MICHAEL OAKESHOTT'S POLITICAL PHILOSOPHY OF INTERNATIONAL RELATIONS

Civil Association and International Society

DAVIDE ORSI

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Introduction

The purpose of this book is to identify the implications of Michael Oakeshott's political philosophy for international political theory and for normative international theory. It argues that the philosophy of civil association provides the grounds for an understanding of international society as a rule-based form of moral association in which international law reflects evolving moral practices.

Already, Oakeshott's thought has been considered from a rich variety of perspectives and has been interpreted in many, often divergent, ways. For example, scholars have placed his works in the context of the history of philosophy and they have highlighted their relation with British and German idealism (Boucher 2001, 2012a, b; Nardin 2001; Orsi 2012; Podoksik 2003, 2012). His critique of Rationalism and the contraposition between civil association and enterprise association has also been considered as a contribution to contemporary liberalism (Gray 1989, 1993; Franco 1990, 2004; Haddock 2005; Galston 2012; Gamble 2012; Giorgini 1999), conservatism (Abel 2010; Devigne 2012), and republicanism (Boucher 2005a; Callahan 2012; Coats 1992). However, little attention has been devoted to the influence of Oakeshott's thought on the study of international relations,[1] even though his work has occasionally been considered relevant to contemporary theory of international politics—especially through the works of neo-English School thinkers such as Terry Nardin (1983), Nicholas Rengger (2013), and Robert Jackson (2000), as well as to constitutive theorists such as Mervyn Frost (2002). In many cases, even

these theorists, who are all indebted to his thought, have failed to consider the broader implications of those of Oakeshott's concepts they apply to their own field.

The intention of this book is to consider Oakeshott's thought from both these perspectives. It shows that in Oakeshott's works there are systematic considerations for world politics. At the same time, the book will take Oakeshott's theory as a background and will develop its implications for international theory, with particular reference to the nature of international practices, international society, and to the relations between international law and morality.

The distinction between political philosophy and International Relations, in both its behaviourist and anti-behaviourist forms, started to collapse at the end of the twentieth century, when the critique of the positivist paradigm that had dominated International Relations gained momentum (Brown 1992, 1–19). Between the 1980s and the 1990s, the so-called normative turn, with its emphasis on the moral nature of international politics, and the constructivist turn (which similarly focused on its ideational and interpretative nature) have indeed re-introduced philosophical reflection into the field of International Relations (Brown 2013, 485).

Political theorists have extended their considerations to the international realm. An exemplar in this respect is of course John Rawls' *The Law of Peoples* (1999), as are the works of Onora O'Neill, Charles Beitz, Michael Walzer, David Miller, Simon Caney, Terry Nardin, and others, who acknowledged that issues in International Relations are interconnected with those of political theory.

An increasing number of work, for example, presents and discusses the importance not only of classical thinkers, such as Plato, Hobbes and Rousseau (Brown et al. 2002; Prokhovnik and Slomp 2011; Lebow et al. 2016), but also of philosophers such as Nietzsche, Heidegger, Ricoeur, Wittgenstein, Gramsci, and Habermas (among others). Even though some of them might have said little of direct relevance to the conduct of states, they have exerted a considerable influence on contemporary theories of international relations. Nietzsche's notion of genealogy, Gramsci's concept of hegemony, or Habermas's theory of communicative action—to mention just some among them—have had, for example, a profound impact on critical theory and constructivism (for example, Farrands and Moore 2010).

David Boucher's *Political Theories of International Relations* (1998) is of particular importance to the argument of the book, since it applies the Oakeshottian conception of the history of political philosophy to the

identification of a tradition of texts in the political philosophical reflection on the conduct of states. Even though conceived as a unity, this history is regarded as animated by the dialectical relationship between three traditions of thought: Empirical Realism, Universal Moral Order, and Historical Reason. As part of this, contemporary reflection on International Relations was eventually reconnected to "the intellectual heritage of the political theory of international relations" (Boucher 1998, 11, 375–405).

Also influenced by academic politics (Vincent 2015), International Relations as a discipline now seems much less concerned with theoretical problems and more with action-guiding issues (Brown 2013; Dunne et al. 2013). It also seems that there is a vague consensus among scholars advocating a certain methodological eclecticism, which merges positivist and post-positivist approaches, without much concern for the great historical metatheoretical debates (Lake 2013). However, as Christian Reus-Smit has pointed out, the solution of epistemological, methodological, and ontological questions, addressed through a self-conscious theoretical approach, is still essential to the discipline, and also to its quest for significance. What occasionally makes International Relations, and other disciplines in the Humanities and Social Sciences, less-than-relevant is, Reus Smit argues, not just the lack of authoritative and charismatic public intellectual figures, or the loss of practical intents, but also the unawareness of the nature of practical reasoning and political action (Reus-Smit 2012).

If regarded in the light of this debate, Oakeshott's philosophy may appear idiosyncratic. The style of his writings and the intellectual heritage to which he refers are certainly very different from those dominating current debates in International Relations. However, as I will argue, his ideas about the nature of normative reasoning and of political life, as well as his legal theory, may contribute to our understanding of world politics and international law.

THE STRUCTURE OF THE BOOK

This study reveals that Oakeshott's theory of civil association offers an original analysis of the historical, social, and moral dimension of international society. It argues that international society is constituted by an international rule of law, conceived as the codification of existing international "moral practices."

In his "Introduction to *Leviathan*," Oakeshott states that, to fully understand a philosophical text, one should consider it in the context of the whole history of political philosophy (Oakeshott 1991, 223–28). Following this methodology, I delineate Oakeshott's ideas through the identification of their relations with the history of the political theory of international relations, as it has been presented by David Boucher, elaborating on Oakeshott's triadic conception of the history of political philosophy (1998).

The argument of the book is as follows: Chap. 2 aims at identifying the meaning of Oakeshott's philosophy, focusing on epistemological and metatheoretical questions. To investigate Oakeshott's ideas, these are related to the philosophical tradition from which he developed his thought. Chapter 2 considers the widely debated issues of the consistency between Oakeshott and British idealism, exploring the relations that he identifies between different kinds of knowledge, and discussing his methodological holism. The chapter presents Oakeshott's conception of philosophical method, again in relation to the British idealist debates on dialectic and the unity of knowledge. On this ground, it considers the nature and role of political philosophy.

Chapter 3 places Oakeshott in the context of the Great Debates that have characterized International Relations since the end of the Second World War. It shows Oakeshott's contribution to post-positivist international theory. The chapter will also show the originality of Oakeshott's theory of historical knowledge with respect to the methodological assumptions of the English School (with particular reference to Herbert Butterfield, Martin Wight, and Hedley Bull). The chapter goes on to highlight the Oakeshottian influence on the normative turn in International Relations, as well as raising a possible comparison with constructivist methodology.

Having undertaken foundation laying in Chaps. 2 and 3, Chap. 4 presents how Oakeshott's theory of tradition and moral practices may offer a philosophical justification of the English School theory of international relations. It also presents the contribution of Oakeshott's idealist political philosophy to current debates in international theory, highlighting its relation to practice and constitutive theories.

Chapter 5 focuses on what has been considered one of the most important international practices: international law. It starts by presenting the Oakeshottian opposition between civil association and enterprise association, between nomocracy and teleocracy. In particular, it

focuses on how political authority is understood in these two modes of political association. On this ground, the chapter turns to Oakeshott's history of the modern European state as presented in *On Human Conduct*. It claims that it comprises a consistent reading of the evolution of international society—a reading that anticipates many constructivist concerns.

It is on this basis that the chapter looks at how Oakeshott's theory has been applied by neo-English School writers to interpret the nature of international society. In particular, it considers Terry Nardin's *Law, Morality and the Relations of States* (1983), and Christian Reus-Smit's criticism of it, presented in *The Moral Purpose of the State* (1999). Moving beyond Nardin's theory and, in response to Reus-Smit, it emerges that Oakeshott's theory of civil association may ground an understanding of international society conceived as a moral association constituted by customary international law. Finally, the chapter shows the heuristic validity of this reading of the nature of international society by considering the current relevance of customs and of their codification in international law. It argues that Oakeshott's theory sheds light on the role of customary international law in the constitution of international society.

While Chap. 5 addresses the ontology of international society, Chap. 6 examines the normative theme of the relations between morality and international law. Normative questions are not those concerned with the desirability of different practical options, but instead those that investigate the moral dimension of international politics (Brown 1992, 3). To identify how an Oakeshottian theory of international society sees the relations between moral values and international society, the chapter considers Oakeshott's political philosophy in the light of realist, universalist, and constitutive theories of International Relations. In spite of his many strong similarities with several of the classic realist theorists, the chapter suggests that Oakeshott identifies the central and fundamental constitutive value of moral practices, intended as the outcome of the historical relations between international agents.

NOTE

1. In the text, I will follow the convention of indicating International Relations as the study of international relations.

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Experience and Political Philosophy

INTRODUCTION

Oakeshott's works appear relevant for debates in international political theory and normative international theory with respect to two main groups of ideas. Firstly, the antinomy between civil association and enterprise association presented in *On Human Conduct* (between a formal legal order constituted by non-instrumental rules and one grounded on a substantive state of affairs considered as a goal) has had a very considerable impact (Oakeshott 1975, 111–22). Scholars such as Terry Nardin and Robert Jackson have employed it to revitalize the English School's notion of international society (Nardin 1983; Jackson 2000), while Nicholas Rengger has more recently used it to interpret the evolution of the just war tradition (Rengger 2013).

Secondly, Oakeshott's notions of moral practice have proved to be fruitful not just for understanding international institutions by neo-English School writers (Keens-Soper 1978; Bain 2003), but also for the development of constitutive theories of international relations. For example, Mervyn Frost (2002, 40–47) has used it to define the normative framework constituting individual identities, human rights, and ethical reasoning in world politics. Moreover, as argued by Cornelia Navari, Oakeshott's idea of moral practice may be linked to the recent

practice turn in International Relations developed by post-positivist, constructivist, theorists (Navari 2011; see Adler and Pouliot 2011, in particular Kratochwil 2011, 36).

Notwithstanding this relatively significant influence, what is still missing from the debate is a thorough and comprehensive analysis of the relevance of Oakeshott's political philosophy for an understanding of international institutions and world politics. In other words, the implications of Oakeshott's theory of normativity, critique of rationalism, theory of civil association, and the rule of law, as well as of his history of the modern European state, for the theory of international politics still need to be explored.

Even Nardin, Jackson, and Rengger, who more than others apply Oakeshott's categories to their analysis, do not in fact engage with the broad philosophical arguments that grounds Oakeshott's theory. The categories of "civil association"; "enterprise association"; those of "rationalism" and "individualism"; and of "practice" and "authority" are often taken prima facie without further investigation into their particular assumptions. Even Terry Nardin—who has not only applied Oakeshott's notions of civil association and the rule of law at the international level (Nardin 1983, 1998, 2008), but has also offered a comprehensive account of his philosophical arguments (2001)—does not show the relevance of the former for the latter.

On the other hand, those who see the potential relevance of Oakeshott's notion of practice for the current practice turn in International Relations, tend to underestimate his possible contribution to epistemological and ontological reflection (Navari 2011, 615). Constructivist theorists—who, in the words of Christian Reus-Smit, share the notion that agents, identities and interests "are socially constructed" and "are the product of inter-subjective social structures" (Reus-Smit 2003a, 188)—see themselves as an outgrowth of critical theory and have focused on empirical analysis rather than on theoretical discussion (Reus-Smit 2003a, 193–201). Those such as Kratochwil who base their arguments philosophically have mainly referred to Habermas's theory of communicative action, and largely ignored Oakeshott's and other idealists' contribution (Kratochwil 2000; Risse 2000; on this, see Reus-Smit 2003a).

I argue in this book that Oakeshott's political philosophy may be the ground for an understanding of international society as a rule-based form of moral association of states constituted by customary international law. I claim that his political philosophy may be the basis of an original analysis

of the historical, social, and moral dimension of international society. In contrast to Rengger, Nardin, and Jackson, as well as to other neo-English School writers and to constitutive theorists, I contend that to appreciate in full the relevance and implications of Oakeshott's thought for the understanding of international relations, it is first necessary to step back and define its broader epistemological and methodological framework. It is only on the basis of this analysis that the place of Oakeshott's political philosophy in current debates in international theory and international political theory may be understood. The objective of this first chapter is to consider Oakeshott's theory of knowledge and philosophy as developed throughout all his main works, and to present his controversial theory on the nature and role of political philosophy.

Educated in Cambridge in the 1920s by J.M.E. McTaggart and W.R. Sorley in the philosophical school of British idealism, Oakeshott wrote his first monograph (*Experience and Its Modes*, 1933) under the influence of F.H. Bradley's *Appearance and Reality* and Hegel's *Phenomenology of Spirit* (Oakeshott 1933, 6). The aim of that book was to offer an overarching vision of the nature and role of philosophical experience and of the relations between different forms of knowledge (4).[1]

Philosophical and epistemological concerns are also central in the introduction to Hobbes's *Leviathan*,[2] in some of the pieces collected in *Rationalism in Politics and Other Essays*,[3] as well as in *On History and Other Essays* (Oakeshott 1999). In this regard, *On Human Conduct* is of particular relevance. As we read in the preface, it is a work in "philosophical reflection" (Oakeshott 1975, vii).

However, the importance of these philosophical tenets, which were so apparent in *Experience and Its Modes* and in other writings of the 1930s,[4] is more opaque in later works.[5] Even though it is indeed impossible to deny some differences between various stages of Oakeshott's thought, and in particular with regard to stylistic and terminological differences (Nardin 2001, 17–18), in the following I will show that in Oakeshott's there are substantial continuities with regard to epistemological and metaphilosophical questions. I contend that Oakeshott consistently defended an original interpretation of idealism that postulates the unity between mind and objects, and between our understanding and reality. These notions are grounded on a methodological holism, according to which the various forms of knowledge (history, science, practice, and art) are based on incommensurable and autonomous logical presuppositions. Moreover, I claim that, in all his works, philosophy is seen as a critical activity that

identifies the postulates or presuppositions of various concepts and, at the same time attempts to define their universal, concrete, or unconditional meaning.[6] Finally, I investigate the relevance of these conceptions for the ways in which it is possible to theorize about normativity and politics.

IDEALISM AND TRUTH

As already mentioned, if it is an incontrovertible fact that the purpose of *Experience and Its Modes* was a restatement of the "first principles" of idealism (Oakeshott 1933, 7), what needs to be discussed is what kind of idealism we are referring to—what are its theoretical assumptions—and whether these tenets may be seen as the grounding of Oakeshott's political philosophy.

Before beginning the comparison between Oakeshott and idealism, it is necessary to pose three main caveats. Firstly, for the idealists, logic is not the science of the validity of inferences represented by symbols (as it is for a large part of contemporary philosophy), but it is rather the study of thought and knowledge. It is to this idea that Oakeshott still refers in his 1983 work, *On History and Other Essays* (1999, 6). Secondly, the idealist school is not constructed around a set of unchanging principles to which all the "idealists" subscribe. What characterized, for example, British idealism was rather a group of interrelated ideas, often inspired by classical German philosophy, interpreted with a certain degree of liberty by its main exponents. The movement had a historical unity despite the diversity, which is recognizable in the discussion of a constellation of questions and themes (Boucher and Vincent 2012, 38–42). Finally, neither the British idealists nor Oakeshott elaborated a philosophical system to match that of Hegel. Though profoundly influenced by Hegelianism, and notwithstanding the internal coherence of their thinking, they never presented anything like a philosophical encyclopaedia.

More than by anything else, British idealism was defined by the polemic against empiricism and philosophical realism that developed through a critique of the assumed dualism between the knowing mind and its objects. As T.H. Green, E. Caird, and Henry Jones refuted the positions of British empiricists (from Locke to Spencer and Lewes), so the latest exponents of that movement, such as R.G. Collingwood and Oakeshott, argued against the realism of Logical positivism (Franco 2004, 30; Mander 2011; Boucher and Vincent 2012, 50–55). The defence of the unity of mind with reality and of the interrelatedness of subject and object, that is, the

identity between reality and rationality, is indeed one of the main concerns of *Experience and Its Modes*, which starts by identifying reality with thought and with the synthesis between "experiencing" and "what is experienced." Experience is a "single whole" that admits no "final or absolute division" (Oakeshott 1933, 9–10).

Far from being abandoned in the essays written after the Second World War—when analytic philosophy was already hegemonic in British universities—this fundamental principle was reiterated in "The Voice of Poetry in the Conversation of Mankind", which is often considered as Oakeshott's departure point from Absolute idealism (Franco 1990: 3; 2004, 142; Nardin 2001, 48). Even though, in this text, Oakeshott seems to place more emphasis on the role of the knowing subject, reality is still defined as a "world of experience." The distinction between the self and the not-self is considered as "unstable," insofar as they "generate one another" (Oakeshott 1991, 496). They are not independent but, instead, aspects of a single reality. Thus, in both *Experience and Its Modes* and in "The Voice of Poetry in the Conversation of Mankind," Oakeshott defends the idealist logical principle according to which nothing is outside thinking and prior to reason. This is what is still defended at the outset of *On Human Conduct*, where we read that no reality can be considered "independent from reflective consciousness" (Oakeshott 1975, 1). As already stated in *Experience and Its Modes* (1933, 32–33), even though an "it" may temporally precede its "interpretation," and a "fact" may be antecedent to a "theorem," the difference between the former and the latter is merely contingent: it is the recognition of something as an "invitation" to further thinking and not a "verdict" (1975, 1). In short, like other idealists, Oakeshott argued that experience is a *factum*, the result of the active character of mind, rather than a *datum*, an external object apprehended or reflected by intelligence (Haddock 1996, 104).

The most important implication of this fundamental principle is that ideas do not refer to anything outside of themselves. Therefore, they are always known in relation to other ideas and significant only within a world of ideas (Oakeshott 1933, 29; see Nardin 2001, 23–27). In this regard, to understand *Experience and Its Modes* we must consider its philosophical context, which may be identified with the debate between Bernard Bosanquet and F.H. Bradley about "concrete universal" and "floating ideas" (Bosanquet 1911, I, 5; Bradley 1946, 350; 1914, 28–64). Oakeshott indeed denies the possibility of an "idea without a world" (1933, 334). He recalls also Bradley's rejection of the existence of "mere

ideas" (Bradley 1946, 324), devoting several paragraphs of *Experience and Its Modes* to a refutation of the notion that an idea may stand in isolation (Oakeshott 1933, 56). This same position is presented, and indeed further clarified, in "The Voice of Poetry in the Conversation of Mankind" where we read that "an image is never isolated and alone," belonging to "the world or field of images which on any occasion constitutes the not-self" (Oakeshott 1991, 497). Once again, this same logical principle is reiterated in *On Human Conduct*. There, ideas construct "platforms of conditional understanding," which are themselves constructed around certain postulates and ideas (Oakeshott 1975, 8–9).

From the synthesis between subject and object, and from the relatedness of all ideas, it follows that, as for other British idealists before him, for Oakeshott the correspondence theory of truth (which claims that truth originates from the adherence of the knowing subject to a known, external, object) must be rejected. Instead, coherence and comprehensiveness are the criterion of truth. The main elements of the coherence theory of truth were already outlined in Bernard Bosanquet's contribution to the intellectual manifesto of British idealism, *Essays in Philosophical Criticism* (1883).

The most systematic presentation of this theory is, however, in H.H. Joachim's *The Nature of Truth* (1906), which shaped the subsequent debate between coherence and correspondence theory of truth.[7] Joachim asserts that something is true insofar as it belongs to a "significant whole," one in which "all its constituent elements reciprocally involve one another, or reciprocally determine one another's being as contributory features in a single concrete meaning" (Joachim 1906, 66). The relationship between judgments is internal, and they compose a whole system of knowledge. *Experience and Its Modes* and subsequent works are predicated on this theory of truth, which posits the coherence of a world of ideas as the criterion of truth, and not the conformity of ideas to any external object (Oakeshott 1933, 37).[8] Truth is a property of the ideas that compose a system and depends on the relations between its different parts (Boucher 2012b, 258). This position can be interpreted as a critique of all forms of realism and foundationalism, which base knowledge either on the perception of an external reality, or on objectivity (on this, see Stern 2009, 177–208).

To sum up, Oakeshott grounds his works on a philosophical idealism that asserts that there is no knowledge of reality independent of our understanding it. Object and subject are mutually constituted by their reciprocal

relations. For this reason, for Oakeshott there is no distinction between ontology and epistemology, between the question about the nature of reality and those concerned with our manner of knowing it (see Jones 1893). As opposed to the realist epistemology, the question of the object of knowledge is not separated from that of the manner in which it is known. This does not mean, however, that knowledge is arbitrary, that it is the construction of a solipsistic mind. Instead, insofar as the test of the validity of truth is coherence and comprehensiveness, the criterion rests on the reciprocal relations between ideas.

MODES OF EXPERIENCE AND ORDERS OF INQUIRY

From the assumption that knowledge is the synthesis between the knower and what is known, between subject and object, idealist philosophy attempted to explain the differentiation of our understanding (Boucher and Vincent 2012, 57–75). The epistemological question—that for the idealists is at the same time ontological—is about the relationship between different forms of knowledge, different forms of reality. As Oakeshott claims in *On History and Other Essays*, to reflect on knowledge is to reflect on the modality in which it is constructed: "the conditions of understanding specify what is to be understood" (Oakeshott 1999, 6).

It is in this regard that G.R.G. Mure notes that British idealism does not attempt to articulate the Hegelian dialectical structure of development in systematic detail (Mure 1954, 329). It is indeed the influence of the Italian idealists, and in particular Croce, Gentile, and De Ruggiero, that leads R.G. Collingwood to elaborate in *Speculum Mentis* (1924), in *Essay on Philosophical Method* (1933), as well as in his moral philosophy lectures, a system based on the hierarchy of overlapping forms (Boucher 1989a, 27–37; Boucher and Vincent 2012, 66–67).[9] In *Speculum Mentis* he sees art, religion, science, history, and philosophy as different kinds of knowledge, arranged in ascending logical order. None of these forms is self-sufficient, and each tends to transform itself into the form above it, which has a higher degree of coherence and unity.

Oakeshott proposes a rather different interpretation of this relationship, inspired by F.H. Bradley (Boucher 1989b).[10] In *Appearance and Reality* Bradley affirmed that the various forms of experience—which he named pleasure and pain, feeling and will—are autonomous and equally necessary. There is not a hierarchy between all these aspects according to their proximity with the Absolute, and they are all abstractions and appearances (Bradley

1946, 404). Oakeshott's notion of modality develops this position and conceives the various modes as grounded in different categories or postulates, which are independent from one another. The modes are the whole of reality from a particular point of view, specified by their postulates (Oakeshott 1933, 71–74). They are autonomous in relation to each other, though abstract in respect of the whole. As such, *Experience and Its Modes* is opposed to the hierarchical idealist encyclopedia proposed by Hegel and reinterpreted by Collingwood. According to Oakeshott, reality is differentiated or abstracted in a potentially infinite number of modes (Oakeshott 1933, 84). However, the most important and highly developed are history (grounded on the category of the past), science (on quantity), practice (on will), and, from "The Voice of Poetry," art (on delight).[11]

It is also important to underline that Oakeshott does not offer a speculative philosophical interpretation of the historical emergence of the various modes of experience. Even though he may be considered alongside Croce and Collingwood to the extent in which the various forms of experience are activities that develop throughout history, Oakeshott does not see any logical necessity in their emergence—their presuppositions or categories are the result of human intelligence and not, as in Kantian philosophy, something that is presupposed by the mind. For Oakeshott, past, quantity, will, and delight—the points of arrests of experience from which history, science, practice, and poetry respectively arise—are not metaphysical forms independent from actual experience and outside of the relation between subject and object (Oakeshott 1933, 23), but emerge historically and are the result of the activity of the mind.

As in Bradley (1946, 441), however, in Oakeshott there is not a connection between historical and logical development. The various modes of experience are not "moments indispensable to the completeness of a dialectic (or logical development)" (Oakeshott 1933, 79), and philosophy or the Absolute, as I shall discuss below, is not its "historical end" (82). Although Oakeshott is not "disposed to deny that this is a possible view of the character of experience," he underlines how it does not logically explain modality and abstractions (73). Even though, for instance, practice may have a genealogical or existential priority, or history as an autonomous form of experience may have appeared earlier than science, there is not a logical connection in this historical evolution (Oakeshott 1991, 488; 1999, 25–26).

Once again, far from being a question that he addressed only in his early writings, in the later works he also underlines the contingent nature of the arrests and their not being the result of a logical necessity. In his peculiar style, in *The Activity of Being an Historian* (1958) Oakeshott affirms that modes of experience "emerge like games that children invent for themselves" (Oakeshott 1991, 151). In a similar stance, in *On History and Other Essays* the various modes emerge "without premonition from the indiscriminate groping of human intelligence" (Oakeshott 1999, 6).

The lack of relations between historical and logical development of the various forms of knowledge and the notion of modality as a whole represent a constant feature of Oakeshott's reflection and the logical standpoint from which all his subsequent thought is developed. In the text considered by many as the moment of departure from idealist logic ("The Voice of Poetry in the Conversation of Mankind") the idea of modality is still present. There is indeed a correspondence between the notion of modes of experience and that of modes of imagining or universes of discourses, presented in "The Voice of Poetry in the Conversation of Mankind" (Oakeshott 1991, 496). Among the significant elements that indicate its persistent centrality is that, in "The Voice of Poetry," he claimed to have improved his theory by adding poetry as an autonomous mode (Oakeshott 1991, 502). Finally, in one of his last works (*On History and Other Essays*), Oakeshott still talks about "modes of understanding": each of them is "an autonomous manner of understanding, specifiable in terms of exact conditions, which is logically incapable of denying or confirming the conclusions of any other mode of understanding, or indeed of making any relevant utterance in respect of it" (Oakeshott 1999, 3).

In *On Human Conduct*, however, Oakeshott expresses this notion through a very different approach. There, he theorizes the existence of two "orders of inquiry" constructed upon unambiguous categories. The first understands going-on as "expression of intelligence"; the second as "process," in terms of causal conditions (Oakeshott 1975, 13). Each of these two orders generates autonomous and distinct "idioms of inquiry," capable of their own "conditional perfection" (Oakeshott 1975, 12–15). As it was for the modes, orders and idioms of inquiry are abstract and conditional.

A possible reason for this change may be the increasing influence of neo-Kantian philosophies and in particular of Dilthey. It is often remarked

that Oakeshott is particularly scant in his references to other thinkers, and he indeed left much to the expertise of his readers. However, as I have already mentioned, in the preface to *Experience and Its Modes* he mentions Bradley and Hegel as his own sources of inspiration. It is significant, then, that in another later text—his reply to D.D. Raphael's review of *Rationalism in Politics*—he indicates Dilthey (along with Aristotle and Hegel) as one of his points of reference (Oakeshott 2008, 183).[12]

Moreover, the affinity between Oakeshott and neo-Kantianism, in regard to the above-mentioned distinction between the two orders of inquiry, is also indicated by some loose notes preserved at the Oakeshott Archive at the British Library of Political Science.[13] In some of these papers, we find handwritten study notes about the distinction between natural and cultural sciences that are relevant to an understanding of Oakeshott's interpretation. They show his reflection on the exponents of the so-called South-Western or Baden School (in particular, Windelband, Dilthey, and Rickert), who were concerned with the identification of the conditions for the possibility of historical knowledge and moral experience. From these notes we may deduce that, like R.G. Collingwood in *The Idea of History* (Collingwood 1993, 165–76), Oakeshott considers their thoughts as an attempt to identify a mode of knowledge autonomous from the method of the natural sciences as depicted by positivism.

To sum up so far, starting from the assumption that reality and knowledge are not objects independent from the knowing mind, Oakeshott addresses the question regarding the relations between various forms of knowledge. I have emphasized that Oakeshott argues for the autonomy of the various modes, as each is grounded on incommensurable presuppositions. I have also stressed that, in *On Human Conduct*, he temporarily abandons the conceptions of modality and subscribes to the neo-Kantian distinction between cultural and natural sciences, which, however, are interpreted as two incommensurable ways of conceiving reality. Throughout this discussion, Oakeshott identifies the conditions of logical possibility of the various modes of experience, or, as they are later called, universes of discourse, orders of inquiry, or modes of understanding. In so doing, he defends the legitimacy of various approaches to reality and denies the possibility of any reductionism to a single, dominant, knowledge. It is this element that, as I will argue below, represents the basis for Oakeshott's understanding of normative thought and of the philosophical understanding of politics.

Individuality and the Absolute

In *Experience and Its Modes*, and in subsequent works, the various modes of experience are autonomous from each other and abstractions of the concrete whole. What needs to be clarified is therefore the logical difference between individual ideas within the various modes and the whole. For the concern of this book's argument, it is on this basis that it will be possible to understand the value of practical and political concepts and their relation to historical knowledge and philosophical activity.

This issue is crucial in *Experience and Its Modes*, where it is addressed through a theory of individuality articulated in the opposition between particularity and universality. In that work, the question continuously asked was what for each of the modes, and for philosophy as a whole, constituted the individual, or individuality (Boucher 2012b, 259–65). In this regard, Podoksik has claimed that the notion of the Absolute, which was central in previous British idealists, is irrelevant to Oakeshott's philosophy and that his focus is rather on particularity and on the pluralism of the forms of knowledge (Podoksik 2003, 43). Similarly, Luke O'Sullivan (2010) identifies in *Experience and Its Modes* an ambiguous and contradictory metaphysics of the Absolute, which is eventually overcome in his later works, and particularly in *On Human Conduct*, where the Absolute is no longer a concern. On the contrary, in my view, the idea of the Absolute as the condition of the possibility of all forms of experience and understanding is central to both Oakeshott's early and later works.

It is worth considering that Bernard Bosanquet and F.H. Bradley (two of the most important exponents of Absolute British idealism) define individuality as a unity within itself (Mander 2005, 115). Both defend an absolute monism in which the whole is the only substance and reality, whilst finite individualities are adjectival and apparent. The opposition between abstractness and concreteness is a matter of degree. Finite individuality is an abstraction, a set of determinations of properties that cannot stand as the ultimate subject of a proposition. Only the whole, or concrete individuality, is real and true. What is true of a certain finite individuality is ultimately true only to a certain degree, and can be affirmed—with the highest degree of coherence—of the infinite individual, reality as a whole (Bosanquet 1918, 80). For Absolute idealism, then, there is a logical hierarchy between different sorts of individuality: abstract and concrete (Bosanquet 1918, 81). Concrete individuality is a many in one, it is the universal that can be reached through a progressive process in

which the shortcomings and the contradictions of abstract individuality are overcome (Mander 2005, 123).

What characterizes F.H. Bradley's Absolute idealism and defines him as a sceptic is that the Absolute or Truth is not achievable through reason, but instead only through a form of direct, immediate, supra-personal perception (Bradley 1946, 433). However, this does not mean that it is completely unrelated to our thinking. Instead, it is present in all appearances, which point forwards beyond themselves. From this point of view, *Appearance and Reality* may be read as a critique of all knowledge on the ground of this logically necessary Absolute, the holistic undifferentiated whole in which all relations and differences are unified. A positive metaphysical knowledge is not considered possible and the system-construction pursued by F.H. Bradley self-limits itself to assign to all forms of existence a position according to their degree of truth and reality, which is to say, of realization of this "idea of perfection or individuality" (Bradley 1946, 440).

Similarly to these Absolute idealist positions, and in the attempt to explain to what extent "individuality is the criterion of experience," Oakeshott refutes the conception that considers individuality as what is separated and self-sufficient. According to his argument, "what is individual is what is specific and distinct, individuality is a matter of degree and circumstance." The difference is then not between an individual and its environment, but between what is "permanently distinct and able to maintain its explicitness without qualification" and what is not. In Oakeshott's theory, the individual points beyond itself, towards its environment, and is "powerless to resist inclusion in what is more individual than itself," concrete individuality (Oakeshott 1933, 44). Finite individuality, or particularity, is designated: it is merely experience arrested at the point which appears to be satisfactory. As it was for F.H. Bradley, it "only exists through an intellectual construction" (Bradley 1946, 464–65). Therefore, concepts within the various modes of experience are finite individualities as they are based on foundations that cannot be refuted without refuting, at the same time, all the modes. They take the part for the whole, elucidating an aspect of reality at the expense of comprehensiveness, and of other elements of concrete reality. On the other hand, the universal or the whole, because completely united with its context, is fully individual and completely substantive (Oakeshott 2010, 154–60).

To show that this notion of individuality nourished in the British idealist tradition is at the root of Oakeshott's political philosophy and is central

to his understanding of the moral criteria of the conduct of states, it is once again necessary to show that he remained consistent with this position in his later works where his political philosophy is developed.

In this regard, *On Human Conduct* is particularly relevant. In that text, the activity of understanding is still described as the "recognition" of "something in particular" distinct from "all that may be going on" (Oakeshott 1975, 1). This engagement proceeds from the indistinctness of the whole towards a more and more recognized "thing," which is a unity of "characteristics," or, as it is called, an "ideal character" (4). Similarly to what is expressed in *Experience and Its Modes*, the identity of an ideal character is the unity of "particularity and genericity," it is the coming together of a group of characteristics and postulates. Individual ideas are not distinct substances: their meaning and value are limited and derive from their relations with other ideas of the same kind.

This theory of individuality indicates that Oakeshott cannot be considered as a subscriber to methodological individualism. Individual concepts are not the logical starting point of knowledge, but their meaning is instead derived from the whole to which they are related. Indeed, for Oakeshott our thinking is always relational. Ideas belong indeed to a certain, more or less well defined, world of ideas or—as they are named in *On Human Conduct*—"platforms of conditional understanding." These are abstractions of the whole based on assumptions or postulates, to which they are related, and in which they find their meaning (Oakeshott 1933, 47, 56). Concepts are abstract individualities as they are grounded on certain presuppositions. At the same time, however, they point beyond themselves to a higher degree of unity.

The concrete individual, or universality—which is self-sufficient as it does not presuppose anything outside of itself—is what the idealist philosophical tradition calls the Absolute. Oakeshott follows F.H. Bradley by claiming that the Absolute is not the final end of knowledge, an ultimate final coherent body of knowledge. It is rather the totality from which all modes are abstracted: "it is not something to come; it is the ground not the hope of experience" (Oakeshott 1933, 349–50). The key point here is to highlight that Oakeshott consistently and continuously maintains that the Absolute is the regulative ideal, the criterion of experience (Oakeshott 1933, 82; 2007, 181; 1991, 491–95; 1975, 3, fn. 1).

This position is maintained not just in *Experience and Its Modes*, but also in *On Human Conduct*. As we have discussed, in Oakeshott's first book the Absolute is "the concrete and complete whole implied and involved

in every modification of experience" (Oakeshott 1933, 349–50). In *On Human Conduct*, Oakeshott explains how knowledge emerges from the undifferentiated whole, which is logically prior to it. Ideas and concepts are "something in particular" which, emerge "from the unconditional (and, therefore, unrecognizable) confusion of all that may be going on" (Oakeshott 1975, 1).

In other words, the unconditional or the whole in which all relations are overcome is still considered, in *On Human Conduct*, the presupposition of all possible understandings. A notion of "unconditional or definitive understanding" has indeed "no part in the adventure," but it may still "hover in the background" (Oakeshott 1975, 3). In short, neither in *Experience and Its Modes* nor in *On Human Conduct* is unconditionality or Absolute experience irrelevant to the logic of the Oakeshottian notion of philosophy and experience. At the same time, in neither works does Oakeshott believe that it could be conceived as a final stage of knowledge.

To recapitulate, Oakeshott remained in the idealist tradition as he considered that the various forms of experience or orders of inquiry are partial and abstracted from the unconditional, and as he claimed that nothing is independent of reflective consciousness. In this, he may be considered a further interpreter of F.H. Bradley's notion of the Absolute and of its relations to its abstractions. Indeed, they both contended that, although complete coherence is the presupposition of any form of thinking, reasoning is always partial and conditional. However, even more than F.H. Bradley, he does not claim that even our best thinking can ever reach or conceive the Absolute, which is the regulative ideal of our knowledge and not a final and ultimate body of knowledge.

THE METHOD OF PHILOSOPHY

We have seen that, according to Oakeshott's idealism, thinking does not start from a blank slate but instead from a given set of more or less coherent concepts or ideas constructed on certain postulates. Knowing is the attempt to move from what is already known towards a more coherent knowledge. What characterizes the various modes of experience or (as they are called in subsequent Oakeshott's works) universes of discourse, or orders of inquiry, is that even though they are activities that try to achieve a higher degree of coherence, they never criticize the assumptions on which they are based. It is for this reason that they are always conditional, they are abstractions of the concrete whole.

On the contrary, philosophical activity is defined as the "unremitting pursuit of concrete individuality" (Oakeshott 1933 45) of a concept which is not related to anything external. This notion is summarized in *Experience and Its Modes* as follows:

> Philosophy, for me and for others, means experience without reservation or presupposition, experience which is self-conscious and self-critical throughout, in which the determination to remain unsatisfied with anything short of a completely coherent world of ideas is absolute and unqualified (82).

It is indeed clear who shared this notion with Oakeshott. For example, F.H. Bradley conceives philosophy as "the attempt to know reality … not simply as piecemeal or by fragments, but somewhat as a whole" (Bradley 1946, 1). Similarly, Bernard Bosanquet defines philosophy as "the studying of the whole, as it is, and for its own sake, without reservation or presupposition" (Bosanquet 1923, 2). He also suggests that it explains the significance of what is already known (2). That this notion of philosophy as self-critical activity is relevant to Oakeshott's later writings is clear in *On Human Conduct*, where we read that she is

> A special engagement where postulates are identities waiting to be understood and not instruments of understanding, and in which questions are asked not in order to be answered but so that they may themselves be interrogated in respect of their conditions … Here, theorizing has revealed itself as an unconditional adventure in which every achievement of understanding is an invitation to investigate itself. (Oakeshott 1975, 10–11)

In *Experience and Its Modes*, the method through which rethinking and re-understanding take place is that of "refutation," which is the exhibition of:

> The principle of the fallacy or error in virtue of which a form of experience falls short of complete coherence; it is to discover both the half-truth in the error, and the error in the half-truth'. (Oakeshott 1933, 4)

In other words, consistent with earlier British idealists, for Oakeshott philosophy is criticism, which leads to the discovery of the conditions of existence of the various forms of knowledge (Oakeshott 1933, 86–87; 1991, 151–83, 491; 1975, 9; 1999, 3–6).[14] Philosophy has the aim of identifying the postulates or presuppositions at the ground of each world of ideas and of each mode of experience or understanding.

At the same time, however, philosophy aims to identify the universal, or concrete, value of the concepts of the various modes, that is to say, in relation to a context as universal as possible. In this last regard, Luke O'Sullivan has recently contended that Oakeshott "gradually gave up the notion that philosophy understood phenomena in relation to the logical whole of the universe and that philosophical judgment could give a final and real meaning to things by the discovery of their final and real content and value" (L. O'Sullivan 2010, 30). In this light, in *On Human Conduct* philosophy may be considered as unconditional simply because it is a ceaseless process of questioning and not because of any unconditional understanding to be achieved.

However, this interpretation is not coherent with what we read in *Experience and Its Modes*, where philosophy does not reach final and ultimate knowledge, but is rather defined by the nature of its engagement. There we may read that:

> It is not in virtue of its actual achievement that an experience may be called philosophical; rather, philosophy should be regarded as the determination to be satisfied only with a completely coherent world of experience. For it is not merely its actual achievement which differentiates philosophical from abstract experience, it is its explicit purpose. (Oakeshott 1933, 347)

In *Experience and Its Modes*, considered the text in which Oakeshott would have defended the idea that philosophy is the achievement of absolute knowledge (Franco 2004, 142), what differentiates philosophy from abstract experiences is only its being "critical throughout" (Oakeshott 1933, 347). It is the "*the attempt* to realize the character of experience absolutely" (Oakeshott 1933, 347; italics mine). In short, there is no textual evidence in *Experience and Its Modes* that the Absolute (that is, an absolutely coherent and satisfactory world of ideas) is, or will ever be, reached.[15]

That philosophy does not aim to an absolute objectivity is also demonstrated in a passage from a 1938 essay entitled "The Concept of a Philosophical Jurisprudence." There, Oakeshott identifies his philosophical point of reference and writes:

> The Socratic method is an example, though an imperfect example, of the process I have been trying to describe; so also is the method of enquiry pursued by Kant and Hegel; so also, though more obscurely, is the method characteristic of Scholastic philosophy. (Oakeshott 2007, 172).

These thinkers appear very often to indicate the salient moments of idealist histories of philosophy. For example, Henry Jones (2004) considers Kant and Hegel as the fathers of modern idealism, while R.G. Collingwood, in his *An Essay on Philosophical Method* (which was published in 1933, the same year of *Experience and Its Modes*), sees Socrates as at the one who stated for "the first time that knowledge is within the mind and brought to birth by a process of questioning." He is considered the one that inaugurated that "important group of methodological conceptions" that owes its origin to a "technique in philosophical discussion," which is the "dialectic" (Collingwood 2005, 37).

In the above text taken from "The Concept of a Philosophical Jurisprudence," Oakeshott also seems to adhere to those idealist interpretations, such as Caird's (Caird 1865, 351; see Mander 2011, 73–87), that found the limits of Plato and Aristotle in the assumption of an external and independent, eternal and beyond becoming, object as a criterion of truth. For them, ancient dialectic was therefore a process of increasing correspondence between mind and Absolute reality, considered distinct and separate. In this understanding the role of Kant and Hegel was to overcome these hindrances, starting to recognize that thought presupposes nothing outside itself and that its criteria are within mind. This understanding of the dialectic asserts the ultimate character of philosophy but also the absence of a final body of knowledge as an external criterion. This view is shared by Collingwood in *The New Leviathan*, where he follows Plato's *Meno* (Collingwood 1992, XXIV) in considering dialectic to be conversational and not eristic, which is to say, to be not oriented towards the achievement of a final body of ultimate truths.

In a similar manner, also in *On Human Conduct*, in philosophy "what is important is the critical inquiry into the conditions of conditions" (Oakeshott 1975, 29). The denial that philosophy can be associated with a final and fully coherent world of ideas is clearly stated in the rewriting of Plato's "cave allegory" (27–31). There, the possibility of an effective achievement of an unconditional knowledge is considered irrelevant to philosophical activity:

> I shall pass over the difficulties entailed in the notion of an unconditional understanding, which are, perhaps recognized in the visionary quality attributed to this final achievement; what is important is the critical inquiry into the conditions of conditions in which it is reached (29).

Again, what does count is philosophical activity in itself, both as the creator of the criterion of thought and as the continuous overcoming of partiality through the unremitting research into an ultimate meaning of concepts. This critical role of philosophy is finally defended in *On History and Other Essays*. There, the philosopher's concern is the "logical" examination of current concepts and forms of understanding, and not the construction of a final body of knowledge (Oakeshott 1999, 3–6).

To sum up, what I argue is that Oakeshott consistently contends that philosophy is an unremitting process of criticism of current knowledge and, at the same time, the progressive and always uncompleted attempt to reach a fully satisfactory, and universal, definition of concepts. Neither in *Experience and Its Modes* nor in *On Human Conduct* did Oakeshott believe that a final body of absolute and ultimately defined concepts was achievable. Instead, philosophy is the continuous critical assessment of concepts in the light of absolute or unconditional experience, which is, as I have just shown, the ultimate presupposition of any form of experience or understanding, and not a final body of concepts.

However, to say that the Absolute cannot be reached is not affirming that philosophical concepts do not possess a higher degree of universality. On the contrary, philosophy is the activity that attempts to define concepts that are valid outside of the particular context and of the relations from which they originated. As already discussed, in *Experience and Its Modes* philosophy is the unremitting pursuit of concrete individuality; it is the never-fulfilled attempt to achieve a fully satisfactory definition of concepts (Oakeshott 1933, 58).

In *On Human Conduct*, it is the notion of ideal character that, rather than refuting this interpretation, provides an example of this method. Ideal characters are indeed the result of the theoretical activity. They are defined as "composition of characteristics," a coherent unity of particularities. Ideal characters offer a broader universality than the original starting point of thinking.

For instance, in the first essay of that work the expression "human conduct" denotes an "ideal character." "Human conduct" is not a particular or individual action, nor their mere generalization, nor an instrument for identifying "a family of goings-on" (Oakeshott 1975, 319).[16] When individual performances are considered on the ground of their postulates, in terms as universal as possible, what emerges is the identity, the ideal character: "human conduct." As such, it is a universal concept because it relates to a wider context than the particulars.

I will explore below the implications and the relevance of this notion for Oakeshott's political philosophy of international relations; for the moment suffice it to notice that a further example is provided by the two ideal characters that are examined in the second essay of *On Human Conduct*: civil association and enterprise association. They are not particular models of political community that it is possible to find in certain circumstances or that may be achieved in the world. Instead, they represent the universalization of two opposite modalities of human relationship, when "the existence of intelligent and free agency" is taken as a presupposition.

To sum up, for Oakeshott philosophy is animated by a method that has the aim of defining concepts by refuting the inconsistencies and dogmatism of current ideas. Having as its starting point abstract individuality, and by means of progressive refutations, philosophy defines a more and more complete individuality, endowed with a higher degree of unity with its related ideas and its context. However, philosophy cannot be identified with this final unity—an Absolute which is never reached—but rather with the radical critical activity of thinking without presuppositions.

The Conversation of Mankind

In the previous section, I have illustrated that Oakeshott follows other idealists in claiming that philosophy discovers the postulates of each world of ideas. In so doing, it shows their conditionality. However, for British idealists "philosophical criticism" is not only the clarification of the categories or conditions on which different forms of experience are grounded, but also the process through which their "dialectical connections" are identified and constructed. Philosophy cannot be satisfied with the mere critique of partial truths, but has to overcome their partiality by considering them in the light of the substantial unity of human reason.

This constructive side of philosophical criticism is defended by Caird (2004, 26–44), who sees philosophy not only as the process through which presuppositions of thought are shown, but also as the development of an "absolute and objective synthesis." In other words, philosophy reflects the unity among all different spiritual forms. It organizes them according to their own logical categories. Similarly, one of the latest exponents of the British idealist movement, R.G. Collingwood, conceived his work as a reaction to what was perceived as a crisis of European culture, a crisis involving the system of knowledge and, at the same time, the whole civilization (Collingwood 1998, 343).[17] In *Speculum Mentis* (1924), this

malaise is identified with the dissolution of the unity of knowledge, and of its self-consciousness, caused by Naturalism and Positivism (Collingwood 1924, 15–38). According to this account, the process started during the Renaissance, when each knowledge "tended more and more to lead its followers into some desert where the world of human life was lost and the very motive for going on disappeared" (34). Philosophy, for Collingwood, has to reconstruct a philosophical encyclopaedia in which all forms of knowledge are hierarchically classified according to their degree of adequacy in regard of absolute knowledge.

Far from being the point at which Oakeshott abandoned his idealism, as argued by Gerencser (2000), the essay "The Voice of Poetry in the Conversation of Mankind" represents instead the text in which the conception about the relations of the various modes is synthesized through the image of 'conversation' (Oakeshott 1991, 489).

As already discussed, Oakeshott opposes the Hegelian theory according to which the various spiritual forms are in a dialectical relationship in which they overcome one another, with one in which the modes are autonomous from one another because they are based on irreducible postulates. With regard to earlier British Idealist positions—such as those of Caird and Collingwood—conversation seems, in the first place, to indicate a more faded judgment on modernity, expressing a different role for philosophy. The use of the word "conversation" itself, as revealed by the cursory reference to Montaigne (Oakeshott 1991, 491), is taken from the humanist model.[18] In so doing, Oakeshott underlines that the plurality of perspectives on human experience can be considered an enriching aspect of the self-understanding of mankind as a whole (490).

Therefore, the prime objective of Oakeshott's critique is not the fragmentation of knowledge, but those hierarchical conceptions of the relation between disciplines such as those attributing the supremacy to philosophy, or, conversely, attempting to reduce culture to nature, history or philosophy to science (493). Oakeshott delineates a model in which all different voices contribute according to the limited boundaries guaranteed by their postulates, without overwhelming other partial perspectives of the whole. There is not a privileged mode of thinking or a single unified method that may lead to truth. Instead, the idea of conversation suggests that all the various forms of knowledge are equally legitimate and that they all contribute to the "conversation of mankind."

What is important to underline, however, is that in contrast with previous idealist models, philosophy does not construct a positive synthesis

between different modes of experience. Instead, by identifying their presuppositions or postulates, it delineates not just the conditions of logical possibility of the modes, but also the limit of their validity. What the interpretations that see in the image of conversation a turnaround in Oakeshott's thought seem to miss is that, as in *Experience and Its Modes*, the aim of philosophy was to avoid the confusion between different and autonomous modes (*ignoratio elenchi*)—insofar as postulates and conclusions of one form are irrelevant to the other—so in "The Voice of Poetry" philosophy limits the dogmatic pretensions of the various universes of discourse (492).

It is in the light of the idea of conversation that Oakeshott's critique to Rationalism in politics—which was developed in a series of articles published in *The Cambridge Journal* in the late 1940s and then collected in *Rationalism in Politics and Other Essays* in 1962 in may be understood— may be best understood. Indeed, the model of conversation criticizes all theories of knowledge that assert the predominance of one form of knowledge over the other. For example, it is against the idea that practical reasoning should aim at certainty, by means of the method of scientific inquiry. According to Oakeshott's notion of modality, this is a fallacy: a case of *ignoratio elenchi*. Indeed, conclusions that are reached from certain assumptions (in this case those of scientific inquiry) are not relevant in a world of ideas constructed on different assumptions. As I will further discuss, practical reasoning and political activity at both the domestic and the international level have their own autonomous criteria, and concepts from other modes, such as science or history, are irrelevant.

The Nature of Political Philosophy

What are the implications of this notion of philosophy for the understanding of political life and for the relation between theory and practice? In spite of his association with conservatism, Oakeshott defined the engaged philosophers as "theoreticians" without a respectable "programme of investigation" (Oakeshott 1975, 26), and refused to express an opinion on some of the most important political questions of the day (Boucher 1991a, 717–18). Once again, it is to Oakeshott's philosophical theory that we must turn.

The appearance of Oakeshott's unpublished manuscripts has revealed that the problem of the nature and the role of political philosophy was one of his main concerns (Oakeshott 1993a, b; 2006; 2010; Franco

2004, 56–62). Indeed, even before the "Introduction to Leviathan" in 1946, the lectures delivered in Cambridge at the end of the 1920s, entitled "The Philosophical Approach to Politics" (Oakeshott 2010, 141–226), as well as the essays "The Concept of a Philosophy of Politics" (Oakeshott 1993a, b, 119–37) and "Political Philosophy" (a text written between the end of the 1940s and the early 1950s), attempted to identify the specific character of a philosophical understanding of politics (Oakeshott 1993a, 138–55).

Luke O'Sullivan has demonstrated the influence of these early lectures of 1928–1929 and 1929–1930 on the development of *Experience and Its Modes* (O'Sullivan 2010, 14). In my opinion, this is particularly evident with regard to the metatheoretical reflection on political philosophy. In these texts, political philosophy was conceived as the effort to reach what is true outside of the contingent character of political life. Philosophy does not consider "what goes to make up this or that 'state' at this or that particular time." Instead, it defines what is true "at all times" (Oakeshott 2010, 81).

This is also expressed in *Experience and Its Modes* where ethical and political philosophy are defined as the "consideration of valuation and practical judgement from the standpoint of the totality of experience" (Oakeshott 1933, 337–38). In a later essay entitled "The Concept of a Philosophy of Politics" political philosophy is presented as the attempt to "distinguish political life and activity within the totality of experience; and … to relate them to the totality so that they are seen in their place in the totality" (Oakeshott 1993a, b, 126–27).

As discussed above, for Oakeshott, philosophy identifies the categories or assumptions from which modes of experience, including the practical, are constructed. At the outset of *On Human Conduct*, Oakeshott writes that philosophy is "coming to know more fully what is already known," and that the philosopher "seeks to understand in other terms" what she/he already understands (Oakeshott 1975, vii). Philosophy begins from "ordinary, everyday knowledge" and tries to overcome all divisions that determine their limited value. It sees ordinary concepts in a new form. In particular, its aim is to "achieve concrete concepts from which the division between presupposition and conclusion has vanished" (Oakeshott 1993a, b, 128). For Oakeshott, concreteness is universality, where relations and distinctions are overcome. This is the purpose of philosophical definition:

the progressive refutation of all limits of ordinary concepts and their connection with as wide a context as possible.

On the ground of these considerations, it is possible to understand the definition of political philosophy given in the 1946 "Introduction to Leviathan" (which was republished in 1975). There, political philosophy is the attempt to relate "political life, and the values and purposes pertaining to it, to the entire conception of the world that belongs to a civilization" (Oakeshott 1991, 224). Or, in other perhaps more elusive words, political philosophy establishes "the connections, in principle and in detail, directly or mediately, between politics and eternity" (Oakeshott 1991, 225). For Oakeshott, the values and the criteria of political life are considered by philosophy from the point of view of the whole and placed on the map of human experience. In the "Introduction to Leviathan," he writes:

> The whole impetus of the enterprise is the perception that what really exists is a single world of ideas, which comes to us divided by the abstracting force of circumstances; is the perception that our political ideas and what may be called the rest of our ideas are not in fact two independent worlds. (Oakeshott 1991, 224)

As already mentioned, the two "ideal characters" of civil association and enterprise association—presented in *On Human Conduct*—should be considered in this light. Similarly, the "rule of law"—theorized in a 1983 essay (Oakeshott 1999, 129–78)—does not indicate a specific historical experience, but the legal order that may be defined after the dialectical critique of all unnecessary and contingent characteristics that are usually associated to the idea of law. The task of the theorist is, therefore, to distinguish what human conduct, law, human association, and political life are outside of the various contingencies in which they present themselves (Oakeshott 1975, 122; Oakeshott 1999, 131).

What needs to be explored now is the relation between theory/ philosophy and practical and political experience. As we will discuss in the next two chapters, this issue is central for the understanding of the nature and purpose of the study of international relations. For Oakeshott, it is possible to identify different levels of thinking about politics and practice. This is expressed in many writings:

the "Introduction to Leviathan" (Oakeshott 1991, 223), "Political Education" (Oakeshott 1991, 65), and in "Political Philosophy" (Oakeshott 1993a, b, 146–51). On the one hand, political thought may be conceived as "different peoples, at different times, in different intellectual and physical circumstances, engaging in politics in different ways and finding different things to think about it" (Oakeshott 2006, 33). On the other, there is a distinction between various levels of discourse, on the basis of their critical force.

The first level is "at the service of politics" and is about the means and ends of practical action. The second level transforms political experience into doctrines or ideologies. With regard to this, different Oakeshottian texts offer different perspectives. In the posthumously published text "Political Philosophy," Oakeshott stresses the explanatory character of doctrines. They extrapolate the tendencies and fixed elements of a society (Oakeshott 1993a, b, 147–49). Words such as feudalism, mercantilism, and fascism are arid when compared to the historical experiences from which they arise, but they are useful in understanding them (148).

In "Political Education," the focus is instead on the critique of doctrines as guides to practical action. In this case, ideologies are not only abridgments of a "concrete manner of behaviour" (Oakeshott 1991, 52). They also claim to be "gathered in advance of the activity of attending to the arrangements of a society" (49). As a consequence, political discourse pretends to be a demonstrative tool which aims to show the coherence between a given ideology and actions (see Corey 2014).

In addition to political thought oriented towards practice, and political doctrines (which may be both explanatory and practical), there is political philosophy (which is the third level). It represents a specific understanding of politics that, as just discussed, involves a critique of the limited truth-value of political concepts and, in so doing, of defining their true meaning. Whereas to act is to explore "platforms of conditional understanding" without criticizing its conditions, to reflect philosophically on these platforms is to engage in an "unconditional critical engagement of understanding in which the appearance of an assumption is a signal for it to be interrogated" (Oakeshott 1975, 8; see also 1993a, b, 142). Therefore, even though philosophy begins from the critique of ordinary ideas, its results are irrelevant to practice, which has its own autonomous standards. For example, in *On Human Conduct*, in his rewriting of the allegory of the cave, Oakeshott

describes the necessary conflict between the practical man or woman and the philosopher (Oakeshott 1975, 31). This is a consequence of his broader philosophical theory. Those philosophies that aim to be a voice in the conversation of a community—grounding conduct and moral deliberation—lose their specific character, becoming instead an ideological or persuasive discourse.

Deeply puzzling for those who argue that to theorize politics means to be prescriptive, it is of no surprise, then, that Oakeshott's position was attacked, and still is regarded with suspicion, by all those intellectuals who wanted philosophy to shape political agenda (Crick 1963; Crossman 1951; Himmelfarb 1975, 417–18). In this regard, the notion presented in "Political Education" according to which in political activity "men sail a boundless and bottomless sea" in which "there is neither harbour for shelter nor floor for anchorage, neither starting-place nor appointed destination (Oakeshott 1991, 60)," appeared to many to be an expression of that crisis in political philosophy that developed after the Second World War. Alfred Cobban in a 1953 piece entitled "The Decline of Political Theory," after referring to this sentence from "Political Education" as an analogy that camouflages "loose thinking," affirms that what needs to be restored is the criteriological role of political theory. Without such help in justifying a rational political theory, the ordinary man, Cobban tells us, will fall victim to an irrational one (Cobban 1953, 336). There was a similar objection by Watkins (1952), who argued that the problem with Oakeshott's argument is the lack of acknowledgment of any practical role of philosophical argument and its demotion to ideology. If the cure for the consequences of a bad political theory is a good one, then the Oakeshottian argument suffers from a kind of circularity (see also Haddock 2005).

To understand this aspect of Oakeshott's thought it is important to point out that the idea of the practical irrelevance of philosophy is not foreign to idealism. It is true that many of the British idealists saw philosophy as a tool for social reforms. Significant examples of this are *Idealism as a Practical Creed* (1909), by the Welsh idealist Henry Jones, and R.G. Collingwood, who in his *Autobiography* (2013), as well as *The New Leviathan* (1992) and *Speculum Mentis*, claims that "all thought is for the sake of action" (1924, 9). However, Oakeshott's separation between philosophy and practice is inspired by Hegel, who, in the preface to the *Philosophy of Right*, objected the notion of philosophy as a recipe for "a state as it ought to be." Philosophy should not guide society, but explore the immanent logic of historical reality (Hegel 1952, 11).

This Hegelian position was also present in F.H. Bradley's *Ethical Studies*, where we read that philosophy "has to understand what is" and "political philosophy has not to play tricks with the state, but to understand it; and ethics has not to make the world moral" (Bradley 1962, 193).

Edmund Neill has recently contended that, in his writings published in the 1950s, Oakeshott departed from this idea of the practical irrelevance of philosophy and overcame this contested position (Neill 2013, 67–68). In the account of the Western political tradition presented in pieces such as "The Masses in Representative Democracy" and the third essay of *On Human Conduct*, the job of political philosophers would be to provide arguments and models that defend a particular moral option, and even "a system of government" (Neill 2013, 69).

According to the interpretation that I have defended in this chapter, this view may be consistent with Oakeshott's philosophy only insofar as it admits that being an advocate of particular practical options means expressing a point of view based on circumstantial arguments and is, therefore, distinct from the activity of being a political philosopher. The solution to practical and political dilemma is grounded on moral judgments formed through a discourse which is based on certain specific, historical, and moral resources and not on the universal point of view pursued by philosophical activity. This is what we read in *On Human Conduct* where the choice between *societas* and *universitas* is considered as a matter of "desirability" and not of philosophical thinking (Oakeshott 1975, 321).

Conclusion

In contrast with the prevalent anti-metaphysical concerns of the large part of post-Second World War theoretical reflection on politics and international relations, Oakeshott presents a philosophy shaped by the influence of British idealism.

I have illustrated that Oakeshott follows the idealist principle of the unity between mind and objects, according to which there is not a radical distinction between our understanding and reality and there is not an objective reality outside of the knowing mind. To know reality means knowing the human mind, its constructions, and its achievements; ontological questions are the same as epistemological ones. This, however, does not equate with saying that truth is merely what one happens to believe. The idealist tradition also offers to Oakeshott the arguments of

the coherence theory of truth, which, while denying that truth is the correct representation of an external objectivity (as it is for the realist paradigm), identifies the validity of an idea in its relation to ideas of the same sort.

It is the account of the ways in which knowledge and ideas reach their conditional truth that, I have claimed, represents one of the most significant contributions of Oakeshott to the idealist tradition. Following F.H. Bradley, and in opposition to the hierarchical neo-Hegelian model of R.G. Collingwood, Oakeshott argues that our knowledge is based on autonomous and incommensurable presuppositions or postulates. There are different forms of knowledge that are autonomous from one another. The concepts of the various modes of experience, universes of discourse, orders of inquiry, and modes of understanding are true insofar as they are coherent with the presuppositions on which they are grounded and with the other concepts to which they are related. Individual concepts that are relevant within one of these modes (such as practical concepts) are irrelevant for others.

Oakeshott's thought is then based on a methodological holism or monism according to which the whole is logically prior to the individual. The meaning of individual concepts is derived from the context in which they are situated and from the postulates or presupposition on which they are grounded. Moreover, by denying any hierarchy among forms of knowledge as well as any teleology in their historical development, he also denies the Hegelian notion that the Absolute is the historical and logical end of knowledge to be reached by philosophy. For Oakeshott, positive metaphysical knowledge is not possible, because our rationality is limited and thought is always relational.

The chapter has shown that Oakeshott reinterprets the idealist idea of dialectic through the notion of philosophy as a critical activity, and the image of conversation. Firstly, he considered philosophy as a critical activity animated by refutation and criticism of current concepts. This critical activity is the discovery of the conditions of their existence and fallacy—their postulates or unavoidable assumptions. Through this, it identifies the conditions of the possibility of different, autonomous, and equally legitimate perspectives on human experience and shows the limited validity of the various forms of knowledge and their contradictory nature. At the same time, the purpose of philosophy is to relate these concepts to a context as universal as possible through a critical method. However, in contrast with the

claims of many other idealists, Oakeshott believes that philosophy cannot be considered to be the final end of experience, but it has rather the negative and limited role of maintaining each mode within its own limit.

Through the image of "conversation of mankind," Oakeshott proposes a model that defends each form of knowledge, and philosophy itself, from any reductionism. The irrelevance for politics of any scientific or historical theory as well as any philosophical conceptions—which constitutes the kernel of the critique to Rationalism that animates some of his most famous essays written during the 1940s and the 1950s—is indeed consistent with the conversational model of the relation between disciplines represented through the image of conversation. This defends philosophy, history, and poetry against the risk of reduction to scientific knowledge represented especially by neo-Positivism. Apart from their common logical ground (that is to say, their being abstractions of the totality) different disciplines do not have a shared epistemological foundation, be it methodological or ontological.

With this discussion as a background, I have turned to Oakeshott's conception of the nature of political philosophy. Philosophy aims at defining political concepts as they are outside of their circumstances. Therefore it is radically distinct from political activity and practice.

In sum, in this chapter, I have discussed Oakeshott's epistemological and metaphilosophical theory. This discussion represents the necessary background for the analysis of Oakeshott's understanding of the nature of political activity and for his broad contribution to debates in International Relations.

NOTES

1. I will use as synonymous "forms of understanding," "spiritual forms," "modes of experience," "modalities of thought," "forms of knowledge," and so on, to indicate the differentiation of the concrete whole.
2. There are two different versions of this text. The first is Oakeshott 1946. The second was in a 1975 collection entitled *Hobbes on Civil Association* (Oakeshott 2000), and later collected in the expanded version of *Rationalism in Politics* (Oakeshott 1991, 221–94).
3. For example: "The Voice of Poetry in the Conversation of Mankind" (Oakeshott 1991, 488–541). The text was originally published in 1959.
4. See, for example, the essay "The Concept of a Philosophical Jurisprudence," Oakeshott (2007, 154–83).

5. The relevance of British idealism for Oakeshott's thought is very much contested by commentators such as Steven Gerencser (2000), Paul Franco (2004), Luke O'Sullivan (2010), Efraim Podoksik (2004), and James Alexander (2012).

6. This reading of Oakeshott's is inspired by Greenleaf (1966) and Boucher (1984), (1991a), (2001), (2012a), (2012b). Nardin (2001, 17) argues a similar position by stating that "in On Human Conduct, as in most of his later writings, Oakeshott is pursuing the intimations of ideas articulated in Experience and Its Modes."

7. A second edition of the book was published in 1939 with a preface by R.G. Collingwood.

8. Elaborating on W.H. Greenleaf's interpretation, David Boucher argues that Oakeshott followed Collingwood and radically expanded Joachim's theory of truth by claiming the non-propositional character of presuppositions. See Boucher and Vincent (2012, 271).

9. On the Hegelian influence on Collingwood, see Browning (2013).

10. Podoksik (2003, 14) notes that many of the contemporary reviewers of *Experience and Its Modes* emphasized the autonomy of the abstractions of experience. It is in this aspect that was detected both the originality of Oakeshott's perspective and its continuity with Bradley's thought.

11. Incidentally, it is interesting to note that, similarly to Bradley (1962), but differently from the Hegelian model as reinterpreted by Collingwood (1924), Oakeshott (1933, 295), (1993a, 37), (1975, 81–86) does not attribute to religion a logical self-sufficiency, including it in the world of practice.

12. On the influence of neo-Kantianism, see Podoksik (2012) and Wells (1994).

13. In particular the folder: LSE/OAKESHOTT/3/17 (Oakeshott [no date]). It contains loose notes on Hegel's concrete universal and Aristotle's politics, as well as some study notes on Machiavelli, Bodin, and Hobbes that may have been the basis for some sections of the third essay in *On Human Conduct*. The content of this folder is not published in Oakeshott (2014).

14. I have discussed the relations between Oakeshott and the British idealist notion of philosophy in Orsi (2012).

15. Here, I disagree with Nardin, who writes that "after *Experience and Its Modes*, Oakeshott gradually moved away from the view that philosophy is an inquiry that aims at comprehensive understanding" (2001, 48).

16. On the similarity between Oakeshott's "ideal characters" and Max Weber's "ideal types," see Turner (2014).

17. A comparison between Oakeshott and Collingwood on this point is in Podoksik (2003, 9–34).

18. I have discussed Montaigne's influence on Oakeshott in Orsi (2015a).

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Philosophy and International Relations

Introduction

This chapter shows the relevance of epistemology and metaphilosophy for international theory. Firstly, I will highlight how Oakeshott's philosophy may shed a new light on the so-called Second Great Debate in International Relations between the scientific and classical approach. I will argue that Oakeshott's critique of Rationalism in politics can be understood at the international level by showing its relations with Morgenthau's critique of "scientism" and Bull's aversion to the scientific approach. I will also argue that Oakeshott's philosophy of history, with its distinction between the "practical" and "historical" past, is particularly relevant to the understanding of the classical approach, with regard to the possible limitations of the use of history made by both Morgenthau and some of the exponents of the English School of International Relations. It is on this basis of this discussion of the similarities and differences between Oakeshott and the exponents of the classical approach in the study of international politics that I will outline how the reception of some of Oakeshott's instances has been one of the key elements of contemporary theory of international relations.

The Scientific and the Classical Approach

The first step to understand Oakeshott's contribution to the theory of international relations is to consider his thought in the context of the so-called second Great Debate between the classical and the scientific approach that developed in the 1950s and 1960s. Its main protagonists were the American positivist and behaviourist practitioners of the discipline, and the exponents of the English School of International Relations.

As opposed to what was conceived as the wisdom literature of E.H. Carr and Hans Morgenthau, the scientific approach (influenced by the behaviourist movement and the quantitative approach in the social sciences) attempted to bring International Relations back to empirical facts (Brown 2001, 34–36). Morton Kaplan's *System and Process in International Politics* (1957), and the essay "The New Great Debate: Traditionalism vs Science in International Relations," represents one of the landmarks of this break in International Relations (1966). First, even though it is very difficult to reduce to one genus all the great variety of methodological and theoretical perspectives that characterize this approach, it is possible to identify a common theme in the idea that political systems can be "investigated by scientific methods" (1957, see also 1961).

The basic assumption is, therefore, that of the unity of sciences and on the existence of a unique scientific method. Against the Aristotelian distinction between science and art, between certainty and probable knowledge, Kaplan underlines that "modern science insists upon the hypothetical knowledge of all empirical knowledge" (Kaplan 1966, 4). What the scientific or systems approach wants to achieve is not absolute certainty (since all conclusions are provisional) but reliable conclusions. This is assured by "formalized scientific procedures," constructed around models and systematic hypotheses that may contribute to overcome what is perceived as the current stage of poor development of social sciences. In addition, it is important to note that little or no role is attributed to philosophy as conceived by the classical normative tradition, already criticized in philosophy by the Logical positivists, such as for example Ayer (2001) or Weldon (1956). Kaplan perceived classical philosophical reflection as a synonym for "undisciplined speculation" that addresses questions by means of an improper method (Kaplan 1966, 7; on Kaplan see Hamati-Ataya 2012).

On the other side of the fence, the English School of Manning, Wight, Bull, and Butterfield clarified their defence of the classical approach also as a reaction against this new theoretical trend (Bull 1966a; see Dunne 1998;

Buzan 2001). In his polemical "International Theory: The Case for the Classical Approach," Bull claimed that the scientific approach "has contributed and is likely to contribute very little to the theory of international relations" (Bull 1966a, 366; see also Hoffmann 1959). In particular, a quantitative approach is unable to grasp "the substance of international politics" which, as Bull puts it, are "moral questions" (Bull 1966a, 366). As such, (international) politics is an intractable subject according to the model theory as well as to any attempt to reach scientific, objective, truths about it.

The exponents of the English School were not alone in their aversion to the increasingly successful scientific approach. In the USA (where positivism and behaviourism were already hegemonic), Hans Morgenthau counteracted the positivist critique to the traditional approach in International Relations. For this, he has been considered as part of an "intellectual irredentism, resisting its own integration into American social science" (Guilhot 2011, 129–30). As Michael C. Williams suggests, crucial to Morgenthau's concerns was the attempt to move beyond classical liberalism, which was perceived as bankrupt after the success of totalitarianisms. In this light, it appears clear that there is mutual implication between the epistemological critique against the American social sciences and the earlier against utopianism and liberalism (Williams 2013, 651).

Morgenthau's *Scientific Man Versus Power Politics* is, in this regard, of particular relevance. In this work, he criticizes the application of the principles of scientific reason to the social world: while the first are "simple and consistent", the former is instead "complicated, incongruous, and concrete" (Morgenthau 1946, 10). Morgenthau's targets were those "liberal blueprints" that, on the basis of these abstract standards, projected international peace but failed to "stand the trial of history" (Morgenthau 1946, 39). These positions are reiterated in a later 1955 article entitled "Reflections on the State of Political Science," which was written in the middle of the behaviourist revolution. As he had done in *Scientific Man Versus Power Politics*, Morgenthau contests the unity of method postulated by Positivism. Political events are determined by "historic individuality, rational or moral choice" (442). From this follows the necessity of assuming as a postulate the individuality and the freedom of choice, as opposed to the conception according to which human beings are "a product of nature" and then the object of a quantitative study (Morgenthau 1955, 441).

At the same time, he believed that philosophy should and could identify the eternal truths of politics, and of international politics in particular. The role of political theory is indeed to provide a "timeless" map of politics that will tell us "what are the rational possibilities for travel from one spot on the map to another, and which road is most likely to be taken by travellers" (456). It should not be merely descriptive, but should also be normative, insofar as it also shows what is "the shortest and safest road to a given objective" (457).

To recapitulate, what is usually called the second Great Debate in International Relations, which developed mainly after the Second World War, is animated by different positions with regard to international theory. Especially in the American context, this was increasingly conceived as the quantitative study of the relations between states aiming at objective and reliable laws. As opposed to this, the English School of International Relations defended a classical approach, which was mainly animated by history. Even though coming from a different intellectual background, influenced by neo-Kantianism and by Schmitt's critique of liberalism, Morgenthau also criticized the "scientist" and liberal approach to the study of politics. His project, however, was more focused on philosophy, to which he attributed the role of identifying the inner nature of political life, which is power, and, on this basis, able to provide evaluative judgments. Now what needs to be argued is the relevance of Oakeshott's philosophy to this debate.

Rationalism in Politics and the Critique to the Scientific Approach

A first element that shows Oakeshott's engagement with these themes is his discussion of Rationalism, which was developed in a series of writings published in the "Cambridge Journal" after the Second World War and which were eventually collected in *Rationalism in Politics and Other Essays* in 1962.[1] Of course, their immediate context is the political debates that emerged in Britain after the Second World War. As already shown, the core of this argument is a theory of knowledge that is based on the idealist notion of modality firstly presented in *Experience and Its Modes* and further elaborated in "The Activity of Being an Historian (1958)," "The Voice of Poetry in the Conversation of Mankind (1959)," and, albeit with some innovations that I have discussed, in *On Human Conduct* (Haddock 1996, 103–09).

The critique of *ignoratio elenchi* in *Experience and Its Modes*, as well as the defence of a sceptical conception of the relationship between the different voices of the "conversation of mankind" can be considered as the philosophical ground of Oakeshott's critique of Rationalism. Rationalism is a conception that sees science as the dominant voice over history, arts, and practice. With particular regard to politics, the rationalist sees it as a "matter of solving problems" through technical knowledge (Oakeshott 1991, 9). This "is susceptible of formulation in rules, principles, directions, maxims" and it "can be taught and learned in the simplest meaning of these words" (14–15). Moreover, it is applicable in any circumstance and situation, despite its contingent character.

In addition, in the description of Rationalism we may find another sort of argument that draws from an interpretation of the history of European modernity. Oakeshott proposes a dichotomized reading of European intellectual history in which Rationalism and anti-Rationalism are opposed to one another. Its roots are identified in Bacon's and Descartes' philosophies, which find their final stage in Positivism. Even though this interpretation may be highly contentious (and is in fact offered with many qualifications),[2] it is important because it shows the core of Oakeshott's critique. According to Oakeshott, Bacon's *Novum Organum* and Descartes' *Discourse de la Méthode* and *Regulae* attempted to set out fixed methodological rules that may be instrumental to the achievement of a scientific, objective, truth. They all conceived that the first step of this route to certainty was the fight against prejudice and the cancellation of received opinions.

What characterizes Rationalism is the application of the standards and criteria of scientific enquiry to practical and political life. For the rationalist, the customary and the traditional are reduced to nescience and prejudice, and they are criticized as such from the point of view of an alleged fully rational knowledge. Thus, the essential normative character of practical experience and of political life is obliterated. Instead, Oakeshott conceived of practice as legitimate, and as rational as science and history. The practical world is essentially normative, insofar as it is the transformation of "what is" according to an ideal that "is not yet" and "ought to be" (Oakeshott 1933, 274–88). Moreover, as shown by the notion of tradition and even more by that of moral practice (which we will explore below) presented in writings such as "Political Education" (Oakeshott 1991, 57), "The Voice of Poetry in the Conversation of Mankind" (501),

and *On Human Conduct* (1975, 54–55), Oakeshott argues that normative thinking is a non-demonstrative from of reasoning that starts from historically enacted shared assumption.

In this light, the "scientific approach" that, on the one hand, claimed the necessity of studying politics from a quantitative and scientific point of view and, on the other, perceived itself as the aid to decision making, is a clear expression of what Oakeshott labelled as Rationalism in politics. A first element that suggests the relevance of Oakeshott's critique to Rationalism for this context is shown by some similarities with Bull's description of the shortcomings of the "scientific approach." In Bull's 1966 essay, we read:

> There is little doubt that the conception of a science of international politics, like that of a science in politics generally, has taken root and flourished … because of attitudes towards the practice of international affairs …, in particular about the moral simplicity of problems of foreign policy, the existence of 'solutions' to these problems, the receptivity of policy-makers to the fruits of research, and the degree of control and manipulation that can be exerted over the whole diplomatic field by any one country. (Bull 1966a, 376)

An important text in this regard is the Oakeshottian review of Hans Morgenthau's *Scientific Man Versus Power Politics* (1946),[3] which highlights the affinities between Morgenthau's critique of scientism and liberalism, and Oakeshott's interpretation of Rationalism.

Indeed, what in *Scientific Man Versus Power Politics* is called "scientism" is the idea that politics, at both the domestic and the international level, can be studied after the model of the natural sciences. Instead, for Morgenthau, the scientific mind and instrumental reason are inapt to understand the contingencies of human life and its characteristic egoistic nature (Oakeshott 1993a, 102). On this conception of the study of politics, is based much of the rationalist understanding of the international arena. Indeed, Oakeshott adds that:

> Perhaps it is in the sphere of international relationships that the project of a science of politics has made itself most clear. "After rationalist philosophy, in its liberal manifestation, had passed successfully its domestic trial, the general idea of extending those same principles to the international field was transformed into a concrete political programme to be put to the test of actual realization." From Grotius to the United Nations a continuous attempt has

been made to demonstrate Bentham's proposition that 'nations are associates not rivals in the Great social enterprise'. (Oakeshott 1993a, 101)

Even though Oakeshott shared the critique against open diplomacy and the search for a supranational power (Oakeshott 1991, 11), his account of Morgenthau was not uncritical. Firstly, he was loath to identify, as Morgenthau did, liberalism with a rationalistic form of politics—which is to say, with the work of "popularly elected parliaments which would be subject apparently conflicting views and interests to the test of reason through intelligent discussion" (Morgenthau 1946, 25). Instead, Oakeshott contests this identification and instead sees parliamentary democracy as the result of a peculiarly English medieval practice that wanted to limit "the exercise of political power" (Oakeshott 1993a, 109).[4] Moreover, he considered the category of tragedy as inapplicable to political life, being an aesthetic, or poetic, category (Rengger 2005). In addition to these differences, he pointed out what he regarded as a failure to distinguish between science and "scientism," between reason and Rationalism. In other words, as shown also by the correspondence with Popper (Jacobs and Tregenza 2014, 21–24), what Oakeshott states is not the irrationality of practice, nor the legitimacy of a scientific understanding of the social world. Instead, what the critique of Rationalism points out is the legitimacy of a non-scientific understanding of political life, and the impossibility of applying scientific standards to political decisions.[5]

However, the main difference between the two thinkers lies in what they perceived as the purpose of political philosophy. Morgenthau claimed that a theory of politics also contains a normative element (Morgenthau 1955, 457). Moreover, as shown by Seán Molloy, the task of political science is conceived more and more by Morgenthau as the identification of an eternal "objective" truth, which is the transcendental value of political experience (Molloy 2004, 7). For Morgenthau, theory is not only descriptive, but also prescriptive (Brown 2001, 33).[6]

In contrast with both these aspects, Oakeshott defends the autonomy of practice from the intrusion of philosophy. Philosophical arguments and conclusions are of no relevance for actual political life. Philosophy is, in fact, the critique of political concepts and, as we find in a text probably written around 1946 and posthumously published: "where there is genuine philosophy there can be no guidance; if we seek guidance, we must 'hang up philosophy'" (Oakeshott 1993a, 155). What is needed in political life is instead "nothing higher that the ordinary faculties and ordinary

knowledge that everyone (even the convinced rationalist) uses every day in the conduct of his life and in his relations with other men" (Oakeshott 1993a, 107).

The Use of History and Historical Laws

So far, I have illustrated that Oakeshott shared the concerns and the perspective of some of the critics of the scientific approach. His writings on Rationalism in politics may indeed be associated with the critique of scientism and liberalism presented by Morgenthau and of the "scientific approach" advanced by Bull.

In the following, I will consider to what extent he may be regarded as distant from some of those elements that characterized the classical approach of the English School and Morgenthau, with particular regard to ideas about the nature and the role of historical understanding. I shall argue for the relevance in this context of the distinction posed by Oakeshott between the practical and historical past, as well as of his critique of the possibility of reaching objective and universal truths.

Considered by many commentators as one of his constant concerns (L. O'Sullivan 2000, 2003a, 151–53; see also Grant 1990, 99), Oakeshott's theory of historical knowledge is consistent with his idealism.[7] He followed F.H. Bradley's critical approach, and in opposition to speculative philosophy of history of the likes of O. Spengler and A.J. Toynbee, he conceived the philosophy of history as the identification of the condition of the logical possibility of historical knowledge (Oakeshott 1999, 6).[8] His effort is the definition of the conditions that make history a specific and identifiable activity. He is concerned to establish the differentiae of history in terms of its postulates. Elaborating on Croce and Collingwood—who were among his sources of inspiration in this regard (Boucher 1993)—Oakeshott claimed the irreducible autonomy of historical knowledge. Of particular relevance for our argument is the distinction between practice and history, which is based on the argument between the "historical" and "practical" past.

The starting point of his discussion of history is the identification of two different meanings of "history." In the first, it is *res gestae*, which is to say, the events and the actions that happened; in the second, it is "a certain sort of enquiry" (Oakeshott 1999, 1–2).[9] History is the result of the activity of the historian; it "cannot be a 'course of events' independent of our experience of it" (Oakeshott 1933, 92). Consequently, historical

knowledge or experience is the historian's present experience (the body of evidence before him or her) understood under the category of the past. All experience is present experience, and we organize and understand it in terms of categories integral to the modes. Against any positivist epistemology, Oakeshott denies the existence of "absolute data"; the truth lies in the coherence of the "facts," where "facts" are not a given, but instead are an achievement. They compose a historical account whose truth is not determined by a correspondence between historical accounts and the "course of events" (Oakeshott 1933, 113).

In short, Oakeshott's philosophy of history might be summarized as follows: history is the historian's experience; it is the result of the activity of the historian. From what is present, the historian infers something that happened in the past, consistent with the evidence. The historian's present "is exclusively composed of object recognized, identified and understood as survivals from past" (Oakeshott 1999, 30). This past "is composed of passages of related events, inferred from present objects recognized as survival from the past, and themselves assembled as answers to historical questions about the past" (Oakeshott 1999, 50).

"Past events" as such are "dead"; they are not experienced, and they can therefore be known because they are inferred by historians: "the past in history varies with the present, rests upon the present, is the present" (Oakeshott 1933: 107–08). Furthermore, historical events are considered as the result of human conduct, of "past performances" and not of natural processes (Oakeshott 1999: 51–52). The relation that the historian argues between the survivals, or vestiges, of past performances is one of circumstantial contiguity between subsequent events. The image that Oakeshott chooses to represent of this sort of relation between events is that of a "dry wall":

> When an historian assembles a passage of antecedent events to compose a subsequent he builds what in the countryside is called a "dry wall": the stones (that is, the antecedent events) which compose the wall (that is, the subsequent event) are joined and held together, not by mortar, but in terms of their shapes. And the wall, here, has no premeditated design; it is what its components, in touching, constitute. (Oakeshott 1999, 102)[10]

Before moving on and exploring how these ideas show the distance between Oakeshott, and both Morgenthau and Bull, it is worth considering some of the most common misconceptions about them. The notion

that history is a construction of the historians does not mean that it can be considered as a mere "invention." In other words, asserting the absence of an "objective"—that is, prior to the activity of the historian—series of events does not equate to affirming that history is arbitrary, or merely "subjective." This distinction between "objectivity" and "subjectivity" is out of sympathy with the idealist principles entailed in Oakeshott's position. It recalls instead realist and positivist appeals to "facts" and to an "objective" course of events that may be rediscovered. As counterintuitive as it may be, the idea that there is not an objective criterion does not equate to the claim that historical knowledge is impossible or that it falls short of any possibility of achieving truth.

Another similar, common misunderstanding argues that, for Oakeshott, historical accounts are narrations. As Terry Nardin clarifies, however, the fact that they are often presented in this form does not imply that history can be associated with story telling; for Oakeshott, history is not a fable (Nardin 2001, 148).[11] The distinction between different modes, and in particular between poetry and history, suggests instead that the criteria of coherence in a piece of artwork are different from those in a historical reconstruction.

A first element of comparison between Oakeshott and the historians of the English School is that of the relations between history and practical activity. The study of history was at the top of the research agenda of the British Committee on the Theory of International Politics, from which the English School of International Relations arose (Linklater and Suganami 2006, 84–97; Buzan and Little 2000, 29). William Bain, as well as Andrew Linklater and Hidemi Suganami, identify in the writings of Hedley Bull one of the most important exemplars of the conception of the historical enquiry in the English School of International Relations (Bain 2007, 515–17).[12]

Bull's case is indeed of particular relevance for the argument in this chapter. He distinguishes between historical study for its own sake (which is identified with International History) and study that is functional to current international politics. However, in his famous piece on the condition of the theory of international relations—delivered for the fiftieth year of the Aberystwyth chair in International Relations—he admitted that the study of the past has the objective "to throw light on contemporary inter-state politics" (Bull 2000, 249). As Bain argues, Bull believed that history "provides useful knowledge about present events," and is therefore of practical use. More particularly, history provides us with the knowledge of what may or may not happen (Bain 2007, 516–17).

A thinker who articulates even more the variety of opinions within the English School is Herbert Butterfield.[13] He distinguishes between two types of history: the technical and the practical. In *The Whig Interpretation of History* (1931), in *Christianity and History* (1950), and in *History and Human Relations* (1952), Butterfield developed the ideas of German historicists such as Leopold von Ranke and F.W. Maitland, claiming that history has the purpose of explaining change in human society from the point of view of individuals caught up in unique events. Against what he defines as the Whig interpretation of history, historians should "understand the past for the sake of the past" (Butterfield 1959, 16–17). Opposed to the technical, practical history aims instead at drawing lessons from the past. The danger that Butterfield saw in this was that of giving retrospective moral judgments on past events and decisions.

Even though these two kinds of history are on different levels, Kenneth McIntyre argues that Butterfield did not establish a hierarchy between them and, especially in later works, he seems to identify a positive value of practical history (McIntyre 2011, 37–39). For instance in *The Englishman and His History* (1944), he admits its political importance, even though it is composed of what he calls (with a term that will also be used by Oakeshott) "abridgments" (Butterfield 1959). It is in his *The Origin of Modern Science* (1949) that Butterfield seems most to undermine the distinction between practical concerns and the activity of the historian. Indeed, assuming the present point of view, Butterfield conceives past scientific theories as wrong and also recognizes that the awareness of the past may benefit present scientists (Jardine 2003).[14] In this regard, it is also worth mentioning that Butterfield believed that technical history could eventually attain a final truth and discover the "fundamental human predicament" at the heart of human conflicts (Bain 2007, 44).

Within the English School, Martin Wight represents a peculiar position. His denial of the existence of any international political theory is grounded on a speculative philosophy of history (Hall 2006, 43–44). The reason for the paucity of international theory is twofold, and derives from Wight's definition of political theory as the speculation about the State, a political entity that is absent at the international level. Most importantly, however, whereas political theory is concerned with the condition of the good life and with the changing circumstances of different societies, the spectacle that is in front of the eyes of the international theorist is that of recurrence and repetition. Those thinkers, such as Hegel and Kant, who instead tried to see in history a superior rationality, make, in Wight's views,

the "conviction precedes the evidence" (Wight 1966, 27).[15] In short, the denial of the possibility of international theory is based on the idea that international history is dominated by necessity and regularity and is out of human control.

Clearly influenced by Butterfield, Oakeshott theorizes the opposition between "historical" and "practical" past. They are two categorically distinct past, constructed on the basis of different postulates. Practical past is a "living past," related to what is happening to ourselves. Its aim is to "enable us to anticipate events that have not yet taken place." It is from this point of view that it makes sense to ask ourselves about the moral value of past actions, or about the origins of "what we perceive around us" (Oakeshott 1991, 159). For this reason, it is a remembered, recollected, and consulted past, "which may be said to 'teach by example,' or more generally to afford us a current vocabulary of self-understanding and expression" (Oakeshott 1999, 21).

This (didactic) living past is "*legenda*, what is 'read' and what may be read with advantage to ourselves in our current engagement"(Oakeshott 1999, 19). Similar to Butterfield (1944), in 1983, Oakeshott writes that the practical past is

> An indispensable ingredient of an articulated civilized life. But it is categorically distinct both from the survivals which compose the present of an historical enquiry and from an historically understood past which may be inferred from them. It is an accumulation of symbolic persons, actions, utterances, situations and artefacts, the products of practical imagination. (48)

Even though, as Oakeshott says, quoting the Italian idealist Croce, "all history is contemporary history" (Oakeshott 1933, 109), this is true because the historian's experience can only be present and not because history is the expression of historian's present practical concerns. However, it is "understood exclusively in terms of its relation to the past" (Oakeshott 1999, 30).

In a tone similar to Butterfield's, Oakeshott writes that "history is the past for the sake of the past" (Oakeshott 1933, 106). The historian's attitude is not practical. As affirmed in "The Activity of Being an Historian," the historian is rather a translator from the practical idiom. Events and happenings that at the time were practical (that is, that were performances) are understood as historical, which is to say, as part of a continuity

of events of the same sort. In short, what the historian reconstructs in this manner is a contextual picture in which individual events are intelligible in terms of their relationships with other events of the same kind.

The purpose of history is to consider individual actions or performances in the context of "an identifiable practice" to which agents subscribe (Oakeshott 1975, 101). To understand an event historically is to identify it as an "exhibition of intelligence" and to relate it to "beliefs, sentiments, understandings" and to the "practices subscribed to" (Oakeshott 1975, 106).

In sum, Oakeshott opposed the notion that the results of historical knowledge may be considered as the source of practical lessons. At first glance, this may be considered similar to Butterfield's claims against the Whig interpretation of history and the identification of its differences from technical history. He even seems to share with Butterfield a certain incoherence regarding this distinction. Luke O'Sullivan has gone as far as to argue that many of Oakeshott's works exhibit a practical outlook of the past, showing—in place of any progressivism—a "pessimistic and condemnatory" perspective (L. O'Sullivan 2012, 54). Indeed, in Oakeshott's writings, there is often a vein of despair and condemnation of the evolution of modern European society and political vocabulary. That Oakeshott did not disdain the practical use of history is also shown by his conception of political education as presented in his inaugural lecture at the London School of Economics. An important part of that education should be, as we have seen, historical. However, its aim is mainly practical, being that political education,

> Is not merely a matter of coming to understand a tradition, it is learning how to participate in a conversation: it is at once initiation into an inheritance in which we have a life interest, and the exploration of its intimations. (Oakeshott 1991, 62)

In short, what is important to underline, is that the Oakeshottian distinction between a practical and a historical past does not imply a hierarchy between the two. Oakeshott is indeed concerned with what is unique to historical explanation; he aims to identify the specific character of pure historical activity. Even though historians engage in many other things than history (such as moral condemnation, or speculation about what may have happened), this is not what defines historical activity. The fact that the works of historians have been often touched by didactical purposes

does not mean that it is impossible to identify history as an autonomous form of experience or understanding.

Besides the categorial distinction between practical and historical past, there is a distinction between historical and scientific understanding, which is maintained by Oakeshott. In essence, while science sees every happening as an element in a necessary process, history appreciates the contingent (that is, not necessary) nature of any event.[16] In this regard, albeit outside of the English School *milieu*, Hans Morgenthau represents an interesting case similar to Bull. For Morgenthau, historical knowledge and theory are deeply intertwined. He uses a large number of historical examples to corroborate his own position, and he also adopts a nomothetic outlook. Indeed, the repetitiveness and constancy in history can be formulated in "objective laws." Thus, Morgenthau seems still to be influenced by positivism and, more particularly, by Hempel's "covering laws" theory of explanation (1942).

As Thomas W. Smith clarifies, Morgenthau's method was twofold. First, theory—as we have discussed above—should formulate objective truths that transcend time and space. The truths and laws should, in the second place, be tested historically. In so doing, it would be possible to give "theoretical meaning to the facts of international politics" (Morgenthau 1985, 5; see Smith 1999, 67–68). It is worth remarking that there is no contradiction between the critique of the "scientific approach" and the claim that objective laws of political action could be identified by history and philosophy. Even though they are not shaped by the method of natural science, history and philosophy were seen as the "sciences" that were able to accomplish this task.

It is in this regard that the differences between Oakeshott and the classical approach of Wight and Morgenthau are more striking. Indeed, Oakeshott did not believe that historical knowledge could find any historical laws, neither in the form of "universal laws or regularities, which it is the task of the enquiry to ascertain and formulate" (Oakeshott 1999, 79), nor in that deductive-nomological of Hempelian kind (83).

To the task of refuting the nomothetic perspective, as proposed by Hempel and Popper, Oakeshott devoted numerous pages in *On History and Other Essays* (1999: 84–90). He contests the existence of a "model of scientific enquiry and explanation to which all enquiries must conform on pain of being pronounced inadequate or even invalid" (Oakeshott 1999, 86; see D'Oro 2014).

Oakeshott argues against the idea that history should reach the formulation of laws on the grounds of the inductive procedure of examining a number of historical occurrences (a conception that, even in different forms, was shared by the exponents of the classical approach). For Oakeshott, this position misconceives the character of historical understanding, underpinning a realist appeal to already understood and explained facts. In particular, it attributes to events "that are said … to be awaiting explanation in terms of laws" a fixed and certain character which is not their own. Instead of being such "reliably reported bygone occurrences," they are the "conclusions of inferences from … survival used as circumstantial evidence for what has not survived" (Oakeshott 1999, 81). Moreover, the effort to identify regularities cannot derive from the historian's explanation of the relations between events, but is instead the attempt to apply "systematically related abstract concepts" to those situations that the historian should instead aim to explain.

Oakeshott does not see the role of history as one identifying causal relations between different events. The relationship between events inferred by the historian is not causal and by assuming the existence of this sort of universal laws, historians "have resigned any pretence of being concerned with the conditions of historical understanding" (Oakeshott 1999, 90). The connections between events cannot be argued from the observation of constant conjunctions of events, or from empirical general laws inducted from it. This procedure attributes to the not-yet-understood event a role as either an effect or a cause. In other words, Oakeshott contests the realist epistemology underlining this position.

Overall, as with the critique against the scientific approach dominated by positivist reductionism, the differences between Oakeshott's position and the classical approach are grounded on his theory of modality (according to which, as I have illustrated in Chap. 2, all modes are equally legitimate and autonomous from one another). As historical knowledge is an abstraction, it cannot provide ultimate truths; as it is autonomous from science, it cannot provide general laws; and, as it is autonomous from practice, it cannot offer moral lessons. Instead, historical concepts are relevant only within their own limits. They are the result of the historian's activity that argues a circumstantial and contingent relationship of contiguity between individual events and that identifies them as intelligent subscriptions to moral practices.

THE NORMATIVE TURN

So far, I have presented a complex account that shows the relevance of Oakeshott's thought for the debates that were animating international theory after the Second World War. It is, however, also clear that his thought cannot be easily associated with any of the various schools or trends that were engaged in those polemical exchanges. As shown by the review of Morgenthau and by the essays on Rationalism, Oakeshott's thought may be compared with that of those who were engaged in the polemic against the scientific approach. Oakeshott's position illuminates the overlap between the critique of positivist political science and of liberal utopianism.

The distinction between the practical and historical past, as well as the critique of the deductive-nomological model of historical explanation, shows that Oakeshott's philosophy of history was distinct from those that underpinned the various trends of the classical approach. If the Oakeshottian influx on the development of this debate in international theory is, therefore, rather indirect and very nuanced, it appears much clearer in what has been defined as the normative turn in International Relations.

Among the different sources of this turn identified by Brown (2006), there is the interpretation of Oakeshott's philosophy, which, in International Relations, was given prominence by Terry Nardin's *Law, Morality and the Relations of States* (1983).[17] I will leave the discussion of Nardin's contribution to the understanding of the English School's notion of international society to the next chapters. For the moment, suffice it to remain at the metatheoretical level and to highlight how Oakeshott's notions of philosophy and normativity have influenced contemporary international theory.

First, of particular relevance, is Oakeshott's notion of modality, which claims the legitimacy and the full rationality of practice, as well as his defence (in *On Human Conduct*) of a specifically practical or normative understanding of human actions and political life. This is particularly underlined by another neo-English School writer, Robert Jackson, in his *The Global Covenant: Human Conduct in a World of States* (2000). In an explicit attempt to revitalize the English School, he considers "international studies to be a non-technical, humanist inquiry into a distinctive set of questions" (61). It focuses on certain social roles, relations, groups of associations, and notions of authority and power. As such, it is different

from positivist social sciences. The Oakeshottian—and post-Kantian—distinction between natural sciences and cultural sciences is particularly relevant because of the identification of politics as an intelligent, not deterministic, endeavour.[18]

Second, the already discussed Oakeshottian distinction between three levels of political reflection (Oakeshott 1991, 65, 223; 1993a, 146–51; 1993b, 12–15; 2006, 33–44) has had considerable influence on the normative turno in International Relations. In a recent article, Nardin clarifies his debts to Oakeshott with regard to the nature of theorizing international law and morality. As Oakeshott posed a radical distinction between political philosophy and political activity, so Nardin argues for the radical distinction between "theorising an idea" and using it (Nardin 2008, 385). Consistent with Oakeshott, Nardin also conceives the aim of international legal theorists as that of defining "the idea of law in general," when conceived as abstracted from contingencies with the aim of uncovering "the presuppositions of international law as an idea" (Nardin 2008, 386; 1983, ix).

In short, there is a specific, Oakeshottian theory of international relations where theory has the aim of questioning the presuppositions of ordinary understanding about the relations between states, international law, morality, and so on. The attempt is, therefore, that of considering practical, normative, elements involved in world politics from a point of view as universal as possible, outside of the various contingent circumstances that characterize international politics.

The notion of different levels of political reflection has been invoked by David Boucher to advance an alternative view of the nature, the history, and the theory of international relations to that proposed by Martin Wight. In his later writings, Wight changed his views about the absence of a tradition of speculation and enquiry about the relations between states, and he conceives of international theory as a "political philosophy of international relations" (Wight 1991, 1). However, according to Boucher, he does not provide a clear definition of what international political theory is, subsuming under it everything that has been said on international relations throughout history, that is, ideas from all three levels of discourse that Oakeshott identified. Oakeshott's distinction between different levels of political reflection, therefore, may be useful to clarify that there is a distinction between the texts written for polemical or mundane purposes and those of higher value (Boucher 1998, 9).

The identification of a perspicuously philosophical level of reflection in International Relations has indeed been the ground of Boucher's identification of three dialectically related traditions of reflections on International Relations. In his "Introduction to *Leviathan*," Oakeshott conceives of the history of political philosophy as animated by three dialectically related traditions each having its own master conceptions: Nature and Reason, Will and Artifice, and Rational Will. Elaborating on this, Boucher considers the theories of international relations as articulated according to three distinct, but related, traditions, which correspond to Oakeshott's: Universal Moral Order, Empirical Realism, and Historical Reason (Boucher 1998). In so doing, he revitalizes the Oakeshottian notion that philosophy is a "tradition of enquiry," a particular attitude towards experience and not a set of questions or answers, and even less of immutable concepts (Oakeshott 2007, 182–83).[19] Of importance here is the tradition of Historical Reason, to which Oakeshott himself (as I will argue below) may be said to contribute, and which has particular relevance to understanding international relations.

CONSTRUCTIVISM: ONTOLOGICAL QUESTIONS AND THE INTERPRETATIVE METHOD

The discussion that I have conducted so far has led to the identification of the relevance of Oakeshott's thought for the metatheoretical debates that have animated International Relations since the end of the Second World War. It has emerged that, despite some differences with some of the advocates of the classical approach on the nature and role of historical knowledge, Oakeshott's theory of modality—according to which no mode of experience or order of inquiry has a higher value than any other—offers a philosophical justification for the critique against the scientific approach.

Following Chris Brown's interpretation, I have illustrated how Oakeshott's defence of the legitimacy of a normative understanding of human conduct, as well of his philosophical understanding has been central to the so-called normative turn in International Relations, mainly through the works of modern English School thinkers such as Terry Nardin and Robert Jackson, as well as those of international historians such as David Boucher. In short, Oakeshott's epistemological and philosophical theory has offered and may offer an original perspective within post-positivist International Relations. What now needs to be examined is whether it may be considered as a contribution to the constructivist trend in the theory of international relations as it has developed over the last three decades.

According to Christian Reus-Smit, what characterizes constructivism is the emphasis on the importance of "normative as well as material structures, on the role of identity in shaping political action and on the mutually constitutive relationship between agents and structure" (Reus-Smit 2003a, 188). Within this definition it is possible to include a great variety of positions, characterized by a series of very diverse assumptions as well as practical commitments. A word of warning to be considered is that constructivist theorists, over the last ten years or so, have preferred to focus on empirical analysis rather than on metatheoretical discussion (194). Indeed, constructivism does not appear to be grounded on a shared, clearly defined, methodology but is instead proud of a certain eclecticism. However, it is possible to identify some tenets that characterize the broad church of constructivism at both the ontological and epistemological level.

First of all, constructivism may be regarded as a challenge to the ontology of positivist theories of international relations. Against the essentialism of both neo-realism and neo-liberalism (which consider that social interactions are based on pre-established purposes and interests determined by the fixed nature of the actors involved), for constructivists identities and interests are "socially constructed" (Reus-Smit 2003a, 188). In this regard, the constructivist paradigm has been set by Nicholas Onuf's *World of Our Making* (1989, see also 2013), which asserts the need to emancipate international theory from positivist materialism and to investigate the ways in which the social world has been constructed by the activity of human beings. At the same time, this would allow us to identify ways of changing the current state of affairs. Alexander Wendt aptly summarizes this "turn" in International Relations by saying that, for constructivism "material resources acquire meaning for human action through the structure of shared knowledge in which they are embedded" (Wendt 1992, 73, see also 1999).

In spite of this general understanding, it is possible to identify at least three main variants, which address differently the nature of their object of study. The first, defended by John Meyer and the Stanford School of sociology, asserts the ontological priority of social structures. The second, influenced by Habermas's theory of communicative action, stresses the importance of moral arguments in the conflict between the norms that constitute the social structures (Risse 2000; see also Kratochwil 1989, 2014; Reus-Smit 1999). Finally, a third trend in constructivism is inspired by Foucault's structuralism. According to the Foucauldian notion of genealogy (Foucault 2003), social norms are the result of a form of power that defines criteria of normality (Bartelson 1995). Here, constructivism may be considered along the

lines of critical theory as it identifies its purpose in unmasking the relations of power and of the clashes that generate current normative structures.

It is also the methodological debate characterizing constructivism that shows the variety of the positions encompassed. While Wendt, for his emphasis upon quantitative analysis, may still be considered as writing in continuity with the mainstream positivist paradigm (1999), the works of Kratochwil, Ruggie, and Neufeld showed the affirmation of an interpretative paradigm focused on human practices, values, and intersubjective meanings (Kratochwil 1989, 2014; Neufeld 1993; Ruggie 1993). The recent practice turn in International Relations—which will be discussed in the next chapter—may also be considered as a development of some aspects of constructivism. Indeed, it sees the social world as composed of "bundles of ideas and matter that are linguistically, materially, and intersubjectively mediated in the form of practices" (Adler and Pouliot 2011, 28).

Particularly relevant for the concerns of the present chapter are the attempts to compare the English School of International Relations and constitutive theory to constructivism. A significant example here is represented by Tim Dunne, who stresses that both perspectives focus their attention on those intersubjective practices through which the relations of states are constituted (Dunne 1995, 384; 1998, 187–90; Buzan 2004). In this regard, a point to be remarked upon is that constitutive theorists such as Chris Brown and Mervyn Frost share some of the constructivist concerns. As constructivists themselves, they indeed argue for the interdependence between individuals and their social contexts (Brown 1994, 167).

If these comparisons have the merit of identifying a connection between sectors of the study of international relations that have developed autonomously they also underlines differences. The most important among these is the relevance for constitutive theorists and neo-English School writers of normative concerns that are relatively absent in the works of constructivist writers. In other words, one of the key concerns of thinkers such as Bull, Vincent, Jackson, Mayall, Wheeler, and Nardin, but also Brown and Frost, is the relation between international order and justice,[20] an issue that is not often considered by constructivists (Reus-Smit 2002).

As it has emerged so far, Oakeshott shares with contemporary constructivism the idea that world politics is the result of the rational activity of individual agents. However, differing from the assumptions

of constructivist theorists, for Oakeshott, this position is explicitly grounded on philosophical idealism and on a justification of the reasons why reality and mind are interrelated. As demonstrated in the previous chapter, Oakeshott reinterprets the idealist argument according to which there is no object independent from a knowing subject and there is no reality outside of our knowledge of it. Therefore, practical experience or human conduct is a form of thinking, a particular mode of experience. It is, as I will discuss in the next chapter, normative reasoning, a non-demonstrative form of discourse that starts from shared assumptions as historically embedded in a tradition or moral practice. Moreover, the notion that the meaning and value of individual practical ideas is related to their context (which is to a tradition or moral practice) is based on the methodological holism that I have illustrated in Chap. 2.

In addition to this, Oakeshott agrees with the interpretative or humanistic methodology that animates much of the body of constructivist works. In this regard it is of particular significance, as it anticipates many of the constructivist concerns, the history of the modern European state that Oakeshott offers in *On Human Conduct*. This is indeed a reconstruction of the beliefs about the nature of the activity of government and of the authority of the law that have characterized modern Europe. For Oakeshott, the political history of Europe is a history of political thought, an investigation into intersubjective beliefs, into the "European political consciousness" (Oakeshott 1975, 320).

He also defends the possibility of a philosophical reflection on the practical world and human conduct intended as the search of the presuppositions of political concepts and of their universal meaning. The philosophical theory of political life is articulated by Oakeshott through the identification of the postulates and of the characteristics of two opposed ideal characters—civil association and enterprise association. They are universal concepts as they represent the two irreducible modes of human association considered independently of the various historical and contingent circumstances of political life.

Even though Oakeshott is indubitably concerned with the study of moral foundations, his position is distant from one that attributes an emancipatory role to theory as that of those constructivist theorists more influenced by critical theory. Oakeshott radically distinguishes philosophy from practical activity. In other words, to consider political values and criteria in terms as universal as possible, is a different engagement

from that of proposing particular practical arrangements. This dissimilar perspective is not, however, simply a diverse preference regarding the nature of philosophy's role. Instead, it is the consequence of a theory of modality, according to which, practical experience or human conduct is based on autonomous presuppositions, and any change of the current political arrangements is only made possible by departing from those shared assumptions and actual circumstances from which normative reasoning develop. As it considers concepts outside of their immanent context and criticizes their assumptions, philosophical criticism is irrelevant to practical activity.[21]

CONCLUSION

In this chapter I have claimed that Oakeshott's philosophy and theory of modality may be placed in the context of the debates that have animated international theory in the post-1945 era.

In the first place, I have shown that the critique of Rationalism in politics has clear analogies with the opposition to the scientific approach that characterized the second Great Debate in International Relations. Grounded on his idealist theory of modality, and on the sceptical model of the "conversation of mankind," Oakeshott's essays on Rationalism may be considered alongside Morgenthau's *Scientific Man vs. Power Politics* and Bull's defence of the classical approach. However, differently from Morgenthau, he does not consider philosophy a normative activity with the aim of prescribing certain arrangements in world politics. Indeed, it criticizes the assumptions that ground normative reasoning and attempts to identify the universal value of political concepts, which is to say, what they mean when considered outside of the contingent circumstances and of the shared assumptions from which they were constructed and justified.

In spite of the defence of the legitimacy of a non-scientific understanding of human conduct, Oakeshott's philosophy of history is in contrast with the historiographical positions of many exponents of the English School and, in the American context, of Morgenthau. In particular, the attempt to find universal or covering laws through historical knowledge is considered by Oakeshott a residue of the realist and positivist epistemology that he wanted to undermine. Even though he shared with Herbert Butterfield a certain inconsistency between his activity as historian and his methodological and epistemological doctrines, Oakeshott's philosophical defence of the autonomy of history—once again based on his conception

of modality—is a powerful argument against "wisdom literature" and the didactic use of history.

To sum up, by means of the comparison with some of the most relevant ideas of the debates about the nature of the theory of international relations that occurred after the Second World War, I have argued that Oakeshott defends a peculiar and original position, which is against an exclusively quantitative study of world politics, but also sceptical about the possibility of finding eternal truths or objective laws through historical enquiry.

In addition to this reconstruction, this chapter has shown that Oakeshott's thought can be considered one of the sources of the normative turn in International Relations. I have stressed that Oakeshott's ideas are important as they have influenced a genuine philosophical study of international relations, as recently advanced by some neo-English School writers such as Terry Nardin and Robert Jackson. At the same time, Oakeshott's definition of philosophy has also contributed to the historical study of the reflection on the conduct of states with the notion of the three traditions advanced by David Boucher elaborating upon the model of Oakeshott's "Introduction to *Leviathan*."

With this long discussion as a background, I have eventually contended that Oakeshott's philosophy may also be regarded as a contribution to constructivist approaches in International Relations. Oakeshott shared with the constructivists not just the notion that political life and social reality are a construction, that is to say, the result of the activity of mind, but also the interpretative methodology. Indeed, consistent with Oakeshott's notion of modality, the social world may be regarded not just from the point of view of science, but also from that of history, which places individual identities and performance in the context of moral practices intended as shared assumptions. It may also be considered from the point of view of philosophy, which seeks to look at human life from a universal point of view.

Notes

1. The recent publication and discussion by Ian Tregenza and Struan Jacobs of the correspondence between Oakeshott and Karl Popper on these issues sheds further light on these ideas and underlines their epistemological and moral relevance. See Jacobs and Tregenza (2014).

2. For instance, Oakeshott distinguishes between Descartes' works and their reception, considering the latter as rationalist. See Oakeshott (1991, 21–22). There we read: "Descartes never became a Cartesian."

3. Appeared first in *The Cambridge Journal* (1947); the review is now in Oakeshott (1993a, 97–110).

4. Generally speaking, we can say that Oakeshott's attitude towards liberalism was mixed, and he rather despised the confusion that was covered by that term. See, for instance, another piece of that period, a review of Henry C. Simons's *Economic Policy for a Free Society* (1946), entitled "The Political Economy of Freedom," and collected in *Rationalism in Politics and Other Essays*. See Oakeshott (1991, 385).

5. That these observations against Morgenthau were not completely fair is illustrated, for instance, by Seán Molloy, who argues that, just as Oakeshott and Popper, Morgenthau was critical of the rationalist misuse of reason (2004, 3) and of reason *per se*. This is, for instance, shown in the following passage from *Scientific Man Versus Power Politics*: "The philosophy of rationalism … perverts the natural sciences into an instrument of social salvation for which neither their own nature nor the nature of the social world fits them" (Morgenthau 1946, 5).

6. In this regard, Chris Brown (2012, 453) also highlights the importance of an essay collected in Morgenthau's *Truth and Power* (1970) where the task of theory was that "to prepare the ground for a new international order radically different from that which preceded it" (Morgenthau 1970, 260).

7. For a comparison between Oakeshott and the British idealists on the philosophy of history, see Boucher (1984).

8. There we read: "I am concerned with what may, perhaps, be called the logic of historical enquiry, 'logic' being understood as a concern not with the truth of conclusions but with the conditions in terms of which they may be recognized to be conclusions" (Oakeshott 1999, 6). See also Oakeshott (1991, 165). On the distinction between "speculative" and "critical" philosophy of history of particular relevance are two texts by Oakeshott both entitled "The Philosophy of History." The first was written in 1928, the second in 1948. They are now, respectively, in Oakeshott (2004, 117–32; 201–07).

9. The distinction between *res gestae* and *historia rerum gestarum* is firstly presented by Oakeshott in the 1928 essay "The Philosophy of History." See Oakeshott (2004, 117–32).

10. See also Oakeshott (1975, 105).

11. This is true in spite of an Oakeshottian juvenilia entitled "History as Fable" written in 1923 (now in Oakeshott 2004, 31–44). As Luke O'Sullivan demonstrates, he abandoned this position in his mature works, O'Sullivan (2003b, 7).

12. This opinion is shared by Linklater and Suganami (2006, 86).
13. Butterfield and Oakeshott were friends and colleagues in Cambridge and the relevance of Butterfield's ideas on Oakeshott are well known. See Bentley (2011).
14. See also Chang (2009); Hall (1983).
15. It is interesting to note—as a sign of the sort of misunderstandings that characterized the time—the genealogy identified by Wight between Kant's *Perpetual Peace* and Goebbels' conception of the meaning of history, see Wight (1966, 28–29).
16. This aspect is particularly underlined in an important section of *On Human Conduct*, see Oakeshott (1975, 101–07). It is also illustrated by the above-mentioned analogy of the "dry wall." On Oakeshott's notion of "contingency" and on its link with Aristotle's conception, see Boucher (1984, 212).
17. Brown (2001, 55; 2006, 225).
18. A similar application of Oakeshott's understanding of normativity is proposed in Astrov (2005).
19. Jeffrey's (2005, 71) and Smith's (1996, 611) critiques of the use of tradition in the study of the history of thought seem to conflate two different meanings of tradition within Oakeshott's works. One is a "tradition of enquiry," another is a "tradition of moral behaviour" or a "practice"—which is used by Oakeshott to indicate the moral conventions on which our practical reasoning is based (Oakeshott 1991, 61; 1975, 55; see Orsi 2015b).
20. In this respect, Reus-Smit (1999) attempts to offer a synthesis between the sociological attitude of constructivism and the normative reflection of the English School.
21. Chris Brown contends that the claim that theorists "possess some special knowledge which enables them to solve the difficult moral dilemmas of the day" is unsustainable. Their contribution to the debates can only be "in virtue of their role as citizens who happen to have thought about a particularly difficult issue for longer than most of their fellows" (1992, 3).

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Moral Practices in International Relations and Normative Reasoning

Introduction

In the last chapter, I showed the similarities between Oakeshott's philosophy and the classical approach defended by English School thinkers and other critics of the positivist paradigm, such as Morgenthau. The conversational model of knowledge defended by Oakeshott has similarities with their anti-positivist and anti-reductionist understanding of politics. It also emerged that, in contrast to the classical approach, for Oakeshott history should be concerned with neither causal explanations nor general laws. Instead, historical knowledge is the understanding of individual actions or performances in the context of "an identifiable practice" to which agents subscribe (Oakeshott 1975, 101). To understand an event historically is to identify it as an "exhibition of intelligence" and to relate it to "beliefs, sentiments, understandings" and to the "practices subscribed to" (Oakeshott 1975, 106).

Several pages of *On Human Conduct* (1975, 51–55) are devoted to the exploration of the notion of practice, and these ideas have been applied to the study of international affairs. For example, they have been used by English School theorists, such as Maurice Keens-Soper (1978) and William Bain (2003), and by constitutive theorists, such as Mervyn Frost (2002), to understand international affairs. However, this influence has not been studied in detail and its relevance for constructivism and the

recent practice turn in International Relations has not yet been explored by commentators.

This chapter starts with an overview of the ways in which English School writers have applied the notion of practice to the study of international affairs and conduct, and highlights the possible Oakeshottian influence on them. Next, the chapter presents Oakeshott's theory of practice and moral reasoning. As in previous chapters, to understand Oakeshott's philosophy I consider it in the context of the intellectual debates of its time. With this analysis as a background, the chapter will then return to the contribution of Oakeshott's philosophy to current debates in international theory on the nature of practices.

The English School of International Relations and the Practice Turn in International Relations

The programme of research of the English School of International Relations was oriented towards international practices, intended as a set of historically situated social relationships, values, and norms. However, much of the English School literature was concerned with first-order questions regarding the historical evolution of concrete practices shaping international society, and not much effort was devoted to second-order reflection on the theoretical and philosophical answer to the question: what is a practice? (Buzan 2004, 167).

Following the work of Cornelia Navari (2011) and others (Buzan 2004, 161–204), it is, however, possible to identify a trajectory of the concept of practice within classical and neo-English School writers. Shaping the approach that will define the school, Charles Manning wrote in the 1930s that the study of international relations should focus on "the sufficiently general and sufficiently qualified acceptance of the appropriate set of conventional assumptions" (Manning 1975, xxiii). Likewise, Martin Wight assumed that the study of international relations should include cultural conceptions and values that were embedded in actual practices by international agents (Navari 2011, 615).

An example of this, and of the Oakeshottian influence on this strand of study, is Maurice Keens-Soper's "The Practice of a States-System." In this work, "the framework of European foreign affairs" had to be reconstructed in the same terms in which it "was considered to exist by those directly engaged" (Keens-Soper 1978: 25). To conduct

this reconstruction, the theorist should look at words and deeds, but also at the precepts behind actions. In his essay, Keens-Soper identifies the emergence of the balance of power as a new practice or institution. From this perspective the balance of power is a tradition of diplomatic behaviour of which Burke and Gladstone are a part (Navari 2011, 619).

William Bain (2003) interprets trusteeship through the Oakeshottian image of conversation to indicate that practices are a place in which different voices meet, none of which is a bearer of truth. Trusteeship, Bain argues, is composed of different, often divergent and contradictory, arguments. These voices are located in the reflections of some practitioners and in the official writings and speeches of others (2003, 8–12).

This approach has of course also generated a large number of studies of diplomacy conducted by members of the English School (Egede and Sutch 2013, 239–49), and indeed the first work stemming from the meetings of the British Committee on the Theory of International Politics was *Diplomatic Investigations* (1966), edited by Herbert Butterfield and Martin Wight. This tradition of enquiry was then continued in more recent works such as Adam Watson's *Diplomacy: the Dialogue between States* (1989), Christian Reus-Smit's *The Moral Purpose of the State* (1999), and Paul Sharp's *Diplomatic Theory of International Relations* (2009). Despite the many and significant differences between these writers, what characterizes this approach is the attempt to understand diplomacy from the perspective of the practitioners and in particular, as is stated in *Diplomatic Investigations*, their "speeches, dispatches, memoirs and essays" (Wight 1966, 20).

From the point of view of English School writers, the question of practices is intertwined with that of institutions. According to Hedley Bull, international society is defined as a subscription to core values, such as sovereignty and international law. As will be discussed in the next chapter, this commitment does not imply that states share purposes, but only procedural norms (1995). It is then clear that the term institution does not necessarily indicate intergovernmental organizations or administrative machinery. They are "a set of habits and practices" (Bull 1995, 71) with a certain degree of stability. The key features of these institutions are indeed that they are "relatively fundamental and durable practices" and that they are "constitutive of actors and their patterns of legitimate activity" (Buzan 2004, 167). Subsequent writers have also underlined that international practices, such as diplomacy, international law, the balance of power, and

state sovereignty, are regularized and partly institutionalized, even though not always formally (Hall 2014, 8), by means of rules (Suganami 2003).

Christian Reus-Smit (1997) has offered a systematic taxonomy of international institutions (Egede and Sutch 2013, 74–75). He sees a hierarchy between different institutional layers and distinguishes between constitutional structures, fundamental institutions, and, finally, issue-specific regimes. The bedrock of international society are historically situated metavalues defining legitimate statehood and rightful action. Therefore, the source of the authority of institutions is anterior to them, and is located in these metavalues.

We will return to this issue of the relations between values and institutions in the final chapter; for the moment, suffice it to note that Reus-Smit elaborates on Bull's approach and attempts to overcome neo-liberal and neo-realist readings, both inspired by neo-positivist epistemology. Fundamental institutions are "those elementary rules of practice that states formulate to solve the coordination and collaboration problems associated with coexistence under anarchy" (Reus-Smit 1997, 557). These rules of practices are bilateralism, multilateralism, and international law. Without examining here the claim that practices and values are the result of the attempt to solve functional and cooperation problems, what must be for the moment highlighted is that the fundamental idea at play here is that there are deep practices that generate and shape all of the others (Buzan 2004, 176).

Among neo-English School writers, much effort has been devoted to the understanding of the normativity of practices. According to Robert Jackson, the focus on practice equates to a focus on human relations "understood in terms of normative standards" (2009, 21). The human world, and politics in particular, is constructed on historically evolving norms of conduct and it would be impossible to understand the relations of states or international agency "without grasping the basic norms that the people of the day use to justify or vindicate their political conduct" (22). As already stated by earlier writers, in order to understand these norms, the point of view should be that of the practitioners. International scholars should understand world politics from the point of view of the players involved. The problem of defining who the practitioners are is addressed by Robert Jackson in the *The Global Convenant* (2000, 132). He identifies them with those whose words and deeds reflect upon the framework, the rules and standards, within which foreign affairs are conducted. The most important practitioners are statespersons. For example, Jackson offers a definition of diplomacy as "an activity that involves agents or representatives

of different states who are interested in or concerned about the same issues and who have every right to voice their interests and concerns to other statespeople" (37).

It is, however, Terry Nardin who has explored more fully the notion of practice, relating it to the study of the relations of states. Elaborating on previous English School scholars, Nardin considers practice not as a sum of actions but as a standard of conduct. A practice is a "set of considerations to be taken into account in deciding and acting, and in evaluating decisions and actions" (1983, 7). An example is the practice of making treaties. It specifies "the forms and procedures to be observed in reaching international agreements and in handling the problems … that may arise with respect to them" (7–8). Therefore, practices are composed of values and ideals, standards and criteria, that give form to actions. To participate in a practice means to conform to a set of values "prescribed over by appointed or self-appointed referees, judges, critics, and custodians" (7). From Nardin's perspective, and indeed from that of all the scholars of the English School, subscription to a practice is therefore a normative engagement, an activity of thinking agents responding to an understood situation and recognizing a certain set of rules as valid and relevant.

What are the practices that constitute international society? Barry Buzan (2004, 174) offers an articulated summary of the various positions of the subscriber to the English School approach, and of the practices they consider to be fundamental in the various historical international societies. Hedley Bull identifies five: diplomacy, international law, great power management, power balancing, and the regulated use of force or war (Bull 1995). Martin Wight sees as fundamental, among others, religious sites and festivals, dynastic principles, trade, diplomacy, alliances, guarantees, war, and so forth. Alan James adds colonialism. Robert Jackson limits primary institutions to diplomacy, war, international law, sovereignty, and colonialism (Buzan 2004, 174). Elaborating on Terry Nardin's works (in particular 1983, 2008), the next chapter of this book will focus on international law.

To sum up, the focus on practice implies the investigation of the normative content of the acts and thoughts of the people involved in world politics. Moreover, it is concerned with the study of their historical emergence and of the events that have influenced their transformations. Practices are indeed evolving values, norms, ideals, and criteria that shape relations between international agents and that constitute international institutions. The study of international relations aims at the words and

actions of the practitioners, and to elicit the historical role of practices in forming diverse international societies.

Before showing how Oakeshott's political philosophy may contribute to the understanding of the nature of practices and of their constitutive role, we must bear in mind that the recent practice turn has led scholars once again to focus their investigations on the everyday practices of diplomats, statespersons, military personnel, and political activists.[1] In one of the most important of these recent studies, Adler and Pouliot invite all students of International Relations "to approach world politics through the lens of its manifold practices" (Adler and Pouliot 2011, 1; see also Bueger and Gadinger (2014); for a critical discussion Frost and Lechner 2015). Adler and Pouliot argue that social sciences, and International Relations in particular, should focus on actions or performances, on what practitioners do. A practice has a set of features. It is a performance; it tends to be patterned and to exhibit regularities; it rests on background knowledge; and it weaves together the discursive and the material worlds; it "is more or less competent in a socially meaningful and recognisable way" (Adler and Pouliot 2011, 7–8). Each practice has its own lifecycle and it goes through phases of generation, diffusion, institutionalization, and fading (17, 19, 23).

Elaborating on constructivist international theory from a pragmatist standpoint, and on Adler and Pouliot's approach, some of the most recent practice theory aims to emancipate the study of international relations from the narrow focus on instrumental rationality, which characterizes, as we have seen in the previous chapter, the rationalist and positivist approach. At the same time, however, practice theory wants to overcome the focus on norms and values. What the idea of practice wishes to illuminate is the implicit, tacit, and unconscious layer of knowledge and doing (Bueger and Gadinger 2015, 2–3). Practice is understood as a constant union and synthesis between knowing and doing, where knowing, learning, and acting are collective processes. From this perspective, "action is seen as taking place in multiplicity, in a combination of 'common worlds,' and in hybrid relations between subjects and objects, and humans and non-humans" (7). This approach is ecumenical in its philosophical justifications and identifies five strands of practice theory, originating from Bourdieu's praxeology, actor-network theory, community of practice, narrativism, and Luc Boltanski's pragmatism.

In contrast to this eclectic point of view, which unifies thinking and actions, theorizing and doing, the English School maintained a focus on norms, seeing practices as a social construction in which truths and values are shared within a particular social group or network (see Turner 1994, 2). Oakeshott has written some of his most debated and controversial pages on the idea that practical thinking is embedded within practices, and that to understand actions we must place them in the context of moral practices from which they are shaped. It may be surprising, then, that little effort has been devoted to the study of the relevance of Oakeshott's notion of tradition and moral practices for the understanding of international practices and institutions.

In the following section, I will present an account of Oakeshott's theory of practice as it is developed in his works, from *Experience and Its Modes* to *On Human Conduct*, and I will then illustrate what his theory can contribute to current debates in international practice theory.

Practices and Normativity

To understand Oakeshott's theory of practice it must be considered that it was developed in the context of the increasing hegemony of the analytic paradigm in philosophy, and of its behaviourist counterpart in political science. As already discussed in the previous chapter, what Oakeshott attempted to contrast in his works was the Logical positivist reduction of normativity to non-rationality, and the idea that the study of politics must be transformed in a more rational enterprise grounded on causal categories (Orsi 2015b).

Consistent with the notion of modality according to which each mode is grounded on certain logical presuppositions, practical experience is experience *sub specie voluntatis* (from the point of view of volition). Practical reasoning is value-oriented nature and practical experience is the transformation of "what is" according to a normative ideal, which is "not yet" and "ought to be" (Oakeshott 1933, 274–88).

The objective of Oakeshott's theory was to defend the rationality of normative thought (and practical experience) against the critique outlined by analytic philosophy. Ayer's *Language, Truth and Logic* well represents these positions and had a tremendous impact on ethical and political studies (including International Relations). Ayer extends the critique of metaphysics already advanced by earlier analytic philosophers to ethical and normative statements. As metaphysical propositions are nonsensical

because they are neither true by definition (as analytic statements) nor subject to verification (as synthetic statements), ethical statements and value judgments are utterances without meaning—nothing more than the expression of moral approval and disapproval (Ayer 2001, 110).

Moral exhortations, for instance, are not propositions but commands, which aim to provoke action. Ethical judgments are emotions, expressions of feelings about certain objects. Thus, there can be no logical argument or dialogue about these sorts of statements, and ethical decisions are not the result of logical reasoning, but rather of mere agreement or disagreement (110–11, see also Macdonald 1956).

In contrast to these positions, Oakeshott makes it clear that practical thinking is not inferior to empirical sciences. Consistent with the idealist principle, according to which nothing is irrational and everything is identifiable with the activity of mind, "action" is "a form of thought" (Oakeshott 1933, 251). At the beginning of the chapter on practical experience in *Experience and Its Modes*, Oakeshott affirms the identity between rationality and will. Volition, the category that grounds practical experience, is thought and, as a consequence, "practice is itself a form of experience, a world of ideas" (252). The practical mode is a unity of related ideas in which full coherence and complete consistency is never achieved, because "the presupposition of practical experience is that 'what is here and now' and 'what ought to be' are discrepant" (304). In this lies the ultimate abstract character of practical experience: the coherence between actual experience and what has not yet come about is impossible. Achieving this unity would be to overcome practical experience.

In *On Human Conduct*, Oakeshott further develops his theory of normativity. *On Human Conduct* may be seen as an attempt to claim and defend a specific, normative, understanding of human actions. "Value-judgments" and the "creation of norms," we read in that work, are not feelings or "organic tensions," but rather "expression of intelligence capable of being investigated" (Oakeshott 1975, 52).

On Human Conduct argues for an autonomous understanding of human actions in terms of their normative character (13–14).[2] The ground of this is the distinction between two incommensurable "orders of inquiry". The first considers "goings-on" as causal processes: actions are   processes and "are not themselves exhibitions of understanding" (Oakeshott 1975, 20). The second sees "goings-on" as the result of "an intelligent agent responding to an understood (misunderstood) situation" (21). As I have already pointed out in Chap. 2, as it was for the

modes in *Experience and Its Modes*, these two orders are mutually exclusive and equally legitimate.

In other words, the distinction does not deny the legitimacy of a purely causal study of human actions (Oakeshott 1933, 234–43). The aim is once again to criticize *ignoratio elenchi*, any "categorial confusion" (1975, 22). When science wants to understand human conduct through causal explanations, human freedom and intelligence are reduced to processes and deprived of their proper moral and rational character (21–25).

As said, for logical positivists normative utterances were the expression of "emotions" and were not fully rational. From the assertion that the only legitimate form of knowledge is made of verifiable empirical propositions, it follows that empirical sciences are the only fully legitimate approach towards reality, including politics. The possibility of a naturalistic study of human actions was implied in Ayer's theory, (Ayer 2001, 105; 1967, 21, 23.). The success of behaviourism in the social and political sciences (including International Relations) must therefore be considered a consequence of these analytic, Logical positivist, philosophical premises. On the contrary, for Oakeshott there is no hierarchy between "normative concepts" and those that are empirically testable. Both practical and scientific concepts are legitimate understandings of our world.

The Nature of Normative Reasoning and Moral Practices

I have clarified that Oakeshott declares the autonomy and rationality of practical thinking, and defends the legitimacy of the normative study of human conduct. I want now to consider more specifically how he theorizes the nature of norms and practices. If practical experience is the transformation of "what is" into "what ought to be," what is the role of norms, ideals, and criteria in practical action and thinking? The most influential and controversial Oakeshottian solution to this problem is offered in "Political Education," the inaugural lecture at the London School of Economics in 1951. Political and practical reasoning are not "a consequential enterprise" or the attempt to apply a "general principle." Instead, they are the "pursuit of the intimations of a tradition of behaviour" (Oakeshott 1991, 57). What I want to suggest is that this notion describes the nature of norms, criteria, and ideals relevant in political and practical activity, and defines what Oakeshott meant by "practice."

This aspect is fully intelligible only in the context of the doctrine of practical thinking that I have started to present, and which finds a further development in *Rationalism in Politics and Other Essays*. In "The Voice of Poetry in the Conversation of Mankind," the relevance of custom and tradition for the practical world is acknowledged. To act is not just the result of volition, and practice is not just reality *sub specie voluntatis*, but also *sub specie moris* (Oakeshott 1991, 501). Political actions are not merely the pursuit of change according to an ideal, but also the expression of "a traditional manner of behaviour" (56). Practical life "is to be conscious that some desires are approved and others disapproved" (Oakeshott 1993a, 145). Customs, laws, and institutions are the concrete expression of this.

Oakeshott provides examples that are relevant for our argument. Among customs and institutions, he mentions industrial management, the art of military command, and diplomacy. As they all have "men as their plastic material" (Oakeshott 1991, 13), these arts have a dual character: they are a combination of a technical and practical element, where the former "tell a man … *what* to do," and the latter "*how* to do it" (13). This second element is a sort of knowledge which "exists only in use, is not reflective and (unlike technique) cannot be formulated in a rule" (12). From this point of view, diplomacy has a tacit element which is irreducible to rules and principles and which is shared among the practitioners of a certain art.

As already mentioned in the previous chapter, in his writings on Rationalism Oakeshott was mainly concerned with the modern tendency to reduce practical knowledge to nescience, because it is intractable through scientific standards and often obscure to the uninitiated. His solution was the defence of a humanist conception of education as "learning how to participate in a conversation" (62). These ideas are developed with different concerns, disengaged from the immediate polemical context, in *On Human Conduct* through the concept of "moral practices."

The correspondence between the two concepts is suggested by Oakeshott's reply to some critical readings of *On Human Conduct*. In a 1976 issue of the journal *Political Theory*, he claimed to have abandoned tradition as inadequate to express what he believed (Oakeshott 2008, 276–77). Already in the 1958 essay "The Activity of Being an

Historian," we in fact read that those who participate in an activity may be recognized not by the results they achieve, but by their "disposition to observe the manner of a 'practice'" (Oakeshott 1991, 151; Nardin 2001, 76).

Kenneth McIntyre and Steven Gerencser argue that this change reflects the movement from an essentialist conception, which was represented through the notion of tradition, to the formalism of moral practice (McIntyre 2004, 67; Gerencser 2012, 313–14). However, "Political Education" seems to suggest that Oakeshott never had an essentialist view of tradition. There we read that a tradition is "neither fixed nor finished" and is without "changeless centre" (Oakeshott 1991, 61). It is an identity in difference and does not have a connecting core or essence.

To sum up, both tradition and moral practice suggest that human action presupposes the existence of a "durable relationship between agents," which is the conditional context of all actions (Oakeshott 1975, 54–55). A practice, for Oakeshott,

> May be identified as a set of considerations, manners, uses, observances, customs, standards, canon's maxims, principles, rules, and offices specifying useful procedures or denoting obligations or duties which relate to human actions and utterances. It is a prudential or moral adverbial qualification of choices and performances, more or less complicated, in which conduct is understood in terms of a procedure. (Oakeshott 1975, 55)

There is a fundamental relational element in a practice that defines it and that, at the same time, constitutes the identity of the agents involved. Following Oakeshott, let's take neighbourhood as an example. Neighbourhood may be conceived as a moral relationship or practice as it is not defined by the mere physical vicinity of people (a non-intelligent condition), but in respect "of their understanding themselves to be neighbours" (Oakeshott 1975, 57). As a practice, neighbourhood does not prescribe specific actions to be conducted, but a modality of conduct, certain considerations, observances, principles, and rules to be observed. At the same time, the agents involved are defined as neighbours to one another because they observe certain manners, and they subscribe to certain conditions in their relationship. Practices are, then, constitutive relationships.

Indeed, agents' participation in a given practice or set of practices defines their identity. At the same time, the agents involved shape the practice through their actions, circumstantial choices and responses to contingent conditions.

Oakeshott clarifies what it is "to subscribe to a practice" and "to participate in a practice." As noted by Nardin (2001, 77), to subscribe to a practice is not doing certain particular actions; it is not to obey an order or to follow a command. Commands prescribe actual substantive performances (like "please shut the door"). Instead, practices "adverbially qualify" actions. People are not friends because of specific, substantial transactions between them. They are friends, not because they do certain things, but because they act in friendly way. In other words, it is the formal and moral element, not the contingent and empirical, which characterize actions.

In the world of human conduct there are innumerable practices, each shaping human identities and providing criteria for action. Some of these practices are local, while others involve a large number of agents. Some are informal; others codified and institutionalized. What is important is that these practices are the outcome of individual performances (Nardin 2001, 78), and are "subject to historic vicissitudes and ... variations" (Oakeshott 1975, 57). There is a spontaneous character in the emergence of new practices; they are often the unplanned by-products of performances.

To sum up, Oakeshott's traditionalism is a form of moral conventionalism according to which actions and normative arguments derive their meaning from historically enacted practices. These are the context of agents' activity. Tradition and moral practices provide the often tacit "background assumptions," as well as the resources for the identification of normative ideals and of criteria for moral judgment (Turner 1994, 29). To make a choice and to pursue a course of action is to determine "the relative importance, in the given circumstances, of the numerous, competing normative and prudential considerations" that compose our moral vocabulary and experience (Oakeshott 2008, 184). In contrast to behaviour, which is the outcome of non-intelligent processes, "action involves intelligent choice" (Nardin 2001, 75). What makes action meaningful is the intelligent subscription to the adverbial considerations of a practice.

This Oakeshottian conception of practical activity and normative thought, in which there is no certain or demonstrable criterion and in which choice is embedded in historical evolving practices or traditions, has been at the centre of a considerable amount of criticism. The notion that decisions regarding key principles are based on prudential considerations has been seen as a form of irrationalism and nihilism. D.D. Raphael's review (1964) of *Rationalism in Politics and Other Essays*, published in *Political Studies*, identifies in Oakeshott's anti-foundationalism a radical inconsistency. For Raphael, Oakeshott's traditionalism would deprive us of a criterion of choice between different practical options, between different "intimations" coming from tradition.

To the question about the ground of our normative decisions, Oakeshott answers by recalling that the foundations of the solutions of normative dilemmas can only be circumstantial considerations about which there can be no final solution, but only more or less persuasive arguments. In short, normative arguments are possible only when their ground is a belief that is "familiar to us and is appropriate enough to be capable of engaging our sympathy while we listen" (Oakeshott 2008, 184). They presuppose the moral vocabulary of a certain political association, a vocabulary composed of "images" which are myths, representations, institutions.

This aspect is further clarified by an examination of some of Oakeshott's loose notes located in his archive at the British Library of Political Science. These writings illuminate the importance of the Aristotelian distinction between dialectic, eristic, and demonstrative discourse for Oakeshott's theory of normativity.[3] In these notes, Oakeshott writes that demonstrative discourse is the search for the causes and the nature of things and generates true knowledge. The eristic looks for shared premises. The dialectic is grounded on agreed premises that are shared by "all or most people." Practical discourse is "dialectical," and starts from shared assumptions.

"Political Discourse," an essay collected in the second edition of *Rationalism in Politics and Other Essays*, demonstrates even more the Aristotelian root of Oakeshott's theory of normativity (Oakeshott 1991, 78–80; Nardin 2012). In this piece, practical discourse aims to diagnose the situation and to identify a solution. Arguments are based on "probabilities, signs and examples" and grounded on general statements considered to

be shared. For this reason, this sort of argument may be rebutted by the same kind of considerations. From the notion of the "pursuit of intimations," and from the idea of the persuasive and dialectical character of practical argument, it follows that definitive and objective criteria cannot justify practical choices.

Therefore, the notion of "pursuit of intimations," is part of a doctrine about the nature of normative thinking. Practical discourse is based on the subscription of shared assumptions that come from the conventional background provided by traditions and moral practices, and that it is structured through circumstantial and phronetic considerations (Turner 2010, 203). This shared set of assumptions or presuppositions represents what Andrew Hurrell, with reference to global society, terms "a stable and shared framework for moral, legal and political debate" (2007, 303). This framework defines the normative ground of moral claims and the justification of actions and choice. As suggested by Allan Buchanan, it is the ground for institutional moral reasoning (2004, 14–70) which, in order for moral claims to be significant and to gain purchase on global political debates, must be grounded in existing legal and social norms (Egede and Sutch 2013, 152).

PRACTICES AND RULES, THEORIZING AND DOING

As already mentioned, Cornelia Navari has argued that, even though English School theorists have identified in Oakeshott the source of their notion of practice, the philosophical justification and explanation of the concept that they employed should be sought in other thinkers, most notably in Wittgenstein (Navari 2011, 615).

In spite of Oakeshott's reticence in acknowledging any Wittgensteinian influence,[4] Luke Plotica (2013) has recently compared Oakeshott's notion of practice to the late Wittgenstein's concept of language-games.[5] According to this reading, practices, as well as language-games, represent the context that gives intelligibility to individual utterances. Both emphasize the social dimension and conventional nature of languages. Moreover, according to this interpretation, both thinkers believed that the human world is a world of language and, as a consequence, the "regularities and systematic structures of the world we understand and act within are (intelligible as)

the regularities and systematic structures of language" (Plotica 2013, 49). Finally, for Plotica, language-games, as well as moral practice, are learned in terms of rules and conventional techniques (49–52).

It is indeed true that there may be an important resemblance between Oakeshott's notion of practice and that of a language-game. In *On Human Conduct* we read that a practice may be recognized as a "language of moral converse" and as:

> 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 … Learning to speak it is learning to enjoy and to explore a certain relationship with others. (Oakeshott 1975, 58)

However, this similarity should not obscure the profound differences between the two thinkers. First of all, in contrast with what is argued by Plotica, and in agreement with an observation by Peter Winch (1990, 62), Oakeshott does not attribute a primary importance to linguistic or moral rules. To focus on rules, he contends, is a distortion of moral reasoning, as they merely represent abridgments of a tradition/practice. Just as someone may speak a language perfectly without knowing any of its rules, so it is possible to enter into a moral conversation without being aware of any of its systematic structures and regularities (Oakeshott 1975: 70; see Vincent 2004, 149). These are rather the results of the reflective engagement of theorists, specifically moralists.

The meaning of moral practice is then a much more elusive concept, one that indicates a concrete and historical "manner of behaviour" (Oakeshott 1991, 50). This is fully intelligible only in the light of the idealist epistemological principles that are defended by Oakeshott, and which I have illustrated in Chap. 2. As reality is the result of the activity of mind, and as there is no difference between knowing subject and known object, a moral practice or tradition is the result of the understanding of individual agents. I will return to this aspect in the next chapter, while examining the nature of customary international law. For the moment, suffice it to say that, like Hegel's notion of ethical life (*Sittlichkeit*), Oakeshott's moral practice is inseparable from concrete historical communities.

Likewise, the attempt to identify Oakeshott's position with Habermas's theory of communicative action may be misleading. First, both philosophers share a critique of the dominance of instrumental or technical reason. As I have already pointed out (in Chap. 3), Oakeshott's essays on Rationalism are indeed a critique of the prevalence of the scientific or technical manner of reasoning over the practical. In Oakeshott, as in Habermas and earlier exponents of the Frankfurt School, there is a radical critique of modernity, which is seen as dominated by the positivist understanding of rationality (Khan 2012, 386). In this regard, Oakeshott's conception of practical thinking is also a reaction against the consequences of the predominance of instrumental, technical, rationality. In spite of such significant similarities between the two thinkers, as I have shown in regard to the notion of conversation, Oakeshott's judgment on modernity is contrastingly more muted, and he finds in modern philosophy (in Montaigne, Hobbes, and the idealists) the resources to counteract Rationalism (Podoksik 2003; Tseng 2003).

Oakeshott and Habermas seem also to propose similar accounts of morality, understood as a shared background from which practical discourse may arise. I have discussed how the "pursuit of intimations" may be considered as a formula that summarizes how practical thinking is a non-demonstrative, dialectic form of reasoning that starts from common premises. Khan contends that Habermas acknowledges the "embedded element of practical knowledge" and the "context-bound" character of communicative rationality (Khan 2012, 385). According to this reading, in both *The Theory of Communicative Action* and in *Between Facts and Norms*, Habermas retains a Hegelian element, according to which rationality is not merely subjective, but dialogical and context-dependent (Habermas 1990, 21–42; 1996, 9).

However, it cannot be overlooked that, according to Habermas's theory of communicative actions, there is a commitment to consensus that is absent in Oakeshott's theory. For Habermas, agents have to reach a consensus, not just on positive moral norms and obligations that are constructed through deliberation, but also on their understanding of their contingent situations. On the contrary, claiming that for Oakeshott the starting point of normative thinking is a moral practice intended as shared assumptions means emphasizing the concrete historical tradition of a given community. It is from there that the resources of moral understanding may be taken and interpreted.

This sheds light on what is perhaps the most significant difference between the two thinkers. Habermas is indeed an interpreter of critical

theory, as first identified by the early Frankfurt School, and retains an emancipatory dimension linked to the model of deliberative democracy where, in "an ideal speech situation," all impeding extraneous factors are absent and the guiding force of the better argument prevails (Anievas 2010, 148). If we assume that practical experience is grounded on a number of "traditions of behaviours," and that philosophy has the role of showing their limited validity, then, as already discussed, philosophy has to understand the world, not to propose changes. The philosopher is not a participant in the moral conversation of a given community, but rather a spectator (Oakeshott 1975, 3).

In contrast to both critical theory and pragmatism, and as already discussed in Chap. 2, Oakeshott poses a radical distinction between theory and practice and between theorizing and doing. According to the pragmatist, ideas are instruments used to satisfy wants, and truth has a practical dimension (Nardin 2001, 81). Even though, consistent with his broader idealist standpoint, Oakeshott identifies practice with rationality, he also proposes a theory of modality according to which practice is incommensurable with philosophy. In *On Human Conduct*, he specifically addresses the objection that theorizing is an activity and therefore belongs to the world of practice. If this objection were true, Oakeshott says, "it would return the theorist to the servitude of doing" (1975, 33). First of all, even though theorizing is an activity performed by a human, being situated in a defined practical and historical context, and even though philosophy itself may be seen as a "practice" or a tradition, this aspect is contingent to the activity. Second, practical truths are based on presuppositions that theory attempts to overcome. As the philosopher returning to the cave is unable to engage with the cave-dwellers and to understand their idiom, so the theorist is distinct from the practice and the practitioners he or she theorizes. "To theorize a comic performance," we read in *On Human Conduct* (1975, 34), "is not itself to make a joke," just as to theorize diplomatic practice is not to engage in diplomacy, and to theorize political activism is not to be an activist.

Understanding Practices in International Relations

From the analysis that I have presented in this chapter it follows that the Oakeshottian position, which was developed in contrast to positivist understanding of normativity and to the scientific approach, offers a philosophical foundation to the English School's study of international

practices, such as diplomacy, sovereignty, the balance of power. What Oakeshott adds to these positions is a form of conventionalism, a theory of institutional moral reasoning according to which normative thinking is a non-demonstrative form of reasoning based on shared premises that evolve throughout history.

As already discussed, Oakeshott's theory of modality and his critique of Rationalism imply a defence of a humanist understanding of human affairs. First, he defends the possibility of a purely theoretical understanding of practices, as of any other reality. Philosophy, as I have already discussed in Chap. 2, is the search for the "most general" conditions of any given ideal characters or individuality (Oakeshott 1975, 111). Philosophy, thus, investigates practices as they are one of the postulates of human conduct. Even though Oakeshott does not dismiss the scientific mode as irrelevant to our understanding of the world, he also defends the peculiarity and autonomy of historical understanding. The concern with the postulates of historical knowledge is constant in Oakeshott's works (Boucher 1984); however, it is in *On Human Conduct* that historical understanding is presented as the form of theorizing of human action (Oakeshott 1975, 106–07). In the historical understanding of an action, says Oakeshott,

> what is sought, in the first place, is an identifiable practice: a morality, a religion, an art, a skill, a genre, a style, a *coutume*, a "productive" practice, an institution, a cult, a ceremony, a ritual, a "class," a regime, a profession, an "economy," a *ménage*, or even a "society" or a "civilization," recognized as a procedure (not a process) and understood as an organization of recognitions, considerations, dispositions, compunctions, rules, etc. (Oakeshott 1975, 99)

Historical understanding reads actions in respect of their place in identifiable practices, which also include what have been called the "fundamental institutions" of international society. Historical knowledge reveals their conventional character (99–100). Of course, this is not the only aspect of history, which is also concerned with "contingency" and the relation between agency and circumstances (101–07). However, what is important to point out is that, according to the Oakeshottian perspective, practices are the context that provide the conditions of intelligibility of any given action, and which may be understood from an autonomous point of view, that of history.

With regard to international affairs, Terry Nardin (1983, 29–34) offers a significant example of the ways in which understanding practices

from a normative standpoint may enlighten the notion of the balance of power. As is well known, the expression has been used to explain international relations as a parity and stability between forces. Some of the theorists that have used it saw the balance of power in terms of a process, as a category of natural sciences. From this perspective, "the threat of hegemony by one state was checked by the natural tendency of other states to form a coalition to oppose it." The balance of power leads to a natural equilibrium that perpetuates the system. A different perspective is opened when relations between states are seen in the terms of "the concepts of human choice and conduct" (30). The balance of power is, in this case, a procedure, a set of precepts and rules that qualify states' actions and choices. It is a tradition or moral practice subscribed to by agents. The theorist, then, understands events and agents as occurrences framed by practices. I will discuss in the next chapter how this perspective enlightens the nature of one of the fundamental constitutive practices of international society: international law.

Conclusion

This chapter has highlighted a strong element of similarity between Oakeshott and constructivism in International Relations. It has shown that, for Oakeshott, the social world is the result of agents' actions and understanding. Human conduct is the intelligent response of historical agents to understood situations, and is shaped by the interpretation of pre-existing beliefs, and by the moral practices in which the agent is situated. Agents' identities are not fixed and defined once and for all, but are rather what they have become over their history and through their interpretation of the moral resources in which they are situated (Oakeshott 1975, 37). Therefore, Oakeshott shares some constructivist concerns, and in particular the idea that "actors develop their relations with, and understanding of, others though media of norms and practices" (Hopf 1998, 173).

It is indeed to Oakeshott's theory of practice, and to its contribution to contemporary debates in international theory, that this chapter has been devoted. In particular, it has emerged that Oakeshott's philosophy of tradition and moral practice, which was developed in contrast to the neo-positivist and behaviourist conception of practical reasoning, seems to offer a philosophical foundation for the English School's study of practices. Diplomacy, sovereignty, the balance of power, among others, may be

seen as based on historically evolving premises shared among the practitioners. Practices provide the shared framework that define a community and that constitute its participants. They also represent the presuppositions that ground normative arguments, decisions, and actions On the other hand, practitioners participate in the evolution of these practices through their circumstantial arguments and decisions.

In his understanding of practice, Oakeshott is consistent with his holistic standpoint that he justified, as we have discussed in Chap. 2, through arguments taken from the British idealist tradition. Individual actions, as well as identities, purposes, norms, and criteria are meaningful only in the context of a tradition, a practice, a historically evolving set of premises or presuppositions. Any idea is significant only in the light of the postulates on which it is constructed. In his definition of politics as an interstitial activity, Reus-Smit (2004, 24–29) argues that it has a multidimensional form that integrates four types of deliberations: idiographic (concerned with identity-constitutive questions), purposive (engaged in interest and preference formation), ethical (related to "the realm of socially sanctioned norms"), and instrumental (25). What Oakeshott's perspective claims is that all these aspects of practical action are shaped by the practices and traditions shared by the agents involved, which provide the moral resources available to agents. As noted by Mervyn Frost, participation in moral practices "gives to the participants access to a whole range of values which are internal to the practice in question" (2002, 41; Frost and Lechner 2015, 10).

However, Oakeshott's notion of practice does not imply an internalist position such as that recently defended by Frost and Lechner (2015). According to this perspective, in order to understand practice one must be internal to it. Even though untimely, what the point of view defended in this book claims, on the ground of Oakeshott's theory, is that it is possible and legitimate to propose a philosophical study of practices, one in which the theorist is a spectator and not a participant, one in which actions and their frameworks are seen from an external, autonomous, and perhaps even superior point of view. It is indeed possible to understand practical activities in ways that are not themselves practical and by using ideas that "belong to another universe of discourse" (Nardin 2001, 10). This is the perspective of political philosophy, which connects criteria and standards internal to a certain community and constituted by subscription to a practice with the whole of human experience, in an attempt to see them from a different, critical point of view.

The recent practice turn seems to ask scholars to shorten or bypass the distance with the practitioner, be she or he an activist, a scientist, or a fighter. What is at risk here is not only the autonomy of theoretical activity, and the survival itself of pure philosophical thought, but also the critical potential of scholarly research. It is well known that Oakeshott and his followers defended the autonomy of a university, seen as a distinct form of social practice (Nardin 2001, 78), from super-imposed purposes and from practical concerns (Vincent 2015, 476). Even though it may appear a paradox to some, the radical distinction and separation between theory and practice, between philosophy and modes of experience, preserve the ability to criticize practices by showing their limited and contingent value from an external perspective.

Notes

1. The practice turn in International Relations is indebted to what has already occurred in the social sciences, and which has its "systematization" in Schatzki et al. (2001).
2. This was already Oakeshott's position in the early 1920s. While writing against the Cambridge syllabus he complained about "the reduction of political science to natural science" (Oakeshott 2004, 57). In this regard, also relevant is Oakeshott's review of Catlin's *A Study of the Principles of Politics* (Oakeshott 2007, 61–63).
3. See again the loose notes in the folder LSE/OAKESHOTT/3/17 at the British Library of Political and Economic Science (Oakeshott [no date]). This text does not appear in the recent edition of Oakeshott's notebooks.
4. Kenneth Minogue reported an Oakeshott remark: "there were a lot of Austrian comedians around the place at the time" (Minogue 2002, 68).
5. See also Costelloe (1998). Even though written before *On Human Conduct*, see Greenleaf (1968).

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Civil Association and International Order

INTRODUCTION

Over the last three chapters, I have discussed some of the implications of Oakeshott's philosophical idealism for past and current debates in international theory. First, the theory of modality and the consequent critique against Rationalism in politics associates Oakeshott with the anti-positivist strand in international theory. However, Oakeshott's position cannot be merely identified with those of the defenders of the classical approach. In particular, his philosophy of history distinguishes the concerns of the historian from those of the practical man. For Oakeshott, historical knowledge provides neither useful practical lessons, nor objective laws. If, as such, Oakeshott's thought may be used as a critical tool against the main tendencies of the so-called second Great Debate, his ideas have animated a distinctive approach in the so-called normative turn. Oakeshott's analysis of human conduct and political life has been the starting point for an understanding of the moral and normative nature of international law and morality. Moreover, Oakeshott's positions have influenced those theorists that see international theory and international political theory as an explanatory activity, as a tradition of enquiry lying not in a certain set of

questions and answers, but rather in a manner of questioning the presuppositions of relations between states.

Oakeshott's political philosophy is also consistent with constructivist approaches and relevant for current debates in international practice theory. Oakeshott conceives practical experience as a world of value judgments. In *Experience and Its Modes* and in *On Human Conduct*, practical experience, or (as it is called in the later work) human conduct, is seen as the result of human intelligence and rationality. At the same time, philosophy is a critical activity insofar as it identifies the postulates and the meaning that concepts have when considered outside the contingent circumstances in which they are situated. Philosophical criticism moves from the current and ordinary understanding of political and legal concepts to a definition that may be as universal as possible.

The idea of the rational and intelligent character of practices, which represents one of the legacies of idealism and historicism in Oakeshott's thought (according to which the human world is the result of human rationality), has been revived in international theory by the so-called constructivist turn. Even though constructivism in International Relations is of course a very broad church, its main contribution may be summarized in the idea that the interaction of states and other actors builds and modifies social structures. Anarchy and interests are not a given but socially constructed and understood. In particular, law cannot be considered as a mere reflection of interests and power insofar as power and interest are interpreted and reinvented (Reus-Smit 2003a). What, in my view, Oakeshott adds to these persepctives is, as we have seen in Chap. 4, a theory of normative thinking as a non-demonstrative form of reasoning based of shared premises that evolve throughout history.

As it argues for the normative nature of the social world—and it defends the legitimacy of its historical and philosophical understanding, Oakeshott may be considered as offering an innovative view of the nature of practices. As I have illustrated in the last chapter, not only he offers a philosophical grounding to the notion of practices used by English School theorists, but he also provides a contribution to the understanding of the constitutive and normative nature of practices. Indeed, he offers an account of institutional moral reasoning according to which practices are historically evolving sets of moral presuppositions that frame normative reasoning, choices, and actions. Moreover, these practices have a constitutive role as they are relationships that define agents' identity.

Following classical and neo-English School writers, I have identified some of these constitutive, or fundamental, practices or institutions that constitute international society. In this chapter, I will focus on international law and I will contend that from Oakeshott's political philosophy of civil association it is possible to construct a theory of international society. To this end, I will first discuss how Oakeshott presented what he conceives as two opposite ideal characters of intelligent human relationships, namely, civil association and enterprise association. The analysis will be centred upon the concept of authority and its relation with morality, also in the light of Oakeshott's indebtedness to Hobbes. On this ground, I will analyse Oakeshott's texts to offer a comprehensive account of his ideas about international relations. I will show that, particularly in *On Human Conduct*, we may find considerations about European expansionism, war, and colonialism, as well as on the nature of international society as a whole. I will then discuss Terry Nardin's *Law, Morality and the Relations of States* (1983), and Christian Reus-Smit's criticism (1999) of the attempt to theorize a "practical international society."

I will ultimately argue that international society may be conceived as a moral association in terms of recognized and authoritative non-instrumental laws. What will emerge is that Oakeshott's theory of the rule of law illuminates the possibility of an international legal order without a central legislative office. This is of particular importance, not just because of the Hobbesian influence on Oakeshott's theory of civil association, but also because it sheds light on the historical nature of the criteria of conduct and on the obligations that states acquire in their relations with other states and their population. Finally, the heuristic validity of this perspective will be discussed with reference to the role of the codification of customs in international law.

Two Modes of Human Association

Oakeshott contends that philosophy conceives political concepts not in relation to their normative context, but instead "outside of the contingencies and ambiguities of actual goings-on in the world" (Oakeshott 1975, 109). With particular reference to political life, once we assume that it is an intelligent normative engagement, that is to say, it is a human construction and not a given material,

> The task of the theorist is to discern the mode of intelligent relationship it postulates. And by a mode of relationship I mean a categorically distinct manner of being related which, while it may subsist in conjunction with other modes of relationship, cannot be reduced to any other. (Oakeshott 1975, 112)

It is in this respect that the critical method that I have discussed in previous chapters is applied. Oakeshott identifies the distinguishing features of autonomous and irreducible modes of human relationship from the contingent character to which they are circumstantially related.

This is evident in both *On Human Conduct* and in "The Rule of Law," where civil association and the rule of law are distinguished from other forms of relationship. For instance, Oakeshott aims to define what law is besides the various occurrences to which it is attached. It is for this reason that, for example, he uses Latin terms for the concepts he is defining. These words, such as *respublica*, *cives*, *and lex*, "being somewhat archaic, are more easily detached from contingent circumstances" (Oakeshott 1975, 108–09).[1] To achieve this result, his theory constructs ideal characters, which are a composition of elements abstracted from "actual goings-on in the world" (109). Consistent with the theory of truth that I have examined in Chap. 2, their coherence depends on certain postulates or unavoidable assumptions, which are investigated by philosophy.

As already clarified, Oakeshott's theory does not attempt to propose a solution to political issues or ethical conflicts. Rather than being normative models to be put into practice, or solutions to practical dilemmas, ideal characters are instruments of identification. As such, they are theoretical devices useful to understand the different, irreducible, forms of human association on the grounds of the understanding of their participants. Of course, this is not to deny that philosophical concepts may have a normative relevance, but to state that those who engage in such an effort temporarily abandon their philosophical commitment to become participants in the practical debate.

Enterprise association, or teleocracy, is the first of the two ideal characters identified by Oakeshott in his understanding of political life. It is a "relationship in terms of the pursuit of some common purpose" (Oakeshott 1975, 114), intended as a substantive condition of things to be procured. What defines enterprise association is the goal common to its members. Enterprise association can thus be identified as a "community of wills," or of "choices." Agents are related to one another in sharing common purposes and in making decisions oriented towards this end.

Consequently, it is a relationship in terms of "the management" of the activities. "Power" or *dominium* is the base of the activity of governing, which consists in imposing actions in order to obtain the expected consequences (Oakeshott 1975, 115). Laws are therefore "commands," calling for obedience, and for particular responses from assigned agents. The final end of the association represents the normative criterion for judging the value and validity of rules.

The second mode of human association is civil association, or nomocracy (Oakeshott 1975, 121). As distinct from "enterprise association," which is teleologically constituted by the common goal of the associates and by the management of its pursuit, civil association is a relationship identified by the rules commonly subscribed to by agents. These rules do not ask for specific action or outcomes, but only for recognition. Thus, they are "moral" and not instrumental (Oakeshott 1975, 119). If instrumental rules are the efficient means of achieving a purpose, moral rules are the conditions for individual enactment and are "indifferent to the success or to the failure of the substantive enterprises being pursued" (Oakeshott 1991, 454). They are purely adverbial and indeterminate, setting the procedural conditions that individuals have to take into account when they act.

Civil law, which is composed of non-instrumental rules, establishes the autonomy and completeness of the association from any external features, being without superior terms of reference, such as the substantive, absolute goals set by "enterprise association." Civil association conceptualizes the ideal of law as a limit to politics (N. O'Sullivan 2012, 290), and the autonomy of politics from any ethical conceptions that represent an end from outside the moral and legal system of a political community. There is no external criterion that legitimates and authorizes the rules in terms of which the civil relationship is constituted.

The distinction between enterprise association and civil association is between a relationship which is constituted by non-instrumental rules and one that is based on the pursuit and achievement of a common purpose. While the source of political obligation in enterprise association is this common end, in civil association it is the recognition and acknowledgment of the authority of law by all agents who fall under its jurisdiction. It is also worth underlining that both civil association and enterprise association are socially constructed human relationships; they are not a given, independent of the actors involved and from their understanding of the situation. Beliefs about authority and order, goals and purposes are the result of a normative, practical understanding of the agents.

Given this broad assumption, the difference between the two is that civil association breaks the connection between authority and purposiveness. Civil law is not authoritative because of its expected outcomes, or its desirability. However, this does not imply that this model does not explain the role of purposiveness in political life. First, when the legal order is understood as a civil association—which is to say, when there is not any overarching final end to be reached or providing the final criterion for all possible actions—it is still possible to have "an unregulated variety of self-chosen purposive associations" (Oakeshott 1975, 316). Civil association is a way to regulate different associations and individuals that act according to competing and often conflicting purposes and values.[2] Second, civil association has its own purpose: to establish that small amount of "compulsory civilization," without which the pursuit of individual endeavour would be impossible (Oakeshott 1975, 152).

This, however, does not equate with saying, as suggested by David Mapel (1992), that all laws are purposive and that the distinction between instrumental and civil law is blurred. Instead, while the purpose of instrumental law is to ask individual agents to fulfil specific actions functional to the pre-established goal, civil association does not prescribe actions to agents, but aims at providing those conditions based on which particular ends may be achieved.

This is evident also from Oakeshott's account of the history of the modern European state, where he explores how the ideal characters of enterprise associations and civil associations may be used to understand European political history. There, the contraposition between civil association and enterprise association is that between *societas*, or nomocracy, and *universitas*, or teleocracy (Oakeshott 1975, 202–03). The two ideal characters never appear in their pure form, but they are found together, contingently related.

It is relevant to our investigation that, in Oakeshott's account, European states emerged from medieval realms as different *societas*. The many communities and corporations, which pre-existed the state, were united in their acknowledgment of a superior, royal, authority. Its purpose was to establish peace and legality, while being indifferent to the goals of the various groups that were unified (Oakeshott 1975, 212).[3] In the third essay of *On Human Conduct* this is once more explained in relation to Marsilius of Padua. He identified as the purpose of a realm "human well-being, peace, tranquillity, and … a concern for the 'health' of the human condition" (Oakeshott 1975, 217). However, this does not equate the realm with an

enterprise association insofar as rules "do not prescribe wants to be chosen or actions to be performed," but only "conditions to be subscribed to in self-chosen transactions of individual agents" (Oakeshott 1975, 217). As this example shows, civil association can be considered as having a specific moral purpose: the achievement of the minimum conditions required for the possibility of civil order and human interaction.

The elimination from the definition of authority of any conceptions of the common good intended as the final *summum bonum* of the legal order indicates Oakeshott's indebtedness to Hobbes. As for Hobbes, in civil association there is no external criterion that may provide the ground for the authority of the legal order. Law is authoritative neither because of its expected outcomes, nor because of the approval by the members of the association. In Hobbes, it is through the covenant that individuals recognize the authority of a sovereign legislative office as the sole author of valid laws, renouncing the possibility of other sources of moral obligation (Oakeshott 1991, 284).[4] In Oakeshott's civil association, laws are self-authenticating, their authority "is recognized in terms of the rules which permit them to be made" (Oakeshott 1975, 186). Authoritative law are those enacted by a previously recognized legislative office, which act according to a pre-established procedure.

However, it is important to underline that differently from Hobbes, Oakeshott does not see the origin of authority in the act of will of the subscribers to the covenant, and law as the expression of the will of the sovereign authority. On the contrary, for Oakeshott, expressions such as "covenant" or "contract" represent that "civil association" is an engagement and a relationship between individual intelligent agents (Oakeshott 1975, 150). They may indicate the day-to-day bargaining between different parties of society, and it may depict the intentionality that animates these acts. The notion of covenant may indeed represent the evolving nature of political criteria and the fact that it is the result of historical human inventions. In short, even though we can say that law is independent from any other source that makes it authentic, for Oakeshott it represents and reflects the evolution of the relationship between the agents involved.

This difference is clarified in relation to the triadic conception of the history of political philosophy which is presented in the "Introduction to *Leviathan*," and that may be considered to understand different theories about the source of authority. The dialectical opposition between the three traditions of Reason and Nature, Will and Artifice, and Rational

Will provides a framework for the understanding of the theories about the origin of political order and authority. While the first conceives of the principles of political order as natural and discovered by reason (as in Plato's *Republic*), the second (with Hobbes) thinks of them as the result of human creation and will. Finally, the followers of the third tradition believe "that in it the truths of the first two traditions are fulfilled and their errors find a happy release." Most importantly, just as in Hegel's *Philosophy of Right*, they see the world "on the analogy of human history" and the authority of the law as the result of historically evolving relationships (Oakeshott 1991, 227).[5]

Therefore, the difference between Hobbes' and Oakeshott's ideas about the authority of law is one about its origin. While for Hobbes the creation of the civil order is the result of an act of will, for Oakeshott it is the outcome of historical moral relationships, of an evolving practices of civility. The recognition of the authority of the law is diffused throughout time, and is situated in evolving relationships between the various agents involved.

To recapitulate, Oakeshott's political philosophy identifies the postulates or presuppositions of two opposite ideal characters that designate two incommensurable and irreducible modes of relationship between individual agents. While enterprise association is a transactional relationship composed of rules instrumental to the achievement of a pre-established goal, civil association is non-purposive; it is a legal order constituted by a system of non-instrumental rules. Insofar as it excludes any considerations about a higher ethical or normative foundation, Oakeshott's conception may be considered in continuity with Hobbes and with the legal positivist tradition. Indeed, it identifies authority with authenticity, excluding any further considerations from law. However, as opposed to Hobbes, he does not identify the origin of authority in an act of will, but it is instead the recognition of an existing and evolving moral relationship.

THE MODERN EUROPEAN STATE AND THE AMBIVALENT CHARACTER OF INTERNATIONAL ORDER

In the third essay of *On Human Conduct*, Oakeshott presents a work of philosophical history in which the evolution and development of the modern European state is understood through the lens of the antinomy between civil and enterprise association. Anticipating many of the constructivist considerations, Oakeshott offers a history of the beliefs about the authority and

the engagement of government, and the nature of law (Oakeshott 1975, 189). It is a history that, consistent with the idealist tenets that ground his position, focuses on humans' self-understanding, on the history of thought.

Thus, this history is seen as the conflict and, at the same time, coexistence between those who have understood the State as a *societas*, or civil association, and those who have seen it as a *universitas*, or enterprise association (Oakeshott 1975, 185–326). *Societas* and *universitas* are not "dominant and recessive dispositions," nor are they "complementary characteristics" (323). In fact, they deny one another. At the same time, however, they have never appeared in their pure form and "have become contingently joined by the choices of human beings in the character of a modern European state" (323). They have represented the two "poles" of "the modern European political consciousness" (Oakeshott 1975, 320) and have been interpreted by political actors, thinkers, and theorists throughout history. To put it another way, as is the case with constructivism, in Oakeshott's eyes, modern European political history is the history of intersubjective beliefs about the nature of the state and about the activity of governing. These beliefs and practices are "polarized" in nomocratic and teleocratic understanding.

It often goes unnoticed by readers and commentators that in the third essay of *On Human Conduct* Oakeshott presents not only an account of the character of the modern European State, but also some ideas that are relevant to International Relations that are part of his broader argument. In particular, he identifies in the international sphere some of the circumstances that favoured the increasing success of the teleocratic understanding of the activity of governing.

The first of these is colonialism. The initial colonial settlements were indeed "corporate undertakings, communities of persons modelled upon the constitutions of churches or religious sects" (Oakeshott 1975, 270). As such, they understood their activity of government as that of a teleocratic enterprise. One consequence of this was the success of the disposition "to regard the office of government as the exercise of seigneurial management." In particular, even in those cases in which the states regulated their internal affairs through the rule of law, in their colonial adventures their style was teleocratic. The purpose of those early settlements was indeed the exploitation of resources, the increase of trade, and the diffusion of a faith (Oakeshott 1975, 270–72; 2006, 474–75). Quoting

Burke's famous description, in the colonies the state was "disguised as a merchant" (Burke in Oakeshott 1975, 271).

As well as colonialism, another element that enhanced the teleocratic understanding of the activity of government was, as Nicholas Rengger has recently highlighted, war. It is interesting to note that Oakeshott—who served in Continental Europe during the Second World War—also devoted some of his notebooks to this theme.[6] Even though they are scattered over many years, the bulk of these reflections is in one notebook, entitled "A Conversation," begun in 1944. There, we may identify the three main themes of Oakeshott's discussion of war: its centrality in modern history; its deleterious impact on liberty and on the organization of society; and the evolution of its role.

The importance of war in the history of the modern European state is presented in *On Human Conduct*. There, European modernity is interpreted as dominated by continuous threats of war and by the consequent necessity of providing protection from external invaders (Oakeshott 2006, 385–86). The success of the teleocratic understanding of the role of the office of government was supplemented by the "great threat of extra-European invasion" and by the continuous state of war within Europe (Oakeshott 1975, 272, 322). It is indeed in the protection of the interests of the state, and in the care of its relations with other states, that the teleocratic character of governing emerges more clearly (Oakeshott 1999, 177).

War has a deleterious impact on the strength of the nomocratic understanding of the state. The Latin motto *Inter arma silent leges* is so reinterpreted: when a state is menaced "with dissolution or destruction" it becomes predominantly an enterprise association, and civil law tends to disappear (Oakeshott 1975, 147). As W.H. Greenleaf notes, the total mobilization, the degree of destruction, the level of homogeneity achieved by propaganda, and the exploitation and management of resources reached after two world wars have been decisive in the affirmation of the belief that the State is a form of enterprise association, oriented towards a common purpose, and directed by the government (Greenleaf 1983, 47–77). In short, war shapes the nature of the state and changes our understanding of what political association is.

Finally, especially in his notebooks, Oakeshott reflects on the nature of war. In some of his notes, he seems to distinguish between a classical and a "gnostic" conception of war, with the prevalence of the latter starting, according to Oakeshott, after 1918. This change is emphatically described by Oakeshott as the most important "in European civilization," as the

change "which marks the twentieth century" (Oakeshott 2014, 518).[7] War changed from being a regulatory mechanism within the European state system to an instrument for the establishment of a radically reformed world order.

To argue that there is a relation between enterprise association and the state of continuous belligerence that characterized the modern European state system does not equate to a version of the democratic peace thesis (Rengger 2013, 58–62). Oakeshott gives short and rather cursory consideration to the idea that the constitutional form of government has implications for the persistence of war in history. In *On Human Conduct*, we read:

> Kant and others conjectured that a Europe composed of states with republican constitutions would be a Europe at peace. This absurdity is often excused on the ground that it is a plausible (although naïve) identification of war with so-called dynastic war, but it is in fact the muddle from which Montesquieu did his best to rescue us, the confusion of a constitution of government (republican) with a mode of association (civil relationship). (Oakeshott 1975, 273, n. 1)

What matters is not the constitution (monarchic or republican; liberal or non-liberal) of the office of government, but instead the beliefs about the nature of the association, that is to say the moral self-understanding, of the members of the association.

The self-understanding that the members have of their reciprocal relationship is the "moral essence" of the association. When, at state level, individuals understand themselves to be members of a collective enterprise for the achievement of a goal, or for the enactment of substantial conceptions of the good or moral values, war is more likely. This argument highlights that the teleological style of politics and the teleological understanding of the state produce a mind-set and a kind of government that are part of the conditions of war. At the same time, the condition of war forces the establishment of a teleocratic form of government in which all material resources, as well as all individuals, cooperate in the achievement of the final goal. As Oakeshott writes:

> And although, even in these circumstances, the rule of law may (as Hobbes thought) be formally rescued by invoking such legal doctrines as that of the "eminent domain" of a government to be exercised *ex justa causa*, this is only another way of saying that necessity knows no law. (Oakeshott 1999, 178)

When the state is perceived under mortal threats, when an attack is feared, when the necessity of moving to war is felt, the office of government assumes its teleocratic appearance and the authority of its acts derives from the final end to be achieved: victory (which in the twentieth century has been the annihilation of the enemy).

However, it is not only the case that enterprise association has become dominant in the understanding of the state; it has also been victorious in the self-understanding of the society of the state as a whole. Although only in a footnote, Oakeshott extends his diagnosis of the history of the modern European state to the international level:

> It is perhaps worth notice that notions of "world peace" and "world government" which in the eighteenth century were explored in the terms of civil association have in this century become projects of "world management" concerned with the distribution of substantive goods. The decisive change took place in the interval between the League of Nations and the United Nations. (Oakeshott 1975, 313, n. 1)

This short passage suggests a reading of the history of international institutions, such as the League of Nations and the United Nations (UN), based on the antinomy between civil association and enterprise association. It appears that Oakeshott considered the eighteenth century—which is the period in which great powers coordinated their policies according to the principle of equilibrium—as one in which the voice of international civil association was stronger. Europe was understood as "an association of states within a common framework of practices," which were the "basis of international relations even among states whose interests were opposed" (Nardin 1983, 84). In the century that ended with the French Revolution, this order based on non-instrumental rules was maintained without central institutions. After 1815, the Concert of Europe represented the codification of these practices. However, the nineteenth century saw the increasing success and the notion of the Concert of Europe was intended to foster cooperation in pursuit of common interests (95). This same ambiguity characterized the League of Nations. On the one hand, as noted by Nardin, the international society that emerged from Versailles was conceived as a union grounded on the common "acknowledgment of the authority of certain rules governing the pursuit of all interests, common or conflicting" (103). On the other, in the interwar years, it was the preponderance of the interest of some of its members that gave a teleocratic

character to the association (Carr 2001, ch. 9). Moreover, the rise of fascism in Europe and the international crises of the 1930s gave strength to states that did not recognize the rules and the values stated by the League. In the almost three decades between the League and the UN Charter—which are considered decisive by Oakeshott—projects of new orders and the teleocratic idiom dominated the stage. From the Oakeshottian point of view, then, the UN is based on a purposive conception of international law. States are "associated on the basis of an agreement to pursue together certain substantive ends" (Nardin 1983, 107) and as a consequence the solidarity of the associates is based on the persistent existence of common goals (110).

In his recent work, Nicholas Rengger has further developed these Oakeshottian claims and has focused on the just war tradition. According to Rengger (2013), the success of just war theory and practice has led to a permissive conception of the use of force by governments in international affairs. In particular, the just war tradition is the expression of this teleocratic leaning in modern history and should be regarded as a manner of justifying and encouraging war, rather than as a way of constraining it. The emphasis on humanitarian intervention, in both its minimalist (such as Walzer 1977) or solidarist form (such as Wheeler 2000), is an expression of this (Rengger 2013, 152). The tendency depicted by Rengger, following Oakeshott, is one in which states, and associations of states such as the United Nations, have become more and more responsible for delivering goods and achieving goals.

In short, it is now clear the antinomy between civil association and enterprise association may be applied to the interpretation of international history and world politics. In this regard, it must be remembered that no actual political institution can be a pure civil association or a pure enterprise association, and, as Oakeshott is keen to underline, there is not a future in which one of the two tendencies will have disappeared (Oakeshott 1975, 320), and no regime has ever represented one of the two understandings without qualification (1975, 313). Even though one may have a preference for the prevalence of one understanding or the other, Oakeshott's political philosophy shows the ambivalence of actual political institutions and, as I have underlined, of world politics.

In the rest of the chapter I will contend that, even though Oakeshott is rather assertive in his denial of an international civil association, his theory may open the way to an original interpretation of international society conceived as moral association based on the common acknowledgment of the authority of international law.

Practical and Purposive International Society

In his contributions to *Diplomatic Investigations*, Bull presented one of the first versions of his notion of international society, which was later advanced in *The Anarchical Society* (1977). In that paper, entitled "Society and Anarchy in International Relations," Bull follows Martin Wight's triadic conception of the way in which international relations have been theorized (Bull 1966b). According to Wight, the realist view of the international system, in which world politics is a relationship based on power, is opposed to the rationalist notion of international society, in which the world is governed by human institutions which arise from human cooperation and interaction. Finally, there is the revolutionist tradition, which, while despising the current state of affairs, believes in the unity of humankind which can be achieved through a world society (Wight 1991).

Along these lines, Bull distinguishes between three different traditions: a realist one, whose understanding of international relations is shaped by Hobbes' notion of the state of nature (Bull 1995, 24–25);[8] a Kantian, universalist one which demands "that the international anarchy be brought to an end" by achieving a transnational community (Bull 1966b, 38); and a Grotian or internationalist tradition, according to which the absence of a supranational government (that is, anarchy) does not exclude cooperation framed by international law (Bull 1966b, 38).[9]

The Grotian tradition is the idea of international society defended by Bull, and one that became the distinctive idea of the English School. The cooperation of states under a recognized international law represents a *via media*, a middle ground, between the realist and the revolutionist traditions (Dunne 1998, 138–39). International society is a critique against both the realist view that the world comprises states in an anarchic power relationship with each other, and the universalist view that argues that the world is a single society (Bull 1995, 13).

This notion finds its final systematization in *The Anarchical Society*, where international society is grounded on the consciousness of "certain common interests and common values" (Bull 1995, 13), which, historically, can be found in "common culture or civilisation" (15). As such, international society has some goals: the preservation of order; the maintenance of the independence or external sovereignty of individual states; peace; the limitation of violence; the keeping of promises; and the stabilization of possession (16–18). As summarized by Alan James (1978), international society is a society of notional persons (the states) with a

body of rules that define proper behaviour for its members. These rules are protocols, morals, and law.

In another of his contributions to *Diplomatic Investigations*, entitled "The Grotian Conception of International Society," Bull distinguishes between two ways of interpreting the concept of international society. Even though there are many possible doubts about the methodology that underpinned Bull's discussion—which resembles, as David Boucher suggests (1998, 17), Arthur Lovejoy's unit ideas—his considerations on the Grotian and internationalist traditions are very relevant to our argument.

First, there is the pluralist conception (such as that of Oppenheim), where various states with different goals and conceptions of the good recognize that they are bound by a minimal code of coexistence. States agree on certain minimal rules, which are recognition of sovereignty and non-intervention. Second, there is the solidarist conception (such as that of Grotius) which argues instead for a collective will of the society of states (Bull 1966c, 52). In this regard, Bull points out two possible manifestations of collective will, related to the enforcement of international law: the first concerns "police action," where states respond to law-breaking; the second concerns the monitoring of the way in which states treat their own citizens (Bull 1966c, 63).[10]

As such, Bull claims, the solidarist strand of the internationalist tradition damages international order as it prescribes much more than the society of states is able to deliver. Bull finds examples of the detrimental influence of the Grotian perspective on international order on several occasions in the twentieth century: the actions of the League of Nations against Italy in 1935; the trials of the International Military Tribunal of Nuremberg and of the Far East on charges of having begun an unjust war; and the Korean War, conducted in the name of the UN (Bull 1966c, 71). Bull argues that these acts burdened international law and institutions for the limitation of conflict with a weight that was for them impossible to bear, and this has led to them becoming ineffective.

Over the past decades, this distinction between solidarist and pluralist conceptions of international society has shaped a great variety of positions, with particular regard to humanitarian intervention, collective security, and issues of distributive justice.[11] As such, the two perspectives differ from both the realist view, which negates any sort of possible meaningful cooperation, and the revolutionist or cosmopolitan views, which instead aim at the construction of a world unity. However, they differ from each

other in arguing that cooperation may achieve at best a minimal order, as the pluralists suggest, or a cohesive collective will, as the solidarists argue.

Elaborating on the English School notion of international society and on the dichotomy between solidarism and pluralism, Terry Nardin has considered Oakeshott's theory of civil association in the attempt to find a middle ground between the idea that international order is absent, and that it can only be achieved through a world society. In particular, Nardin argues that there exists a practical or moral understanding of international society, a community where members are not persons but states, which understand themselves to be bound by non-instrumental rules, and not by common purposes (1998, 20).

At the outset, it is worth underlining once again that, as in much of the modern literature in international relations and in sympathy with Bull, Nardin conceives states as individual agents. Thus, he develops his notion of international society by analogy with the relations between persons in civil society (1983, 16). The members, the individuals (or using the Oakeshottian terminology, the *personae*) related by the recognition of a system of non-instrumental rules, are, at the international level, the sovereign states. They are formally equal because the rules are specified in the same terms for all, even though they do not have the same opportunity to use the resources of the law, and to pursue their chosen purposes.

Problematic for the understanding of international society as constituted by international law is the increasing importance in international relations of non-state actors. Indeed the defence of state-centrism has undermined the plausibility of a pluralist understanding of international society in current debates. The emergence of outlaw agents (in addition to outlaw states) such as the Islamic State, Boko Haram, and al-Qaeda in disregard of international norm, and dismissive of the rule of law, poses new challenges for the international community. At the same time, the role of subnational and supranational communities with different and often conflicting ethical values calls for a non-statist pluralist theory of international society (Williams 2016). Without denying the increasing relevance of these agents—and therefore the highly problematic nature of their exclusion from discourses about international order—what this approach wishes to stress is the legal primacy of the relations between states (Jackson 2000, 109). It argues that non-state actors and international organizations pursue their divergent goals in a world that is legally framed and shaped by the relations between states. The centrality of international law, however, also emphasizes the role of international lawyers and of all those agents,

such as non-governmental organizations (NGOs) and public opinion, that in addition to statespersons influence the development of the legal framework.[12]

Following Oakeshott, Nardin conceives international society as an ideal character, that is to say as a composition of characteristics detached from the circumstances of the world (1983, 34). In so doing, he distinguishes between different conceptions of international society: practical and purposive. As enterprise and civil association are the exclusive manner by which the relationship between individual intelligent agents may be understood, practical and purposive society are two modes of international society. According to the purposive conception, different states are united by shared values and purposes, while for the practical they are united by the subscriptions of a set of custom and practices. In the former case, international law is the instrument for the achievement of the common purpose, while in the latter "rules constrain the conduct of states pursuing different and sometimes incompatible purposes" (187).

Oakeshott's political philosophy provides an argument that asserts the self-contradictoriness of purposive or solidarist international society. Indeed, Nardin's point is not just about the distinction between these two modes of international society, but much more about the logical priority of the practical form over the purposive. Elaborating on an aspect that was merely hinted at in Oakeshott—according to which enterprise association entails a moral practice[13]—the pursuit of shared purposes presupposes procedures to which agreement may be achieved. The legal order understood as a system of non-instrumental rules makes possible a vast array of purposive associations organized through treaties, contracts, and stable organizations (Nardin 1983, 15–16). In short, the purposive conception is not autonomous, and is self-contradictory insofar as it presupposes the existence of a practical society, constituted by a set of laws, customs, and practices, recognized by different states.

In other words, it is possible to conceive international law as a moral practice constraining the conduct of states which are pursuing different goals. In particular, it is customary international law which is relevant. Indeed, it is neither the result of a central legislative authority nor that of the command of the sovereign, nor of an agreement between states (Nardin 1983, 166—73). Instead, it is "based ultimately on the practice of its users" and contains the authoritative rules according to which the conduct of states is directed and judged. Therefore, the first level of international society would be represented by customary international law and

would correspond to the "practical conception." States are related to one another on the basis of common rules. Besides this, there is the political level, in which a multitude of purposes are shared, and in which interests either converge or clash. Realism, various forms of rule-scepticism, and much of the recent constructivist literature assert the identity between law and politics. Against this reading, Nardin follows Oakeshott and claims the logical irreducibility of law to politics, and the priority of the former over the latter. The legal order provides the shared normative framework in which agents pursue their interests.

Nardin's notion of international society as a practical association based on the recognition of non-instrumental rules substantiated in customary international law has been criticized by Christian Reus-Smit, who has claimed that "all historical societies of states have begun … [as] communities of states, linked by common sentiment, experience and identity" (Reus-Smit 1999, 37). It is this intersubjective common belief that represents the moral purpose of the state and of international society. In this regard, it is worth recalling, as already stated above, that to say that a political association is based on the subscription to rules indifferent to any particular moral goals does not equate with saying that purposiveness is absent or eliminated. On the contrary, Oakeshott's distinction between enterprise and civil association is all about the nature of authority and governing. In enterprise association, authority of the law is based on its relations with the pre-established goal, which is intended as a substantive state of affairs to be attained. Governing is the activity of managing individuals towards this goal through the coercive apparatus of power. Civil association, however, simply denies that the legal order should be at the service of any superimposed goals.

My point is that the shared values that Reus-Smit (and Hedley Bull before him) identifies as constituting various historically international societies are not substantive purposes, but procedural constraints. In this regard it is enlightening that as an example of his understanding of moral purpose, Reus-Smit quotes Aristotle's famous sentence from the *Politics* (1.I, 57):

> Observation tells us that every state is an association and that every association is formed with a view to some good purpose. I say good because in all their actions all men do in fact aim at what they think good. (Aristotle in Reus-Smit 1999, 170)

According to Reus-Smit's interpretation, Aristotle's "good purpose" should be interpreted as a goal that can be reached though the actions of the community of states. It is this shared notion of the good that is the foundation of international society in its various historical forms. It is significant to note that Oakeshott is inspired by Aristotle's Book I of the *Politics* in conceiving his model of civil association (1975, 110). What is important, however, the "good life" is not necessarily a substantial state of things to be achieved but instead a formal condition. To behave according to this ideal is not to do certain specific actions but to act "while subscribing adequately to considerations of moral propriety or worth" (Oakeshott 1975, 118–19). It is to accept constraints rather than to pursue goals. For example, the practice of Renaissance diplomacy was embedded within the practices of fifteenth-century Italian society, and in the moral purpose of the state: "civic glory" (Reus-Smit 1999, 63–86). However, this moral purpose should be considered not as a teleological end, but rather as a set of moral, non-prudential, values. Thus, in the example considered, "civic glory" does not prescribe specific actions in certain circumstances; it does not suggest what to do, but it provides the standards and the criteria that determine the manner in which actions are performed.

Thus, the notion of civil association offers a new perspective on Bull's key idea that international society is grounded on common values and interests. It is a perspective that elaborates on Nardin's interpretation, and sheds light on the nature of the moral values that ground international societies. In contrast to Reus-Smit's constructivism, Oakeshott's perspective clarifies that these common values and interests—what may be called the common good—are not conceived as the result of a common will, and do not impose particular actions on individual agents. This is manifested in the subscription to the adverbial constraints to conduct prescribed by the law and not in the pursuit of some common enterprise (Oakeshott 1975, 147). As such, and insofar as it reflects the evolution of the relationship between individual agents, it is a "relationship of civility" (Oakeshott 1975, 108). The notion of civil association offered the solution to the possibility of a legal order "in conditions of cultural and social diversity without imposing coercive constraints on individual freedom" (N. O'Sullivan 2012, 293), so, when considered at the international level it shows the possibility of coexistence based on a legal system even without an overarching conceptions of the good to be pursued.

The Rule of Law, Customary International Law, and Historical Reason

So far, I have argued that the opposition between civil and enterprise association may be applied at the international level to understand the difference between pluralist and solidarist conceptions of international society. While practical international society is based on the acknowledgment by the various individual equal agents of a system of non-instrumental rules, purposive international society is concerned with the pursuit of a shared goal. From an Oakeshottian point of view, international society may be seen as a relationship of civility based on the acknowledgment of a common set of values.

In the following, I want to claim that this relationship of civility is based on the recognition of customary international law, which is understood as the codification of the existing practices between states. As such, it challenges the Hobbesian and legal positivist idea that international law is impossible because of the absence of a supranational sovereign power.

With regard to the nature of authority, I have previously underlined some similarities as well as some differences between Hobbes and Oakeshott. In particular, I have claimed that in civil association authority does not arise from an act of will (a covenant) but rather from the evolving practice subscribed to by various agents. A similar difference between Oakeshott and Hobbes may be seen at the international level.

On the one hand, it is true that Oakeshott considered law as resulting from a legislative office. As a legal realist, Oakeshott seems to deny the existence of any international law. This is also true when custom is considered as law because, for Oakeshott, customary law is an indirect mode of legislation. As we read in "The Rule of Law": "its authenticity derives from a presumption that it cannot resist appropriation, rejection or emendation in a legislative enactment" (Oakeshott 1999, 151). Customary international law cannot be considered as genuine law because of the absence of a supranational absolute legislator, who is able to enact, amend, and reject laws. From a Hobbesian conception of authority would follow a Hobbesian position, in which international relations are anarchical.

On the other hand, however, Oakeshott distinguishes considerations about the authority of the law—which, as we have seen, are identified with those about its authenticity—from others concerning its interpretation and enforcement (1999, 157). The theory of civil association identifies, as the sole terms of the relationship between individual agents, "the recognition

of the authority or authenticity of the laws," and this is independent of considerations about the nature of the legislative office (149). In short, Oakeshott's position suggests a way in which the theme of obligation and authority is distinct from that of the enforcement of law and from the constitution of the legislative office. Asking what is the relationship between different individual agents, and whether this relationship is based on the pursuit of a shared goal or, on the contrary, on the recognition of non-instrumental moral rules, is a very different question from that about the instruments of power (Nardin 1983, 126). Coercion does not generate obligation and the empirical fact of compliance with law does not demonstrate the existence of a duty to obey the law. Enforcement is a contingent fact, not an essential condition, in a legal order.

As already pointed out, Oakeshott's theory about the authority of law and the origin of the legal order attempts to overcome the voluntarist paradigm as inaugurated, in modern philosophy, by Hobbes. This difference may be understood in the light of the triadic conception of political philosophy that has been applied to the theory of international relations by David Boucher in his *Political Theories of International Relations*. There, Empirical Realism is analogous to Oakeshott's Will and Artifice and encompasses those thinkers such as Thucydides, Machiavelli, and Hobbes that separate international relations from morality or equate political conduct with expediency.

In opposition to Realism and equivalent to Oakeshott's Reason and Nature, there is the Universal Moral Order tradition. Even though sharing with Realism the idea that humanity is deprived and corrupted, it is more optimistic about the possibility of human self-improvement. The various exponents of this tradition—such as the Stoics, Aquinas, Vitoria, Gentili, Grotius, Pufendorf, Locke, and Vattel—postulate the existence of a higher moral law, "discovered by right reason, or inferred *a priori* from indubitable data, or even *a posteriori* from observing the common practices of nations" (Boucher 2007, 75).

As in Oakeshott's model, these two opposite traditions are superseded by a third, Historical Reason, in which criteria of conduct emerge from historically evolving moral practices, resulting from intelligent responses to changing circumstances. What characterizes the thinkers of this tradition is that the conduct of states is not capricious but regulated by principles. However, these are not objective truths—either intuitively known or constructed by right reason—but criteria justified as responses to changing historical circumstances (Boucher 1998, 311).

My contention—which will be defended in full in the next chapter—is that Oakeshott's political philosophy may be associated to the tradition of Historical Reason, one of whose exponents is Edmund Burke. Burke considered Europe as a society of states, a Commonwealth, an expression of civilized manners and common sympathy organized by regulatory principles. Formal treaties and national interests are not the defining element of European society. Its nations are instead united by bonds such as common law, religion, customs, habits, and the manners of a gentleman. They are regulative devices that maintain the integrity of the European Commonwealth. As is well known, for Burke, the most important among them is the customary law of the balance of power (with the related "principle of interference" and "right of vicinage"), which represents the common law of Europe (Boucher 1991b, 140–48).

James B. Murphy has recently identified a philosophical tradition of reflection upon customary law, and has argued that custom is "intelligible only in relation to basic norms of objective morality or natural law" (Murphy 2014, 117). While suggesting that the role of custom in legal order shows the inadequacy of the dichotomy between nature and convention in the analysis of human social institutions, Murphy claims, following Aristotle, that customs "turn our natural propensities into complex conventions" (5).

According to this reading, even voluntarism appeals to natural law and objective rational principles. Francisco Suarez is the paradigmatic thinker of the voluntarist tradition. He has defended a view in which law, including the law of nations (which was considered to be largely consuetudinary) is the result of the activity and intentions of a lawgiver (30). This is because it rests upon consent, considered as the expression of the will of both the people and the legislator (42). However, even in Suarez's case, the grounds on which to identify whether or not a custom creates obligation are the "traditional criteria of objective morality and prudential judgment" (56). These criteria are substantiated in the will of the divine legislator and in natural law (57). Overall, objective standards and core values are needed to identify which customs are law.

Although concerned with the relation between custom and law in the domestic case, this interpretative framework is also of relevance to international order. In Murphy's neo-Aristotelian theory, customs are the expression of the fact that man is "a conventional animal and social conventions are how we actualize our natural potential" (3). As they are something tacit, unexpressed and evolving without clear design and reflecting our innate propensities, they are our "second nature."

In contrast to Murphy, Oakeshott's theory of practice—which I explored in the previous chapter—points the way towards a theory of customary law which does not need to refer to any objective, natural criterion. Instead, legal obligation arises from existing social practices, or custom, created by relations between actual states. Customary international law results from the recognition of the obligatory character of imposition of some moral practices.

As I expounded earlier, in Oakeshott's conception a moral practice is a relationship between individual agents composed of a "set of considerations that are the by-product of performances" (Oakeshott 1975, 55). It provides shared assumptions to be taken into account while acting. As such, practices shape the deliberations and the broader conduct of their subscribers. Practices are not causes but normative engagements. They are not identified with mere habitual conduct but rather with a moral convention, interpreted as a coherent set of moral constraints. Just like habits, moral practices are often based on tacit, shared moral assumptions or presuppositions, which are only unveiled by critical reflection. However, unlike habits, moral practices are learned conventions; they are understood relationships (Turner 1994).

In Oakeshott's political philosophy, customs and practices prescribe "conditions but [do] not determine substantive choices and performances of agents" (Oakeshott 1975, 55). Therefore, even without entering into the debate about whether custom should be considered as one among the various sources of law or as law *tout court*, suffice it to emphasize that, for Oakeshott, custom and law are both moral practices. A system of law is a moral practice (or custom) which has obtained formal recognition and is authoritative. It is composed of a set of evolving criteria, which form a system of beliefs about the moral constraints that qualify an action as good. As both civil law and customs are moral practices, and since a system of law is a moral practice that prescribes obligatory conditions to be subscribed to by agents, there is no substantial difference between customary (international) law and statuary law. Both are frameworks that regulate existing activities and that provide social coordination.

As with other exponents of what Boucher has called the Historical Reason tradition, Oakeshott identifies as the foundation of international legal order, neither certain absolute principles nor the will of a legislator, but instead the evolving practices resulting from the relations of states. Whenever two or more states enter into relations with one another, the emergence of a custom, which makes this interaction intelligible, is

unavoidable; it is in virtue of their reciprocal understanding as participants in those practices that they have the possibility of engaging in mutual relations (see Byers 1999, 19). At the same time, the continuity of purposive transactions between agents creates new practices in which these specific actions may be understood, and which are not themselves purposive. States with very different and divergent goals, contrasting values, and conflicting interests are nonetheless united by law. In spite of all the apparent problems of enforcement and adjudications, this law exists because it is nothing more than the institutionalization of already existing rules created by actual interactions.

CUSTOMARY INTERNATIONAL LAW IN WORLD POLITICS

Throughout the various chapters of this book I have contended that Oakeshott's philosophy is a form of constructivism, given that it considers world politics as a normative activity and international society as a moral relationship between states based on shared values, which are interpreted as commonly recognized constraints (and not as purposes). I have gone on to argue that his theory of non-instrumental law as a moral practice, or tradition, sheds light on the fact that obligations stem from social interactions. It is from the recognition of certain moral practices as authoritative that law arises. In this, statuary law is no different from customary law. I want now to consider in more detail how Oakeshott's theory of law and of civil association sheds light on the relations between customs, or moral practices, and international law. I will then highlight its relations for the understanding of the role of customary international law in world politics.

Customs and existing practices are indeed among the sources of international law and have a crucial role in current global politics. The importance of customary international law is so clear that the whole edifice of international legality has been considered to be constructed on a single customary norm: *pacta sunt servanda* (Guzman 2005/2006). Moreover, on the ground of two important decisions made by the International Court of Justice (ICJ) (*Barcelona Traction* and *North Sea Continental Shelf*), treaties have been considered as a source of customary norms, when signed by a considerable number of states. In the *North Sea Continental Shelf* case, for example, the "widespread and representative" adoption of the rule over "a short period of time" by states that did not sign the conventional relevant treaty was considered as valid grounds for the establishment of customary norms. For example, treaties on the prohibition

of torture, genocide, or slavery, albeit not signed by all states, may be considered as customary norms, binding all international actors (Meron 1989, 3; Baker 2010, 176–84).

Once a custom is recognized as law, it also applies to states that have previously protested against it, or that did not exist when the law arose (Cassese 2005, 162–63; Dixon 2005, 30; Thirlway 2006, 121). This is also the case where there exists a "persistent objector," that is, a state which consistently objects to the formation of a new customary law and, therefore, claims to be exempt from its authority. As underlined by Martin Dixon, the changes in the international context have led to the acknowledgment of a newly recognized law by countries that previously objected to it, be they minor (such as decolonized states that aimed to be exempted from some disadvantageous norms in matters of compensation) or great powers (as shown by the acceptance by the United Kingdom of the extension of the territorial sea) (Dixon 2005, 31).

That customary international law applies to all states and international actors is of particular relevance in the case of international humanitarian law. This importance is exemplified by the Martens Clause, which appeared in the preamble to the 1899 Hague convention with respect to laws and custom of war on land. It states that:

> Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience. (Laws and Customs of War on Land: Preamble)

The clause has consistently been used in international treaties and in the work of jurists in various international tribunals, such as the Nuremberg Tribunals, the ICJ, and the International Criminal Tribunal for the former Yugoslavia (ICTY), and has been accepted as a norm of customary international law (Sutch 2011, 109; see also Chetail 2003, 257). Its purpose is to remind all belligerents that there are established customs that have an obligatory character.

The Oakeshottian perspective that I have defended in this work offers a theory of the source of authority of customary international law. An element that Oakeshott's perspective illuminates is the normative nature

of law. Consistent with the broader contribution to constructivism that I have illustrated throughout this work, customary international law has to be considered as the result of human interaction, social practices, and deliberative thinking. As in the case of Oakeshott's interpretation of the domestic rule of law, customary international law forms the grounds of the moral relationship between agents that constitutes international society.

The traditional doctrine that sees custom among the sources of international law is usually considered to be found in Article 38(1) (b) of the Statute of the ICJ, which identifies customary international law as "evidence of a general practice accepted as law." There are then two basic criteria to be fulfilled for a rule to emerge as customary international law: consistent state practice (*usus*) and the acceptance of the practice as obligatory (*opinio juris*). *Usus* distinguishes custom from "merely ideal standards", while *opinio juris* identifies legal custom from mere regularities or routines. This doctrine purports to combine a subjective and objective aspect of law. The latter is the sense of legal obligation by states, while the former is the empirical record of state practice, which, according to the ICJ in the *North Sea Continental Shelf Case* should be "a very widespread and representative participation of states."

This traditional approach has the merit of identifying a procedure that leads to the authoritative identification of law and that compensates the absence of centralized legislative institutions. However, it is also a source of perplexity as it suffers of a certain circularity. In fact, it claims that if states act in a certain manner, then they may be acting in such a manner because they have sense of legal obligation. In other words, states create a rule, through acting in conformity with such rule over a certain period of time, because they feel they are legally obligated to do so (Baker 2010, 176).

The difficulties of the traditional explanation of the source of customary international law may be solved if we look, as I have suggested following the Oakeshottian perspective, at legal obligation as the result from a subscription to a practice by agents. As also argued by Gerald J. Postema (2012), once we consider that law arises from actual moral practices, and that its recognition is the result of a discursive and interpretative argument, the traditional doctrine that sees the establishment of customary international law as a combination of objective (*usus*) and subjective (*opinio juris*) elements is undermined.[14] From this perspective, the identification of a customary law is a matter of judgment shared among the participants. Both *usus* and *opinio juris* are normative elements. From this point of view,

regularity of behaviour is not a simple material fact; it is more than merely an exercise of empirical evidence. It is instead the result of a normative engagement: the persistent subscriptions to the conditions prescribed by a practice. This is further exemplified by the fact that customary norms are transmitted not by repetition or imitation, but "in virtue of their integration into the discursive network" (Postema 2012, 730), for their being part of the system of conditions that are taken into account while acting. If international law is seen as a set of evolving practices, whether a rule is a valid part of international law is determined by its acceptance by the members of the international community.

This is shown by requirements identified by the Statute of the ICJ. They entail a certain degree of flexibility, as well as the possibility of a case-by-case decision by the Court—for instance with regard to how many states need to participate before a general practice can become law, or to the length of time required. This shows that the recognition of already existing practices is not a matter of sharp criteria or deterministic processes, but the result of an evidential, discursive, and interpretative argument.

A key element of the philosophy of customary law is the theme of consent. In the voluntarist account, the law of nations is authoritative because it is expression of the consent of the sovereign and of the people. As I have discussed above, in both *On Human Conduct* and in "The Rule of Law," the subscription to moral practice is based not on consent, nor on expectations about the outcomes of laws (Oakeshott 1975, 152–54). When the authority of law derives from considerations about its effects or from the consent of its subscribers, it unavoidably acquires an instrumental character. Instead, authority is the attribute that a system of law acquires when it is recognized by agents, regardless of any other considerations. This circularity reveals that Oakeshott argues for the autonomy of the legal order and denies the existence of any foundation external to the authority of the law. The next chapter will return to this issue; for the moment suffice it to note that by denying any external foundation to the authority of the law, and to the origin of obligation, the Oakeshottian perspective identifies from inside the actual practice subscribed to by the states the ground of their reciprocal obligations. International law makes obligatory moral claims that are immanent in international society.

Against any rationalist project of reforming international laws or world institutions departing from abstract principles, the Oakeshottian model once again considers political activity and legislative innovation as based on institutional moral reasoning. Reforms are the result of the "pursuit

of intimations," of changes of current arrangements according to a normative ideal and with the resources of an existing morality. The classical question about the origin of law and its relation to custom is solved in the Oakeshottian perspective without appealing either to the will of a "legislator," nor to the "so-called dictates of Reason" (Oakeshott 1975, 139). There is no ready and indisputable criterion for determining the desirability of a certain change. Customs and customary law are not the product of explicit design, but rather the by-products of intentional performances. As contended by David Boucher, that customary international law reflects and declares slow changes in international society is illustrated by its role in the advancement of humanitarian justice. For instance, the actual advancement in the recognition of human rights is not made in virtue of declaration or treaties. Instead, what has been essential—as in the case of the establishment of the ICTY and the International Criminal Court—is customary international law (Boucher 2011, 763–68).

This is also illustrated by the progressive codification of customary practices—a process that occurred after the establishment (in 1947) of the International Law Commission. Since then, customs and practice have increasingly taken written and codified forms. This shows one of the ways in which customary practices have obtained formal recognition in international society. However, it does not deny the priority of customary law over treaties. Indeed, where a treaty covering the same content as a customary international law ceases to exist, for whatever reason, the customary law remains binding (Boucher 2011, 754).

A further significant example in this regard is the progressive codification of customary international humanitarian law by the International Committee of the Red Cross (ICRC) that aims to identify norms that bind all states in the conduct of war and protect its victims (Henckaerts 2005). Moreover, rules of *jus cogens*, such as the prohibition of genocide, have emerged as fundamental rules of customary law. These examples show that the cogency of international obligations derives from the recognition and codification of already existing norms of conduct in the relations between states. Advancement in the recognition of human rights and humanitarian principles derives from the fulfilment of these intimations and not from the success of some rationalistic project.

At the same time, the rationalist idea that uncertain rules cannot be regarded as real law does not take into account the nature of practical reasoning. Every rule is to some degree open, vague, and ambiguous. Its interpretation may change in future, unforeseen contingent circumstances.

Legislation reflects and must adapt to the ever-flowing reality of human life that is antithetical to scientific certainty. Following Postema's "normative practice account" (2012), I have suggested that the test that identifies the relevance of a customary norm is that of integration. The evidential and circumstantial argumentative discourse that attempts to define the emergence of new authoritative rules aims at considering the coherence of the emerging norms with those assumptions and considerations already in place.

To sum up, customary international law reflects actual practices of states, and declares those moral constraints to conduct that are already acknowledged by states. According to this perspective, new norms are recognized as part of the system of law not in virtue of their expected outcomes, nor of their conformity with some absolute principle, but instead because of their coherence with the already existing rules.

CONCLUSION

Oakeshott's idealist conception of philosophy as criticism finds in political and legal philosophy one of its finest results. The aim of Oakeshott's theory is indeed to distinguish and define the postulates of political life, and to identify the essential elements of political and legal relationships. From these presuppositions, he identifies two fundamental, mutually exclusive, and antinomic modes of relationship—enterprise association and civil association (or the rule of law)—that are distinguished by the nature of their rules and their authority, and the relationship between individuals that they entail. While in enterprise association individuals commonly pursue a pre-established end, and rules are instruments to those goals, in civil association individuals are united by common recognition of a system of non-instrumental rules.

The chapter has highlighted that in Oakeshott's works there is a systematic theory of the historical evolution of international society. In contrast with how it may first appear, the distinction between civil association and enterprise association has important implications at the international level. Oakeshott identifies war—along with colonialism—as one of the elements that contributed to the success of the teleocratic understanding of the state. Moreover, international society as a whole has been increasingly understood as a *universitas*, that is to say, according to a solidarist conception of relations between states. This is shown by the transformation of war from a regulatory device to an instrument for the creation of

a new world order, and by the establishment of purposive international organizations (such as the UN).

Third, the fact that Oakeshott is very critical of the contemporary state of affairs in world politics, as well as of international organizations, does not imply that from the theory of civil association it is impossible to conceptually identify the conditions of the possibility of an international rule of a system of non-instrumental laws. From Oakeshott's theory of the rule of law or civil association, it is indeed possible to construct a notion of international society conceived as a relationship based on customary international law, understood as a system of non-instrumental rules. Therefore, Oakeshott may be associated to those thinkers (such as Burke) who conceive the conduct of states as regulated by historically emerging criteria.

Conceived of in this manner, international society represents the framework in which different actors of international politics may pursue their different goals and cooperate with each other. As such, international society is based on the recognition of shared rules, moral constraints, and values. As a consequence, the common good of international society may be understood not only as a substantive state of affairs to be reached, but also as a set of shared rules and a common concern for conditions of civility. As for the constructivists, this perspective focuses on the relationships between different actors, which are not a natural given, but the result of the normative reasoning of different actors. It is on the ground of these continuous relationships that forms of cooperation can be pursued and that criteria of justice and the common good can be enacted.

In particular, the argument developed in this chapter contributes to constructivism by identifying in customary international law the constituting moral practice of international society. I have illustrated that, insofar as customs emerge without design and are a by-product of actual states relations, customary international law may be considered as a system of moral (non-instrumental) rules. According to Oakeshott's perspective, its authority is not grounded on expected outcomes or on the "dictates" of right Reason, but instead on its recognition by international actors. In sum, the Oakeshottian perspective underlines the declaratory and evolving nature of international society and shows how principles have acquired legal force as they arise from actual moral practices, binding the conduct of states and providing criteria for judging their actions.

Notes

1. As pointed out by David Boucher they also indicate that the Roman republican tradition represented one of the most significant points of reference for Oakeshott's theory, see Boucher (2005a). I will return to this in the next chapter.
2. Rawls' note on Oakeshott's civil association is also relevant here; see Rawls (1996, 44).
3. An interesting example of this is provided by Oakeshott in a notebook that he was writing around 1966, where we read: "Elsewhere in the Mediterranean the Normans were mainly destroyer. They were men of war who happened upon a Byzantine & a Saracen culture which was weak, perhaps decadent, & they destroyed it. But in Sicily they made the first modern European state—a multiracial, polyglot state in which Greek, Saracen & Norman, Christian, Jew & Moslem each followed their own cultural traditions under a central Norman rule. 'Rule' was keeping the peace in a manifold, not imposing a single solidarity," Oakeshott (2014, 499).
4. Oakeshott's interpretation of Hobbes' conception of political obligation is one of the most significant changes between the two editions of his *Introduction to Leviathan* (the first published in 1946, the second in 1975), see Tregenza (2003, 96–102, 2012).
5. See also Oakeshott's review of Leo Strauss's interpretation of Hobbes, Oakeshott (2000, 157).
6. In the notebooks there are indeed some notes of a more personal tone on the theme of war, see, for instance, Oakeshott (2014, 510).
7. Oakeshott (2014, 518). The notes are from a notebook written in 1967.
8. On the limitations of this understanding of Hobbes, see Boucher (1998, 145–70); Malcom (2002, 432–56); as well as the contributions in Prokhovnik and Slomp (2011).
9. The three traditions are presented also in Bull (1995, 23–25). On the differences between Bull's and Wight's conceptions of the three traditions, see Boucher (1998, 15–16); Dunne (1998, 138–40).
10. See Dunne (1998, 100–01).
11. For an overview, see Egede and Sutch (2013, 114–24).
12. For an interpretation of non-state actors through the antinomy enterprise association and civil association, see Katsikas (2010).
13. "This mode of association [enterprise association], of course entails moral relationship, but with that and with any other adverbial or rule-like conditions it may involve we are not now concerned," Oakeshott (1975, 114).
14. The difficulty in identifying a distinction between *usus* and *opinio juris* is discussed by Henckaerts (2005, 182) in regard of the codification of customary international humanitarian law by the International Committee of the Red Cross (ICRC).

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Realism, Universalism, and Evolving Morality

INTRODUCTION

In the previous chapter, I have argued that Oakeshott's political and legal theory may be seen as the basis for an understanding of international society as a rule-based form of moral association. In spite of the mixed character of real world legal order, and of the varying circumstances in which the ideal characters of civil association and enterprise association may appear, Oakeshott's theory offers an account in which the existence of international law is not undermined by the lack of a supranational power. Instead, as I have argued, it is based on the codification of state practices. As such, international law reflects the evolving nature of international society. When customary international law is conceived as a system of non-instrumental rules (whose authority depends neither on the outcomes of rules, nor on the consent of its subjects), it represents the ground of the relations between international agents.

I have included Oakeshott among those theorists who understand the society of states as a relationship of civility based on common morality and shared values, resulting from historical human actions. These shared values—I have argued against Reus-Smit's criticism of the Oakeshottian position as expressed by Nardin—should be understood as a common subscription to moral constraints, and not as a common purpose.

In this chapter I want to consider further the relationship between international law and morality. I will explore two objections that may be raised against the idea of international society as a moral, practical, association between states constituted by the subscription of conditions of civility defined by non-instrumental rules.

First, there is the classic realist objection against the existence of genuine law. It has profound roots in the history of the philosophical reflections on the conduct of states and may be linked to the thought of, among others, Thucydides and Machiavelli, but also of Schmitt and Morgenthau. This chapter will show both the similarities and the differences between Oakeshott and a realist conception of the question of international justice. As Chris Brown and Sean Molloy have pointed out, it is no longer permissible to consider realism as a theory in which "moral judgments have no place" (Beitz 1999, 15; for a discussion of this sort of critique of realism, see Molloy 2008, 83–84). Instead, it should be regarded as a critique of utopianism and of those kinds of moral thinking arguing for the existence of overarching moral codes (Miller 2016, 2). In this regard, I will recall some of my earlier considerations about Oakeshott's critique of Rationalism in politics and show some of its similarities to Morgenthau's aversion to international liberalism. I will contend that, however, Oakeshott offers a different and less essentialist conception of human nature, as well as a theory of law that is distinct from and critical of the instrumentalism implied in realist legal theory.

Second, I show that Oakeshott's philosophy offers a possible solution to what has been called the problem of interiority, which I have already mentioned in Chap. 4 (Reus-Smit 2003a, b, 2011). This arises when "the source of [legal] obligation is located within an aspect of a particular normative system" and when "the theory in question lacks the theoretical resources to account for the existence or legitimacy of the system as a whole" (Reus-Smit 2003b, 593). This sort of objection is addressed against the "identity thesis," (Turner 2014), which characterizes positivist theories of the rule of law. According to it, the grounding of the authority and legitimacy of law may only be law itself. For example, the fact of compliance with international norms is often explained with reference to the legitimacy of background institutions, (such as international law) or to other sources, for example consent. However, the reason of the obligatory force of either law or consent is not explained, but rather taken as an assumption

or presupposition. In other words, the objection that has been made against the notion of a practical international society constituted by non-instrumental moral rules is that it does not explain why non-instrumental rules should have obligatory force and why actors attach normative values to some criteria of legality.

To address these issues the chapter will compare Oakeshott's political philosophy to realist, universalist, and constitutive positions. Ultimately, it will emerge that Oakeshott advances a theory of the rule of law in which law, criteria of legality, and obligation draw their normative force and authority from moral practices and understandings that emerge in history and that results from specific and situated moral experiences. This, I claim, represents an answer to the problem of interiority and, thus, contributes to current debates in international theory. In particular, I will contend that Oakeshott defends an embedded notion of practical rationality, in which criteria of justice are constituted by the moral tradition in which the agents are situated.

LAW AND MORALITY IN THE POLITICAL PHILOSOPHY OF INTERNATIONAL RELATIONS

I have illustrated in Chap. 2 that philosophy is conceived by Oakeshott as the unconditional understanding of the "standards and valuations of our civilisation," and the restoration of the unity between those criteria and "the rest of our ideas." The triadic conception of the history of political philosophy presented in the "Introduction to *Leviathan*" provides a framework in which the various philosophical definitions of the criteria of conduct are related to each other, and are seen outside of the historical circumstances in which they were presented.

As already discussed, it has been further elaborated by David Boucher to explain how political philosophers have reflected on international relations. Boucher identifies the three traditions of Empirical Realism, Universal Moral Order, and Historical Reason, which correspond to the Oakeshottian Will and Artifice, Nature and Reason, and Rational Will. Of course, this representation of the history of philosophy is not to say that there are fixed doctrines which are consistently reinterpreted throughout history. What the notion of tradition suggests is that it is possible to identify some characteristics that, when composed, create a more or less stable identity.

To place Hobbes in the tradition of Will and Artifice, as Oakeshott does, means to identify in these two master conceptions the key elements

of his system. In so doing, it is related to the history of philosophy and emancipated from the historical vicissitudes of its times.[1] From this perspective, in Hobbes' *Leviathan,* criteria of justice are the creation of human beings, and political order is based on an agreement that offers a remedy to the predicament of humankind (Oakeshott 1991, 225; 276–78). At an international level, the Empirical Realist tradition conceives of human nature as self-interested and unconstrained by any higher moral laws. As no superior power can govern states, actions are guided by national interests, and morality is identified with expediency and prudence (Boucher 1998, 29–31). For this reason, Realism often advances a critique of utopianism, and of those theories that defend a supremacy of ethics over politics.

Empirical Realism was strongly present in the work of some of the theorists writing in the same period as Oakeshott. Of the English School, besides E.H. Carr's critique of utopianism in *The Twenty-Years Crisis,* Martin Wight sees international politics as the site of constant war and conflict (1966). In international politics, no progress is possible and, as Wight famously put it, if some people from the distant past returned to present and looked at international affairs, they "would be struck by resemblances to what they remembered" (Wight 1966, 26). Hedley Bull maintains a much more nuanced attitude and, in some respects, may be considered a defender of a neo-Grotian position claiming the existence of a universal moral order, and therefore opposed to realism.[2] However, he maintained a radical scepticism towards solidarist projects as well as a deep awareness of the limits of political action, and, in *The Anarchical Society,* Bull indeed postulates the priority of concerns about order over those of justice (1979, 90–94).

Realism in international relations has been very successful in America, and not just the structural realism inaugurated by Waltz's *Theory of International Politics* (1979), which was highly influenced by positivist methodology and in which international politics was seen as determined by the anarchical structure of the international system. Earlier in the twentieth century, the works of Niebuhr and Morgenthau introduced Realism into the academic study of international relations through a more classic and humanist style.

In this context, an important role was played by the reception of Carl Schmitt's philosophy. As is well known, in his *The Concept of the Political* (1927), Schmitt develops a theory clearly influenced by Hobbes, and argued that politics is the realm of power. To deny the role of power and decision is to deny the essence of the political itself. Given the predicament

of human nature, Schmitt sees in the role that fear plays in Hobbes' state of nature a key to understanding the nature of politics. As the Leviathan offers an escape from the constant threat of death, so the authority of the State, for Schmitt, derives from his ability to protect the citizens, who, in return, give their obedience (Schmitt 2008a, 52).[3] International relations are politics at its highest; it is indeed in the relations between states that the centrality of power is seen more clearly. As with Hobbes, Schmitt sees the international realm as one characterized, not by actual war, but by a constant state of belligerence, in which the world is divided along the lines of friend/enemy (Schmitt 2008a, 37). In short, there is no distinction between politics and war, as both are constructed around the "amity line"; in both a key role is played by power and decisions. Ultimately, it is at times of war, in moments of exception, that the real nature of politics reveals itself.

Hans Morgenthau interpreted Schmitt's political philosophy in the context of the post-war American International Relations and, as his teacher, argued against liberalism, whose fault was in not acknowledging the centrality of power in politics and the ubiquity of evil in the world. Elaborating on Schmitt's notions of "the political," Morgenthau asserts that current international law merely codifies states' mutual self-interests and, for this reason, it may be called "non-political law." As such it is different from "political law," which instead derives from the power and the decision of a sovereign (which of course is simply missing at the international level) (Morgenthau 1940).

Terry Nardin (2008, 387–89) shows that Morgenthau's Schmittian notion that laws are authoritative only when they are the expression of power has inspired more recent legal theorists (such as Myres S. McDougal and Richard Falck), who see international law as the legalization of the actual relations of power and supremacy in world politics. It is this aspect that is picked up by postmodernists and critical theorists who, inspired by Foucault's Nietzschean concept of genealogy, see law as the codification of a system of power in which liberal democratic countries have the monopoly of normative discourse and of the definition of what is just conduct. For them, as famously stated by Foucault in *Society Must Be Defended* (2003), politics itself is the continuation of war by other means, and normative frameworks and legal orders are structures of dominations which perpetuate the struggles between different groups within society.

To recapitulate, the Empirical Realism thinkers ground their argument on a pessimistic conception of human nature, and on the idea that

international politics is essentially characterized by anarchy and war. Their positions often present a critique of utopianism and of the idea that international politics may be constrained by law or ethical principles.

The existence of immutable and knowable moral absolutes that define what is justice is what characterizes the tradition of the Universal Moral Order. According to Oakeshott, the root of this tradition is in the Platonic notion that the just city should reflect a metaphysical idea of justice to be discovered by reason through dialectic (Oakeshott 1991, 227; 1999, 160). For Oakeshott, it is Stoicism—and later Christian philosophy—that further develops "the doctrine that the *cosmos* was governed by a natural law" and that human beings can know it and are "able to construct human societies whose law and organization are a reflection of this natural law" (2006, 163).

At an international level, the notion that there are universal and immutable moral principles that can be known by reason to shape political institutions and international order is further explored by Grotius, Pufendorf, Locke, Vattel, and Kant (Boucher 1998, 32–37). Again, there are of course a good many internal differences, and some of these thinkers (for instance Kant) present elements from other traditions, but it is possible to identify some common tenets. There is a much more optimistic conception of human nature that, even though regarded as a "crooked timber," is considered capable of redemption in social life. Moreover, the action of states and individuals are justified by the appeal to objective principles that are either inferred from Natural Law or constructed by Right Reason.

Even though declining in contemporary philosophy, the idea that universal principles or human nature should ground international order is still present in the debate. For instance, some human right theorists (such as Michael J. Perry) identify a religious foundation of human rights. Similarly, the Catholic Church continues to appeal to natural law or a higher law to develop moral considerations about world affairs. Universalism may also take on a more formal or procedural character. For example, Martha Nussbaum grounds her universalism on some conception of humanity or on some fundamental universal moral characteristics that are realized in different ways according to the various cultural contexts.

Including and overcoming elements of both Realism and Universalism, the Historical Reason tradition conceives criteria of justice as embedded in historical moral practices. While the classical exponents of this group of theories are Rousseau, Herder, and Hegel, in more recent times this

sort of approach has been developed by a variety of thinkers of different persuasions.

Michael Walzer summarizes the historical reason tradition in his *Spheres of Justice* (1983), where he conceives of justice as the product of "particular political communities at identifiable times." Similarly, Rawls' position as expressed in *The Law of Peoples*, as well as David Miller's civic nationalism (1997), may be considered as stating the moral priority of autonomous states over the broader international community (see Boucher 2006). There is therefore not a single conception of justice that transcends the circumstances of human existence, but rather different ones according to various social systems and historical situations (Valentini 2011, 25–32).

Constitutive theorists offer another interpretation of Historical Reason. Against what they perceive as the reduction of society to its economic element, constitutive theorists such as Mervyn Frost and Chris Brown have contended that the state and social contexts are the constitutive ground for individual morality, identity, and rights (Brown 1994, 167; Frost 1996, 142). In Brown's theory, political structures, and in particular the state, play a vital role in the moral development of the individual and in the development of their ethical perspectives (Brown 1994, 173).

According to Frost, this kind of state is an autonomous one in which the law is constituted by the people and constitutive of the people (Frost 1996, 151–52). The criteria defining the conduct of states and individuals may only grow out of a specific community (Brown 1992, 110). At an international level, society is composed of autonomous sovereign states. It is this sort of community that, for Frost, represents the ground for settled norms of international conduct (Frost 2002).

Just like the state, global civil society is a fundamental authoritative practice; they both constitute individuals by setting commonly accepted ideas that are the context of what individual agents do. Without appealing to the teleological and speculative philosophy of history underpinned in that theory, Frost finds in Hegel's *Philosophy of Right* an account of how free and rational human beings "are constituted as such within a set of social practices" organized in a complex hierarchy (Frost 2002, 49). Elaborating on Hegel, then, Frost identifies this hierarchy of foundational practices: from the family through civil society and the state, to the system of states. As particular citizenship is important in establishing individual freedom and rights, so the recognition of the state by other autonomous states is essential to this.

What is crucial is that, for Frost, both the state and the system of state represent constitutive practice, that is to say, a set of evolving norms "adherence to which is required of anyone wishing to be considered as an actor in good standing within that practice" (Frost 2002, 14). Therefore, for Frost, the ground of any considerations about justice at an international level must have as a starting point the historically determined relevance of the autonomous sovereign states, and the actual conditions of their relations.

Recent constructivist theories may also be regarded as further interpretations of the Historical Reason tradition. The work of Christian Reus-Smit is of particular relevance here, not just because it considers, as have other constructivists such as Wendt, the centrality of intersubjective beliefs in international relations, but also because it offers an account of the diachronic development of international society. In his *The Moral Purpose of the State,* Reus-Smit elaborates on Bull's notion of international society to offer an account of the various "constitutional structures" that have grounded certain historical international societies (Reus-Smit 1999, 2013). These structures are coherent ensembles of intersubjective beliefs, principles, and norms. They represent the context in which human intentions and actions are embedded. Historical changes in the various constitutional practices constituting actors and criteria of action are explained through a theory inspired by Habermas's theory of communicative action. On this basis, Reus-Smit's constructivist theory shows different reasons given by the actors involved in order to reach an agreement regarding these diachronic changes.

The Historical Reason tradition does not necessarily equate with a form of state-centrism (Boucher 1998, 395–405).[4] As with the Universal Moral Order and the Empirical Realist tradition, this also cannot be identified with a settled doctrine but rather with a distinct conception of the nature of human agency and moral reasoning. The key tenet of this tradition is not the ahistorical priority of the state but that criteria of justice are not identified on the ground of some essentialist arguments, such as a negative conception of human nature and the pervasiveness of conflict (as for the realist), or the existence of a higher immutable moral law (as for the universalist). In contrast, criteria of justice are related to an evolving moral discourse, which is itself related to varying historical circumstances.

War, Law, and Human Nature

I have already argued in Chap. 3 that Oakeshott's arguments shared many similarities with the critique of international liberalism presented by Morgenthau's *Scientific Man vs. Power Politics*. The notion that it is possible to know objective principles on the basis of which a just international order could be constructed is associated by both Morgenthau and Oakeshott with the follies of European modernity (Morgenthau 1946; Oakeshott 1993a, 101). Furthermore, in the last chapter I showed that Oakeshott considered war to be a central and characterizing element of the history of the modern European state, as well as of the development of the state itself. More specifically, one of the reasons for the success of the teleocratic understanding of the state is the state of continuous belligerence that has characterized European modernity (Oakeshott 1975, 272–74).

The similarities of Oakeshott's work to the Realist tradition also lie in his reflections on the human condition. As indicated by Rengger, Ned Lebow's discussion of tragedy in the realist theory of international politics is particularly relevant (Rengger 2005; Lebow 2003, 216–56 and 257–309). Morgenthau's (as well as Schmitt's) ideas may be considered as tragic, insofar as the nature of human beings is always and necessarily imperfect, and no political arrangement can overcome this predicament (Rengger 2005, 323). In his review of *Scientific Man vs. Power Politics* Oakeshott comments on this, stating that the argument owes something to the anti-Pelagianism of Augustine and Hobbes and that:

> The human race lacks what would be required to abolish "power politics"; and all that distinguishes "scientific man" is his illusion of possessing what is wanting to the human race. (Oakeshott 1993a, 105)

Even though Oakeshott "does not offer any criticism of this argument," it is possible to highlight some differences between the two thinkers. In his account, Rengger focuses on Oakeshott's aversion to the definition of this condition as "tragic," not just because it is a category which is pertinent to the world of poetry and not to that of practice—which are autonomous from each other—but also because human fallibility and imperfection is not a negative condition (Oakeshott, 1993a, 107–08). In the same review the imperfectability of human beings:

Is not tragic, nor even a predicament, unless and until it is contrasted with a human nature susceptible of a perfection which is in fact foreign to its character ... And only a rationalistic reformer will confuse the imperfections which can be remedied with the so-called imperfections which cannot, and will think of the irremovability of the latter as a tragedy. The rest of us know that no rationalistic justice (with its project of approximating people to things), and no possible degree of human prosperity, can ever remove mercy and charity from their place of first importance in the relations of human beings, and know also that this situation cannot properly be considered either imperfect or a tragedy. (Oakeshott 1993a, 108)

My point is that the ground of this conception is in a theory of agency which is fully developed in *On Human Conduct*. There, human interactions are described as hazardous and immersed in contingency, as "a movement about a world where achieved satisfaction breeds wants, a world habitable only when the energy of pursuit is prudentially mixed with *nonchaloir* in respect of the outcome" (Oakeshott 1975, 73). Oakeshott links to this understanding of the human condition a sceptical and humanist ethics that he derives from Montaigne. The acceptance of the role of contingency and fortune in human life is associated with the idea that the sage acts with the awareness that the accomplishment of the teleological design of conduct is beyond his/her full control, as it depends mainly on the responses of the other agents involved, and on ultimately uncontrollable circumstances.

Oakeshott seems also to follow Montaigne's humanism in its characterization of moral autonomy and in the idea that the value of action and agents is not determined by the full realization of their goals. Besides the recognition of the importance and relevance of an individual's autonomy in the face of both external authorities and human vicissitudes, Oakeshott also argues that actions do not benefit from any "model of self-perfection," as they are as provisional and temporary as anything else (Oakeshott 1975, 84; on Oakeshott and the sceptical tradition see Oakeshott 1996; Orsi 2015a; Tseng 2003, 2013; Botwinick 2010).

Merely hinted at in the above-quoted passage from the review of *Scientific Man vs Power Politics,* the idea that human action is by definition fallible and that there is not a model of justice to be achieved through political action is developed by Oakeshott in various works. Normative thinking is considered by Oakeshott to be the "pursuit of intimations," developed through a non-demonstrative moral reasoning starting from the shared assumptions of a certain political community. It is not a demonstrative

reasoning that can reach a moral absolute through a necessary argument modelled on the criteria of truth proposed by natural sciences. In other words, to assert—as Oakeshott famously does in "Political Education"—that in political activity "men sail a boundless and bottomless sea" in which "there is neither harbour for shelter nor floor for anchorage," and in which "the enterprise is to keep afloat on an even keel," is not just a way of denying a normative role to political philosophy; it is a restating of that supremacy of expediency and prudence in politics that characterizes the Realist tradition (Oakeshott 1991, 60; see: Brown 2012, 448–54).

Therefore, there are strong similarities between Oakeshott's position and the moral scepticism of the realist tradition as well as with contemporary forms of realism in political theory that emphasizes the prudential nature of political activity (Miller 2016). Oakeshott's conception of politics as a prudential activity based on practical judgment, is similar to Raymond Guess's ideas that political activity is irreducible to rules and abstract principles (2008, 95). As already discussed, Oakeshott sees politics as a form of activity based on persuasive judgments, rather than on demonstrative discourse. In politics, values conflicts cannot be resolved by appealing to rules or absolute criteria, but only through a *phronetic* and practical approach.

Moreover, the exclusion of any ethical notions from normative principles of rules and governing seems to eliminate any moral considerations from the legal order. At an international level, when the society of states is conceived as constituted by customary international law it excludes any substantive conception of the common good from being a teleologically normative principle in the legal system. As at a domestic level, civil association is indifferent to the variety of ethical purposes pursued by individuals and groups, so an Oakeshottian understanding of international society is deeply pluralist.

However, it is worth restating that, as I discussed throughout the last chapter, the Oakeshottian legal theory—while criticizing the current state of international law by considering it as an expression of power—admits the possibility of a non-instrumental legal order which is logically prior to the conflict of power and the representation of interests. Thus, it should be regarded as different from a classical or neo-realist position. Contrary to Schmitt's understanding and that of legal positivists, Oakeshott sees law as radically distinct from the command of a sovereign. Firstly, as already discussed in the last chapter, law cannot be considered an act of will, nor do individuals accept the authority of the law for its expected outcomes (such

as protection). Instead, Oakeshott conceives law as a moral practice that has become institutionalized through a previously recognized procedure.

Moreover, a command is addressed to "an assignable agent," while the set of non-instrumental rules that for Oakeshott constitute the law is addressed to an unknown audience. In addition, a command is an "action in response to a particular situation" that demands the performance of a substantive action. Instead, law—when it is understood as practice—provides the conditions to be subscribed to by agents pursuing their self-chosen actions (Oakeshott 1999, 140–41).

In sum, in spite of many similarities with political realism and the Empirical Realist tradition, Oakeshott's theory responds to the classical realist objection against international law by denying the identity of the authority of law with power. As I have argued, this is particularly relevant at the international level, since customary international law is a legal order which is independent of any sovereign authority.

Natural Law, the Unity of Humankind, and Universalism

So far, I have claimed that Oakeshott's political philosophy has many important similarities—as well as very significant differences—with some of the themes of Empirical Realism. I now want to explore further the Oakeshottian critique of any universal or transcendental criteria of justice in the conduct of states.

I have argued above that Oakeshott defends an embedded conception of practical rationality in which normative criteria are the result of the moral traditions or practices in which individuals are situated. Oakeshott's discussion of the doctrine of Natural Law may be understood in the context of his broader distinction between technical and practical knowledge—between knowledge based on principles to be applied to political activity and evaluation of just conduct, and knowledge based on a practical and embedded notion of practical reason.

In essays such as "Rationalism in Politics" and "Political Education," which were written when the Universal Declaration of Human Rights was elaborated and adopted by the newly constituted UN, Oakeshott criticizes the notion that the idea of Natural Law and Natural Rights may ground political activity (Oakeshott 1999, 140–41). With reference to the 1789 Declaration of the Rights of Man (part of which he reproduces in the

appendix of his *Social and Political Doctrines of Contemporary Europe*),[5] Oakeshott contested the idea that the system of rights and duties and the scheme of ends encompassed in that document were the codification of the principles of natural law needed to inform the new political order. Instead, it should have been considered as an abridgment of the "the common law rights of Englishmen, the gift not of independent premeditation or divine munificence, but of centuries of day-to-day attending to the arrangements of an historic society" (Oakeshott 1991, 53).

What Oakeshott is criticizing is not the actual idea of rights, but rather the tendency to conceive of them as premeditated and immutable ends to be pursued in politics (Boucher 2009, 228). In one of his most engaged texts of the time—"The Political Economy of Freedom" (1948)—Oakeshott identifies the liberal (which he calls libertarian) tradition with three particular kinds of freedom—of association, the right of private property, and of speech (Oakeshott 1991, 391). These freedoms, however, were not declared or set as final ends, but were rather enjoyed, and constituted a historically enacted method of government (Oakeshott 1991, 390).

What Oakeshott's theory contends is that rights are social and not natural—that they derive from the place of individuals in a society, and from their recognition by the system of law in which they are situated. There cannot be rights without historically situated society. In short, like Burke, Oakeshott criticized the abstractness of the idea of identifying true principles upon which to base laws and institutions without regard to historical and shared experience (Boucher 2009, 184). This same position was also shared by British idealists such as Henry Jones and D.G. Ritchie (Boucher 2009, 228), who understood rights as eminently social and not natural, and Oakeshott draws upon this philosophical school to develop his arguments.

With reference to the debate around the Universal Declaration of Human Rights this same idealist and historicist argument was advanced by Benedetto Croce in his reply to Julian Huxley's invitation to participate at the 1948 United Nations Educational, Scientific and Cultural Organization (UNESCO) symposium on Human Rights. In that text, the Italian idealist and liberal thinker affirms that, instead of a universal declaration of timeless principles, what is possible is a declaration "of certain historical and contemporary rights"; the Rights of Man are rather the rights "of the historical man" (Croce 1948, 83).

Oakeshott indeed grounds his theory on the idealist theory of individuality (which I presented in Chap. 2). At the political and social level, it argues for the priority of the whole over the individual. As I shall discuss further below, this argument may be indeed compared to constitutivist and constructivist claims that the state and the broader social and moral context have a moral priority in the constitution of individual identity, and should be taken into account when defining justice.

For the moment, it suffices to show the arguments deployed by Oakeshott to defend the idea that individuality is not an absolute, ahistorical, criterion. The essay "Some Remarks on the Nature and the Meaning of Sociality" (1925) is particularly relevant. There, as well as in some other pieces from Oakeshott's Archive and other works recently published (Oakeshott 2010), he addresses the issue of moral individuality in terms similar to those of Absolute idealists such as F.H Bradley and Bernard Bosanquet (Boucher and Vincent 2012, 42–48; O'Sullivan 2010). In that early text, he underlines the moral and relational character of social and political life. In particular, he stresses that the self and society are not distinct, but rather that they compose a single whole. This social whole is a unity of mind in which the self participates (Oakeshott 1993a, 54).

In another piece that Oakeshott wrote in his twenties, entitled "The Authority of the State" (1929), he again follows Bosanquet and Bradley, defining the state as "the social whole," and as a "totality" (Oakeshott 1993a, 83). The authority of the law does not derive from a natural or external obligation (such as power), nor from consent or utility; rather, it is "moral." It derives from the "internal" recognition of the will of the state. In other words, the moral nature of the social life lies in the unity between the self and the State, between the individual and the community (Oakeshott 1993a, 79, 84).

It is true to say that in the texts published after the Second World War Oakeshott develops a political philosophy that is committed, as noted by Noel O'Sullivan (2012), to identifying the conditions of the coexistence between authority and individual freedom and seems to defend the priority of the individual (Oakeshott 1991, 363–83; 1993b; 1975). As is well known, the theory of civil association is also a powerful critique of those political arrangements that limit the pluralism of values, individual liberty, and human eccentricity by the imposition of a goal to be reached through the coercive apparatus of the state (Oakeshott 1975, 317).

However, in these texts the individual is not a metaphysical absolute or an entity which derives its value from itself. First of all, the free individual emerged in the Renaissance and, from then on, has constituted the starting point of the ethical theories of Hobbes, Spinoza, and Kant. It is therefore a historical realization, a historical identity, and not a metaphysical absolute (Oakeshott 1991, 366–67).

Moreover, the theory of civil association offers a reinterpretation of the idea that individual rights are unavoidably related to the recognition of the authority of the rules. To say that a person has rights equates to saying that the whole of society has the obligation to respect these rights (Oakeshott 1991, 392–93). This obligation, for Oakeshott, is grounded on and derives from the recognition of the authority of the system of non-instrumental rules, which is civil association. As I have discussed in Chap. 5, civil association affirms the absolute autonomy of the legal order from external considerations and values; therefore, to have an obligation to recognize and respect rights is to acknowledge the authority of the rules that prescribe it (Oakeshott 1975, 151).

It is therefore not correct to say that Oakeshott grounds his theory on methodological individualism (Meierhenrich 2014, 13–14; Schatzki 1996, 97). Rather, he maintains an idealist holism, which asserts the interrelatedness and dependence of individual will and actions on the social whole. The self's identity and actions can be understood exclusively in the light of "morality." A practice in which it is situated and that provides the resources and the procedure that the individual takes into account while acting. This morality is an identity which has a continuity between past, present, and future that overcomes the finitude of individual identities, providing the moral resources for their enactment (Oakeshott 1975, 70–73).

To recapitulate the analysis so far. Differently from the Empirical Realist tradition, Oakeshott's theory admits the possibility of rule-based international legal order. However, he shares with that tradition the critique of universal and immutable criteria of justice that need to be taken into account in the conduct of states as well as in the design of international institutions. Indeed, he argues against the logical possibility of conducting political activity on *a priori* principles and on the use of Right Reason. Instead, he defends an embedded conception of practical reason. The human condition is characterized by the supremacy of contingency and uncertainty. Politics is not the overcoming of this predicament but it is rather an activity governed by expediency and prudence.

Differently from both Realism and Universalism, he criticizes the idea of ahistorical criteria, of conduct grounded on essentialist notions of nature. Even though he can indeed be considered as one of the most intransigent theorists of individual freedom, Oakeshott considers the individual to be a historical realization and achievement. Far from being a subscriber to methodological individualism, he theorizes the logical priority of the whole over individuality. In other words, individual morality and will are grounded on a shared and common historical morality.

EVOLVING MORALITY

The analysis of how Oakeshott's political philosophy refutes the main conception of the Empirical Realist and Universalist tradition points the way to the existence of historically situated criteria of conduct.

Oakeshott's account of the rule of law is concerned with the understanding of the nature of commitment to the law (Turner 2014). For Oakeshott the rule of law is a relationship between individual agents constituted by the subscriptions to non-instrumental rules and the recognition of their authority. In civil association, laws are self-authenticating, and their authority "is recognized in terms of the rules which permit them to be made" (Oakeshott 1975, 186). Authoritative laws are those enacted following a pre-established procedure.

Thus, Oakeshott's account of law appears to be an example of the identity thesis that originates the already mentioned interiority objection. According to this line of reasoning, law creates its own authority, which is autonomous from any external source. As a consequence, the justification of its authority leads to a form of circular reasoning. This may be found in the following passage from *On Human Conduct*:

> And should it be asked how a manifold of rules, many of unknown origin, subject to deliberate innovation, continuously amplified in judicial conclusions about their meanings in contingent situations, not infrequently neglected without penalty, often inconvenient, neither demanding nor capable of evoking the approval of all whom they concern, and never more than a very imperfect reflection of what *are currently believed to be 'just' conditions* of conduct may be acknowledged to be authoritative, the answer is that authority is the only conceivable attribute it could be indisputably acknowledged to have. (Oakeshott 1975, 154, italics added)

As already discussed, Oakeshott rejects any grounding of law in the will of the legislator, consent, or natural law. The grounding of law is in itself; authority is the condition of law. However, this same passage from *On Human Conduct* contains the core element of Oakeshott's contribution to the theory of the rule of law that suggests a possible solution of the interiority problem. Indeed, while claiming that authority is the sole attribute that characterizes law, Oakeshott also states that law is a set of "just conditions" that change throughout history. Excluding from consideration about the law any concern regarding a final end or a *summum bonum* does not mean that law and morality are two incommensurable spheres (Letwin 1989; Friedman 1989). Unlike for legal positivists such as Kelsen, for Oakeshott, the so-called "moral neutrality" of the rule of law is nothing more than a "half-truth" (Oakeshott 1975, 175), and law is itself a "kind of morality." There are moral considerations of *jus* that are relevant to the rule of law.

First, there are indeed some moral conceptions that are endorsed by law. Indeed, for Oakeshott it should be non-instrumental, neutral between persons and interests, and should exclude outlawry and privilege (Boucher 2005b, 100–01). As I have highlighted in the previous section, in contrast with universalism, Oakeshott contests the idea that abstract *a priori* principles may be the ground for the construction of political institutions and international order. The critique of rationalism is first of all a critique of universal principles external to concrete political traditions and applied to political and practical contexts. Therefore, the moral ideas that are enacted by the system of law are not moral absolutes but are instead realized through history in contingent situations.

In this regard, the history of the modern European state as a *societas* that is presented in the third essay of *On Human Conduct* may also be read as the history of how an understanding of the nature of law and government activity animated by these moral ideals emerged and developed. It shows how it has been interpreted by different thinkers at various times, and how it has been opposed and contrasted by its "sweet enemy," *universitas.* Moreover, in some essays, Oakeshott celebrated the English political tradition and found that rule of law principles were grounded and realized in the concrete experience of the Englishmen (Oakeshott 1991, 384–406). In "The Rule of Law," he also sees the origin of those principles in the Roman political experience (Oakeshott 1999, 178).

Thus, in Oakeshott's account, criteria of legality internal to the rule of law are not naturalized—as suggested by Reus-Smit (2003b, 65–66; 2004, 5)—but are instead grounded in specific historical experiences.

Secondly, both law and morality are what Oakeshott calls a "practice." As already mentioned in Chap. 4, the notion of practice is developed by Oakeshott in the first essay of *On Human Conduct* as a re-interpretation of that of tradition presented, in particular, in "Political Education." As I argued, neither practice nor tradition prescribe which course of action should be followed in a particular case or what ideals should be enacted, but rather how the individual should behave. They are not prudential, but they intimate the considerations that we should take into account when acting.

In short, by saying that both law and morality are a practice, Oakeshott wants to stipulate that they are not concerned with the specific outcome of individual performances (they are not instrumental or prudential), nor with the particular transactions between agents. Instead they specify the conditional context in which actions and choices may take place (Oakeshott 1975, 59). Moreover, both law and morality are the result of human intelligence—the relationships that they define can be enjoyed only by virtue of having being understood, acknowledged, and recognized (60–65). Participants in these relationships share these conditions and acknowledge them as a limit in their conduct. Thus, conditions of just conduct prescribed by practices, some of which become obligatory as part of the legal order, result from social construction.

Therefore, even though we can say that law is independent of any other source that makes it authentic, for Oakeshott it represents and reflects the evolution of a "moral tradition." Whereas morality is a practice concerned with the conditions of "good and bad" conduct (Oakeshott 1975, 62), law is the codification of some of these conditions seen as "just." As shown in previous chapters, at the international level, customary international law may be seen as the codification of existing international moral practices that are coherent with current existing norms and moral self-understanding. It aptly represents the declaratory nature of the legal order, according to which the value of legal constraints is grounded on their coherence and integration with the actual moral beliefs of a given (international) community.

Thus, Oakeshott's theory of the rule of law responds to the problem of interiority not only by identifying the connection, and even the identity, between actual moral practices and criteria of legality that define the rule of law and its authenticity; it also claims the relevance of external moral considerations to questions of justice. What is prescribed by the law reflects the conditions of moral-legal acceptability expressed in the evolutionary criteria of the "moral-legal self-understanding of the associates" (Oakeshott 1999, 174). Law is "declaratory" of what is immanent in the moral practice of a community. A system of non-instrumental laws is a morality that has become an institution though a previously recognized procedure. At the international level, this is identified, albeit imperfectly, by Article 38(1) (b) of the Statute of the ICJ (that I have discussed in chapter 5).

The relationship between legal order and moral values is further clarified by Oakeshott in his 1983 essay "The Rule of Law." There, the judgment about the justice of a law is composed of "beliefs and opinions invoked in considering the propriety of the conditions" that law prescribes. Considerations about justice are not only related to the authenticity of the laws—their being the result of a previously recognized procedure, as it is for legal positivism—but also to

> a particular kind of moral considerations: neither an absurd belief in moral absolute (the "right" to speak, to be informed, to procreate and so on) which should be recognized in law, nor the distinction between the rightness and wrongness of action in terms of the motives in which they are performed, but the negative and limited considerations that the prescriptions of the law should not conflict with a prevailing moral educated sensibility. (Oakeshott 1999, 173–74)

The prevailing moral sensibility of a given community and, at the international level, of international society represents the boundaries of the political and moral imagination of the various actors involved.

The notion of "prevailing moral educated sensibility" capable of distinguishing between the conditions of virtue, the conditions of moral association ("good conduct"), and those which are of such a kind that they should be imposed by law ("justice") is controversial. If, as argued by Noel O'Sullivan, it refers to the opinion of an enlightened moral elite, the concept is highly problematic in a deeply pluralist context. Moreover, one could question the ways in which this prevailing view should be identified and how this prevalence, or hegemony, has come about (N. O'Sullivan

2014). The notion, then, is even more problematic at the global level where little consensus may be achieved on core values.

We could assume that this prevailing moral sensibility is the product of a moral experience, with its own internal tensions and discrepancies and represents the boundaries of the political and moral imagination of the various agents involved. Here, the Oakeshottian perspective is particularly relevant because it stresses the relational character of the legal framework and of legal criteria. Moreover, what is important to stress is that Oakeshott proposes an historicist model of the rule of law, which recognizes the role of evolving moral values in the definition of both criteria of legality (such as non-instrumentality) and of criteria of just conduct. Thus, it represents a possible theoretical solution to the philosophical dilemma posed by the problem of interiority.

In current international legal order, the connection between law and evolving morality could be identified with the "requirement of the public conscience" of the Martens Clause. This is an elusive and, at the same time, significant concept that is included in many international treaties and that has played a role in the evolution of humanitarian international law. The Clause admits that the laws of war are, and will be, incomplete and insufficient to the regulation of conduct and, therefore, the constraints to the actions of the belligerents should also include "the requirement of the public conscience" (Laws and Customs of War on Land: preamble). According to Theodor Meron, this role of the public conscience in moving governments to acknowledge certain practices as law was, for instance, recognized in the Rome Conference on the Establishment of the International Criminal Court (Meron 2000, 83; see also Sutch 2012).

The question that now needs to be asked is about the possibility of invoking these anterior moral standards and values in our discourse about justice of law, institutions, and political events. Previously, I argued that practical discourse is an argumentative, non-demonstrative form of reasoning radically distinct from the demonstrative or "scientific" form. Of course, this does not mean that for Oakeshott there is no criterion in practical reasoning, and that practical activity is the "pursuit of what recommends itself from moment to moment" (Oakeshott 1991, 47). Instead, moral reasoning should also be coherent with the shared moral assumptions provided by the prevailing moral practice, which, even though contingent, is not arbitrary. From this point of view, Oakeshott proposes a form of institutional moral reasoning according to which arguments about legal and political arrangements must be based on

current shared normative frameworks. The appeal to these bedrock values is often tacit, and even unconscious, but emerges in crucial moments of crisis and of hard political decisions (Egede and Sutch 2013, 75). To judge the justice of the conduct of states is a prudent, *phronetic* discourse concerned with the compatibility between the conduct of states, international law, and evolving international morality.

At the outset, I suggested that recent constitutive theorists such as Frost and Brown, as well as the communitarianism of Walzer and Miller, may be regarded as part of the tradition of Historical Reason because they identify in the historically evolving conditions of the moral context the ground for the identifications of international norms. In the manner of constitutive theorists, and by means of idealist arguments, Oakeshott does attribute priority to the social whole and to moral practices in the constitution of identity and of the moral world of individuals.

Being critical of any construction of shared and homogeneous values and principles, and describing the history of the modern European State as that of a "mixed and miscellaneous collections of human beings precariously held together" (Oakeshott 1975, 279), Oakeshott's theory of civil association is, however, opposed to all forms of nationalism.[6] This critique is not just valid for its most extreme expressions that crossed Europe over the nineteenth and twentieth centuries, but also for David Miller's "civic" version, in which the bounded community is not just grounded on shared values, but is also conceived as a purposive "cooperative venture for the mutual advantage" in which to apply rules of redistribution (Miller 1997). At the same time, the model of civil association, when considered at the international level, is also sceptical about supranational purposive institutions that impose goals on agents undermining the pluralism of international order. On the contrary, the Oakeshottian perspective defends a pluralist conception of the state and of the international community, and provides an account of the multiplicity of community memberships, and of the conflicts between ethical values and normative demands that characterize contemporary global politics.

On this issue, the interpretation that sees Oakeshott's conception of civil association as a form of Republicanism inspired by Cicero and by the Roman political experience is particularly relevant (Boucher 2005a; see also Callahan 2012). Some loose notes in Oakeshott's Archive demonstrate his study of Cicero's *De res publica*.[7] In *On Human Conduct*, he uses the Latin word *respublica* to describe the sort of political association that he had in mind, differentiating it not just from the nation-state, but

also from any close identification with liberal democracy. For Oakeshott, *respublica* is "the public concern or consideration" prescribed by the legal order to all individuals (Oakeshott 1975, 147).

This form of Republicanism admits the existence of a plurality and multiplicity of moral allegiances and identities. Indeed, in another of his works, *On Duties,* Cicero considers that natural human sociability implies the existence of "several degree" of fellowships: from the "vast fellowship of the human race" to the confined and limited ones of marriage, brotherhood, and so on. (Cicero 1991, 22). Of these, reason tells us that none is more serious or dearer to us than that with the republic (Cicero 1991, 23). Without referring to the doctrine of human natural sociability, Mervyn Frost notes there is sometimes a conflict between equally authoritative practices, as what is pre-eminent in the considerations of justice are obligations prescribed both by the domestic institutions and by international society. Both are "foundational practices," as what they prescribe "trumps" any other allegiance (Frost 2002, 46). In Oakeshott there is neither a doctrine of the natural sociability of men, as we find in Cicero, nor a neo-Hegelian teleological doctrine, as we find in Frost. Individuals are situated within a complex web of moral relationships, each implying some sort of moral obligation (Oakeshott 1975, 57).

Once again, in these conflicts between different levels of moral, and legal, obligation there is no easy solution, and the priority of one over the other is dictated not by necessary considerations, but by the historical circumstances in which the individual is situated and by the evolving moral practices that constitute the assumption of this practical reasoning. Even though we may reasonably argue that Oakeshott was a "committed patriot," a lover of his own country (Boucher 2005a, 94), his theory, as those of earlier idealists such as Bosanquet (Boucher 1998, 346; Tyler 2005), does not close the door to the progressive extension of obligations beyond the state to a more inclusive moral community.

Conclusion

The aim of this chapter has been to consider Oakeshott's political thought in the context of philosophical reflections on international relations and international justice. Whereas in Chap. 5 I contended that his theory of civil association may represent the ground for an understanding of international society as a rule-based association constituted by customary inter-

national law, in this chapter I have considered how this theory explains and justifies the existence of moral constraints on the actions of states.

In other words, the question that I have tried to answer through analysis of Oakeshott's political and legal philosophy is that of the existence of criteria of just conduct at the international level. I have addressed some objections against the notion of international civil association based on international rule of law. In particular, I have attempted to rebut the realist objection against the existence of genuine international law, and the constructivist critique, which sees the idea of an international rule of law as anti-historical and abstract.

To discuss these issues, I have placed his political philosophy in the context of the history of reflection on the conduct of states. Invoking Boucher's triadic conception, I have compared Oakeshott with the traditions of Empirical Realism, Universal Moral Order, and Historical Reason. What has emerged is that Oakeshott retains and criticizes elements from all these traditions, but that, in common with Historical Reason, he identifies criteria of just conduct in a historically evolving normative discourse based on moral practices, which are composed of changing sets of assumptions and criteria.

In particular, like the Realists, he criticizes Universalism and the existence of immutable principles of justice on the grounds of a negative conception of human nature and political activity. However, for Oakeshott, human nature is not a fixed entity; the human condition is not essentially a predicament. Instead, it is what it becomes throughout history; it is the result of human creation. This creation and invention is not arbitrary, but is consistent with an evolving morality resulting from the conduct of individuals and transcending them, as it is a continuity between past, present, and future. In Oakeshott's hands, the tradition of Historical Reason is thus a form of humanism, which is also associated with an ethical doctrine of self-acceptance and self-construction.

As also shown by the comparison between Oakeshott and Schmitt and Morgenthau, to say that Oakeshott is critical of universal and immutable principles is not to say that he denies the existence of moral considerations in international politics. For Oakeshott's theory of civil association, law is understood as a system of non-instrumental rules reflecting the evolving moral practices of states. It does not offer substantive and absolute criteria of justice, but rather constraints upon the conduct of states and individuals. These constraints are the common good of international society and the result of practical and prudential discourses developed from a

common set of assumptions expressed in international morality and codi-fied in international law.

The chapter has illustrated the ways in which Oakeshott's theory of the rule of law sees the normative source of legal obligation in concrete moral practice as reflected in the moral imagination of a certain political community. The idea of law as a set of non-instrumental rules is linked to a specific, historically situated political and moral tradition. As such, Oakeshott's theory of law overcomes also the interiority objections insofar as it links the source of legal obligation to practices that arise from actual moral experience.

It may be questioned whether this culturally and politically specific mode of relationship may be applied to an increasingly divided and plural-ist international realm, where states and other agents do not always share a commitment to common legal practices and values. What Oakeshott's theory of the rule of law aptly represents is the declaratory nature of the legal order, according to which the value of legal constraints is grounded on their coherence with the actual moral beliefs of a given (international) community. Thus, given that moral reasoning is a non-demonstrative form of discourse based on shared moral assumptions, to judge the justice of the conduct of states (and of any other agent) is a practical discourse concerned with the compatibility between the conduct of states, interna-tional law, and evolving international morality.

In this regard, Oakeshott's political philosophy of international rela-tions may be associated with a form of constitutive theory, according to which, moral practices provide the normative horizon for individual choices and identities, and solutions to ethical dilemmas. For example, he does not identify a necessary hierarchy between global civil society and the state. The scepticism and the radical separation between philosophical and practical truths implied by his theory of modality lead us to consider the solution of this dilemma as based on circumstantial arguments, whose only criterion of truth is the coherence with historically evolving assump-tions and current understandings.

NOTES

1. Of course, there would be a lot to say about Oakeshott's contextualism. Further discussion is in Boucher (2007); Thompson (2012).
2. On the ambiguity of Bull's interpretation of international society, see Wheeler and Dunne (1996). Cf. Bull (1979).

3. Schmitt later came to change his mind about Hobbes in response to Leo Strauss's criticism of his interpretation. See Schmitt (2008b).

4. Boucher (1998, 395–405). This is exemplified by neo-Rawlsian cosmopolitans such as Thomas Pogge and Charles Beitz who see cosmopolitanism as founded on the increasing cooperation between states, that is, in a historically contingent and human-created condition (see Beitz 1999; Pogge 1989, 2007).

5. The appendix is in the 1942 American edition of the book, see Oakeshott (1950, 232–34).

6. Oakeshott cast doubt on the actual historical existence of a nation-state, see Oakeshott (1975, 188). For an Oakeshottian interpretation of nationalism, see Kedourie (1993). For discussion: Miller (1997, 31).

7. These notes are collected in Oakeshott [no date] (LSE/OAKESHOTT/3/17). They are not published in Oakeshott (2014).

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Conclusion

Over recent decades, the scholarship on Oakeshott has grown exponentially and his thought has been considered from many, often divergent, perspectives. However, in spite of his work exerting a certain influence on neo-English School writers, international historians, and constitutive theorists, as well as displaying some important similarities with constructivism, no study has ever attempted to discuss the implications of Oakeshott's political philosophy for the understanding of international relations. Even in the growing literature on the impact of philosophical thought on International Relations theory, references to Oakeshott are very rare.

This book has offered a comprehensive interpretation of Oakeshott's thought. It has shown his contribution to constructivist theories of international relations, and to the theoretical study of the nature of international society and morality. What emerges is the conclusion that his philosophical idealism is the basis for an understanding of international society conceived as a rule-based association constituted by customary international law. This international rule of law is the institutionalization of an existing moral practice evolving throughout history.

Following an Oakeshottian approach, which invites the reader to consider philosophical texts in the context of the whole history of philosophy, I have identified the epistemological grounds of Oakeshott's position by exploring its relations with the British idealist tradition. This study

highlighted not just the consistent relevance of Bernard Bosanquet's and F.H. Bradley's Absolute idealism to Oakeshott's works, but also the broad philosophical assumptions at the root of his theory. Most important among these is the identity between epistemological and ontological issues; in other words, for Oakeshott, questions about the nature of things are unavoidably related to those about our manner of understanding. World politics, for example, is not an object that waits to be apprehended by a knowing mind equipped with the correct, scientific, methodology. Instead, its nature is defined by the diversity of approaches that look at it.

The difference between these various forms of knowledge, with their divergent claims about truth, is interpreted by Oakeshott through his theory of modality, which represents one of the constants in his thought and is developed in continuity with F.H. Bradley's position. Various modes of experience (history, science, practice, and art) are autonomous from each other and abstract in respect of the whole.

This theory has profound methodological implications. The first is a form of holism, according to which to understand the meaning and value of individual concepts, it is necessary to consider their relations to other concepts of the same sort, which share the same foundations. These foundations, it is important to stress, are not a metaphysical given, but are instead the result of the activity of mind throughout history. Against any methodological individualism, for Oakeshott, individual concepts are not the criterion of truth, as this lies instead in the whole—in the unity between a concept and its context. In this context, philosophy is criticism. It shows the presuppositions of various forms of understanding and their limited value. At the same time, it attempts to reach concepts that are as universal as possible, that is to say, that are true outside of the circumstances and of the context from which they are generated. Philosophical activity is the unremitting criticism of all concepts in the attempt to reach a definition of things as universal as possible. In contrast to other commentators, however, I have argued that at no stage of his works does Oakeshott see philosophy as the actual achievement of a positive body of absolute knowledge—one that overcomes concepts from the various modes.

The modes, instead, maintain their relative validity, granted by their coherence to their postulates. The image of conversation, I have argued, far from representing a departure from idealist logic, reinterprets the idealist notion of dialectic. It illustrates the autonomy and the reciprocal irreducibility of the various forms of knowledge. At the same time, it shows that philosophy is not the teleological end of knowledge.

As a consequence, the role of political philosophy is not to offer guidance or the solution to practical dilemma. Instead, it considers normative reasoning, political values, and institutions in a context as universal as possible. This is, I have argued, the meaning of "ideal characters," such as "civil association," "enterprise association," and "the rule of law."

This broad methodological, ontological as well as epistemological theory places Oakeshott's philosophy in the context of so-called second Great Debate that developed after the Second World War. Oakeshott's critique of Rationalism in politics—which is based on his theory of modality—may indeed be considered alongside the classical approach, which was defended by the exponents of the English School and, in the American context, where positivism was very successful in shaping the discipline, by Hans Morgenthau. However, there are some important differences. Albeit not without ambiguities and inconsistencies, Oakeshott does not agree with many exponents of the English School in regard to the practical use of history; nor does he agree with Morgenthau about the normative role of philosophy. In particular—again, consistent with his theory of modality and his metaphilosophy—Oakeshott is sceptical about the possibility of identifying objective laws through historical or philosophical inquiry.

If the Oakeshottian influence on the so-called second Great Debate in International Relations is controversial, that on the normative turn is much clearer. Neo-English School thinkers such as Nardin, Rengger, and Jackson, as well as constitutive theorists such as Frost, have indeed applied many of the concepts of Oakeshott's political philosophy to the understanding of international relations. Moreover, Oakeshott's triadic conception of the history of political philosophy has been essential in tracing the history of the philosophical reflection on the conduct of states by Boucher.

It is on these grounds that I have argued, in spite of the differences in regard of the critical and emancipatory role of theory, that the Oakeshottian position may be regarded as a contribution to constructivism and to the recent practice turn in international theory. Oakeshott's idealism contends that world politics is the result of normative reasoning developed within moral practices, which evolves throughout history in virtue of agents' actions and understanding.

It is indeed with regard to the theory of international practice that Oakeshott's political philosophy has to offer a first important contribution to contemporary debates in International Relations. The second essay of *On Human Conduct* opens with a quote from Vico's *The New Science* that has often puzzled readers. It reads: "in the night of thick darkness

enveloping ancient times there shines the eternal never-failing truth beyond all doubt: that the civil condition is certainly a human invention and that its principles are therefore those of human intelligences" (Vico in Oakeshott 1975, 108). Oakeshott's idealism reaffirms this ancient truth by stating that the social world is the result of agents' actions and understanding, and that human conduct is the rational response of historical agents to understood situations. Oakeshott indeed develops a theory of human intelligence and, in particular, of practical reasoning, which is the bedrock of his political philosophy of international relations. As I have demonstrated, he proposes a neo-Aristotelian notion of practical reasoning, according to which actions and thinking are intelligible, and possible, only through a set of historically evolving premises, which are shared among a given group of people. These shared premises, which are often tacit, are what Oakeshott calls tradition or moral practice.

The English School of International Relations has underlined the role of practices in international affairs as well as the necessity of the study of the concrete activities of the practitioners. Oakeshott has inspired some of these English School writers, offering them a philosophical foundation and a comprehensive theory of practice. In particular, he considers practices composed of formal considerations qualifying agents' choices and actions. Even though they are the outcome or the by-product of human performances, they are not themselves actions and they do not prescribes specific choices. Diplomatic tradition and military art, as well as those practices that shape the activities of scientific communities and religious groups, are a formal set of premises, considerations, manners, and so forth that qualify the actions of the practitioners. What is important is that these practices not only provide normative criteria and standards of conduct, but also constitute the identities and the normative horizon of the practitioners, who are defined by their subscription to a vast array of overlapping practices and traditions.

The activity of the theorist is not to become a participant in these practices; on the contrary, it is to understand their presuppositions, which are the assumptions that are shared among the practitioners. At the same time, the theorist may consider them historically and identify their role in human choices and events. Any given human performance may be seen as a result of a subscription to a practice and the role of the historian is to study this relation.

Oakeshott's political philosophy is particularly relevant for the understanding of one of the most important international practices: international law. In particular, I have claimed that the difference between the

two ideal characters that Oakeshott identifies for understanding political associations and the state sheds light on the nature of international order and legality. Civil association and enterprise association are indeed different in terms of the nature of law and of its authority. While in enterprise association rules derive their authority from a pre-established goal, which is conceived as a substantive state of affairs to be attained, in civil association the authority of rules stems from their recognition as conditions to be observed while acting. Therefore, in enterprise association rules are instrumental, while civil association is constituted by non-instrumental, moral rules, which are indifferent to the self-chosen goals of its members.

As is well known, and anticipating many of the constructivist positions, Oakeshott employs this antinomy to interpret the history of the modern European state as an opposition between two self-understandings of the nature of the activity of governing. What has less often been noted, and what this book has shown, is that this history contains important implications for the understanding of the relations between states. First, Oakeshott identifies at the international level some of the circumstances that favour the success of a teleocratic conception of the activity of governing. These are European colonialism and, most importantly, the state of belligerence that has characterized European modernity. The constant threat of war has indeed contributed to lead the European consciousness to understand the State as an enterprise association, which manages all the resources and guides the association toward a final substantive end: victory. However, the relationship between the self-understanding of the association and international relations is mutual. In a world composed of enterprise associations, war is more likely. In addition, it is the nature of war itself that has conferred the success of a teleocratic understanding of international order. In particular, war has moved from being understood as a regulative device in the service of the European balance of power (as it was for Burke) to being an instrument for the establishment of a certain substantive world order, of a new state of affairs in international relations. Overall, in Oakeshott's international thought, the society of states has become more and more understood as an enterprise association.

Even though Oakeshott's political philosophy of international relations asserts the teleocratic character of the contemporary society of states, I have contended that from his theory of civil association it is possible to construct a different interpretation of international society. It is to this end that I have considered Hedley Bull's notion of international society and Terry Nardin's Oakeshottian opposition between practical and purposive

international society. Like civil association, Nardin's practical international society is composed of non-instrumental rules (1983). Against this position, Christian Reus-Smit has instead contended that no historical international society has ever existed without shared moral values (1999). To solve this dilemma, my argument has shown that civil association, and by implication international society, is indeed based on a shared morality, which has to be understood as a coherent set of conditional constraints on actions, and not as a substantive state of affairs to be achieved and enforced.

On this ground, I contended that the model of civil association offers an understanding of the nature of international law which authority derives not from the command of a sovereign (which is absent at the international level), but from the recognition of existing moral practices between the states. Thus, international society is constituted by customary international law. This is of particular interest because Oakeshott develops his theory on the Hobbesian notion, according to which a law is authoritative when it is the result of a previously recognized procedure. However, in Oakeshott, the considerations about the authority of law are distinct from those regarding its enforcement and the constitution of the legislative office. In sum, the only necessary condition for the authority of law is its being recognized as such by the agents involved.

Elaborating on Boucher's (1998) triadic conceptions of the political theory of international relations (which is itself based on Oakeshott's triadic view of the history of political philosophy), I have contended that this view of international society may be regarded as similar to that of Burke, as it attributes a constitutive role to customary international law. Even though not all customary international law may be regarded as non-instrumental, the model that I have presented offers an understanding of the role played by customary international law in world politics, with particular reference to humanitarian law. Customary international law has indeed been central in the codification of existing practices within international society. The emergence of international obligations derives from the recognition and codification of already existing criteria in the relations between states.

Therefore, my argument points the way to analysis of the relation between international law—conceived as a system of authoritative non-instrumental laws—and morality. I have addressed this theme by placing Oakeshott's political philosophy in the context of the triadic conception of the political theory of international relations elaborated by Boucher.

The comparison of Oakeshott with the Empirical Realist, the Universal Moral Order, and the Historical Reason traditions has illustrated some key elements, and has placed his thought in the context of the history of philosophical reflection on international relations. In particular, I argued that Oakeshott's understanding of the relations between law and morality may be regarded as a further interpretation of the Historical Reason tradition, according to which, criteria of conduct are the result of historically situated practice.

Indeed, even though he shares with classical and political realists a critique of liberal internationalism and political utopianism, in sympathy with contemporary constructivists, Oakeshott is against the essentialism that is underpinned in many of the realist positions. In particular, I argued that Oakeshott defends a version of humanism, for he conceives of human nature as the result of human creation that is the result of an understanding of the moral practices in which individuals are embedded. At the same time, since he does not consider law as the command of a sovereign, but the result of its recognition by the various agents involved, Oakeshott also opposes the classical legal positivist "command" argument. At the same time, because of his theory of normativity, and of individuality, he rules out the relevance of any transcendental principle of justice, as defended by the Universalist tradition.

This, I reiterate, does not imply the absence of any moral criteria in the conduct of states. To conceive, as I did, international society as constituted by a non-instrumental system of law, which may be identified with customary international law, is itself to acknowledge a moral character to international order. Not only is there some inner moral conception embedded in the notion of non-instrumental law, but this is also an institutionalized moral practice. Indeed, as law is not the result of the command of a sovereign, nor is it the manifestation of absolute and transcendental moral principles, it is an understood ever-changing relationship. Moreover, it is not concerned with the specific outcome of individual performances; instead it specifies the conditional context in which actions may take place. As a consequence, law, at both the domestic and the international level, is the institutionalization of a moral practice, and it prescribes some of the conditions of good conduct as "just." Overall, this work argues that Oakeshott's theory of civil association offers an understanding of international society as constituted by an international rule of law—a system of non-instrumental rules that is the institutionalization of a common international morality. These shared moral values are not, however, ahistorical,

transcendental principles, nor substantive state of affairs to be achieved and enforced, but rather components of an evolving practice which prescribes, to those states and other actors, conditions to be observed while acting.

Even though the Oakeshottian perspective does not offer an account as to the reasons why a certain sort of moral beliefs have prevailed, the idea that customary international law is the institutionalization of the morality of states further contributes to constitutive and constructivist theories of international relations. The practices established by the historical choices of international agents are the moral foundations of international society. However, departing from recent constructivist accounts, the Oakeshottian perspective underlines the conditional and non-instrumental character of this international morality.

At the same time, Oakeshott's account offers reason for the existence of a plurality of, even conflicting, practices that constitute individual identity and that provide the normative framework for her or his decisions. Again, to state that there is not a mathematical formula that may solve ethical conflicts, and that rationalist solutions are "abridgments" and false hopes, it is not to claim that human rationality is ineffective or that the status quo is unchangeable. Instead, this position implies that solutions to urgent practical questions require an awareness of the limits of our practical reason, and the determination to think hard, starting from shared values.

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