the polity as a civil association is a *necessary* and *sufficient* condition to the justification of political obligation, the mode of relationship that pertains to more substantive bonds of community might strengthen the will to discharge other positive duties towards compatriots (like favouring natives over newcomers in the provision of welfare resources), but need not have a justificatory role in political obligation.

In this sense, membership in the civil association has to be carefully distinguished from any form of political aggregation understood by analogy to "family and friendship and other forms of association more local and intimate".[299] Even if family, friendship, and the civil association, are all modes of relationship that agents enter into for their own sake (they are non-instrumental), friendships and family ties are based on a substantive commitment to one's fellows that the formal mode of relationship displayed by the civil association need not entail. The kind of reciprocal engagement that characterizes membership in the civil association is not the recognition of a shared purpose, but subscription to the same general rules of conduct, and the common acknowledgement of their authoritativeness by all associates (*cives*):

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[298] Finnis (2011), p. 141.

[299] Dworkin (1986), p. 206.

Civil associates are persons (*cives*) related to one another, not in terms of a substantive undertaking, but in terms of the common acknowledgement of the authority of civil (non instrumental) laws specifying conditions to be subscribed to in making choices and in performing self-chosen actions. A state understood in these terms is identified as a system of law and its jurisdiction. […] The mode of association here is, therefore, formal; not in terms of the satisfaction of substantive want but in terms of the conditions to be observed in seeking the satisfaction of wants.[300]

The civil association can thereby be differentiated from an alternative mode of human relationship, characterized by the common pursuit of a single purpose, and functional or instrumental to its realization, that is to say, the enterprise association:

An enterprise association is composed of persons related in terms of a specified common purpose or interest and who recognize one another in terms of their common engagement to pursue or to promote it. Each associate knows himself as the servant of the purpose being pursued. They may also recognize themselves to be associated in terms of some rules of conduct, but since these rules are, like the associate themselves, instrumental to the pursuit of the common purpose, this does not constitute a distinguishable relationship. […] This mode of association is, then, substantive; it is association in co-operative doing.[301]

Civil and enterprise association refer to two different understandings of the nature of a community, *societas* and *universitas*. The latter relates to the 'entrepreneurial' community, with its monolithic identity and the single determined purpose that all associates are expected to contribute to pursue:

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[300] Oakeshott (1975), p. 313.

[301] Oakeshott (1975), p. 315.

It is persons associated in a manner such as to constitute them a natural person; a partnership of persons which is itself a Person, or in some important respects like a person. […]

[In the Middle Ages] A corporation aggregate was recognized as persons associated in respect of some identified common purpose, in the pursuit of some acknowledged substantive end, or in the promotion of some specified enduring interest.[302]

An association understood as *societas* has, to the contrary, a radically different character:

The idea of *societas* is that of agents who, by choice or circumstance, are related to one another so as to compose an identifiable association of a certain sort. The tie which joins them, and in respect of which each recognizes himself to be *socius*, is not that of an engagement in an enterprise to pursue a common substantive purpose or to promote a common interest, but that of loyalty to one another, the conditions of which may achieve the formality denoted by kindred word 'legality'. Juristically, *societas* was understood to be the product of a pact or an agreement, not to act in concert but to acknowledge the authority of certain conditions in acting. […] It was a formal relationship in terms of rules, not a substantive relation in terms of common action.[303]

Let me underline two important features of *societas*. First, according to Oakeshott's definition, *socii* are related to each other either by choice or circumstance. Hence, the model of *societas* lies in a range from voluntary participation, which is uncommon, and confined to a restricted set of cases (like immigrants), to simple cooptation as a result of history and birth, which is the way the majority of individuals enters into the civil association: the emergence

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[302] Oakeshott (1975), p. 203.

[303] Oakeshott (1975), p. 201.

of associative bonds towards the polity generally befalls self-determination.

Second, Oakeshott speaks of a "pact or an agreement" in the same sense in which Edmund Burke defines society as "a contract between those who are living, those who are dead, and those who are yet to be born":[304] *societas*, viz., the 'civil association', is not the result of an explicit covenant, but the engagement of an on-going, inter-generational, 'conversation' by means of subscription to *lex*. Such subscription is 'intelligent', and thus, with Hardimon, 'reflectively acceptable', and requires, at the same time, the active re-enactment and the maintenance of the 'core' of an inherited system of beliefs and customs which identify that practice, grounded in the attitude to acknowledge the authoritativeness of *lex*, according to the 'model of a living tradition'.

There seems to be, in any case, a hierarchical order between civil and enterprise association. The mode of association whereby *cives* acknowledge the authoritativeness of common general rules that prescribe the adverbial conditions of individual conduct has a theoretical priority, in that it represents the *conditio sine qua non* of all other forms of relationship. The *practice of civility* is, in a sense, the 'practice of practices', and it defines the transcendental conditions of other modes of association. It retains the character of the Hegelian *Sittlichkeit*: in fact, "[…] in addition to its distinctive substance and

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[304] Notice that, in Burke's interpretation, such partnership has to be "looked on with other reverence, because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature", nor it is a partnership in trade, or economic interest by and large. Therefore, Burke views the polity as a non-instrumental association in the same sense described by Oakeshott and Finnis.

techniques it involves a shaping of general mores, as well as an inner morality of its own".[305]

That the practice of civility pervades all other modes of human relationship explains why the binary distinction between the realm of 'public' and the realm of 'private' is ill-conceived. As Richard Boyd observes, "our membership in a sewing club, self-help group or paramilitary militia is undoubtedly distinct from (and perhaps even discrepant to) our membership in civil association or the state. And yet our actions are within each and every relationship are equally subject to the adverbial constraints of 'civility' or 'just conduct' that characterize our membership in civil association".[306] As Oakeshott clarifies, in the civil association "every situation is an encounter between 'private' and 'public', between an action or an utterance to procure an imagined and wished-for substantive satisfaction and the conditions of civility to be subscribed to in performing it; and no situation is the one to the exclusion of the other".[307]

1.3 The justification of political obligation

Since there is no properly 'private' mode of relationship, unrelated to the 'public' dimension shaped by participation in the *practice of civility*, it is possible to define *respublica*, the space of collective, 'public' concern that all members of the civil association share, as "the comprehensive conditions of association", which set the

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[305] Auspitz (1976), p. 275.

[306] Boyd (2004), p. 614.

[307] Oakeshott (1975), p. 183.

boundaries of all other forms of human relationship within the civil association itself.[308]

Now, Oakeshott asserts that "to be related in terms of the acknowledgement of the authority of *respublica* is a relation of obligation".[309] For him, in this sense, 'civil obligation' is nothing but a matter of definition:[310] that one is participating in the practice of civility, that he is a member of the civil association, implies by definition that he is acknowledging the *authoritativeness* of *lex*, the set of rules that characterize the civil condition, and the obligation to obey them. Obligation is the "counterpart of civil authority".[311] As Finnis argues, in relationships *of play* members of the community need not "have the same values or objectives (or set of values or objectives)"; there needs to be only "some set (or set of sets) of conditions", which allow each of the members "his or her own objectives".[312] These "material and other conditions that tend to favour the realization, by each individual in the community, of his or her personal development", and which, for this reason, constitute the 'common good' of that community, primarily depend on abidance by the rules of the association, for no association of this sort can hold together unless all members participate in the game *fairly* (but notice that political obligation is *not* grounded in the principle of fairness).[313]

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[308] Oakeshott (1975), p. 108.

[309] Oakeshott (1975), p. 155.

[310] See Gerencser (2002), p. 139.

[311] Oakeshott (1975), p. 154. Notice that for Oakeshott it is not obedience, but obligation, which characterizes the basic condition of membership in the civil association: it is not the attitude to obey, or the feeling to be obligated, or the statistical preponderance of obedience, which explains 'civil obligation'.

[312] Finnis (2011), p. 156.

[313] Finnis (2011), p. 154.

However, rather than settling for a conceptual argument (the obligation to obey the law is already implied by the concept of membership in the civil association), we must see whether political obligation can be justified by means of an independent thesis. Assuming that civil association cannot be maintained unless *cives* recognize the authoritativeness of *lex*, is there a moral reason that binds them to *conserve* their membership in the civil association? And does this reason relate to the core principles and to the political values conservatism endorses.

1.3.a Synchronic and diachronic community: the practice of civility as a carrier of HV

As we have seen, conservatism is characterized by a philosophical nucleus, that is, the status quo bias and traditionalism, in which the recognition of historical value (HV) plays a diriment role. One the one hand, in fact, conservatives acknowledge a reason to preserve the status quo insofar as it is made up of practices and institutions inherited from the relevant past of their civilization, viz., when it qualifies as a carrier of HV. On the other hand, the importance of traditions, along with their function as devices for cognitive economization, lies in their being a stock of stratified wisdom to be passed on from one generation to another, linking together, as in a spiritual chain, the dead, the living, and the unborn.

The *practice of civility* is informed by the society's legal and political tradition and is transmitted in the form of a tradition, that is, as a pattern of beliefs, behaviors, habits, etc.

Since all *cives* implicitly subscribe to the *practice of civility*, as the set of adverbial conditions for all other modes of action and reciprocal

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engagement between members of the civil association, the former turns out to be the source of a communitarian connection between them. In order to have a true *synchronic* community, it is necessary that in their mutual interactions persons abide by the same general rules, share the same 'practical grammar'. It is necessary that everyone who participates in the game knows what it entails to be a player.

The outcome of enacting such non-instrumental practice is the constitution of the realm of politics, the sphere in which the interests and the nature of a community (*polis*) are at stake, as a *civil conversation*, in which all 'speakers' are joined by the sharing of the same language, although not everybody has to utter the same phrases nor conform himself to an established script.

In this sense, the kind of synchronic community fostered by the enactment of the *practice of civility* is a formal one: it is a structure that is up to persons to mould. Like a grammar, it is indispensable to develop a common language, one that makes a community of speakers possible, but it can be used to compose an infinite range of words and utterances. The synchronic community cemented by participation in the *practice of civility*, therefore, is also the basic condition for a wide set of more substantive bonds to be nurtured.

But the *practice of civility* is not only what turns a multitude into a society. It is also the chain of transmission that ties together the generations of those who are members of the civil association. The *practice of civility* is transmitted from one generation to another, and when they engage themselves as *cives*, members of the civil association become part of a *diachronic* community, one to which past, present, and future associates are all invited to join.

As such, the *practice of civility* and the civil association qualify as carriers of HV. The most essential legal and political traditions of a

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society, inherited from the relevant past of that civilization, and conceived of as a 'capital' of societal wisdom to be handed down to those who are yet to be born, contribute to outline the character of the *practice of civility*, and to shape the conditions of membership in the civil association.

It is through this practical connection that a society secures an ideal intergenerational connection. By virtue of its going through this chain of transmission, the *practice of civility* assumes a particular relevance not only as the 'practical grammar' of a synchronic community, but also as a medium between subsequent generations, which engenders a diachronic communitarian bond between associates of different epochs.

The civil association is, in fact, an on-going conversation in which all generations have a voice. As a grouping, it is not contingent on the specific people who find themselves to be members: associates come and go, while the association remains, with all its changes and adaptations, throughout the ages.

Take, for instance, the United States. Surely, present-day American society is in many respects different from the American society of the early XIX century; and yet, the USA have always devoted many efforts to preserve their political institutions, and as a whole, the American society is still explicitly committed to the same basic principles established by the Constitution. Changes and reforms, even when in fact they are contrived as radical departures from the inherited set of political traditions, are never presented to the public as a relinquishment of constitutional principles, but rather as a way to come closer to their full achievements.

Societies undergo substantial changes, and the character of the *practice of civility* on which they are based may be transformed. Nevertheless, on a conservative perspective, it would be reasonable to

insist on the fact that all traditions, practices, and institutions, which convey a sense of historical continuity, embody HV, so that the living become continuators of their ancestors' traditions and practices, but also tradents thereof to their successors.

The *practice of civility* secures this chain of connection with the relevant past of a civilization. As such, therefore, it is a carrier of HV. Furthermore, the civil association nurtures the feeling of connectedness to a synchronic and a diachronic community, helping people to trespass the limits of individualist atomization. Thus, according to the conservative philosophy, the presence of HV and the principle of the primacy of community (both synchronically and diachronically), confer on its members a moral obligation to *steward* and *conserve* the civil association.

1.3b The good of civility and the primacy of order

Another reason why conservatives may support the idea of a duty to obey the law as the requirement to maintain the civil association has to do with the specific 'good' the *practice of civility* provides, as the transcendental condition for all other modes of relationship to take place (and, therefore, as a guarantee of the order necessary for a prosperous society to develop).

As John Kekes remarks, a basic aspiration that all conservatives should cultivate is that society be good; now, as Plato maintained, a society is good as long as the lives of its members are good; and a life is good if individuals pursue primary and secondary values.

Primary values are basic values that each society has to achieve: they are goods related to physiological needs, like nutrition, physical

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security, rest, etc.; to psychological needs, like the self's cultivation, intimacy, privacy, etc.; and to social needs, like peace and order.[314]

Secondary values are not such because they are merely optional and dispensable; they are secondary in the sense that their fulfilment is contingent on the realization of primary values. Secondary values single out the specific mode whereby societies concretely enact primary values through the mediation of their own traditions. No society could ever pursue secondary values unless it secured primary values (and in any case, a society that achieved secondary values but neglected primary values would not be good); at the same time, secondary values enrich the moral life of a society, and widen the scope of primary values (for instance, they open up spaces for practices like the reward of merit, certain professional activities, the enjoyment of arts, literature, and for the cherishment of honour, loyalty, self-sacrifice, etc.).

Among the traditions that mediate between primary and secondary values, Kekes distinguishes between 'productive' and 'enabling' traditions. The former are "guided by a specific goal":[315] they all produce a particular result, like "profit, world domination, the composition, performance, and appreciation of music, historical research, athletic achievement, helping the poor, and so on".[316] The latter are "an endeavour to defend the conditions necessary for the existence and continuation of the first kind of tradition":[317] they are 'enabling', in the sense that they warrant the contextual circumstances required for productive traditions to be effective.

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[314] See Kekes (1998), pp. 54 and following.

[315] Kekes (1998), pp. 112-113.

[316] Kekes (1998), p. 113.

[317] Kekes (1998), p. 113.

Partaking in traditions, be they enabling or productive, allows agents to enjoy the goods internal to those traditions, which depend on the enactment of secondary values. Among these goods, Kekes includes 'civility':

This is a reciprocal relationship that exists among members of a good society who are not intimates and who may not even be personally acquainted with each other. Their contacts occur in the routine conduct of affairs. They meet each other in queues, audiences, airplanes, waiting rooms, and stores; they are connected as clerks and customers, nurses and patients, buyers and sellers, fellow drivers on the road, providers and recipients of various services, homeowners and repairmen, officials and clients, and so on. If all goes well, the internal good that characterizes these impersonal encounters shows itself in the presence of casual friendliness, spontaneous good will, and courtesy, and the absence of hostility, distrust, surliness, and a litigious disposition bent on exacting one's pound of flesh.[318]

Civility is the good internal to a practice that does not refer to a productive tradition: the *practice of civility* is not contingent on the pursuit of an external purpose, nor does it point at the production of a specific result; it does not relate to the set of beliefs and customs that inform the 'entrepreneurial' mode of association. To the contrary, it is an enabling practice, connected to an enabling tradition (a set of beliefs and customs concerning the role of individuals as *cives*, the duty they have towards *lex* as members of the civil association), and it sets out the transcendental conditions of all other modes of human relationship within the civil association, securing therefore an effective participation in the various practices that a society includes.

The good of civility, that is, the disposition by *cives* to recognize the authoritativeness of *lex*, lies in that it warrants the possibility to

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[318] Kekes (1998), p. 126.

undertake all other practices and intercourses within the sphere of the civil association.

There is, therefore, a *functionalist* side to the justification of the moral duty to conserve the civil association. Virtually all activities we, as human beings, prize, and which relate to the fulfilment of secondary values, depend on the effectiveness of our participation in a non-instrumental practice, the *practice of civility*. They depend on the widespread sharing of a common grammar of civil intercourse.

Civility is the *conditio sine qua non* for the realization of primary values as well. For one thing, peace and order would be practically impossible in absence of a tradition, a set of beliefs and customs, by virtue of which individuals, as *cives*, participants in the *practice of civility* and therefore members of the civil association, abided by *lex*. Furthermore, in absence of such general order, many primary needs would barely be satisfied. Even the fulfilment of very basic physiological needs would be hampered in a condition of profound insecurity, which would make life, as Thomas Hobbes stated, "nasty, brutish, and short".[319]

The way to conserve the *practice of civility* is precisely by discharging political ('civil') obligation. Civility consists of *personae*, which, in their role as *cives*, viz. members of the civil association, subscribe to general rules of conduct, thereby acknowledging the authoritativeness of *lex*. The counterpart of civil authority is 'civil' obligation: there can be no recognition of authority unless one discharges his duty to abide by the law. Since our participation in a multiplicity of practices, related to productive and/or transactional, instrumental traditions, is valuable, we, as members of the civil association, must also preserve the fundamental conditions of civility,

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[319] Hobbes (1991) [1651], p. 78.

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that is, the good internal to the *practice of civility*, which secures both primary values and secondary values.

This aspect of the justification of the duties that membership in the civil association entails may be correlated to the political principle, endorsed by conservatives, of the primacy of order over liberty.

Conservatism holds in high esteem the value of negative freedom, and yet, it maintains that social order (determined by the extent to which a community fulfils primary goods, that is, by the degree of satisfaction of basic physiological and psychological needs, by the preservation of peace and security, etc.) is the pre-condition for individual liberty to be exercised (while liberty is likely to facilitate the enactment of secondary goods: for instance, in a regime of personal and political freedom, it will be easier for arts, literature, science, etc., to thrive).

As long as a society enjoys an effective *practice of civility*, that is, as long as its members engage this non-instrumental practice, and share the grammar of civil intercourse, such society will also be sufficiently ordered so as to allow persons to participate in all other modes of relationship, practices, and communal enterprises, connected to the realization of a broad range of goods.

2. The conditions of political obligation

The theory developed here matches the conditions of political obligation identified by Simmons.

First and foremost, political obligation follows the *particularity* requirement: the theory that I defend interprets political obligation as a duty citizens owe only to the particular State to which they belong.

Several accounts of political obligation do not succeed in proving that subjects of a State have a duty to obey the law only in respect to their country: it is the case, for instance, with theories based on the notion of fairness, or theories that resort to general duties like the duty to promote justice, which generally employ a consequentialist argument according to which particularizing political obligation is a means to achieve global justice, in a world devoid of a single international society and divided into a multiplicity of sovereign powers.

The theory advanced here assumes that each country has its own political traditions, and, therefore, its particular *practice of civility*, a mode of relationship whereby individuals, as members of a specific civil association, engage each other. The boundaries of the civil association might be approximately equated to the borders of modern nation-States: on the one hand, the existence of a *practice of civility* within certain communities influenced (along with other historical, cultural, religious, economic, and political factors) the constitution of nations and the definition of their borders; on the other hand, the processes whereby States have achieved a more or less stable territorial configuration contributed to shape and particularize the *practice of civility*, and to restrain membership in the civil association to agents who were born and resided on that territory.

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Naturally, there are more controversial and 'blurred' cases: areas contended by two or more countries; regions subject to a State but whose language, culture, and traditions are closer to those of another neighbouring country; secessionist countries or regions, which were forced to develop a *practice of civility* with citizens of the States or kingdoms to which they were subject, but nonetheless kept on cultivating projects of autonomy and independence due to cultural and/or economic reasons, that is to say, to 'entrepreneurial', not to formal considerations; enclaves, namely, small lands subject to a State but surrounded by the territory of another country. In these instances, it might be harder to ascertain to which political authority these people owe their political obligation, and/or whether political obligation derives from formal membership in the civil association or from 'entrepreneurial' features of their mode of association.

Take the Catalan case. It may be argued that the value of the 'entrepreneurial' component (the set of cultural features that relate to the community's self-interpretation as an association of individuals joined in the pursuit of a common purpose), fostered by the sense of a cultural uniqueness, by enmity towards the Spanish central government, and by a history of severe repression of independentist movements, has overridden the value of participation in the national *practice of civility* as the source of political obligation towards the Spanish State. Hence, the goal of self-determination, propelled by the sense of a cultural separateness, might be perceived by the citizens of Catalonia as the ground of their obligations of membership towards their own nation. And yet, this would not confute the idea that a formal relationship between members of a civil association is a *necessary* and *sufficient* condition for political obligation to hold.

It may be that historical circumstances did deteriorate the *practice of civility* Catalans used to share with other Spanish citizens.

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However: 1) insofar as that *practice of civility* is still in place, everybody has a *prima facie* moral reason to preserve it, and/or to avoid its rupture, for the good of civility is the precondition for the exercise of freedom, and for the development of substantive, 'entrepreneurial', bonds of community; 2) if, to the contrary, the Catalans end up obtaining independence, they will be obligated to obey the laws of their State primarily by virtue of the particularized *practice of civility* they will establish with each other. Other 'entrepeneurial' considerations might prompt their willingness to promote their country abroad, to favor their fellow citizens as receptors of welfare provisions, or even to go to war on behalf of their country, but will not *justify* political obligation: 'entrepreneurial' features 'magnify' duties that persons have due to their membership in the civil association, namely, to their participation in a formal mode of association like the *practice of civility*.

But what if one could find an instance unequivocally proving that, at least in that particular case, political obligation was actually grounded in an entrepreneurial commitment on the part of all associates? Take the Soviet Union. From the point of view of the civil association, nothing could justify the duty to obey the law: the country had a heavily deteriorated *practice of civility*, in light of the arbitrariness of the communist elite in managing the law and the repressive apparatus. And yet, thousands of people, within and without the USSR, believed they were obligated to obey for the sake of a shared purpose, that is to say, the realization of full communism.

Two replies can be formulated to this objection. First, no theory can be universal in the sense of having no exceptions. The idea that political obligation is a duty of membership in a civil association is a specifically Western conception, which presupposes a history of political development from the absolute State to liberal-democracies.

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Countries with radically different political institutions, related to alternative traditions of belief, i.e. Muslim republics or monarchical regimes, might claim that political obligation is justified precisely by virtue of an interpretation of those societies as enterprise associations, joint in the pursuit, say, of religious integrity.

Second, the theory advanced here is a *normative*, not merely *descriptive* theory: it has a conservative scope, in that it defends political obligation in the context of countries were a valuable form of relationship between *cives* has been already established, but it may also function as a basis for the evaluation of the moral status of other forms of political association. From this point of view, one might express severe judgments on the mode of association that characterized the former Soviet Union, or characterizes today Muslim countries.

The second condition established by Simmons, although he does not regard it as strictly binding,[320] is the *generality* requirement: a theory of political obligation should be capable of justifying a duty to obey the law of the country that extends to all citizens. Again, there may be exceptions: for instance, emarginated people, who live on the edge of society, which therefore seems unauthorized to claim duties on their part; or committed anarchists, who claim the right to exit from the civil association, and might be even disposed to dispense with all the advantages that their membership entails.

However, on a closer scrutiny, a wide range of these hard cases can be reconciled with the theory of political obligation proposed here. For instance, trumps, homeless people, and vagabonds, have nonetheless daily intercourses with other citizens. Therefore, they have to acquire at least the basic sense of what it means to participate

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[320] See Simmons (1979), p. 35.

in the *practice of civility*, and learn how to abide by the most fundamental rules of the civil association. Of course, almost all the laws they ought to obey refer to general negative duties that they would be required to discharge anyhow: refraining from theft, harming, or killing other people, etc. The laws of a country might provide for a system of exemptions on other positive duties (like paying taxes), and devote other citizens' resources to welfare projects whose purpose is to intensify their inclusion in the civil association.

The case of full-fledged anarchists is different. As supporters of the principle of fairness observe, a man can hardly retreat himself from the wider society so profoundly, to the point of giving up all advantages that the existence of a public authority warrants, at least in the field of security and national defense. The fact that duties of membership in the polity befall one's voluntary adherence to the civil association reinforces the idea that political obligation applies to anarchists as well.[321] And yet, beyond the instances of a morally defensible civil disobedience, to which the Appendix is devoted, contemporary nation-States can accommodate at least some of the requests advanced by anarchist/libertarian groups, insofar as granting them a plot of land, and/or the right to live in a community with vast autonomies and legal exemptions, does not trigger disobedience and noncompliance with civic duties on a large scale in the rest of society.

Political obligation as interpreted here has to be regarded as *content-independent* as well, in the sense that it extends to the entire juridical order (*lex*). Here, a clarification is required. There is certainly one kind of laws whose character is more fitting to the image of the polity as a civil association, in which members are bound together by

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[321] See, for the opposite view, Massimo Renzo's 'quasi-voluntarist' model of associative political obligation: Renzo (2012), pp. 116-118.

the recognition of common rules, and not by the pursuit of common purposes. From this point of view, "general, abstract rules, equally applicable to all", certain, regulating an indeterminate number of future cases, are clearly better candidates for political obligation in comparison with redistributive policies, or laws that command certain performances for the sake of 'social' objectives, and which thereby relate to the model of the enterprise association.[322] Nonetheless, there are at least two reasons why political obligation does extend to this latter kind of legislative provisions as well.

First, the distinction between civil and enterprise association is a conceptual distinction. No historical polity is purely 'civil' or 'entrepreneurial', and to claim that political obligation applies only to laws that relate to the model of the civil association might threaten law abidance and stability in general.

Second, 'entrepreneurial' legislation is enacted by virtue of decision-making procedures whose authoritativeness is acknowledged as part of the basic law of the country. This justifies a bias towards obedience to any law, regardless of its character; the burden of proof lies with those who reject the obligation to obey in particular cases.

According to Simmons, then, political obligation is a *prima facie* duty: people are normally required to obey the law *qua* law, but political obligation can become less stringent, or be trumped altogether, in case other more important moral considerations urge non-compliance.

The last point revolves around the question of *singularity in ground*. According to Simmons and other theorists, it is a mistake to require "that there be one and only ground of political obligation"; to the contrary, a plurality of principles might be perfectly fit to account

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[322] Hayek (2011) [1960], p. 223.

for the duty to obey the law that different categories of members of the polity have.[323]

Now, it is true that persons like public officials, as such, have consented to submit themselves to the laws of the State: they ought to be aware that being in charge entails the acknowledgement of the authoritativeness of *lex*. In this case, one might contend that political obligation has been voluntarily acquired. A rich businessman might persuade himself that his community has helped him significantly in achieving success, say, by means of public funding of education, effective infrastructural provision, a tax rate favorable to firms, etc.; consequently, he might be willing to reward his fellow citizens by discharging political obligation on the basis of the principles of gratitude and/or fairness.

The theory I advance, however, need not assume a plurality of principles. While it does not deny that particular categories of citizens may *believe* they are required to obey the law by virtue of their consent to the State, fairness, gratitude, etc., it identifies a moral principle that applies to all citizens: both public officials and grateful businessmen, for instance, are members of the civil association, and their membership, for the reasons explicated above, justifies political obligation as an associative duty.

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[323] Simmons (1979), p. 35. See also Renzo (2012), p. 118; Wolff (2000), pp. 182-190; Klosko (2005).

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Appendix

Conservatism and civil disobedience

1. Disobedience: civil or uncivil?

The problem of political obligation is coextensive with the question of disobedience. Ever since, in the *Crito*, the innocent Socrates refused to escape from prison and avoid undeserved capital punishment, Plato made it clear that one of the central issues of political philosophy is to establish whether (and why) men are obligated to obey laws they find (or they know) unjust.

It is uncontroversial that we should abide by a wide range of laws, which sanction those moral duties we ought to discharge anyhow: these are laws on the prohibition of theft, injuring, murder, unilateral breach of freely and willingly subscribed fair contracts, etc. But are we equally obligated to obey laws that are either indifferent from a moral point of view (like stopping at red traffic lights in the midst of the desert), or even unjust? For instance, it might be argued that, on the basis of the principle of fairness (or the duty to help the least well-off, etc.), we ought to give our contribution to a system of redistribution whereby the State employs a quota of the national income so as to fulfil the basic needs of the poorest ones. And yet, this reasonable, if not undisputable, consideration tells us nothing about the share of our revenues that we should grant public authorities. Would we be obligated to offer any share of our earnings that was legally established? And what should we do in case that quota was

patently disproportionate (say, eighty or ninety percent of our income)?

This is exactly the question political obligation attempts to settle. That political obligation is *prima facie* means that there is a presumption in favour of the duty to obey on the part of citizens subject to the authority of the State that promulgates laws according to a fixed procedure, requiring compliance. However, if other, more stringent, moral considerations supervene, they are liable to trump the duty to obey the law. It is possible to conclude that, since the issue of disobedience is the counterpart of the question of obedience, no theory of political obligation is complete unless it includes an account of the conditions under which citizens, otherwise obligated to abide by the law of their country, nevertheless retain the right to disobey.

There are at least two orders of reason why it is important to dwell upon the notion of civil disobedience. The first one is a *political* reason, and it has to do with the nature of decision-making procedures in liberal-democratic States. Democracy may help to secure important values like justice, equality, and liberty, but it is not a guarantee against any abuse of power. As several liberal philosophers argued, democratic authority might even degenerate into a form of despotism.[324] This is why liberal-democratic States provide for a set of legal limitations on the encroachments of political power, although democratically legitimated: unalienable rights sanctioned by a constitution, judicial review procedures, etc. And yet, if these systems fail, it is vital that a citizen, in the last resort, retained the possibility to claim his right to disobey.

Moreover, there might be situations in which laws lack a proper democratic legitimation. As Daniel Markovits explains, this "may

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[324] See Constant (1806-1810); Tocqueville (1835); Leoni (1961); Hayek (1982).

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occur because the policy was never approved by the democratic sovereign at all but instead arose in some other way, as through a slow and unattended transformation of an initially very different policy".[325] Alternatively, a law approved by a democratic decision-making procedure and respectful of constitutional limitations might nevertheless be so distant from "the present political situation – measured in terms of citizens preferences, institutional continuity, time, or whatever other variables contribute to individual authorship of collective decisions […]", that "the conditions of sovereign authority no longer apply in connection with the policy at hand". And, eventually, "it can happen that such policies not only lack democratic authority, but also would not win democratic approval if the sovereign reengaged them".[326] In case norms were not supplemented by popular approbation, they were unsympathetic towards public opinion, or in case they lost the subjects' support, citizens may have good reasons to resist the implementation of laws with which they were *prima facie* expected to comply.

The second one is a *moral* reason, and it has to do with the space that personal conscience claims to be legitimated to conserve in spite of one's acknowledgment of his membership in the polity and of the obligations it implies. The urgency of conflicts of law and morality[327] is such that one of its first paradigmatic expositions dates back to the Book of Daniel, when Shadrach, Meshach, and Abednego refuse to bow down to the statue erected by Nebuchadnezzar, even if they are aware that the king will sentence them to be thrown into a fiery furnace. In cases in which laws contrast with moral and/or

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[325] Markovits (2005), p. 1933.

[326] Markovits (2005), pp. 1933-1934.

[327] See Greenawalt (1987).

religious principles so deeply held by individuals that they constitute a non-renounceable aspect of their personal identity, the purpose of acts of disobedience is generally to obtain exemptions in order to exercise *contentious objection* legally.[328]

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[328] There might be a *strategic* reason to defend civil disobedience from a conservative viewpoint as well. It has to do, rather than with the strictly defined political conservatism developed here, with the marginalization of conservative morality, and the increasing rate of radical legislative provisions enacted in liberal-democratic States. Hence, beyond the question of conservatism as a political theory, civil disobedience may sound appealing to parties and social groups that are usually labelled as 'conservative', though they may not fully embrace the conservative philosophy developed in this work. In fact, that sensitivity to the right to disobedience primarily arose, historically, in 'anti-system' contexts (like Socratic philosophy in the post-Peloponnesian war period, Henry David Thoreau's rebellion to the Mexican-American war, when the term 'civil disobedience' was coined, French 'May 68', or students' revolts against the Vietnam War, etc.) should not induce conservative theorists in the error of judging that civil disobedience is simply a radical article of faith, to be contrasted with perpetual law abidance, authoritarianism, and ruthless repression of all protests.

As a matter of fact, most of the campaigns for which radical groups struggled in the last decades have been won, and the majority of Western liberal-democratic countries recognizes legal provisions or exemptions to match the demands of pacifists, animal rights supporters, LGBT lobbies, feminists, etc. Conscription, the measure against which many acts of disobedience and conscientious objection have been directed in the last decades, has been abolished in practically all Western countries; women's rights are almost everywhere backed by appropriate legislative provisions, although female employment and wages are still lower than men's; the law of almost all States in the West convicts persons who mistreat animals; and where gay marriage is not altogether equalized to heterosexual marriage, and adoption is not officially authorized, the law nonetheless recognizes civil unions and stepchild adoptions. No doubt that the most radical activists would object that this still is not enough. However, the future might disclose unprecedented spaces for acts of disobedience on the part of conservative groups: religious movements, anti-

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2. *The Rawlsian framework*

In *A Theory of Justice*, John Rawls identifies the conditions that in carrying civilly disobedient acts citizens ought to respect. He defines civil disobedience as a "public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government".[329] Civil disobedience, therefore, should be *public*, that is to say, committed overtly, with notice to authorities and to the community at large;[330] it should be *nonviolent*, in the sense that it ought not to interfere with the civil liberties of other citizens; it should be *conscientious*, in the sense of pointing to serious, sincere, deep moral convictions by virtue of which civil disobedients decide to break the law; however, it should be *political* as well, "not only in the sense that it is addressed to the majority that holds political power, but also because it is an act guided and justified by political principles, that is, by the principles of justice which regulate the constitution and social institutions generally".[331] From this point of view, when one is called to justify acts of civil disobedience, he "does not appeal to principles of personal morality or to religious doctrines", but to "the sense of justice of the majority of the community".[332]

An important specification, one that makes the Rawlsian model appealing to the conservative conception developed here, is that, according to Rawls, civil disobedience should not aim at subverting

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abortion campaigners, opponents of gay marriage and adoption, anti-globalist and anti-immigration identitarian activists, etc.

[329] Rawls (1971), p. 320.

[330] On this, see Bedau (1961).

[331] Rawls (1971), p. 321.

[332] Rawls (1971), p. 320, 321.

the existing constitutional order, and all the more so since his theory is designed so as to apply to "the special case of a nearly just society, one that is well-ordered for the most part but in which some serious violations of justice nevertheless do occur".[333] Civil disobedience, therefore, is expected to express noncompliance with the law "within the limits of fidelity to law [...]. The law is broken, but fidelity to law is expressed by the public and nonviolent nature of the act, by willingness to accept the legal consequences of one's conduct".[334] In combination with the idea that civilly disobedient acts address the sense of justice of the community, this means that civil disobedience should be carefully distinguished from revolution: in a nearly just society, its purpose is not to cause regime change, but to restate the principles that preside over the polity, and to amend it from injustices. Moreover, since civil disobedience does not depart from substantial allegiance to the basic constitution of a political community, it has to be enacted only in the last resort, if and only if other legal means of opposition to an unjust law (judicial review, courts of appeal, political pressures, abrogative referenda, the likelihood that a new majority, once elected, repeals the law, etc.) did not succeed, unless the case at hand is "so extreme" that there is "no duty to use first legal means of political opposition".[335]

According to Rawls, civil disobedience also requires that political minorities cooperate with each other so as to "regulate the overall level of dissent", and prevent "a breakdown in the respect for law and the constitution, thereby setting in motion consequences unfortunate for all".[336] Rawls observes that in our societies there are

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[333] Rawls (1971), p. 319.

[334] Rawls (1971), p. 322.

[335] Rawls (1971), p. 328.

[336] Rawls (1971), p. 328.

many groups equally entitled to engage in actions of civil disobedience; but if they do not coordinate their actions, they might impair the nearly just constitution they ought to respect by virtue of a natural duty of justice, and end up preventing their own claims to be paid the attention deserved. If this is done, according to Rawls, in a society that is nearly just albeit still characterized by some severe injustices, civil disobedience may be "one of the stabilizing devices of a constitutional system, although by definition an illegal one": as long as civil disobedience remains within the limits of fidelity to law, in fact, "it serves to inhibit departures from injustice and to correct them when they occur".[337]

Now, other theorists contested some points of the Rawlsian framework; while focusing here on three apparently weak points of Rawls's model, I am persuaded that his main argumentative structure can be maintained in the elaboration of a conservative understanding of civil disobedience.

A first problem arises with regard to the *publicity* requirement: it is possible to envisage cases in which giving notice to the public and to political authorities of an act of civil disobedience is likely to make such action ineffective. As Brian Smart remarks, authorities might be thereby given the chance to prevent the act of civil disobedience from taking place, and "from being made public" as a consequence of its enactment.[338] Accordingly, "a public declaration of intention made after the act is all that need be required to decode the meaning of the civil disobedience".[339] From this point of view, openness and publicity

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[337] Rawls (1971), p. 336.

[338] Smart (1991), in Bedau (1991), p. 206.

[339] Smart (1991), in Bedau (1991), pp. 206-207. Clearly, in tyrannical regimes the publicity requirement might make acts of civil disobedience altogether inefficacious, and be unreasonably costly to the disobedients. In this sense, one might question

need not precede the act; a subsequent statement acknowledging the act and explaining the reasons behind it might suffice to prove the sincerity of disobedient groups and their willingness to deal fairly with legal authorities.

A second problem concerns the *nonviolent* character of acts of disobedience. The point, here, is that all depends on the definition of violence one adopts. Rawls clarifies that civil disobedients should not interfere with the civil liberties of other citizens; and as John Morreal notices, strictly interpreted nonviolence means "that not only must *prima facie* rights to control over one's own body and the ownership of property be respected; the rights one has to autonomy and to *control* over his property must also be respected".[340] In this sense, all acts against property and/or minor acts of physical violence (like shoves, or slaps) should be ruled out by any justification of nonviolent civil disobedience. And yet, as Joseph Raz emphasizes, there might be instances in which the use of violence is justifiable: in fact, the evil disobedience "is designed to rectify may be so great, may indeed itself involve violence against innocent persons […], that it may be right to use violence to bring it to an end". On the other hand, there may be cases in which nonviolent acts could nonetheless cause greater harm than violent actions do: on this, Raz invites to "consider the possible effects of a strike by ambulance drivers".[341] However, Raz concedes that resort to violence should be avoided as a general rule:

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whether in repressive dictatorships the only available form of resistance is conscientious elusion of the law. However, Rawls's theory, as he explicitly avows, is confined to the case of nearly just societies.

[340] Morreal (1991), in Bedau (1991), p. 135.

[341] Raz (1979), p. 267.

It is clear that, other tings being equal, non-violent disobedience is much to be preferred to violent disobedience. First, the direct harm caused by the violence is avoided. Secondly, the possible encouragement to resort to violence in cases where this would be wrong, which even an otherwise justified use of violence provides, is avoided. Thirdly, the use of violence is a highly emotional and explosive issue in many countries and in turning to violence one is likely to antagonize potential allies and confirm in their opposition many of one's opponents. All these considerations, and others, suggest great reluctance to turn to the use of violence, most particularly violence against the person.[342]

A third problem arises with regard to the proviso according to which disobedients, while performing a conscientious act, should address the sense of justice of the majority of the community. In this respect, Rawls seems to impose too strict limitations. In fact, Peter Singer advances two objections against this aspect of Rawls's definition.[343]

The first one is that civil disobedience need not appeal only to principles which the community already accepts, but may also advocate a change in the shared conception of justice. The second one is that it is wrong to focus excessively on the question of justice, neglecting the legitimacy of recourse to personal morality and religious doctrine. There may be important issues which principles of justice overlook, and in such cases one might better resort to his own moral and/or religious convictions so as to persuade the majority to take those matters into account.

While these objections raise important points, I suggest that the basic tenets developed by Rawls can be maintained, provided some of the specifications I will list below, and which should help us outline a

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[342] Raz (1979), p. 267.

[343] See Singer (1973), pp. 84-92.

conception of civil disobedience coherent with the principles conservatism embraces.

3. A 'conservative' civil disobedience

In his analysis, Rawls raises a point that represents one of the major concerns of conservatism in respect of civil disobedience: the idea that legitimating noncompliance with the law may nurture a widespread disregard of their authority, and eventually determine a collapse of the entire legal and constitutional system. Plato expressed this fear in the following excerpt of the dialogue between Crito and Socrates:

SOCRATES: […] If the laws and the community of the city came to us when we were about to run away from here, or whatever it should be called, and standing over us were to ask, 'Tell me, Socrates, what are you intending to do? By attempting this deed, aren't you planning to do nothing other than destroy us, the laws, and the civic community, as much as you can? Or does it seem possible to you that any city where the verdicts reached have no force but are made powerless and corrupted by private citizens could continue to exist and not be in ruins?'.[344]

Consequently, it has to be emphasized that in a conservative perspective civil disobedience has to be considered as the very last resort. Before turning to acts of disobedience, normally citizens ought to exhaust all other legal methods of political opposition and protest, which in liberal-democracies tend to be abundant: they can organize marches, demonstrations, and sit-ins; they can lobby their political representatives; they can coordinate media campaigns so as to sensitize other people; they can arrange a popular referendum to

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[344] Plato, *Crito* 50a-b.

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repeat the law they disagree with; or, if they have reason to expect that the current majority will be overturned within a short span of time, they can grant their vote to opposition parties in exchange for the abrogation of that law.

In case these methods fail, they should consider carefully whether they really believe that the law at issue shall have effects so noxious on the polity to require civil disobedience as a means to persuade public opinion and the government that it has to be abolished or modified. Otherwise, they may acknowledge the legitimacy of the decision-making procedure whereby the bill was passed, and discharge their associative political obligation, complying with the law and patiently awaiting for subsequent amendments.

If citizens eventually resolve to attempt civil disobedience campaigns, these are the characteristics that, according to an integrated version of the Rawlsian model, their action should display.

Civil disobedience should target the government, not private agents. Raz denies that acts of civil disobedience may "include breach of law in protest against morally unacceptable actions or policies of private agents (trade unions, banks, private universities, etc.)".[345] To the contrary, Michael Walzer tries to demonstrate the legitimacy of sit-downs and strikes by workers against a private corporation like General Motors in 1936-1937, which by the way involved "coercion of innocent bystanders and resistance to police authority".[346]

The conservative stance is that disputes between private subjects should be resolved by legal means: the exercise of the right to strike regulated by the law, lobbying on political representatives, authorized

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[345] Raz (1979), p. 264.

[346] Walzer (1970), p. 25.

demonstrations, litigations, etc. Civil disobedience, strictly interpreted, should be directed towards governmental agencies, and against laws and/or policies enacted by the State.

Civil disobedience must be public. This is a relatively uncontroversial feature that almost all advocates of civil disobedience in liberal-democratic States subscribe to. There are at least a *moral* and a *political* reason why acts of civil disobedience should be carried out overtly, with a proper notice to other citizens and to authorities.

The *moral* reason is that, since there is a presumption in favor of compliance with the law, that is to say, a *prima facie* duty to obey, breaking the law secretly would simply constitute a failure to discharge one's duty as a member of the civil association, and it would be unfair towards other associates. Any breach of the law threatens the conditions of the *practice of civility*; but if acts which imply not only the will to free ride, but to question the authoritativeness of a law, are committed covertly, the moral mode of relationship that holds together members of the civil association undergoes serious deterioration.

The *political* reason is that civil disobedience has, in fact, a political purpose, so far as it aims at bringing about a change in a policy or a law. Civil disobedience, in this sense, has a communicative intent: it conveys disavowal of the laws at issue (*backward-looking* aim), and tries to persuade the public to demand that they be changed (*forward-looking* aim).[347]

That civil disobedience ought to be public does not mean that due notice to other citizens and authorities always ought to be issued

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[347] See Brownlee (2007). Interestingly enough, civil disobedience shares this feature with punishment.

in advance. As we have seen, there may be cases in which it would be better to release a statement after the action has been accomplished, claiming responsibilities for it and explaining the motivations which led that group to disobey.

Civil disobedience must be nonviolent. It is important to clarify what actions are to be included into the category of 'violence'. Violence constitutes a violation of the right that each person has to physical and mental integrity, to her property, and to the exercise of her freedom (of movement, choice, speech, etc.). Therefore, violence surely encompasses all forms of physical assault, albeit minor, and psychological offences like threats, brainwashing, humiliation, etc. It comprehends theft, or damage and/or destruction of other people's possessions. And it also includes the use of force in order to prevent an agent from enjoying one or more of his civil liberties.

As a general rule, disobedience that involves one or more of the acts specified above ought to be ruled out. There is an evident *moral* reason why violence should be avoided: it constitutes an encroachment on *prima facie* basic rights held by other citizens, and a failure to discharge the associative obligations that protesters have towards them as members of the civil association. However, there is a *strategic* reason as well: recourse to violence tends to alienate public opinion from the cause embraced by civil disobedients, and is likely to provide hostile authorities with arguments to delegitimize the campaign. *Politically*, this has the effect of preventing civil disobedients from implementing an effective communication of their reproach for the law or policy against which they protest, and of the alternative with which they wish to replace them.

And yet, there may be circumstances in which resorting to violence is justifiable, due to the duress or the enormity of the

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injustice of the law and/or policy at issue, and in light of the failure of all other available legal methods of protest. Actually, this is rarely the case in liberal-democratic States. The need for violent disobedience tends to be minimal in those which Rawls calls "nearly-just societies", or "well-ordered societies". Such necessity might still be quite low in "decent societies", those countries in which a basic list of rights is assured, and governments take into account the interests of all persons more or less fairly, proving themselves to be responsive to remonstrations, and abstaining from arbitrary discrimination. To the contrary, violent disobedience may be required in crude dictatorships and totalitarian regimes.

However, there might be cases in which the grossness of a particular injustice perpetrated even in a well-ordered society makes resort to violence justifiable. An instance of a liberal society in which a morally defensible violent disobedience took place is the case of the American colonies: in light of the failure to achieve a compromise with the motherland, and of the latter's increasing disposition to exploit and abuse the colonies, American subjects burst into a series of assaults directed against representatives of Great Britain, like the 1773 Boston 'tea party', when protesters, in defiance of the Tea Act, destroyed a shipment of tea which belonged to the East India Company. Historical instances of violent revolts against totalitarian or authoritarian rulers are the hammering of the Berlin wall in 1989 (destruction of the government's property by the Eastern Germans), and the conflicts between activists and police officers in Venezuela, in 2017.

When actions of this sort justifiably occur in overall just liberal-democratic States, civil disobedients are required to undertake some preventive measures to avoid unnecessary damages: violence has to be minimized as much as possible in intensity, size, and duration; it has

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to be directed preferably towards unanimated objects rather than persons; it has to point to the government, as the factual author of the contested law or policy, rather than ordinary citizens, regardless of popular support for that legislation. So, for instance, demonstrations whereby disobedients poured blood on the government's draft files during the Vietnam War[348] are to be preferred to random devastation of private shop windows by students who protest against a university reform. In general, the minor is the harm for the rest of the people, the more an act of civil disobedience, even one involving a certain degree of violence, is likely to be legitimate.

As Raz observed, there are cases in which nonviolent acts cause much harm to people: think, for instance, of an ambulance or a public transport drivers' strike. These actions do not amount to a straightforward exercise of violence: they do not entail direct physical assault (although the lack of EMTs may have detrimental results on physical integrity) or seizure of property (nevertheless, they may involve a remarkable amount of psychological pressure). Acts of this kind, rather than being violent, are breaches of self-assumed contractual obligations; and still, they should be avoided, at least in those cases in which defiance of one's professional duties is likely to provoke severe consequences on third parties due to the importance of the service suspended, and citizens cannot easily turn to other suppliers. Disobedience of this sort will be much more justifiable as long as it expresses an act of conscientious objection by a single individual, or by a group of professionals who demand legal

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[348] See Walzer (1970).

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exemptions, when a highly controversial ethical conundrum is at stake.[349]

Civil disobedience must aim to reinstate the conditions of existence of the practice of civility. Rawls argues that civil disobedients, by their action, should address the sense of justice of the majority of the community: the underlying idea is that citizens should be persuaded that the law or policy against which demonstrators protest violates the principles of justice on which the constitution of that society is based. Any act of civil disobedience must of course be informed by serious, sincere, deep moral convictions, but it remains a political act, in the sense that in justifying disobedience "one does not appeal to principles of personal morality or to religious doctrines, though these may coincide with and support one's claims; and it goes without saying that civil disobedience cannot be grounded solely on group or self-interest. Instead one invokes the commonly shared conception of justice that underlies the political order".[350] Singer objects to such restrictive proviso that civil disobedience may sometimes point to a change in the majoritarian conception of justice, and, furthermore, that focusing only on justice may lead to neglect other important questions.

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[349] An instance of legitimate conscientious objection by a single person on a disputed ethical question is represented by the case of Kim Davis, an American public employee in Rowan County, who refused to issue gay marriage licenses for religious reasons and was thereby arrested in 2016. A typical case of legal exemption for a group of objectors is the religious refusal to practice abortions on the part of gynaecologists, which is granted in many countries in the world, even where the law authorizes voluntary termination of the pregnancy.

[350] Rawls (1971), p. 321.

Rather than a particular conception of justice, the basic value that conservatives should be willing to preserve is the set of conditions for the maintenance of the *practice of civility*, and, consequently, for membership in the civil association. A conservative may find that a certain law or policy deteriorates the conditions of existence of the *practice of civility*: for instance, a policy might diminish legal certainty; a law might create incentives to free riding; in general, several legislative provisions might concur to transform the nature of a polity, from a civil to an enterprise association (similar objections were addressed by classical liberal philosophers and economists to the policies of social-democrat parties in Europe between the Fifties and the Seventies of the XX century).

From this point of view, civil disobedience should have a *conservative* intent: rather than a form of political action aiming at a change in the *practice of civility*, it is one of the means to reinstate the transcendental conditions which characterize membership in the civil association of which protesters are part. Therefore, Rawls is right in defining civil disobedience as a breach of the law within the limits of fidelity to the law: it is not disobedience for the sake of revolt against authority, but disobedience which seeks to re-establish the conditions of full legitimacy of the existing system of *lex* and political authority. It is not a way to circumvent one's associative political obligation as a member of the civil association, but the last resort of *cives* who wish to shiver that association from the degeneration they dread may derive from the enactment of certain laws and/or policies.

Singer may be right in contending that civil disobedients sometimes pursue a change in the values shared by their community, and that their actions may try to sensitize other citizens towards issues hitherto overlooked by public opinion. The point is that, on a conservative perspective, unless a society fails to fulfill fundamental

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primary and/or secondary values on which a breach of the law is likely to summon people's attention, a campaign for changes in a society's beliefs and values, or the introduction of new subjects of public concern, should be conducted via institutional and legal means: authorized marches, sit-ins, advertisings, direct participation to the political contest (say, be the foundation of a new party) or a lobbying action directed to politicians already in charge, etc. Allowing disobedience in the cases addressed by Singer amounts to breeding widespread noncompliance and arbitrariness within the civil association.

Civil disobedients must be prompt to accept punishment. Part of the conscientiousness of an act of civil disobedience is the readiness "to accept the legal consequences of one's conduct".[351] If civil disobedience is supposed to remain within the limits of fidelity to the law, and if its purpose is to reinstate the conditions which make membership in the civil association possible, submitting to punishment is a way to confirm that one's intentions, in engaging disobedience, were in fact genuine, and to reassert the legitimacy of political authority and one's duties towards other associates in the polity. Nevertheless, this principle allows for exceptions, in particular when the evil denounced by disobedients is huge, dealing with major violations of basic rights and/or values, and the penalty one may incur is extremely severe. An interesting, paradigmatic case in which submission to legal punishment might be dispensed with is whistleblowing.

Whistle-blowers are persons who decide to bring to surface illegal or unethical information or activity conducted by a private or a

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[351] Rawls (1971), p. 322.

governmental organization. Exposure can be internal, when the whistle-blower brings to the attention of unaware members of the organization his allegations, or external, when the whistle-blower reveals publicly, by contacting a third party (like journalists, law enforcement, etc.), his accusations. Now, when whistle-blowers publicly denounce a private company, they may face serious consequences, like losing their job, or being taken to trial by their employers, but they may actually find shelter in the law if they prove their company to be wrong. When they expose the government itself, however, it may be the case that the violations brought to surface are so massive, and the likely penalty so severe (unless their action is legally authorized, as it is the case in many legislations), that trying to avoid punishment becomes justifiable.

For instance, Edward Snowden and Julian Assange denounced patent encroachments in the rights of American citizens, blatant abuses by members of the American government against other sovereign States, and supposed violations of national security by the former American Secretary of State Hillary Clinton. Criminal charges against Snowden amounted to a thirty years conviction, whereas Assange, accused of espionage, could be even convicted to death, a price that it would be unreasonable to *require* one to pay in the name of fidelity to law, sincerity, or else.

The relevance of the revelations issued by whistle-blowers may be not only a good reason for them to avoid extremely costly punishment, but also an incentive for public authorities to pardon them: indeed, on October 29, 2015, the European Parliament voted a non-binding resolution for EU States to drop criminal charges against Snowden, and recognized "his status as whistle-blower and

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international human rights defender".[352] Moreover, the possible injustice of the penalty that the State would inflict to whistle-blowers may diminish, or suppress, their duty to accept the legal consequences of their action: this is the case with Assange facing the likelihood of capital punishment.[353]

In general, civil disobedients are required to submit to penalties as a way to demonstrate their good faith and to prove they are not questioning the legitimacy of the State. The strictness of this rule may be diminished if (and this is very likely in cases of illegal whistleblowing), the magnitude of the evil exposed and the relevance it has for all citizens are great, and the punishment they risk to undergo is extremely severe.

Civil disobedience may be either direct or indirect. There is general agreement among political theorists that acts of civil disobedience may be either direct or indirect. Direct civil disobedience obtains when protesters break the law they wish the government to modify or abrogate; indirect civil disobedience obtains instead when they break another law or set of laws which, other things being equal, they do not oppose, in order to prevent the government

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[352] http://www.europarl.europa.eu/news/en/press-room/20151022IPR98818/mass-surveillance-eu-citizens-rights-still-in-danger-says-parliament

[353] Certainly, other elements suggest that the conduct of Snowden and Assange was ethically disputable: in particular, their alleged collaboration with the Russian government, which might have put American national security in danger. Furthermore, it has to be stressed that while Snowden and Assange avoided punishment, Chelsea Manning, who had smuggled secret documents concerning operations of the American intelligence in Iraq, and handed them down to WikiLeaks, faced a trial after which he was convicted to thirty-five years of jail (in January 2017 President Barack Obama commuted the sentence, and Manning was eventually released on May 17, 2017).

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from implementing the policy they contest. For instance, David Thoreau refused to pay the tax that the US government exacted in order to finance the American-Mexican War. Naturally, it is important that if they opt for indirect disobedience, activists make it clear what is the real target of their demonstrations; if this is not the case, they may increase confusion and prevent the communicative dimension of civil disobedience from achieving its objectives.

The purpose of civil disobedience may be the repeal of a law or a policy, or the obtainment of a legal exemption. By definition, civil disobedience aims at the abrogation of the laws against which demonstrators protest. It is worth clarifying, however, that when disobedients sense that their campaign is likely to fail, if the reasons they defend pertain to deeply held moral convictions and they are persuaded that noncompliance is less likely to damage *civility* than abidance by that law itself, it may be reasonable to settle on a compromise by virtue of which the law or policy at issue is maintained, but spaces of legal exemption are guaranteed to those who oppose it.

Even if their ideology might not have a necessary and/or strict connection with the philosophical and political conservatism advocated by this work, it is perhaps worth noting that groups and parties normally labelled as 'conservative' might be attracted by such solution, because the majority of the legislation on civil rights they disapprove is unlikely to be repealed in the short run, without a radical but gradual cultural change. As they strive to persuade the people that laws on abortion, or same-sex adoptions, ought to be changed, they can make sure that their acts of civil disobedience lead to the legalization or to the broadening of the possibilities of conscientious objection: this right is now recognized in ambits like the provision of

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abortions; religious firms in the United States appealed to the Supreme Court so as to be exempted from the obligation to provide contraceptives to their employees, within the scope of President Barack Obama's healthcare reform; and public officials might now ask for their conscientious refusal to issue gay marriage licenses to be recognized.

The importance of this purpose is not only that it guarantees the rights of dissenters not to commit acts their regards as highly immoral, but also that it brings disobedience back to the ambit of legality, while those who oppose the law or policy can carry on their sensitization campaign.

Conclusion

Political obligation has been for long one of the most debated problems of political philosophy; controversies are still bound to arise, and new theories will hardly ease all disagreements. However, I think that the theory presented here can boast some merit.

The substantial inconclusiveness of liberal and democratic theories of political obligation, and the controversial assumptions as much as the threatening consequences of philosophical anarchism, may advise us on the possibility to draw from alternative political traditions in our quest for a solution to the problem of the duty to obey the law.

Now, conservatism seldom addressed directly the question of political obligation. Sometimes, conservatives maintained that political obligation is simply a matter of habit and unreflective belief, and that the importance of social peace and order provided a consequentialist justification of the duty to obey political authority, regardless of its legitimacy (Hume). Sometimes, they treated it as a 'conceptual' argument, as they seemed to judge that the idea of a duty of law-abidance was immediately implied by the notion of political authority, and by the nature of the human condition in society (Oakeshott).

What I tried to accomplish in this work was to refine the definition of the conservative normative structure in order to elaborate a theory of political obligation grounded in a clear moral principle, one capable of putting conservatism on the ground of analytic political philosophy.

The tenet on which I focused was the notion of membership in the 'civil association', which relates to the social constitution of

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personal identity, secures intergenerational continuity (and, therefore, historical value, HV), and generates an internal good, 'civility', which is, by the way, the transcendental condition for the exercise of individual freedom.

However, the concept of membership I employed differs from other variants for at least three reasons.

First, although it refers to HV and the value of civility, it is not contingent on the actualization of an external normative standard and/or on more fundamental principles liable to qualify the idea of membership, as it is the case, for instance, with Dworkin's 'true community' and its commitment to 'equal concern'. Citizens' duty of law-abidance does not depend on alien criteria; it stands on its own.

Second, this theory does not attempt to establish how the liberal principle of autonomy may be coupled with the recognition of communitarian bonds, as Tamir tries to do. It does not postulate that 'identification' requires a certain degree of voluntariness; it does not play on the subtle distinction between 'voluntariness' and 'commitment' (as, in different ways, Jeske, Renzo, and Gilbert do); it does not ascribe particular relevance to one's openly voluntary participation in the process of identification with a community either. It is prompt to acknowledge that associative duties befall individual will, and that the bonds of the civil association, though 'reflectively acceptable' out of rational scrutiny, at least insofar as they generate the good of civility and produce HV, are mainly a matter of birth rather than a matter of choice.

Third, the notion of 'civil association' is based on a *formal* mode of relationship between associates, which need not presuppose any kind of 'Romantic' nationalism. On the one hand, in fact, political obligation as the duty to obey the law only requires, as a *necessary* and *sufficient* condition, the existence of the mode of association *cives*

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entertain with each other by the common subscription to *lex*. While this theory does not rule out more substantive bonds of community, it only demands that a *minimal* requisite be met, and even conceives it as the transcendental condition for stronger forms of attachment between compatriots to hold. On the other hand, such conservative interpretation of political obligation insists on the role of intermediate bodies, and endorses a composite understanding of the relation between society and the State instead of a simplistic (and potentially illiberal) binomial differentiation between the atomized individual and centralized political authority.

Now, it may appear naïve to keep on discussing political obligation as a particularized duty owed by citizens to their States in the age of globalization, while power and authority are undergoing a momentous change. Politics is proving increasingly ineffective as a source of decisions and a solution to the world's complexity; and power is losing a discernible facet, as it becomes fragmented, supra-national, and largely unaccountable, with a proliferation of influential entities of a semi-public and semi-private character.

And yet, finding a satisfying response to the problem of political obligation may bring about a normative conclusion in respect to those predicaments as well. It may be that nation-States will come through as the only political subjects to which persons have a clear moral reason to grant their loyalty and obedience (intended as a restriction on their individual liberty and judgement). This should not urge us to relinquish all the praiseworthy purposes of philosophical reflections on global justice, neither when it comes to the question of positive general duties that we might be in fact obligated to discharge on a world scale, especially in the ambits of pollution, global warming, and absolute poverty. Eventually, the lesson that a conservative approach to the basic conundrums of political philosophy might teach is that,

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contrary to what Nagel suggests, we should not accept «patently unjust» global institutions, and that we should try to build a system of internal cooperation with a solid grip on people's attachments to the local dimension instead. This may entail a strengthening of the legal framework within which economic superpowers today operate, or a profound rethinking of the present-day complex of international law. In any case, it is likely that the future will call us to decide on trade-offs between the efficiency of the market, full-fledged globalization, and not only social security, but also ethical principles, the cultural character of our political communities, and other identitarian instances. And these cannot be but *political* decisions, which thereby require that persons have the chance to check and control decision-makers (an uneven battle, if it is conducted on a supra-national scale).

If politics (and, generally, human civilization), as conservative thinkers from Hume to Oakeshott believed, is a 'conversation', globalization prompts us to choose one of the following ways: either inventing a new language that speakers may effectively employ to understand each other in a context devoid of political borders; or turning back to the language which characterizes the existing civil conversation of our nation-States, and moving from there to build a communal grammar for the world.

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