
The Forked Road: Scruton, Grant and the Conservative Critique of Liberalism

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I. INTRODUCTION

Sir Roger Scruton's book *Conservatism: An Invitation to the Great Tradition* (2018)¹ is a welcome addition to his recent work on the topic. Unlike his classic *The Meaning of Conservatism* (1980) and his more recent *How to be a Conservative* (2014), *Conservatism* takes the reader on a historical journey through the multifaceted forms of political, philosophical and cultural conservatism from its birth in the enlightenment era to the present. And while primarily focussed upon conservatism as it has developed in the Anglo-American tradition, Scruton also devotes a full chapter (i.e. Chapter 2) to a discussion of conservatism in France and Germany. I found this a fascinating chapter, as it not only discusses forms of continental conservative thought which are often ignored (at least in English), but it also weaves thinkers typically identified with this form of conservatism like Le Maistre and Hegel into the more general themes of the book. One minor quibble I had with the book is that it is quite short and compact, and some of the arguments are skirted over quite quickly. However, this is not atypical for an introductory text.

One of the themes which Scruton develops over the course of the book is that conservatism, at least in its Anglo-American guise, is a 'qualification' (p. 23) of classical liberalism. By this, he means that while conservatives endorse the central tenants of the post-enlightenment liberal political order—they hold that liberalism *per se* fails to place them in proper moral and political context, and it is the task of the conservative to put these moral and political qualifications in place. As a means of exemplifying how conservatism can act as a qualification, Scruton (pp. 58-61) argues that the liberal theory of political authority is wholly inadequate. It is so because the device it uses to morally justify authority—the social contract—abstracts away from the source of moral significance from which agents could determine whether the sovereign is just in the first place—

the community. So, while the edifice of civil liberties constructed through the liberal point of view is entirely justifiable, it is not justifiable on the liberals' own grounds. It needs the conservative point of view for this.

My aim in this paper is to critically assess Scruton's claim that Anglophone conservatism is a qualification of liberalism by way of putting his argument against the contractarian conception of political authority into dialogue with another conservative critic of the social contract—George Parkin Grant. Grant, in his book *English-Speaking Justice* (1974), took aim, from a distinctly high Tory point of view, at the updated social contract theory of legitimacy articulated by John Rawls in *A Theory of Justice* (1971). Putting Grant and Scruton into a dialogue in this manner will allow me to argue in favour of two points, which are the key claims of the paper. The first is that Scruton and Grant share a common complaint against the liberal. Each thinker, in a slightly different way and from different initial premises, argues that the social contract, as theoretical device, is, in fact, unable to account for what it claims to account for: the moral limits of political authority as expressed in legitimacy. The second point I wish to make is that despite this common negative ground, Grant would part ways with Scruton when it comes to theorizing conservatism as a qualification of the liberal project. In my view, Grant would see this characterization, and Scruton's commitment to 'liberal individualism' (pp. 23-24), as rooted in the same enlightenment-era view of the human which leads the liberal astray in the first place. This objection, moreover, highlights what I take to be a deep tension in the Anglophone conservative tradition, one which admits of no easy solution. Grant and Scruton, if I am correct here, walk the same path, and then part ways at a theoretical fork. From the path they walk we can learn something about each, and about the tradition as a whole.

II. BACKGROUND

Before a discussion of Scruton and Grant can begin, some background needs to be put in place. We need a working conception of the liberal theory of political legitimacy, which is their shared target.

1.1 Political legitimacy

To get my argument off the ground, we need to have some prior notion of political legitimacy to work with. I'm concerned here with political legitimacy as a moral status² by which coercive political authority is judged; a sovereign is legitimate if and only if it meets some specific moral criteria or other. Legitimacy, then can be expressed as a conditional:

If the sovereign has met moral conditions Φ , then it is legitimate.³

The theory of legitimacy, then is the working out of what constitutes this phi. I will here assume (though this is contentious) that legitimacy entails obligation, in the sense that agents who are subject to a coercive authority are thereby obliged to comply if and only if it is legitimate. In other words, I take obligation to be the converse relation to legitimacy, and thus produced by the same moral status. Obviously, much more could be said here, but this is adequate as a working definition.

1.2 Classical liberalism

Classical liberalism provides a simple and compelling way of filling out the condition I posed as central to a conception of political legitimacy. For the liberal, the sovereign is legitimate if and only if it is the product of the consent of the parties' subject to its authority:

Social Contract legitimacy—If the sovereign is the product of the consent of the individuals' party to it, then it is legitimate.

Broadly speaking, for the liberal, consent, expressed by way of a social contract, is the key moral status involved in the generation of political legitimacy, because it is the key property reconciling freedom with authority. This is shown by way of a particular argumentative device, which is the so-called state of nature. The idea is that while agents, *qua* individual, have natural rights in the state of nature, which

is just the absence of political authority, they are unable to enjoy them in the absence of a sovereign, who is able to enforce these rights against trespass. So, the inconveniences of the state of nature compel rational agents to consent to a contract whereby a sovereign is given a monopoly on the coercive enforcement of these natural liberties. Thus, on the liberal view, the legitimacy of this contract is secured by way of consent, because consent implies an exercise of natural freedom, rather than its diminution.

What is important to note for my purposes here are two points. First, as an argumentative device designed to specify the moral conditions under which authority is legitimate, implies that consent is an aggregate of individual acts of will, which further implies that individuals possess the freedoms required to consent to the contract are pre-social, and unattached to any specific sociocultural setting or historical inherence. Second, as it is generally understood, the pre-political rights are taken by liberal theorists to be universal and exceptionless.

III. WALKING TOGETHER: SCRUTON AND GRANT ON THE SHORTCOMINGS OF LIBERALISM

In my view, Scruton and Grant each see the liberal theory of political legitimacy as inadequate. Moreover, they view it as inadequate for what is essentially the same broad reason. The liberal attempts to model legitimacy through the device of the social contract. However, for both of these thinkers, the contract—as an abstract model—can't capture the embedded practices and institutions which constitute the condition of the possibility for legitimacy to arise. In this section, I will unpack both Scruton and Grant's versions of this general argument schema.

3.1 Scruton

Scruton's criticism of the classical liberal conception of political legitimacy in *Conservatism: An Invitation to the Great Tradition* is, in essence, a compressed and clear exposition of an argument that can be detected in a number of his political writings stretching back to *The Meaning of Conservatism*. The main thrust of this criticism is broadly Hegelian in inspiration, mixed with a tinge of Burke and Oakeshott. Reconstructing Scruton's argument for the inadequacies of the liberal conception will then open the door for a reconstruction of his positive views of legitimacy, which I will subsequently piece together from a variety of his writings.

3.1.2 Scruton's critique of the social contract

As we have seen, classical liberalism attempts to ground political authority in the hypothetical choice situation of the state of nature. In such a state, individuals would be unable to enjoy their pre-political rights, and thus if rational, would transfer the right of enforcement, by consent, to a sovereign. The sovereign, however, is bound by this contract to limited power—the power to enforce these pre-political rights. Anything else is tantamount to tyranny. For the liberal, then, the state of nature has two primary functions. First, it is a theoretical model which, by way of rational choice, specifies the scope and limits of legitimacy. Second, as hypothetical, it binds all rational agents, at least in principle.

Scruton takes issue with both upshots. The problem, as I read him, is that the social contract is too thin to capture the scope and limits of political legitimacy, and it is too thin because it abstracts away from the sources of normative significance. As a first step in understanding this objection, let's begin with a passage from his (2003, pp. 59-74, 64):

The social contract begins through a thought experiment, in which a group of people gather together to decide on their common future. But if they are in a position to decide on their common future, it is because they already have one: because they recognize their mutual togetherness and reciprocal dependence, which makes it incumbent upon them to settle how they might be governed under a common jurisdiction in a common territory. In short, the social contract requires a relation of membership, and one, moreover, which makes it plausible for the individual members to conceive the relation between them in contractual terms. Theorists of the social contract write as though it presupposed only the first-person singular of free rational choice. In fact, it presupposes a first-person plural, to which the burdens of belonging have already been assumed.

In this passage, we are given the fundamentals of Scruton's complaint against the social contract: the very possibility of a contract rests on a pre-existing network of relations between the agents' party to it. In other words, the contract presupposes that agents already have obligations towards each other; the obligations typical of a moral community. The argument here is Hegelian in nature. According to Hegel, reciprocation is fundamental to the first-person sin-

gular: to be a moral agent to begin with presupposes that others see me as owed what is due, and that I see others as due what they are owed. Otherwise I am simply not a moral agent; communal reciprocity is a precondition of having a moral life at all, let alone entering into a contract. The broader point of significance is that for Hegel, and for Scruton, freedom comes from, e.g. is generated by, social recognition. Thus, the social contract theorists, who start with the foundational assumption that agents are free and have a determinate moral status on their own, *before* entering into a community—get things exactly backwards. We don't have a moral status outside of the community; we are indelibly shaped by what he calls the 'burdens of belonging'.

The upshot of this is that the social contract, for Scruton, is a totally inadequate device for modelling political legitimacy and the obligations it generates. To recall, I put the social contract view of legitimacy in the conditional form which I take to reflect the normative problem of political legitimacy:

Social Contract legitimacy—If the sovereign is the product of the consent of the individuals' party to it, then it is legitimate.

If the Hegelian argument Scruton endorses is correct, then the social contract theory of legitimacy is false because consent, understood as a moral status where each party is recognizes as moral agent, is parasitic upon an already existing moral community. So, if each party does indeed consent to be ruled by a sovereign, they are only able to consent because they are already members of this community. Thus, it is the mutual obligations of this community which generate the normative significance which the contract exploits. As such, therefore, Scruton's objection to contractarianism is that it is too thin to generate the type of moral obligations implied by political legitimacy, and too thin because too abstract. By using the state of nature as argumentative device, social contract theorists syphon away as irrelevant any conception of a shared community, therein placing the atomized agent in an artificial choice situation. But Scruton's point is that this artificial choice point abstracts away from the community which is, given the Hegelian point of view, the very condition of the possibility of autonomous moral choice to begin with. Thus, it is totally inadequate to the task it sets itself, and this is because one of its key assumptions is false; i.e. that the primary unit of moral significance is the pre-communal agent.

3.1.3 Scruton's positive view: 'the legitimacy of procedures'

If, for Scruton, we can't ground legitimacy in a contract, then what exactly is political legitimacy? The answer, which has already been foreshadowed in the past section, in the notion of the so-called 'burdens of belonging': the community of ends within which a particular agent is situated and made the agent she is. In this section, I want to reconstruct Scruton's theory of legitimacy in some detail.

By way of beginning, we need to return to some of Scruton's earlier political writings. A good place to start is a passage from his (1998, pp. 43-56, 49-50), where he says the following:

...the assumption that we can jettison all institutions, traditions, and conventions and decide how to make them anew [is dangerous]. This is the root assumption of liberalism, and it reoccurs in every version of the social contract.... It implies that we can make rational choices, knowing what to do and how to do it, without the benefit of social knowledge—in other words, without the hard-earned legacy of consensual solutions ... we know what to do only when we have a sense of right and wrong, and implicit awareness of the unseen multitudes whom our actions affect, and an instinctive knowledge of what is admirable or despicable, that are perceived through the channels of tradition.

In this passage, Scruton is affirming what was already argued above in the negative: that in order to know what to do, and how to be moral, we must rely upon our inherited ways of life. The liberal wants to jettison these ways as irrelevant, but we've already seen why this is a non-starter, because any contract we make is already downstream of communal identity. What Scruton is saying here, as I take it, is that we must look to this inherited stock of social knowledge in order to determine what is of moral significance for us, because each of us is indelibly structured—as agents—by this community.

That the community, and its network of obligations is, for Scruton, fundamental to how we understand our moral standing, and the moral standing of others, provides a clue to how he understands political legitimacy. On his view, the legitimacy of a sovereign is a matter of whether it recognizes the moral standing of its citizens, understood as a community. More specifically, it is legitimate only if it conforms to the pre-existing network of obligations which are

constitutive of the moral agency of a concrete community. Importantly, this means that as I read him, Scruton is arguing for a historicized or pluralistic conception of legitimacy. For on the assumption that the type of reciprocity required for moral standing is compatible with a variety of fundamental moral premises, then the shape of the network of obligations constitutive of the community will exhibit local variation. That this is his view is suggested by the following passage (Scruton 1993, pp. 17-23), which is perhaps the most straightforward statement of his view of legitimacy:

...our ultimate model for a legitimate order is one given historically, to people united by their sense of a common destiny, a common culture, and a common source of the values that govern their lives.

What allows agents to determine whether they are obliged to obey a sovereign is whether that sovereign approximates the network of obligations which constitutes the community. For on the present conception, the *community* is the unit which determines the moral standing of our political institutions, not individuals. So instead of seeing legitimacy as the aggregated consent of separate agents, Scruton sees it as the end result of an essentially communal process; the process of constructing institutions which are morally acceptable *here*, and to *us*, *qua* moral community. Legitimacy, therefore, has a distinctly Burkean flavour for Scruton, inasmuch as it involves not merely the living, but an inheritance passed acquired from the dead, to be passed to the unborn.⁴ Moreover, because it's not predetermined what shape the community will give to its conception of moral agency, we can't determine whether a sovereign has met the standards required for it to be legitimate outside of the sociohistorical processes that produced it. As a result, there is a plurality of different forms of legitimate regime, each attached to a time, place, and third-person plural—the 'we' of the community whom are subject to it.

Pluralist conception of legitimacy: If a sovereign approximates the local conditions required for moral agency demanded by the community subject to it, then it is legitimate.

One might assume that this pluralist understanding of legitimacy implies that Scruton is committed to a form of relativism about the moral foundations of apolitical authority. This, however, would not be correct. For while it is true that communities are always embedded in a time, place

and history, and will differ, sometimes radically, in the institutional realization of a particular form of life, it doesn't follow that every possible community will have the same moral status. Indeed, while some communal forms of life will be conducive to the realization of a Hegelian autonomy, others will not.⁵

Pluralism explains the conservative attachment to a specific tradition and set of institutional arrangements. These are important for the conservative because they express the moral foundations of the local community which is constitutive of self-realization. We can't abstract to some universal axiom which governs all possible human associates because legitimacy is, for reasons adduced above, always attached to a time and place. Anglophone conservatism, therefore, is an attachment to at least some of parliament, the Monarchy, common law and the Church of England precisely because these are the institutions which both reflect and help give rise to the form of moral agency—liberal individualism—held to be foundational in the English-speaking world. This moral anthropology can't, for Scruton, be wrenched away from these institutions, precisely because the historical development of these institutions and the cultural setting which produced them is a precondition for the form of liberty we enjoy here and now.

3.2 Grant

Like Scruton, George Grant was an articulate defender of a form of English-speaking conservatism and a critic of liberalism. Grant agrees with what he calls liberalism in practice, which he identifies as individual rights and consent of the governed. The protection of individual rights requires an independent judiciary and rule of law, whereas the second requires representative institutions. Grant takes the affirmation of these to be something 'all decent men accept as good' (Grant 1998, p. 4). However, he takes umbrage with what he calls liberalism in theory, by which, he means the theoretical foundations of individual rights and consent of the governed.

Perhaps his clearest criticism of liberal theory is to be found in the book based upon a series of lectures he gave at Mount Allison University in 1974 and published as *English-Speaking Justice*. In this book, Grant takes aim at the modern liberalism of Rawls (1971). As I shall demonstrate, Grant argues that the Kantian version of contractarianism Rawls deploys as a means of grounding the moral justification for a distinctly liberal form of political authority is ill-suited to this task. It is ill-suited, moreover, because its formal Kantianism abstracts away from the type of meta-

physical assumptions which would be required for such a justification. In short, as I shall argue, Grant takes aim at Rawls in a manner mirroring Scruton's criticism of classical liberalism.

3.2.1 Rawlsian contractarianism in brief

Because Grant is taking aim at a specific target (i.e. Rawls 1971), it will be necessary for me to sketch out what Rawls was attempting to establish in this book.

Rawls' starting point, inspired by Kant, is a particular view of political morality—or justice, as he terms it—called constructivism. Broadly speaking, the constructivist view of justice is that what is just is what agents would agree to under certain conditions, i.e. under conditions abstracted away from the types of contingencies which make people prefer themselves to others. The broad idea here is that our pre-theoretical intuitions about justice demand principles that are chosen in light of the interests of all agents, and not tailored to one's own particular circumstances. It demands universal principles.

Rawls argues that we can model the choice situation through which universal principles are chosen through the device of a contract, which will determine the major principles of justice constitutive of legitimate political authority. In order to ensure that the contract is made in a way that expresses the moral point of view, he argues that it must be made from a particular choice position, which he calls the original position. In the original position, agents know that they want to secure the best possible arrangement for themselves in order to lead a good life, where this implies basic goods—security, liberty, material goods. But they are placed under a 'veil of ignorance', and therefore don't know their race, gender, class or natural talents. Rawls argues that in such a situation. All rational agents would converge upon two basic principles of justice: one, equal liberties (freedom of expression, equality of opportunity, etc.), and two, the so-called difference principle (cf. Rawls 1971, section 12, and especially, pp. 75-90), which is that material inequalities are acceptable only if they benefit the worst off. Thus, to return to the schema I have used to model legitimacy, the Rawlsian view can be summarized as follows:

Rawlsian constructivist legitimacy—If the state adheres to the two basic principles of justice which would be chosen by parties behind a veil of ignorance, then it is legitimate.

The veil of ignorance, and the subsequent contract are, for Rawls, entirely hypothetical and are intended solely to specify the normative constraints placed upon the state. Nevertheless, one can see the similarities between the Rawlsian argument for legitimacy by consent, and the argument for legitimacy by consent which I attributed above to the classical liberals.

3.2.2 Grant on Rawls

While *English-Speaking Justice* is a very rich text, impossible to explicate in a brief paper like this, I think it is possible to extract two major criticisms of Rawls from chapter 2, which is devoted to the latter. In what follows, I will unpack these criticisms, and argue that they contain a core of common themes with Scruton's criticism of liberalism surveyed above. I also hope that this will be of independent interest, as I think Grant's arguments are deeper than much of the secondary literature on Rawls, much of which has the technical narrowness typical of a scholasticism. I also think this is important because many contemporary discussions of Grant are dismissive, facile or in some cases, both.⁶

First argument: the poverty of the choice situation

The centrepiece argument of *English-Speaking Justice* takes aim at Rawls' attempt to derive his two principles of justice through the device of the original position. Grant argues that the original position, shorn as it is of any substantive metaphysical assumptions about human nature, does not support the two principles of justice in the way that Rawls assumes it does. The only thing supporting these principles are Rawls' intuitions about the nature of justice, and these intuitions do not amount to an argument. They simply reflect the prejudices of the American progressivist class. So, *A Theory of Justice* singularly fails to discharge its main purpose.

Let's unpack this line of reasoning in detail. It is one of Rawls' explicit aims to avoid deriving a theory of justice from substantive metaphysical assumptions about what constitutes the good life for humans, or any related assumptions about human nature.⁷ He wants to derive the principles from placing agents under a veil of ignorance, coupled with the assumption that agents, as interested in pursuing their own conception of the good, want to maximize the resources available to them. For Grant, however, it's not clear why, under these two assumptions, we arrive at the two principles of justice as universal norms. Grant (1998, pp. 42-43) writes:

How can the content of justice he advocates be derived from his contractual theory? He advocates many liberties and equalities ... surely any decent human being will agree that liberty and equality are at the heart of political justice... but Rawls's book claims to be more than a catechism of such goods; it claims to be a theory of justice. That is, its claims to be giving us knowledge of what justice is, and how we know that a regime of liberty and equality are its core. ... The fundamental question about Rawls' book is whether justice can be derived from calculation of self-interest in general ...

Rawls claims to be providing an argument for the conclusion that political justice *just is* his two principles, and that anyone placed in the original position will come to this conclusion. However, this assumes that Rawlsian contractarianism can answer in the affirmative what Grant calls 'the fundamental question'—that the bounds of a just political regime can be derived from self-interest in the original position. Grant argues that this assumption is incorrect.

Why can't the Rawlsian answer this question in the affirmative, according to Grant? The answer, in brief, is as follows. Rawls wants to ground legitimacy in contract, but it's a contract shorn of the metaphysical foundations adopted by earlier contractarians like, for instance, Locke and Kant. Thus, because it is so shorn, it cannot provide us with the content of justice as Rawls claims it can. For we can only have knowledge of whether the sovereign is legitimate if we have knowledge of ultimate moral ends of the type Rawls doesn't supply. So, he can't give us what he promises. Let's unpack this line of thought. The key passage in the argument summarized above is the following (Grant 1998, pp. 33-34):

... why does Rawls' account of 'person' make equality our due? Why are beings who can calculate and cannot avoid choices worth of inalienable equal rights? After all, some humans can calculate better than others ... His writing is typical of much modern liberal thought in that the word 'person' is brought in mysteriously to cover up the inability to state clearly what it is about human beings that makes them worthy of the highest political respect ... In short, Rawls affirms a contractarianism against a utilitarian account of justice, but wishes to free that contractarian teaching from the metaphysical assumptions upon which it was founded in the thought of its great exponents.

On Grant's reading, Rawls wishes to make our consent to a contract under minimal assumptions the source of political legitimacy. However, his attempt to do so is 'free' of the metaphysical assumptions required to derive legitimacy from such a source. For instance, one of the 'great exponents' of contractarianism, Locke, grounds the normative force of contract in the natural law. The natural law is a key premise in Locke, because knowledge of God's natural law is what allows us to *determine*, in the first instance, whether the sovereign is acting in a legitimate manner. Natural law, however, constitutes a 'substantive' view of the good life which Rawls won't countenance. So does Kant's axiology of the good will (cf. Kant 1991). Thus, Grant argues, when we are behind the veil of ignorance, we have no recourse to knowledge of any metaphysical principle or principles, i.e. no knowledge of 'what it is about human beings' which would allow us to determine whether the two principles are indeed constitutive of justice, and thus that humans are due equal respect. The choice situation of the original principle would allow us to understand whether these principles are able to maximize self-interest, but this, argues Grant, is entirely beside the point. What we want to know, rather, is whether or not a regime constituted by Rawls's two principles *is* just, and knowing this requires recourse to something that Rawls doesn't provide.

Thus, concludes Grant, when we look at the Rawlsian original position, we are looking at a contract which is taken away from the sorts of assumptions which would be required to determine whether the contract is, in the last analysis, just. This is why Grant thinks that it is completely unclear, on the Rawlsian picture, whether humans are due equal respect of the type implied by Rawls' second principle of justice. Indeed, if we are cut off from the metaphysics of human good, then what reason do we in fact have to respect the Rawlsian universalizability imperative in the first place? Kant grounded these imperatives in a thick moral theory—a moral anthropology, to borrow a term from John Gray (1995)—of the type Rawls eschews. So why, Grant asks, should we even grant Rawls this neutered form of Kantianism? This is, to my mind, a powerful critique, and cuts to the very heart of the Rawlsian project. Grant suggests that the Rawlsian invocation of Kantian universalizability as reflective of our pre-theoretical intuitions about justice is just a regimentation of Rawls' own bourgeois and American progressivist sensibilities. And if his argument here is correct, that seems quite plausible.

Turning to the Rawlsian form of what I have called the legitimacy conditional, then, what Grant argues is that Rawls

has no right to conclude that any regime which abides by his two principles is just, because he has not determined the all-important antecedent matter, which is a moral anthropology of the type needed for humans to know what they owe each other in the first place. His conditional is false. The choice position we face behind the veil of ignorance is morally impoverished.

Second argument: moral nihilism

Grant's second critique of Rawls picks up where his first argument left off. If our sense of equality, on the Rawlsian picture, derives from our intuitions, then where do these intuitions come from? They come, according to Grant, from an earlier, Christian conception of morality, a conception which has been more or less killed off by the enlightenment and the scientific revolution. The west, therefore, is mired in the midst of a great 'civilizational contradiction' of the type predicted by Nietzsche:⁸ our moral understanding of the person, and of the bounds of authority, derive from a tradition which has long since been extinguished by progress.

Consequently, argues Grant, moral nihilism beckons. For our present systems of morality, as exemplified by Rawls (and the argument outlined above), are shorn of the very foundations by which they could support the conclusions they draw. Thus, once the afterglow of Christianity recedes into memory, there is nothing, at least in principle, standing in the way of a contractarian defence of things we now find abhorrent. Our entire moral ontology is a narrow pursuit of a universalized self-interest. What if, given the new technological vistas, self-interest changes scope? What's to stop the nature of the contract changing, to allow the presently abhorrent? This is, according to Grant, especially pressing in our scientific society, which desacralizes the human. No ends in technological and scientific view of world. We are relying on an older view of moral foundations which has been extinguished by technological progress. Radical contingency beckons—what of technology changes the horizons of what is possible for self-interested individuals to acquire? Why won't we then change what is rational? This is an open possibility for Rawls, as Grant reads him.⁹

3.2.3 Defusing an objection

One might object that Grant's critique outlined here is conflating two different types of contractualism. More specifically, one might charge Grant's emphasis on self-interest as betraying a misunderstanding of Rawls: Rawls, the objec-

tion goes, is a *moral* contractualist—a constructivist—not a Hobbesian contractarian. As such, Rawls derives his principles of justice from a choice situation in conjunction with a moral premise which operates as a normative constraint on acceptable choice. This moral premise is that all agents are de equal respect, and thus, only universalizable principles are acceptable. Thus, when Grant asks whether we can derive justice from ‘a calculation of self-interest in general’ (Grant 1974, p. 43), we can see that he misunderstands the Rawlsian project.

Responding to this objection will allow us to gain a deeper appreciation of Grant’s criticism. In reply, I contend that Grant is not, in fact guilty of this misreading of Rawls. Grant is aware that ‘liberty and equality’ are at the heart of the Rawlsian project, which I take to be his way of putting the Rawlsian universalizability constraint. He understands that Rawls is engaged in a Kantian and moral form of contractualism, which is based not upon self-interest, but upon the idea that agents must be treated with equal respect. Grant’s criticism is a ‘second-order’ criticism, aimed at the Rawlsian version of a Kantian constructivist morality. In effect, Grant accuses Rawls of attempting to take universalizability as a basic premise or axiom without any justification. His criticism is that without a substantive and ‘thick’ moral theory standing in the background and justifying this appeal to equality—a substantive theory of the type employed by Kant—Rawlsian constructivism, in effect, collapses into a form of rational choice. For agents in the original position are asked to maximize their basic goods only subject to the equality constraint. Grant’s point is that without a substantive moral theory, the equality constraint—at least from the perspective of the agents in the choice situation—looks arbitrary. This, moreover, is why he also thinks that the Rawlsian divorce of the principle of equality from substantive moral commitments is, in Rawls, dangerous—if decoupled from a thicker moral theory, then why can’t agents shift the goalposts of what is involved in equality?¹⁰ Why can’t agents, that is, remove potential persons from agency? In the end, then, I think that understanding the ‘second-order’ form of Grant’s criticism allows him to avoid the objection in question.¹¹

3.3 Walking the same path

As will already be apparent from my reconstructions, Scruton and Grant share a great deal in common when it comes to criticizing liberalism. Scruton and Grant both take their respective targets to be unable to adequately theorize the origin of political authority. As I’ve reconstructed his argu-

ment, Scruton criticizes the contract for presupposing what it purports to explain: communal obligations. For Grant, the Rawlsian contract, arising from the original position, is in a similar predicament insofar as is unable to generate the normative constraints it purports to so generate. For both thinkers, therefore, while civil liberties are desirable, they must be theorized in a manner altogether different from the theoretical starting point made by liberals. For these starting points are, *qua* normative conceptions of authority, completely inadequate.

Each thinker, moreover, locates a similar source of the inadequacies of the liberal conception of political authority. For Scruton, as well as for Grant, the liberal conception of political authority fails because it attempts to ground the norms constitutive of legitimacy in form of thought experiment—the contractual choice situation—which is too thin, metaphysically speaking, to do the work it is tasked with. According to Scruton, the contractarian tradition reifies the individual, and makes her the seat of legitimacy in the form of consent. However, on his view this is a fatal mistake, because there is no contractual choice situation in the first instance without an antecedent community. The social contract tradition therefore gets the source of legitimacy the wrong way around—a contract is legitimate because it abides by the terms of community, rather than the community being legitimate because it abides by the contract. It is the community which allows the agent to enjoy her freedom in the first place, not the state of nature. Thus, the grave mistake of the contractarian is to assume that a basic conception of the individual, abstracted away from everything else, is sufficient to generate legitimacy. Similarly, Grant takes aim at what he takes to be the hole in the heart of the Rawlsian original position. For Grant, the individual agent, shorn of any notion of the good, is not in a position to know whether or not Rawls’ two principles are in fact just. For any notion of justice must refer to a theory of the good—a philosophical anthropology—of the sort that Rawls eschews. Consequently, for Grant, the Rawlsian contract commits the same grave mistake that Scruton identified in his analysis of the classical contractarian tradition—it abstracts the agent away from the conditions which are the very condition for the possibility of identifying a legitimate regime. Rawls is guilty of the same error of abstraction as the classical liberals, insofar as he believes that the starting point for a theory of political legitimacy is the individual agent and her desire for value maximization.

In sum, then, Scruton and Grant walk down the same path when it comes to theorizing the pitfalls of liberalism.

For each thinker, as I understand them, the fundamental problem with the liberal picture of legitimacy and political authority is a fatally abstract and empty starting point. The liberal starts with individuals in a state of nature, not realizing that this is to get things exactly backwards. We must look to something antecedent—the community for Scruton, our knowledge of ends for Grant—in order to see where these norms are generated.

IV. PARTING WAYS: SCRUTON'S QUALIFICATIONS, GRANT'S REJECTIONS

In the previous section, we saw two conservative criticisms of liberalism—those of Sir Roger Scruton and George Grant—which, if I am correct, converge in important ways. To put it metaphorically, while the two authors are separated by time and place, they walk a similar critical path. They also, moreover, share more than a critical path. Each author displays intellectual traits which make it plausible to categorize both as belonging to the Anglophone conservative tradition. As I shall argue in this final section of the paper, however, Scruton and Grant part ways when it comes to articulating their respective conservatisms as a positive doctrine, and I shall also argue that this parting of ways represents a deeper tension in the tradition.

Scruton's historically-oriented discussion of conservatism in his (2018, pp. 23-24) makes it clear that he sees modern conservatism to be an outgrowth of the enlightenment, in the sense that he understands the conservative to be 'qualifying' the central principles of liberalism:

Modern conservatism ... began life in Britain and also in France as a qualification of liberal individualism. The conservative argument accepted the bottom-up view of legitimacy, as conferred on government, at least in part, by the consent of the people. It accepted some version of natural law and natural rights, as defining the limits of political power and the freedoms of the sovereign individual. And it was by and large in favour of constitutional government and what Jefferson was later to describe as 'check and balances' through which the various powers and offices of government could hold each other into account.

By and large, argues Scruton, the Anglophone conservative endorses 'liberal individualism'—a starting point which sees the 'sovereign individual' as defining the limits of political power, and like the classical liberal, he takes legiti-

macy to be a matter of respect for some form of natural law. However, (2018, p. 24):

... modern conservatism ... opposed the view that political order is founded on contract, as well as the parallel suggestion that the individual enjoys freedoms, sovereignty and rights in a state of nature, and can throw off the burden of social and political membership, and start again from a condition of absolute freedom. For the conservative, human beings come into the world burdened by obligations, and subject to institutions and traditions that contain within them a precious inheritance of wisdom, without which the exercise of freedom is as likely to destroy human right and entitlements as enhance them.

As we have seen, Scruton rejects the contract as the seat of legitimacy; the human agent is indelibly social, and it's the web of social obligations of which she is thrown which is the seat of legitimacy. The fallacy of the free agent in state of nature is that it artificially abstracts away from the bonds of membership which allow the agent to be free.

Grant, as I understand him, agrees with Scruton with regards to the failings of the social contract theory of legitimacy. However, I argue that he would not be satisfied with Scruton's description of conservatism as constituting a qualification of liberalism. The reason he would reject this, as base, is that Grant understands Anglophone conservatism to be the product of a distinctly pre-enlightenment political tradition, the Christian Platonist tradition of Augustine and Hooker. Grant makes this clear (1998, p. 44) in the following passage:

In philosophy we are given sufficient knowledge of the whole of the nature of things to know what our interests are, and to know them in a scheme of subordination and superordination. In this account, justice is not a certain set of external political arrangements which are a useful means of the realization of our self-interests; it is the very inward harmony of human beings in terms of which they are alone able to calculate their self-interest properly.

Philosophy equips us to know what justice—political authority within the bounds of right—is composed of. We are able to know what our 'interests' are—what is best for us as political agents, by inquiry into the metaphysics of ends. In short, for Grant, justice is knowledge of the divine or-

der or *logos*—and what is just for the temporal order is given by the divine order, in the sense laid down by Augustine and the cardinal virtues. In short, Grant reaches beyond the enlightenment to the thicker notion of justice encapsulated by the pre-modern saying ‘justice is each man getting what is his due’. The conservative, for Grant, is the defender of a distinctly pre-modern inheritance, the tradition of natural law and ecclesiastical politics; someone who ‘invokes the ancient doctrine of virtue’, according to which ‘virtue is prior to freedom’ (Grant 1965, p. 74). Agents are free, on this conception, only if they are aware of the virtues and the inner harmony of the soul, because following Plato, Grant sees this inward harmony as a prerequisite of freedom.¹²

Grant criticizes the conservatism of Burke and the enlightenment more generally on grounds rooted in this broadly Neo-Platonist view of human ends. In his view, Burkean conservatism is simply ‘the defence of property rights and chauvinism, attractively packaged as appeal to the past’ (Grant 1965, p. 71). It is so, moreover, precisely because, as a distinctly enlightenment form of political theory, it takes rational self-interest to be the both the highest end for humans, and a limiting condition upon political coercion (in the form of consent). For Grant, this conception of humanity leads to an essentially negative understanding of human ends and, as a result, political obligation (in the sense that the contract becomes collective security for self-interest) which is entirely at odds with the nature of things as reflected in the virtues. As such, it is the enlightenment which is the harbinger of moral nihilism: if self-interest determines what we owe each other, then when our self-interest changes, so do our norms. Unfettered reason has a tendency towards vice and excess.

I argue that Grant would have similar reservations regarding Scruton’s conservatism as he does to Burke’s conservatism. As we have seen, Scruton places a form of ‘liberal individualism’ at the heart of conservatism. His conservatism is self-described as a qualification of liberalism; it is a liberalism embedded in a time and place. Given Grant’s rejection of the essentially negative understanding of human ends, however, he would view Scruton’s commitment to individualism as a surrender to the enlightenment view humanity as essentially self-interested calculators, and thus vulnerable to the same form of moral nihilism which he takes to infect Burke’s thought.¹³ While as we have seen, Scruton does in fact hold that human freedom is ‘thick’ in the sense that it is essentially structured by a community, it is, importantly, not the same community of con-

cern to Grant. Scruton’s community is, as far as I can see, the spontaneous orders of Smith and Hayek, an aggregate of individuals producing something supervenient. It is not the pre-enlightenment community of those who wish to see the temporal order structured by the divine order. Scruton thus implicitly aligns himself with a tradition which Grant rejects.

V. CONCLUSION

I have argued that when it comes to criticizing the liberal contractarian theory of legitimacy, Scruton and Grant walk a common path. However, I have also argued that the two thinkers part ways at a fork in the path created by their respective conceptions of a positive vision for Anglophone conservatism. I would like to bring the discussion full circle by relating what I have said back to some themes prominent in Scruton’s (2018).

If I am correct here, then Scruton’s historical introduction to conservatism, framed as it is in terms of a reaction to and qualification of the more radical developments of the 18th century enlightenment, could be seen as representing only a partial picture of the Anglophone conservative tradition. Certainly there is a great deal of truth in what Scruton says in his description of the evolution of conservative thought, and there is no greater living exponent of the tradition, in my view at least. Arguably, however, Grant’s vision is also part of the Anglophone story, and certainly provides, if anything, the theological-philosophical stage upon which the story of the development of civil liberties in Britain and its colonies progressed. The evolution of the common law, parliament and the unwritten constitution, for example, certainly would not have developed the way they did outside of the peculiarities of the English religious settlement, and its stormy relationship to its non-conformist offshoots. While much more could be said here, I mention it because I think that this parting of ways suggests an unresolved tension as the heart of this particular conservative tradition. There is a tension, in Anglophone conservatism, between what I will call the neo-classical and Platonist elements of its ecclesiastical origins, and the liberal individualist elements of the tradition which stem from the enlightenment. Which element or pole should we emphasize? Should we follow Scruton’s liberal conservatism, or Grant’s high Toryism?¹⁴ My concluding suggestion is that we should, as a starting point, look to the great compromises of the English settlement as an exemplar, and attempt to navigate a course between the poles.¹⁵

NOTES

- 1 Unless otherwise specified, all references are to Scruton 2018.
- 2 That is, I am concerned with the conditions under which political authority is right. The theory of political legitimacy is, broadly speaking the attempt to specify these conditions.
- 3 My discussion of the liberal theory of legitimacy in this section is based on Peter 2017.
- 4 Burke (2001, p. 261) writes: “[Society] is a partnership in all science, a partnership in all art, a partnership in every virtue and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.”
- 5 The issue is complicated. However, at least prima facie, it is plausible that societies which do not countenance political institutions which enshrine legal protects to what we would call civil liberties, at least in some for or other, will not be conducive to a Hegelian form of autonomy.
- 6 A good example of the latter is Ignatieff 2009, which contains what I consider to be a grotesque and ideologically driven caricature of Grant, worthy of a Liberal Party election pamphlet. Sadly, this is not atypical. For a serious and thoughtful engagement with Grant’s thought see Dart 2016.
- 7 Cf. Rawls 1971, section 22 ‘the circumstances of justice’.
- 8 As far as I can tell, Grant is discussing Nietzsche’s *Ecce Homo* and *Beyond Good and Evil*. The ‘great delayer’ quote is from *Ecce Homo* books CW 2 (cf. Grant 1998, pp. 78-79).
- 9 Cf. Grant 1998, pp. 74-78 but also part III more generally.
- 10 Indeed, this is what Grant argues in the third section of *English-Speaking Justice*, where he criticizes the recent *Roe vs Wade* decision.
- 11 Thanks to Martin Beckstein for suggesting this objection.
- 12 Unfettered choice is not equivalent to freedom in this tradition. It is, rather, a form of bondage, because true freedom requires that one act in a way consonant with the rationality which makes one human.

- 13 This is the importance of what was, for Grant in the mid 60’s, the waning British connection in Anglophone Canada; Britain was what defined Canada in opposition to the liberalism of the United States, a connection to a society with ‘ways of life from before the age of progress’ (Grant 1965, p. 70). The gradual loss of this connection, therefore, spelled the end of any possibility of resisting a technocratic liberalism of which the United States is the primary exporter.
- 14 In suggesting that there is a tension between the Toryism of Grant and the liberal conservatism of Scruton, I don’t mean to here endorse one or the other, or suggest that one and only one is the ‘true’ conservatism. I merely wish to point out the tension, as it is a springboard for further inquiry.
- 15 I would like to thank Martin Beckstein and Leslie Marsh for comments and encouragement.

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