APP NO._____

IN THE SUPREME COURT OF THE UNITED STATES

NICHOLAS RAMLOW, an individual,

Petitioner,

v.

AMANDA MITCHELL, an individual,

Respondent.

On Application for an Extension of Time to File Petition for a Writ of Certiorari to the Supreme Court of the United States

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PETITIONER'S APPLICATION TO EXTEND TIME TO FILE PETITION FOR WRIT OF CERTIORARI

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Petitioner

To the Honorable Elena Kagan, as Associate Justice of the Supreme Court of the United States:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner Nicholas Ramlow hereby respectfully requests that the time to file his Petition for Writ of Certiorari in this matter be extended for 60 days up to and including April 28, 2025.[1] The Supreme Court of the State of Idaho issued its opinion in *Mitchell v. Ramlow,* 559 P.3d 1210 (Idaho, 2024) on November 27, 2024 (Appendix ("App.") A). Absent an extension of time, the Petition for Writ of Certiorari would be due on February 25, 2025. Petitioner is filing this Application more than ten days before that date. See, S. Ct. R. 13.5. This Court has appellate jurisdiction to review the state courts' final determination in this matter pursuant 28 U.S.C. § 1257.

STATEMENT OF THE CASE

> "[J]udges should not be in the business of declaring an end to the COVID-19 pandemic[.]"

Resurrection School v. Hertel, 35 F.4th 524, 532 (C.A.6 (Mich.), 2022) (Bush, J., dissenting) (quoting Memphis A. Philip Randolph Institute v. Hargett, 2 F.4th 548, 572-573 (C.A.6 (Tenn.), 2021) (Moore, J., dissenting)).

Like pathogens, the law is informed by experience. Courts that refuse to entertain arguments born from controversies arising form 'once in a century'

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[1] The 60th day falls on a Saturday.

pathogens fail to update and inform our societies' understanding of that experience as applied to our societies' concept of ordered liberty.

BACKGROUND

Petitioner was a Libertarian Party candidate for House District 7 of the Montana House of Representatives in 2020, during the peak of countless government interventions in response to the COVID-19 pandemic. Petitioners' political campaign was based, in part, on policy preferences disfavoring compelled speech (mask-wearing) and forced inoculation. Specifically, Petitioner viewed the facial regalia—sold to the public as a benign contraceptive—as tribal insignia implemented by compulsory state action for the purpose of altering public perceptions and opinions as to the acceptability of experimental mRNA vaccine technology through a process known by mathematicians and social theorists as *preference falsification*.[2]

In the summer of 2020, Respondent, Amanda Mitchell, filed a petition to modify custody of the parties' then five-year-old son, H.J.M.R. The parties had previously shared joint legal and physical custody of the child on a 50/50 basis but their existing judgment was silent as to education issues. The parties resided 120 miles apart; Petitioner in Kalispell, Montana and Respondent in Coeur d'Alene, Idaho. The child having reached the appropriate age for school enrollment and the

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[2] See, Kuran, T. (1995) Private Truths, Public Lies: The Social Consequences of Preference Falsification. *Harvard Univ. Press*; see also, Frank, R. H. (1996). The Political Economy of Preference Falsification: Timur Kuran's Private Truths, Public Lies. *Journal of Economic Literature, 34*(1), 115–123.

parties disagreeing as to which school the child should attend; Respondent sought an order designating the child's attendance at her preferred school ("Custody Action").

In support of her Custody Action, Respondent sought a temporary order requiring H.J.M.R. to attend the Coeur d'Alene School District. In September 2020 a hearing was held via Zoom on Respondents' motion for temporary order and the relief was granted. Beyond approving the school chosen by Respondent, the temporary order significantly altered Petitioner's access to H.J.M.R.; limiting Petitioner's visits with the child to the first and third weekends of the month.

Having already acquired everything Respondent sought—and more—through preliminary injunction, in October 2020, Respondent, filed a Sworn Application for Protection Order, seeking a Protection Order against Petitioner for stalking under Idaho Code § 18-7907. Respondent claimed that Petitioner was tracking her movements by placing a tracking device on her car and giving their son a smart watch with tracking capabilities. Respondent sought a protection order for herself and one of her children, Cameron Mitchell ("Cameron").[3]

Importantly, Cameron is of no relation to Petitioner and H.J.M.R. was not the subject of the protection order sought. The magistrate court issued a temporary ex parte protection order based on Respondent's application and set the matter for a hearing on November 4, 2020.

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[3] Camron is no longer a minor

At that time, the Kootenai County Courthouse—by a single jurists' edict—required parties to wear the jurists preferred political symbol/tribal insignia/regalia before entering the courthouse and on November 4, 2020, Petitioner was barred from entering due to his refusal to wear a mask. The Temporary Protection Order was renewed without any substantive changes and the hearing was reset for November 18, 2020, to allow Respondent time to obtain an attorney.

On November 16, 2020, Petitioner filed a motion to participate at the November 18, 2020, hearing without wearing a mask. Alternatively, the motion sought a hearing via zoom such that Petitioner could participate without entering the courthouse *at all*. This motion was denied by the magistrate court without objection by Respondent or a hearing. In addition to the motion to participate without wearing a mask, Petitioner wrote a letter to the administrative judge setting forth the basis on what he considered "judicial activism" in connection with the mask wearing dictates and provided the court with the mathematical framework for *preference falsification,* reinforcing his demand for access to the court. (Appx. B).

At the November 18, 2020, hearing Petitioner brought with him evidence tending to show that he was not culpable for the conduct alleged in the Application but was again denied access to the court for his refusal to wear the courts' preferred political symbol/tribal insignia. Petitioner's counsel was allowed into the courtroom. However, court staff were prepared this time and once counsel had entered the courthouse and Petitioner was alone, he was promptly arrested on the courthouse lawn. Petitioner was arrested on a warrant that had been issued in a criminal case

that mirrored the allegations made by Respondent in her petition for civil protection order.

The magistrate court proceeded in the matter, treating Petitioner's refusal to wear a mask as a failure to appear and barred counsel from speaking on Petitioner's behalf. No trial was conducted and the magistrate court proceeded to allow Respondent to modify the terms of the protection order that she was seeking; enjoining H.J.M.R. as a protected person for a period of one year. Additionally, the magistrate ordered Petitioner to participate in the courts' 52-week Domestic Violence Review Court program ("DVR Terms").[4]

No notice was given to Petitioner prior to the November 18, 2020 hearing that his custody rights were in jeopardy or that Respondent was otherwise seeking substantive changes to the terms of the Temporary Protection Order beyond its effective date.

Petitioner filed a motion to reconsider, which was denied following a hearing in March, 2021. On April 14, 2021 the DVR Terms were merged into a judicial decree entered in the Custody Action.

Petitioner appealed the denial of his motion for reconsideration and the issuance of the November 18, 2020 protection order to the District Court. The issues raised on appeal were as follows:

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[4] The record reflects that counsel attempted to interject numerous times on Petitioner's behalf but was promptly suppressed from making a record by the presiding judge.

A. Whether [Petitioner] was denied due process of law when on November 18, 2020, his attorney of record was not allowed to present evidence and argument on his behalf in the absence of [Petitioner] personally, his absence due to his refusal to wear a mask.

B. Whether [Petitioner] was also denied due process of law when the court refused to consider lesser alternative responses to his refusal to wear a mask, such as holding the hearing by Zoom.

C. Whether I.C. § 18-7906, the statute on which the imposition of a civil protection order against [Petitioner] is based, is unconstitutionally void for vagueness.

D. Whether allegations as to occurrences on May 9 and 10, 2020, should have been stricken from [Respondent's] petition and excluded from evidence, in that I.C. § 18-7907(2) requires that ordinarily a petition state predicate facts occuring within 90 days immediately preceding filing. (The petition here was filed October 21, 2020, well over 90 days beyond May 9 and 10).

E. Whether the Protection Order entered against [Petitioner] on November 18, 2020, should be vacated because I.C. § 18-7907 requires a showing that the offending conduct is likely to occur in the future. [Petitioner] was deprived without due process of the opportunity to present evidence and argument tending to negate the likelihood of such conduct occurring in the future.

F. Whether it is unconstitutional to deprive a party of his day in court for refusal to wear a mask, or to condition it upon wearing a mask.

G. Whether, alternatively (see subparagraph A, above), the Magistrate Court erred as a matter of law or abused its discretion when it entered a Protection Order against [Petitioner] when it deemed him not present because [Petitioner], although outside the courthouse, refused to wear a mask and was therefore not allowed entry into the courthouse and therefore no hearing on the merits was held.

H. Whether [Petitioner] was denied due process or the Magistrate Court erred as a matter of law or abused its discretion when it ordered [Petitioner] to obtain a domestic violence evaluation and to attend the court's 52-week Domestic Violence Court Review Course because [Petitioner], although outside the courthouse, refused to wear a mask and was therefore not allowed entry into the courthouse, and therefore no hearing on the merits was held.

I. Alternatively (to subparagraph H), whether I.C. § 18-7901 et seq., provides authority for the Magistrate Court to order a [Petitioner] to obtain a domestic violence valuation and to attend the court's 52-week Domestic Violence Court Review Course, or whether any other authority exists for such an order.

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While on appeal, the magistrate court extended the protection order through April 17, 2022, but it had expired by the time Petitioner's appeal was set for oral argument. As a result, the district court dismissed Petitioner's appeal as moot. On October 7, 2022, the district court issued its Order on Appeal (Appx. C), which held that the expiration of the underlying protection order mooted the appeal and that Petitioner failed to show that an exception to the mootness doctrine applied to preserve his appeal. Though the appeal had been made moot through no fault of the Petitioner, the district court did not vacate the underlying protection order.

Petitioner timely appealed the district courts' order. The issue on appeal from the district court was whether the expiration of the civil protection order made the appeal taken from that order moot. Stated differently, Petitioner asked whether the Protected Person can render the appeal moot by letting it expire, i.e., not obtaining an extension of it. Petitioner's also sought review of the exception to the mootness doctrine and asked the Idaho Supreme Court to reverse the district court's ruling that his intermediate appeal was moot or vacate the underlying protection order.[5]

The Idaho Supreme Court affirmed the district court's dismissal of Petitioner's appeal, hoding that: (1) the appeal was moot; (2) the appeal did not fall within exception to mootness doctrine; and (3) vacatur of order in interest of fairness was not warranted. *Mitchell v. Ramlow,* 559 P.3d 1210 (Idaho, 2024). The Idaho Supreme Court then published the identities of the parties whose information had been exempt

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[5] Petitioner applied the vacatur principles set forth by this Court in U.S. v. Munsingwear, Inc., 340 U.S. 36 (U.S. 1950) and its progeny.

from public disclosure in all previous proceedings. Put differently, the decision has on its face evidence of prejudice stemming from the expired civil protection order because it recapitulates disputed facts contained therein that paint Petitioner in a false light in the public eye, and subjects Petitioner to enduring reputational harm unless otherwise vindicated.

GROUNDS FOR GRANTING AN EXTENSION OF TIME

The time to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

First, Petitioner is no longer represented by counsel in this matter and is seeking the assistance of a qualified attorney to argue the merits of the Writ. The record is relatively simple in this case and the Petitioner has carried the burden of legal research, even when represented. If competent counsel can be established within the next few weeks then there should be enough time after an extension is granted to produce a robust petition.

Second, This case presents issues of importance to controversies nationwide that arise from mask wearing mandates. Importantly, since the pandemic nearly every circuit has flip-flopped or otherwise ignored this courts' precedence as applied to mask-wearing. It is well settled by this Court that the First Amendment affords protection to symbolic speech or expressive conduct as well as to actual speech. Virginia v. Black, 123 S.Ct. 1536, 1547, 538 U.S. 343, 358 (U.S.Va.,2003). And the circuits have previously recognized mask wearing as a form of expressive speech. See,

e.g. (Second Circuit) Church of American Knights of the Ku Klux Klan v. Kerik, 356 F.3d 197, 206 (C.A.2 (N.Y.),2004) (recognizing that wearing mask "regalia" is expressive by symbolically "identifying the wearer with other wearers of the same[,] and with the ideology or purpose of the group); (Third Circuit) Church of American Knights of Ku Klux Klan v. City of Erie, 99 F.Supp.2d 583, 587 (W.D.Pa.,2000) (recognizing "white hood [with mask] worn by the Klan members is symbolic speech").

However, in this case Petitioner wasn't wearing insignia of his tribe; he refused to wear the courts' "regalia[.]" This Courts' compelled speech cases establish that First Amendment protections prohibit the government from telling people what they must say. See, e.g., West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624, 642, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943), (holding as unconstitutional a state law that required schoolchildren to recite the Pledge of Allegiance and to salute the flag); Wooley v. Maynard, 430 U.S. 705, 717, 97 S.Ct. 1428, 51 L.Ed.2d 752 (1977) (holding as unconstitutional a state law that required motorists to display the state motto—"Live Free or Die"—on their license plates). These cases dealt with state laws that had been passed by state legislatures which is distinguished from the case here in which the prohibition on access to the court was promulgated by a single jurists edict.

The Third Circuit hinted—just briefly—as to mask mandates as applied to First Amendment protections on compelled speech in *Antietam Battlefield KOA v. Hogan*, 461 F.Supp.3d 214 (D.Md., 2020). However, that case was decided less than two months into the pandemic, before the polarizing nature of the masks and their propensity to foster *preference falsification* had materialized. In that case the court

reasoned that "wearing a face covering would be viewed as a means of preventing the spread of COVID-19, not as expressing any message." *Id.* at 237 (D.Md., 2020). At the time the *Hogan* court made its decision, it would have been impossible for it to know that masks—just a few month later—would become "regalia" almost exclusively promulgated by proponents of the democratic party for the purpose of altering the public's perception as to the permissibility of forced inoculations.

Third, as set forth in the statement of the case above, there are conflicting views by the circuit justices as to the application of exceptions to the mootness doctrine in connection with controversies arising from state action in response to the COVID-19 pandemic and mask mandates. The most thorough review found thus far on this topic is the dissenting opinion by Justice Bush in *Hertel*, *supra* 35 F.4th at 542-552 (C.A.6 (Mich.), 2022).

Fourth, as a pro se litigant with no formal legal training and little more than a 'pull yourself up by the bootstraps' attitude, Petitioner needs more time to continue his legal research and prepare his legal arguments.

Lastly, an extension will not cause prejudice to the Respondent. As noted earlier Respondent has not indicated an objection to an extension. Being that the subject matter of this case doesn't involve any of Respondent's interests, there is no real property or other personal property of Respondent that is put at risk by an extension.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the time to file the Petition for a Writ of Certiorari in this matter be extended 60 days, up to and including April 28, 2025.

Respectfully submitted.

Nicholas Ramlow
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this application was served by email and U.S. mail to the counsel listed below on this 14th day of February, 2025 in accordance with Supreme Court Rule 22.2 and 29.3:

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 50287-2022

AMANDA MARIE MITCHELL, **Petitioner-Respondent,** **v.** **NICHOLAS RODDY RAMLOW,** **Respondent-Appellant.**	**Coeur d'Alene, September 2024 Term** **Opinion Filed: November 27, 2024** **Melanie Gagnepain, Clerk**

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. Scott L. Wayman, Senior District Judge.

The decision of the district court is affirmed.

Kevin J. Waite, P.C., Coeur d'Alene, for Appellant, Nicholas Roddy Ramlow. Kevin J. Waite argued.

Palmer, George, PLLC, Coeur d'Alene, for Respondent Amanda Marie Mitchell. Samantha R. Hammond argued.

MEYER, Justice.

This is an appeal from the district court's dismissal of Nicholas Roddy Ramlow's appeal of a civil protection order. The district court determined that the expiration of the underlying protection order rendered Ramlow's appeal moot. We affirm the district court's dismissal of Ramlow's appeal as moot and decline to award attorney fees on appeal.

I. FACTUAL AND PROCEDURAL BACKGROUND

In October 2020, Amanda Mitchell filed for a civil protection order against Ramlow based on allegations that he was stalking her. Mitchell and Ramlow were in an on-again-off-again relationship for several years and shared a son in common. At the time Mitchell requested the protection order, she was separated from Ramlow and engaged to another man. She maintained that Ramlow was tracking her movements by, among other things, placing a tracking device on her car and giving their son a smart watch with tracking capabilities. The magistrate court issued

a temporary ex parte protection order based on Mitchell's application and set the matter for a hearing on November 4, 2020.

During this time, mask mandates were in place due to the COVID-19 pandemic. The Kootenai County Courthouse required parties to wear a mask to enter the courthouse. On the day of the hearing, Ramlow appeared at the courthouse but was refused entry because he refused to wear a mask as required by the order then in effect. The hearing was rescheduled to November 18, 2020. Ramlow was not physically present at the rescheduled hearing; he again refused to wear a mask, and at the hearing it was unclear whether he left the courthouse of his own accord or if he had been taken into custody on an outstanding warrant. Nevertheless, the magistrate court held the hearing without Ramlow, and it did not permit Ramlow's attorney to argue against the protection order. The magistrate court issued the protection order for one year. The terms of the protection order required Ramlow to attend a 52-week domestic violence course and attend review hearings.

Ramlow filed a motion for reconsideration of the protection order in December 2020. Mitchell opposed the motion for reconsideration, which was denied following a hearing in March 2021. The motion for reconsideration and the magistrate court's decision are not part of the record on appeal. On April 14, 2021, Ramlow agreed to complete a 52-week domestic violence course and to attend all review hearings as part of his child custody agreement in a separate case. On April 23, 2021, Ramlow appealed the denial of his motion for reconsideration and the issuance of the protection order to the district court. The magistrate court extended the protection order through April 17, 2022, but it had expired by the time Ramlow's appeal was set for oral argument before the district court. As a result, the district court requested supplemental briefing from the parties on whether Ramlow's appeal was moot. After hearing oral argument on the merits of the appeal and reviewing the parties' supplemental briefing, the district court dismissed Ramlow's appeal as moot. On October 7, 2022, the district court issued its Order on Appeal, which held that the expiration of the underlying protection order mooted the appeal and that Ramlow failed to show that an exception to the mootness doctrine applied to preserve his appeal.

Ramlow timely appealed the district court's order. On appeal, Ramlow asks this Court to reverse the district court's ruling that his intermediate appeal was moot and to vacate the magistrate court's underlying protection order. He argues that the district court erred when it dismissed his appeal because he contends his appeal still presents justiciable issues and, in the alternative, he claims his appeal satisfies all three exceptions to the mootness doctrine. Ramlow also seeks an

award of attorney fees on appeal under Idaho Code section 12-121, and costs under Idaho Appellate Rule 41. Mitchell argues that the district court did not err in dismissing Ramlow's appeal as moot and seeks attorney fees on appeal under Idaho Code section 12-121, as well as costs on appeal under Idaho Code section 12-107.

II. STANDARD OF REVIEW

When this Court reviews the decision of the district court acting in its appellate capacity, we do not review the magistrate court's decision but are "procedurally bound to affirm or reverse" the district court. *Pelayo v. Pelayo*, 154 Idaho 855, 859, 303 P.3d 214, 218 (2013) (quoting *Bailey v. Bailey*, 153 Idaho 526, 529, 284 P.3d 970, 973 (2012)).

A district court's mootness determination is reviewed de novo. *State v. Barclay*, 149 Idaho 6, 8, 232 P.3d 327, 329 (2010).

III. ANALYSIS

A. Ramlow's appeal is moot.

A case is considered moot when "the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Frantz v. Osborn*, 167 Idaho 176, 180, 468 P.3d 306, 310 (2020) (quoting *Farrell v. Whiteman*, 146 Idaho 604, 610, 200 P.3d 1153, 1159 (2009)). A case is also considered moot when a judicial determination "would have no effect either directly or collaterally on the plaintiff, the plaintiff would be unable to obtain further relief based on the judgment and no other relief is sought in the action." *Idaho Schools for Equal Educ. Opportunity ex rel. Eikum v. Idaho State Bd. of Educ. ex rel. Mossman*, 128 Idaho 276, 282, 912 P.2d 644, 650 (1996) (citation omitted). This Court may dismiss an appeal if it determines the appeal "involves only a moot question." *State v. Long*, 153 Idaho 168, 170, 280 P.3d 195, 197 (Ct. App. 2012) (quoting *State v. Manzanares*, 152 Idaho 410, 419, 272 P.3d 382, 391 (2012)).

However, an appeal may survive even if it is moot so long as it falls within one of three recognized exceptions to the mootness doctrine: "(1) when there is the possibility of collateral legal consequences imposed on the person raising the issue; (2) when the challenged conduct is likely to evade judicial review and thus is capable of repetition; and (3) when an otherwise moot issue raises concerns of substantial public interest." *Koch v. Canyon County*, 145 Idaho 158, 163, 177 P.3d 372, 377 (2008) (quoting *AmeriTel Inns, Inc. v. Greater Boise Auditorium Dist.*, 141 Idaho 849, 851–52, 119 P.3d 624, 626–27 (2005)).

We agree with the district court that Ramlow's appeal is moot. The protection order was the sole basis of Ramlow's intermediate appeal, and when it expired, Ramlow lost any legally cognizable interest in the outcome. Any judicial determination concerning the validity of the protection order would not affect Ramlow because the order was no longer enforceable, and Ramlow was no longer subject to its terms.

Nevertheless, because Ramlow contends that his appeal falls within all three exceptions to the mootness doctrine, we must determine whether his case satisfies one or more of those exceptions. For the reasons explained below, we conclude that Ramlow's appeal does not satisfy any exception to the mootness doctrine.

B. Ramlow's appeal does not fall within the recognized exceptions to the mootness doctrine.

Ramlow maintains that his appeal falls within all three exceptions to the mootness doctrine. In a one-sentence analysis, the district court concluded that Ramlow failed to establish that his appeal fell within an exception to the mootness doctrine. We will analyze each exception in turn. We note at the outset that there is some overlap between the *capable of repetition yet evading review* exception and the *public interest* exception.

1. The Capable of Repetition Yet Evading Review *exception does not apply in this case.*

The *capable of repetition yet evading review* exception to the mootness doctrine requires that the issue on appeal is both capable of repetition and likely to evade judicial review. *Ellibee v. Ellibee*, 121 Idaho 501, 503, 826 P.2d 462, 464 (1992) (citations omitted). The United States Supreme Court has noted that the doctrine "applies only in exceptional situations," *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983) (citing *DeFunis v. Odegaard*, 416 U.S. 312, 319 (1974)), and is "limited to the situation where . . . (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to that same action again[.]" *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (per curiam) (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (per curiam) (remaining citations omitted).

We have considered otherwise moot appeals in the past "due to the abbreviated length of protection orders" when "the time period in which a person is affected may expire prior to judicial review," and "the controversy is susceptible to repetition yet avoiding review." *Ellibee*, 121 Idaho at 503, 826 P.2d at 464 (citations omitted). However, in *Ellibee*, the issues presented on appeal were also "quite likely to arise on future occasions" as they involved "the scope of the Domestic

Violence Act's application, and its requisite standard of proof." *Id.* In addition, the issues presented were "issues of substantial public interest" given that, at that time, the Domestic Violence Act was recently enacted and had not been interpreted by an Idaho appellate court. *Id.*

Ramlow raises two arguments to support his contention that his appeal falls under the *capable of repetition yet evading review* exception to the mootness doctrine. First, he argues that the short duration of protection orders makes challenges to their validity likely to evade review. He notes that protection orders "are typically issued for either 90 days or one year" and may or may not be renewed or extended beyond that timeframe. He is not wrong in this regard. Protection orders are of relatively short duration and can evade review when they expire before an appeal is complete. Ramlow emphasizes that the protected party can allow a protection order to expire during the pendency of an appeal by failing to request that the order be renewed. By emphasizing this, Ramlow implies that Mitchell harbored some kind of nefarious intent or ulterior motive by strategically declining to seek a second renewal or an extension of the civil protection order in this case, thereby rendering his appeal moot. There is no evidence in the record to support the view that Mitchell's failure to seek a second extension of the civil protection order was done with the intent to sabotage Ramlow's appeal.

As part of this argument, Ramlow references "challenged conduct" that is "capable of depriving a party of his visitation rights." He has not identified exactly what he claims *is* the "challenged conduct." The protection order was issued by the magistrate court based on allegations from Mitchell that Ramlow placed tracking devices on her car and on their son's smart watch, and that he was engaged in stalking behavior. Ramlow has suggested that the protection order that issued in this case was questionable; however, he did not provide this Court with a complete record of what occurred before the magistrate court. Because this Court received an incomplete record on appeal, we must assume that the record below supports the magistrate's decision to issue the civil protection order. *La Bella Vita, LLC v. Shuler*, 158 Idaho 799, 805, 353 P.3d 420, 426 (2015) ("When a party appealing an issue presents an incomplete record, this Court will presume that the absent portion supports the findings of the district court. We will not presume error from a silent record or from the lack of a record." (quoting *Gibson v. Ada County*, 138 Idaho 787, 790, 69 P.3d 1048, 1051 (2003)).

Even if the short duration of civil protection orders makes an appeal of the underlying order capable of evading judicial review, Ramlow has failed to show that the issues in his appeal are

capable of repetition because they are too fact specific. The facts underlying each civil protection order case are different, as is the corresponding evaluation of the magistrate court's decision whether to issue a civil protection order in a particular case. The discrete issues that Ramlow complains of are not likely to be raised in a similar way in future cases.

Other courts have followed this same line of reasoning when dealing with fact-specific appeals under this exception to the mootness doctrine. *See N.F. v. G.F.*, 316 P.3d 944, 947 (Utah Ct. App. 2013). Utah's version of the *public interest* exception to the mootness doctrine includes the *capable of repetition yet evading review* exception. *See id.* at 946. In *N.F.*, a grandmother appealed from a child protective order involving her minor grandchild. *Id.* at 945. The mother of the child argued that the grandmother's appeal was moot. *Id.* at 946. The Utah Court of Appeals determined the appeal was moot because the order had expired. *Id.* at 947. The grandmother attempted to challenge the expired order under the *public interest* exception, arguing that the district court had applied an overly broad interpretation of the statute when it issued the challenged order. *Id.* at 946–47. The Utah Court of Appeals disagreed, holding that the district court narrowly construed the statute and based its findings on the unique facts of the case. *Id.* It explained that the grandmother's appeal did not fall within the exception because it was not "'likely to recur in a similar manner' in future cases." *Id.* at 947. Specifically, it explained that "[b]ecause the factual underpinnings of each child abuse case are different and because such facts are necessarily the basis of the trial court's determination of whether a child is in imminent danger of being abused, the issues of which Grandmother complains are not likely to be raised in a similar manner in other future cases." *Id.* The Utah Court of Appeals cited cases from other jurisdictions that followed a similar analysis:

> *Cf. Putman v. Kennedy*, 297 Conn. 162, 900 A.2d 1256, 1265 n. 14 (2006) ("[A]lthough the defendant claims numerous due process and statutory violations, his pro se brief filed before the Appellate Court indicates that they all are rooted in the trial court's exercise of its discretion *with respect to the facts of these particular cases*, and his brief to this court, filed by counsel, does not indicate otherwise. Thus, although the 'capable of repetition, yet evading review' exception might well be applicable in a domestic violence restraining order case raising broader issues than those presented here, the Appellate Court properly concluded that the exception did not apply to this appeal."); *In re Jeffrey C.*, 64 Conn. App. 55, 779 A.2d 765, 772 (2001) (determining that an issue was "not capable of repetition" where the issue was limited "to the case at hand and preclude[d] any far reaching impact in future Juvenile Court proceedings"), *rev'd on other grounds*, 261 Conn. 189, 802 A.2d 772 (2002).

Id. (alteration in original). Similar fact-specific issues are at play in this case. Ramlow's appeal of the expired protection order does not raise the type of broad issues that are likely to recur in future cases.

Second, Ramlow argues that his exclusion from the courthouse, resulting from his refusal to comply with the mask-mandates in place during the COVID-19 pandemic, bring his appeal within the *capable of repetition yet evading review* exception. He asserts that the mask mandates were the result of judicial activism. He appears to claim that compliance with such mandates may give an "undue advantage" to individuals that comply with the mandates over individuals that seek to challenge the mandates, which he contends is a scenario that could arise again in the future. We are not persuaded by this line of argument. In this case, Ramlow is correct that he was unable to challenge the issuance of the protection order at the hearing before the magistrate below; however, his own choices led to that outcome. He decided not to wear a mask. He either left the courthouse of his own accord or was arrested on an outstanding warrant in another case. It is unreasonable to expect that the exact same mask mandates will be imposed in the event of a future pandemic. The mask mandates at issue in Ramlow's underlying case have long since expired, and the advent of treatment options has largely eliminated the need for the strict mandates employed in the early days of the pandemic. Circumstances on the ground have changed. While it is not outside the realm of possibility for another pandemic to occur, it is the first of its kind in the modern era and is unlikely to recur in the near future.

Other courts have taken a similar view when it comes to whether challenges to orders issued during the pandemic fall within the *capable of repetition yet evading review* exception to the mootness doctrine. In *Brach v. Newsom*, 38 F.4th 6, 11, 12 (9th Cir. 2022), the Ninth Circuit determined that a challenge to school closure orders issued during the pandemic was moot and did not fall under the *capable of repetition yet evading review* exception to the mootness doctrine. The Ninth Circuit looked to the fact that the challenged school closure statutes "included a sunset provision so [the] law would automatically expire" on a certain date, as well as a "self-repeal" clause, and noted "[b]oth of these dates have come and gone and there have been no efforts to reenact the emergency legislation." *Id.* at 13. The Ninth Circuit noted that the schools "maintained in-person instruction throughout the surge of the Omicron COVID-19 variant, even while the State's case count soared well past numbers reached early in the pandemic." *Id.* at 14. It explained that measures to combat the virus have led to a significant change in the circumstances. *Id.* (first

citing *Lighthouse Fellowship Church v. Northam*, 20 F.4th 157, 162–64 (4th Cir. 2021); then citing *County of Butler v. Governor of Pennsylvania*, 8 F.4th 226, 231 (3d Cir. 2021)). The appellants in *Brach* acknowledged "that circumstances have changed since July 2020, when they filed their complaint, but suggest that an unexpected reversal in the public health situation could lead the Governor to once again close schools." *Id.* The Ninth Circuit determined that the appellants' "fears are too 'remote and speculative.'" *Id.* It explained that "[r]easonable expectation means something more than 'a mere physical or theoretical possibility,'" and the *capable of repetition yet evading review* exception did not apply because there was no "reasonable expectation" that schools would again be closed. *Id.* The Ninth Circuit noted the changed circumstances since the beginning of the pandemic led it to conclude that the *capable of repetition yet evading review* exception did not apply. *Id.* at 15.

We hold that Ramlow's appeal does not satisfy the *capable of repetition yet evading review* exception to the mootness doctrine, as his case is too fact-specific to fall within this exception.

2. *The* Collateral Consequences *exception does not apply in this case.*

This exception to the mootness doctrine applies "when there is the possibility of collateral legal consequences imposed on the person raising the issue." *Snap! Mobile, Inc. v. Vertical Raise, LLC*, ___ Idaho ___, ___, 544 P.3d 714, 742–43 (2024) (alteration omitted) (quoting *Koch v. Canyon County*, 145 Idaho 158, 163, 177 P.3d 372, 377 (2008)). In *Snap! Mobile*, we concluded that the collateral consequences exception applied because the permanent injunction at issue in that case "may form the basis for further contempt proceedings." *Id.* at ___, 544 P.3d at 743.

Ramlow maintains that the *collateral consequences* exception applies to his appeal because he was ordered to attend a 52-week domestic violence course and subsequent review hearings as a term of the civil protection order. He contends that the requirement continues beyond the expiration of the protection order and is a collateral consequence of the order. Ramlow also argues that firearm restrictions under Title 18 of the United States Code in sections 922(g)(8) and 924(a)(2) stemming from the civil protection order are a collateral consequence, although he concedes that he was only subject to those restrictions while the civil protection order was in effect. Finally, Ramlow maintains that his parenting time and child custody order are affected by the terms of the civil protection order despite its expiration.

Mitchell counters that Ramlow is no longer subject to the terms of the civil protection order because it has expired. She points out that Ramlow was never subject to civil contempt proceedings

for his failure to complete the 52-week domestic violence course, that he cannot be subject to contempt proceedings because the civil protection order has expired, that he never attended review hearings, and that he is no longer subject to the firearms restrictions stemming from the protection order. Mitchell also notes that Ramlow entered into a *stipulated* child custody agreement in a separate case in which he agreed to attend a 52-week domestic violence course and the review hearings. She argues that, as a result, the *collateral consequences* exception does not apply to Ramlow's appeal.

We agree with Mitchell and the district court that Ramlow has not shown the possibility of collateral legal consequences affecting him due to the expired civil protection order. Ramlow is no longer subject to the firearms restrictions that were in place when the protection order was active. No contempt proceedings were ever initiated against Ramlow for his failure to complete the 52 week-domestic violence course. Ramlow has failed to show that the existence of an expired civil protection order will prejudice him in other proceedings. He has already entered into a stipulated child custody agreement with Mitchell, and he has not identified any other legal proceedings where the expired protection order could have collateral legal consequences. His contention that his parenting time is a collateral consequence of the civil protection order is unavailing. Ramlow entered into a separate child custody agreement. That agreement contained provisions related to parenting time, which would increase in phases. He *agreed* to complete the 52-week domestic violence course *and* attend review hearings as part of Phase 1. Even though Ramlow argued that he would not have agreed to complete the domestic violence course or attend review hearings if it was not already court-ordered, there is no evidence to support that contention in the record on appeal. We note that the civil protection order has now expired, and its requirements that Ramlow complete the domestic violence course and attend review hearings are no longer enforceable in this case. Any impact on Ramlow's parenting time at this point is due to his past failure to comply with the terms of the stipulated child custody agreement and is not attributable to the expired protection order in this case. As a result, we hold that the *collateral consequences* exception does not apply in this case.

3. *The* Substantial Public Interest *exception does not apply in this case.*

This exception to the mootness doctrine applies when an issue "of substantial public interest" is involved. *Bradshaw v. State*, 120 Idaho 429, 432, 816 P.2d 986, 989 (1991). This Court has held the *substantial public interest* exception applies to the following situations: (1) reviewing

involuntary commitments, *id.*, (2) interpreting the scope of a recently enacted statute and the standard of proof related to claims under that statute, *Ellibee*, 121 Idaho at 503, 826 P.2d at 464 (interpreting the scope of the then-recently enacted Domestic Violence Act and the standard of proof required to obtain a domestic violence restraining order), and (3) determining whether a public entity can use public funds to campaign in an election, *AmeriTel Inns, Inc. v Greater Boise Auditorium Dist.*, 141 Idaho 849, 852, 119 P.3d 624, 627 (2005). We have long held that "the possibility of the reoccurrence of a similar lawsuit" or the "theoretical possibility that an issue may resurface will not suffice" to bring an appeal within the public interest exception to the mootness doctrine. *Great Beginnings Child Care, Inc. v. Off. of Governor of State of Idaho*, 128 Idaho 158, 160, 911 P.2d 751, 753 (1996).

In this case, Ramlow posits that his appeal falls within the *substantial public interest* exception because of "the simple fairness of procedure." He contends that "[t]o declare this appeal moot would vest substantial control in the 'protected person' [to determine] whether issues raised on appeal can be resolved." Ramlow maintains that the protected party's ability to decide "whether to apply for the extension of a protection order or just let it expire . . . can ultimately insulate a questionable protection order from appellate review and decision[.]" He also contends that because his civil protection order hearing occurred during the COVID-19 pandemic, and he was denied entry to the courthouse for refusing to wear a mask, this appeal presents issues of *substantial public interest.*

Ramlow's arguments under the *substantial public interest* exception have some overlap with his arguments related to the *capable of repetition yet evading review* exception. As we explained in that section, Ramlow focuses on the protected party's failure to seek an extension of a challenged civil protection order during the pendency of an appeal as being indicative of some kind of nefarious intent or ulterior motive on the part of the protected party to thwart the appeal or gain some other kind of advantage in the litigation. Again, there is no evidence in the record that indicates Mitchell's failure to seek a second extension of the civil protection order was done with the intent to sabotage Ramlow's appeal. Ramlow argues that "[t]he ability of one party to pull the rug out from under the other party's appeal" facilitates "evasion of review" and promotes a "dubious policy of giving that party unilateral control over the appeal process and any other litigation . . . that may be influenced by the challenged judgment." His argument that the ability to decide not to seek an extension of a protection order grants the protected party control over the

entire appeal process and any other related claims is too speculative. His contention that the protection order process grants the protected party unilateral control over any other future litigation that may be influenced by the challenged protection order relies on the "possibility of reoccurrence of a similar lawsuit," which is not sufficient to raise broader issues of *substantial public interest.*

The same can be said of his argument with respect to the COVID-19 mask mandates. Ramlow's second argument that the *substantial public interest* exception applies because, "[w]hile a failure to wear a mask does not currently bar entry to the courthouse, it is possible that we are not done with this pandemic or that there will be another one and that the measures and restrictions that bedeviled [Ramlow] may be put back in place" is a "theoretical possibility that an issue may resurface," which this Court has held is insufficient to fall within the *substantial public interest* exception, *Great Beginnings Child Care, Inc.*, 128 Idaho at 160, 911 P.2d at 753. For these reasons, we hold that Ramlow's appeal does not fall within this exception to the mootness doctrine.

4. *Vacatur of the underlying order is not appropriate in this case.*

Finally, Ramlow seeks to vacate the underlying expired protection order if we affirm the district court's determination that his appeal is moot. In *Moon v. Investment Board of State of Idaho*, 102 Idaho 131, 627 P.2d 310 (1981), we vacated the underlying judgment when a constitutional challenge of a statute became moot on appeal because the statute was repealed during the pendency of the appeal. We held that vacatur of the judgment, in that case, was appropriate because it "clears the path for future relitigation of the issues between the parties," and vacatur ensured that none of the parties was prejudiced by a "decision which in the statutory scheme was only preliminary." *Id.* (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 40 (1950)). In *State v. Barclay*, 149 Idaho 6, 9, 232 P.3d 327, 330 (2010), we held that vacatur of the decision from the Court of Appeals was appropriate when the defendant had served his entire sentence while the intermediate appeal was pending, and we dismissed the appeal as moot. In that case, however, we did not vacate the underlying sentence, nor did we vacate the district court's decision to relinquish jurisdiction. *Id.* These cases stand for the proposition that an issue may be moot because of a change in circumstances, and, in the interest of fairness, those changed circumstances may or may not justify vacatur of an underlying order or judgment.

This case does not present a situation where vacatur of the underlying order is appropriate. Ramlow's appeal is moot because the civil protection order has long since expired, not because of a changed circumstance that would indicate that, in the interest of fairness, the underlying order

should be vacated. Therefore, we decline to vacate the expired civil protection order in this case. Ramlow is no longer subject to the order. Even if he shares a child with Mitchell, he has failed to demonstrate that the possibility of relitigating the same issues that arose in connection with the expired protection order is likely. With respect to potential prejudice stemming from the expired civil protection order, Ramlow entered into a stipulated child custody agreement in a different case that places a separate requirement on him to complete the domestic violence class and attend review hearings. Ramlow has failed to show that the existence of an expired civil protection order will prejudice Ramlow in other proceedings.

C. Neither party is entitled to an award of attorney fees on appeal.

Ramlow seeks attorney fees on appeal under Idaho Code section 12-121. Idaho Code section 12-121 provides for an award of attorney fees to the prevailing party if the appeal was pursued or defended "frivolously, unreasonably or without foundation." I.C. § 12-121. As Ramlow was not the prevailing party on appeal, he is not entitled to an award of attorney fees under this section.

Mitchell also seeks an award of attorney fees on appeal under Idaho Code section 12-121. She contends that Ramlow "does not develop any of his arguments on appeal and cites very little authority for his position." Mitchell maintains that Ramlow is simply inviting this Court to second-guess the district court with respect to its mootness determination. Although Mitchell is the prevailing party on appeal, we decline to award her attorney fees under Idaho Code section 12-121 because Ramlow's appeal was not pursued frivolously, unreasonably, or without foundation. Ramlow raised valid arguments related to the difficulties in appealing the issuance of a protection order when that order is not renewed.

Mitchell seeks an award of attorney fees under Idaho Code section 12-107. Idaho Code section 12-107 does not provide for an award of attorney fees on appeal—it provides for costs on appeal when "a new trial is ordered" or "when a judgment is modified" within the trial court's discretion. Section 12-107 states, "[i]n all other cases the prevailing party shall recover costs, including his costs below when the appeal is to the district court." I.C. § 12-107(2). We decline to award attorney fees or costs to Mitchell under this section.

Mitchell also seeks costs on appeal under Idaho Appellate Rule 40(b). As the prevailing party, she is entitled to costs on appeal.

IV. CONCLUSION

For the reasons discussed above, the district court's decision is affirmed. Mitchell is awarded costs under Idaho Appellate Rule 40(b).

Chief Justice BEVAN, and Justices BRODY, MOELLER, and ZAHN CONCUR.

APPENDIX B

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

AMANDA MARIE MITCHELL, Petitioner, vs. NICHOLAS RODDY RAMLOW, Respondent.	Case No.: CV28-20-6569 **LETTER TO ADMINISTRATIVE JUDGE RICHARD S. CHRISTENSEN**

Judge Richard S. Christensen,

COMES NOW, the Respondent, Nicholas Ramlow *In Pro Per*, with this Letter requesting that you modify the current terms and conditions under which parties may have access to the Courts; parties must have access to the Courts. While the most current Administrative Order for the First Judicial District listed on the Supreme Court's website is Order H21-DW.25, Respondent has reason to believe that there is a more current Order and that this Order is compliant with the Supreme Court Order "*In Re*: Emergency Order Regarding Court Services, dated September 22, 2021." Guidelines prohibiting litigants from accessing the courts for refusing to wear masks should be reconsidered and reversed for the following reasons:

1. Mask-wearing as a means of mitigating the spread of SARS-COV-2, lacking objective and substantial evidence of its effectiveness, is a political question, *a priori*. As a political matter, a government requirement to wear a mask falls under the unlawful umbrella of compelled speech and, by requiring them within the Court, the Courts become its most fervent campaigner; engaged in judicial activism.

2. As the revered Thomas Sowell puts so well in his book, Intellectuals and Society, judicial activism is distinguished by "...whether the *basis* of a judge's decisions is the law created by others...or whether judges base their decisions on their own conceptions of 'the needs of the times' or of 'social justice' or of other considerations beyond the written law or legal precedents." Further, Sowell warns that "[i]f the principle of free-wheeling judicial law-making becomes established and accepted across the ideological spectrum, then swings of the ideological pendulum over time can unleash a judicial war of each against all, in which the fundamental concept of law itself is undermined, *along with the willingness of the people to be bound by the arbitrary dictates of judges.*" Declaration of Nicholas Ramlow (Nov. 17, 2020). *Sowell*. P. 254, 258.

3. Judicial Activism comes with it great dangers and costs to the public interest. In a paper attached hereto as "Exhibit A", Kuran argues the paper "illuminates not only why a policy that few people support privately may command an overwhelming public endorsement, but also why, once this policy is in place, the degree of private opposition will diminish." For the purposes of this paper, the Respondent urges considerations of the following:

a. In an environment consisting of "activists...split into two pressure groups", one that advocates for not wearing masks (Respondent/ $p=0$) and another who advocates for wearing masks (Judge/ $p=1$) and "non-activist[s], far greater in number, [who] are not pre-committed to any particular policy.." , the reader can follow the logic of this proposition from Exhibit A.

b. The great danger here (and why history and experience has taught us to severely limit rule making powers of courts in general) is that, while society may consist of many "private preferences" *and* "public preferences" for the policy choices of $p=0$, the power of $p=1$ to produce a public environment (the courts) that prohibits $p=0$, means that, regardless of number of $p=0$ in society, the public environment will consist of only $p=1$ and non-activists.

c. This public environment thus constrains all "public preference" to $p=1$. To achieve societal equilibrium "private preferences" must be consistent with "public preferences", see bold line in Figure 2. Revolutions are more likely to occur when there is a deviation between "private preferences" and "public preferences" or, put differently,

when society, as a whole, has aggregated a large degree of "preference falsifications".

d. "The activists advocating *p=1* are major beneficiaries of the described capture of the non-activists' minds…the key role in this capture is played not by them but by the mass of non-activists, who, by withholding their personal convictions from one another, distort the climate of opinion…[this] manipulation is possible precisely because the non-activists' cognitive limitations make their minds capturable"

4. As indicated by Affidavit, attached hereto as "Exhibit B", you were served "NOTICE OF VIOLATIONS, PURSUANT 18 U.S.C. 242, PRAYER FOR RELIEF, AND NOTICE OF INTENT TO FILE-FAIR NOTICE AS A DISPOSITIONAL CHALLENGE TO THE 'CLEARLY ESTABLISHED LAW' STANDARD AND INJURY CLAIM PURSUANT 42 U.S.C." on May 19, 2021. Respondent hereby gives further notice of intent to file a lawful challenge to "absolute judicial immunity" in the same suit.

5. The aforementioned Notice gives further reasons as to why the current order is unlawful. Among these are:

a. It violates separations of powers principles

b. It violates limitations on general rule-making powers of Idaho Courts, *e.g.* I.C. § 1-213 "[s]aid rules shall neither abridge, enlarge nor modify the substantive rights of any litigant." (Procedural protections of substantive interests were created before the U.S. Supreme Court adopted the term "substantive", *ergo* the more antiquated a procedural rule, the more likely it is inexorably tied to a substantive interest).

c. I.C.A.R 48 grants discretionary power to the lower courts during an emergency- away from the Supreme Court. "…the Administrative Judge..*may* order the closure of a district court…"

d. I.C.A.R. 48 is a 4th tier rule (low effect of law) and subsequent dictates are 5th tier rendering them weak and infantile to constitutional provisions (high effect of law).

e. It violates speedy and impartial trial by jury protections.

f. It violates due process protections to the right to be heard.

g. It violates speech protections under the 1st Amendment and is therefore subject to strict scrutiny.

f. The risk associated with SARS-COV-2 has, thus far, been cast by subjective

review and no objective standard has been identified for longer than a 30 day media cycle (political indicator). Further, the 'remedy' may be worse than the 'emergency'. As Thomas Sowell liked to say, " 'A' always exceeds 'B'- if you exaggerate 'A' and leave out enough of 'B'."

In conclusion, Respondent hereby DEMANDS access to the Court and that you remove the constitutional violations from your procedure and for the "immediate resumption of court business by the most expeditious and practical means possible", pursuant I.C.A.R. 48(a). I PRAY for the resumption of court business and the proper station of its jurisdiction; constrained to the laws written by others.

Dated this 4th day of November, 2021

By: Nick Ramlow
Nicholas Ramlow
In Pro Per

Certificate Of Delivery

I hereby certify that on this 16th day of November, 2021, a true and correct copy of the foregoing document was sent to:

Samantha Hammond Palmer, George, PLLC 923 N. 3rd Street Coeur d'Alene, ID 83814	☐ ☐ ☐ ☒	U.S. Mail, Postage Prepaid Hand Delivered By Efiling Email: kristy@cdalawoffice.com
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PREFERENCE FALSIFICATION, POLICY CONTINUITY AND COLLECTIVE CONSERVATISM*

Timur Kuran

In a moment of frustration over his country's economic woes, Leonid Brezhnev once complained of the tendency of Soviet enterprise managers to shy away from innovation 'as the devil shies away from incense'.[1] Implicit in this lamentation are two distinct attributions. There is the claim that the Soviet economy's lacklustre performance is caused by the failure of enterprises to alter their routines. And there is the allegation that this failure reflects an attachment to the status quo.

This paper seeks to explain why collective decisions are path-dependent – why, as Brezhnev's complaint implies, policy decisions bear the influence of previous policy decisions. The issue to be explained is not simply that one observes *policy continuity* over time. It is that this continuity is generated, at least partly, by society's attachment to its past choices, an attachment we may label as *collective conservatism*.

Of the terms introduced, the first has only a descriptive meaning, the latter a causal one. Policy continuity describes a congruence between choices in consecutive periods. Collective conservatism, on the other hand, refers to a causal process – a process analogous to hysteresis in physics. Thus, the fact that a particular economic prohibition of yesterday is still in effect today constitutes an instance of continuity; conservatism is involved only to the extent that this prohibition exists today *because* it existed yesterday.

The theory of collective conservatism to be developed is based on the observation that because of group pressures, the policy preferences people express in public often differ from those they hold privately. We shall see that under numerous plausible conditions the possibility of *preference falsification* yields multiple equilibrium distributions of public preferences, each associated with a different policy, and each attainable, given the right initial expectations, through a bandwagon process. What gives rise to collective conservatism is that the distribution in one period affects individuals' expected payoffs in the next. Among the contributions of the paper is a measure of collective conservatism, designed to quantify the status quo's influence.

An essential feature of the argument is the observation that people rely on the prevailing climate of opinion in developing the personal belief systems that

* For their fruitful suggestions, I am grateful to Reuven Brenner, Mark Granovetter, Vibhooti Shukla, Jacques Silber, Karol Soltan, Ulrich Witt, and two anonymous referees of this JOURNAL. I also benefited from the comments of numerous others during presentations at the University of Southern California, Virginia Polytechnic Institute, the University of Montreal, California State University at Fullerton, and the March 1986 convention of the Public Choice Society, held in Baltimore. Under grant no. SES-8509234, my work was supported in part by the National Science Foundation of the United States.

[1] *Pravda*, March 31, 1971. As quoted by Berliner (1976, p. 437).

underlie their private policy preferences. With this climate being formed by the justifications offered for preferences expressed publicly, it turns out that a by-product of preference falsification may be a shift in the distribution of private preferences in favour of the status quo.

Through a unified framework, the paper thus illuminates not only why a policy that few people support privately may command an overwhelming public endorsement, but also why, once this policy is in place, the degree of private opposition will diminish. The argument is consistent both with the claim that societies retain many policies they would rather change and with the claim that policies they inherit from the past shape their members' views and wants.

The theory provides an individual-choice based interpretation for an array of phenomena on which other works that deal systematically with collective conservatism are silent.[2] The new insights afforded are illustrated by means of an inquiry into India's caste system, which, throughout the social sciences, is routinely offered as the quintessential example of the past's reign over the present. Among the particular facts explained are that caste councils reach decisions through open rather than secret voting; and that the so-called untouchables, situated at the very bottom of the caste hierarchy, tend to be among the system's most committed supporters. The latter issue is especially significant in view of the fact that social thinkers have long been intrigued by people's propensity to accept servitude.

I. A MODEL OF COLLECTIVE CHOICE

The framework for the analysis is a simplified version of a model developed in a companion paper (Kuran, 1987*a*), where a fuller exposition may be found.

Basic Features

Consider a society faced with the task of selecting a collective policy, p, from within the unit interval. Its members, who are in agreement as to the unidimensional nature of the issue, fall into two categories: activists and non-activists. The activists are split into two pressure groups, one that advocates $p = 0$ and another that advocates $p = 1$.[3] The non-activists, far greater in number, are not pre-committed to any particular policy; and regardless of what they privately prefer, they can be pressured into supporting one of these positions. The activists will remain in the background throughout most of the discussion that follows, so unless indicated otherwise, the term 'individual' will stand for 'non-activist'.

[2] For a critical survey of these works, see Kuran (1987*b*). Several imaginative and instructive contributions, including Hirschman (1970), Goldberg (1976), and Olson (1982), attribute collective conservatism to various social phenomena. Two others, Heiner (1983) and Brenner (1983), invoke personal conservatism, the individual's personal attachment to his own or society's past choices.

[3] The establishment of new pressure groups is ruled out. Although this simplification suppresses an important aspect of the problem at hand, it is justifiable in some contexts by the fact, elucidated by Olson (1982), that it is cheaper to maintain an existing coalition than to negotiate a new one.

The pressure groups vie for individuals' endorsements because society's decision depends negatively on s_0, the share of the individuals who support $p = 0$, and positively on s_1, the share who support $p = 1$. Naturally, $s_0 + s_1 \leqslant 1$. For expositional convenience, I assume that the decision function has the form

$$p = \tfrac{1}{2}(1 - s_0 + s_1), \tag{1}$$

according to which p necessarily lies in the interval $[0, 1]$. Note that this function accords no influence to preferences favouring intermediate policies. The justification for this feature is that the costs of preference aggregation lead societies to ignore preferences held by unorganised groups, especially if they lack numerical strength. Indeed, the administrative and legislative branches of government generally pay little attention to policy proposals that appear to lack the organised support of a sizeable group.[4]

The Individual's Preference Declaration Decision

Each individual decides what position to advocate publicly on the basis of three considerations.

First is his utility stemming directly from society's policy choice. This is measured by his 'direct benefit' function, $B^i(p)$, where i indexes the individual. The form of this function, which for the time being is taken to be predetermined, reflects the preference ordering he would provide in a secret ballot. I assume that there exists a unique policy that tops this ordering. This is x^i, his privately held preference, or simply, his *private preference*. Given that he constitutes an infinitesimal segment of society, the individual justifiably expects his own wish to have no perceptible influence on society's choice. This does not mean that he disregards his private preference. As we shall see, he accords it an important, though roundabout, role in his preference declaration decision.

The second consideration that enters the individual's decision process is the utility associated with his publicly declared preference, which I shall denote by y^i, and refer to as his *public preference*. This utility is captured by his 'reputation' function, which is given by

$$R(y^i) = \begin{cases} f_0(s_0) & \text{if} \quad y^i = 0, \\ 0 & \text{if} \quad 0 < y^i < 1, \\ f_1(s_1) & \text{if} \quad y^i = 1, \end{cases} \tag{2}$$

where $f_0(0) \geqslant 0$, $f_1(0) \geqslant 0$, $df_0/ds_0 > 0$, and $df_1/ds_1 > 0$. Thus, the individual can obtain positive reputational utility only by backing an organised group; he cannot gain such utility merely by coming close to the group's position.[5]

[4] This observation conflicts, of course, with the rhetoric of contemporary constitutional democracy, according to which members of society have equal *political* rights. What this means in practice is that everyone enjoys equal *organisational* rights. Those who do not use their organisational rights have less say in the political process than those who do. In according zero influence to preferences held by no organised block, the function (1) encapsulates an extreme version of the observation.

[5] This feature is not essential to the argument. For reasons discussed in Kuran (1987*a*, sect. 3), all that is necessary is that the function have sufficiently sharp discontinuities at 0 and 1.

Another significant feature is that the utility conferred by a given pressure group increases with the size of this group's following. The rationale for this specification is that people fortify their reputation as supporter of a given cause by rewarding other supporters and by withdrawing favours from opponents.[6]

The final consideration in the individual's preference declaration decision is the utility he derives from integrity. To the extent that y^i differs from x^i, he compromises his integrity and thereby incurs a utility loss. His utility from integrity is represented by

$$N(x^i, y^i) = N(1 - |x^i - y^i|), \tag{3}$$

which is increasing in its argument, $1 - |x^i - y^i|$. This argument, which measures the proximity of the individual's public and private preferences, assumes a value between 0 and 1. The nearer they are, the closer the value to 1.

Given the multitude of non-activists, the individual non-activist has reason to expect his personal influence on the outcome of the collective choice process to be negligible. Thus, he effectively maximises a function such as

$$V^i(x^i, y^i) = R(y^i) + N(x^i, y^i), \tag{4}$$

which incorporates the reputational and integrity components of his utility function, but not the direct benefit component. Two points need to be recognised. First, the absence of $B^i(p)$ from the right-hand side of (4) does not imply that the individual's private preference ordering has no impact on his public declaration; it does have an impact, since x^i, which depends on the shape of $B^i(p)$, appears in the argument of $N(\,.\,)$. Second, although by assumption the non-activists have the same reputation and integrity functions, they may well have different private preferences and, hence, different maximands.

The share variables s_0 and s_1, which enter (4) through the reputation function, are not necessarily known with precision. Let us assume, for simplicity, that everyone employs the same point estimates, $\hat{s}_0$ and $\hat{s}_1$. Using these, each individual computes (4) under three alternatives: supporting $p = 0$, supporting $p = 1$, and revealing his private preference.[7] The corresponding utility levels can be denoted by V^i_0, V^i_1, and V^i_*.

To present the argument clearly, I focus on the case where, for all i,

$$\max(V^i_0, V^i_1) > V^i_*, \tag{5}$$

which is to say that supporting either $p = 0$ or $p = 1$ constitutes the dominant option for all the non-activists.[8] In this setting, expectations can be assumed to satisfy the condition

$$\hat{s}_0 + \hat{s}_1 = 1, \tag{6}$$

[6] This rationale is developed at length in Kuran (1987*a*, sect. 5). The gist is that an individual claiming to support a cause comes across as insincere unless his words are reflected in his behaviour. Thus, to be perceived as an opponent of apartheid, it is not sufficient to pay lip service to the principle of racial equality. Words must be buttressed with concrete actions, such as applauding an anti-apartheid speaker or demonstrating against a company doing business in South Africa.

[7] All other options are dominated by correct preference revelation, because $R(y^i) = 0$ for $0 < y^i < 1$, and because $N(x^i, y^i)$ is maximised when $y^i = x^i$.

[8] For a more general analysis, see Kuran (1987*a*).

under which V_0^i and V_1^i become[9]

$$V_0^i = f_0(1 - \hat{s}_1) + N(1 - x^i), \tag{7}$$

$$V_1^i = f_1(\hat{s}_1) + N(x^i). \tag{8}$$

Equating (7) with (8), we can compute, for each $\hat{s}_1$, the value that x^i must assume to make the individual just indifferent between supporting $p = 0$ and supporting $p = 1$. This exercise amounts to defining a downward-sloping function $\underline{x}(\hat{s}_1)$, such that, for any given $\hat{s}_1$, $V_0^i \gtrless V_1^i$ according as $x^i \lessgtr \underline{x}(\hat{s}_1)$.[10] The function is the same for all non-activists, because they all have the same reputation and integrity functions. It is illustrated in Fig. 1, according to which the individual supports $p = 0$ if the point $[\hat{s}_1, x^i]$ lies below the curve $\underline{x}(\hat{s}_1)$, and $p = 1$ if the point lies above it. Note that $\underline{x}(\hat{s}_1)$ crosses the $\hat{s}_1$ axis at 0·8, which means that for $\hat{s}_1 > 0{\cdot}8$, the individual supports $p = 1$ regardless of where his private preference lies.

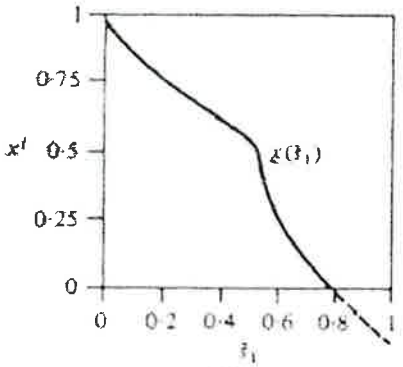

Fig. 1

Equilibrium

Now let $\Phi(x)$ be the *cumulative density function* of the non-activists' private preferences. This function, depicted in Fig. 2 by a light curve, is defined to provide, for any x, the share of non-activists with a private preference greater than this x. The heavy curve, which I shall call the *threshold function* and denote by $\underline{x}(\hat{s}_1)$, separates, for each $\hat{s}_1$, the private preferences for which supporting $p = 0$ is optimal from those for which supporting $p = 1$ is optimal. Its downward-sloping segment is precisely the function $\underline{x}(\hat{s}_1)$, as depicted in Fig. 1. It also has a horizontal segment, which serves to indicate that if $\hat{s}_1$ ever rises above 0·8, $p = 1$ will enjoy unanimous support. (A horizontal segment along the top axis would signal that if $\hat{s}_1$ ever became sufficiently low, all would support $p = 0$.) The reason for working with $\underline{x}(\hat{s}_1)$, rather than $\underline{x}(\hat{s}_1)$, is that this facilitates geometric interpretation.

[9] Insert (2) and (3) into (4), and then substitute $\hat{s}_1$ for s_1 and $1 - \hat{s}_1$ for s_0. When evaluated at $y^i = 0$ and $y^i = 1$, the resulting expression yields (7) and (8), respectively.

[10] To verify the slope of $\underline{x}(\hat{s}_1)$, implicitly differentiate the equation $V_0^i - V_1^i = 0$ to obtain $d\underline{x}/d\hat{s}_1 = -[Df_0(1 - \hat{s}_1) + Df_1(\hat{s}_1)]/[DN(1 - \underline{x}) + DN(\underline{x})]$, where D denotes the differential operator. By construction, $Df_0(\cdot)$, $Df_1(\cdot)$, and $DN(\cdot)$ are all positive.

Given $\hat{s}_1$, the actual shares supporting $p = 1$ and $p = 0$ turn out to be

$$s_1 = \Phi[\underline{x}(\hat{s}_1)], \tag{9}$$

$$s_0 = 1 - \Phi[\underline{x}(\hat{s}_1)]. \tag{10}$$

If $s_1 \neq \hat{s}_1$, both expectations are falsified, and the system is in disequilibrium. In Fig. 2, such is the case when $\hat{s}_1 = 0{\cdot}4$: the dotted arrows indicate that the corresponding s_1 is 0·25. In the event of disequilibrium, I assume, $\hat{s}_1$ is revised in the direction of s_1 until an equilibrium is attained – in which, by definition, expectations are self-confirming. Later, we will distinguish between temporary and permanent equilibria, but for now the distinction is immaterial.

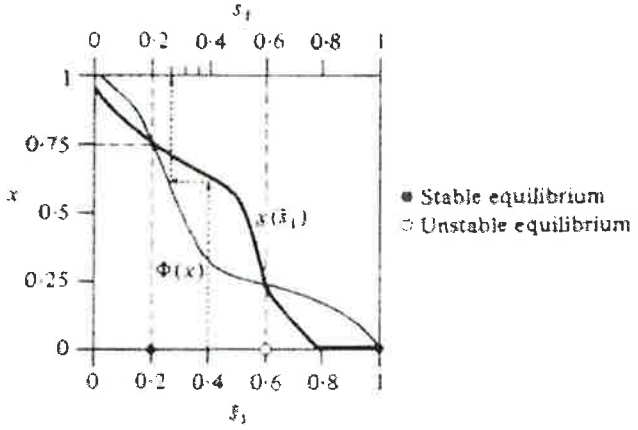

Fig. 2

The assumptions of the model guarantee the existence of an equilibrium, and there may be many.[11] The case shown in Fig. 2, for instance, features three equilibria. One of these is $\hat{s}_1 = 0{\cdot}2$; if everyone believes that exactly 20% will support $p = 1$, then the 20% whose private preferences exceed 0·75 will actually do so, while the 80% whose private preferences lie below 0·75 will support $p = 0$. It is stable, since an expectational displacement in either direction would generate further revisions resulting in its re-establishment. By analogous reasoning, one can show that $\hat{s}_1 = 1$ also constitutes a stable equilibrium. The third equilibrium, $\hat{s}_1 = 0{\cdot}6$, is unstable.

Which equilibrium is attained depends on individuals' initial share expectations, since these help determine how much pressure on behalf of each group is ultimately exerted. Not that the pressure groups' initial strengths are imma-

[11] To verify existence, let us consider in turn all possibilities as to the location of $\underline{x}(\hat{s}_1)$ in the $[\hat{s}_1, x]$ plane. (1) $\underline{x}(\hat{s}_1)$ coincides with the axis $x = 1$ or with $x = 0$: given that $\Phi(x)$ begins at $[0, 1]$ and descends toward $[1, 0]$, there is a unique equilibrium in each case, at $\hat{s}_1 = 0$ in the former and at $\hat{s}_1 = 1$ in the latter. (2) $\underline{x}(\hat{s}_1)$ has a downward-sloping segment, and at least one horizontal segment at $x = 1$ or $x = 0$: either $\hat{s}_1 = 0$ or $\hat{s}_1 = 1$ is an equilibrium, and, as in Fig. 2, there may be additional equilibria. (3) $\underline{x}(\hat{s}_1)$ lies entirely below $x = 1$ and entirely above $x = 0$: since both $\underline{x}(\hat{s}_1)$ and $\Phi(x)$ traverse the entire length of the $\hat{s}_1$ range, and since $\Phi(x)$ traverses the entire length of the x range as well, there is at least one equilibrium. Incidentally, the possibility of multiple equilibria is a feature shared by all models in which individuals' choices are interdependent. Other such models have been developed by Schelling (1978), Granovetter (1978), Akerlof (1980), and Arthur (1985).

terial. But the group that is relatively weaker at the outset can see its policy position gain approval if enough people support it during the crucial first stage. To put this concretely in terms of Fig. 2 and the notation of the reputation function, the fact that $f_0(0) > f_1(0)$ would not preclude attainment of the rightmost equilibrium, $s_1 = 1$.

II. POLICY CONTINUITY AND COLLECTIVE CONSERVATISM

Up to this point, we have examined the individual's preference declaration decision and the formation of self-confirming expectations. Continuing to treat private preferences as predetermined, we can turn now to our central concerns, policy continuity and collective conservatism. The conceptual arguments in this section will be quantified in Section III, after which, in Section IV, the model will be extended to make private preferences, too, endogenous.

Recall that to every pair $[s_0, s_1]$ of actual shares corresponds a particular policy, given by the decision function (1). Since $s_0 + s_1 = 1$, this function reduces to

$$p = s_1 \tag{11}$$

Thus, in Fig. 2 the set of policies associated with equilibria is $\{0{\cdot}2, 0{\cdot}6, 1\}$.

Suppose, as a start, that the leftmost equilibrium has been attained and that society has adopted the corresponding policy, $0{\cdot}2$. If the threshold and cumulative density functions remain fixed, this policy will exhibit complete continuity: period after period, society will choose $p = 0{\cdot}2$. Is this an indication of collective conservatism? Yes, in the sense that if past realisations of the underlying shares were suddenly forgotten, $p = 0{\cdot}2$ would not necessarily be retained. In particular, any initial $s_1 \geqslant 0{\cdot}6$ would lead to the adoption of $p = 0{\cdot}6$ or $p = 1$. But since an individual's utility depends on the shares, he would not just forget their realisations – least of all recent ones that have confirmed his prior expectations. With everyone fitting into this mould, self-confirming expectations will be retained indefinitely, and the other two viable policies, $p = 0{\cdot}6$ and $p = 1$, will not even get tested. What if, though, society had originally adopted either $p = 0{\cdot}6$ or $p = 1$, instead of $p = 0{\cdot}2$? By the same logic, it would hold onto this particular policy, thereby exhibiting collective conservatism.

Returning for a moment to the case discussed, I ought to point out that the 80% who support $p = 0$ in one period do so in the next as well, and that the same goes for the 20% who support $p = 1$. This does not imply that an individual is personally attached to his own earlier choices. Free of *personal conservatism*, he does not give special consideration to past choices in maximising his utility.

Let us consider now the consequence of disturbing the system depicted in Fig. 2. A disturbance could entail a shift in either the cumulative density function of private preferences, or the threshold function, or both. The density function could shift because of a technological discovery, a change in the physical environment, a price shock, the emergence of a new externality, the influx of ideas from other societies, a transformation in a pressure group's efficiency in transmitting information, or population growth, among other

possibilities.[12] The threshold function could shift because, for instance, a group becomes more efficient at punishing its opponents, or the non-activists come to derive greater utility from integrity on the issue in question.[13]

The set of equilibria is not necessarily altered by such functional shifts. But even when it is, the observed shares of support may remain unaffected. Moreover, if the shares do change, they do so under the influence of the past.

Suppose, to illustrate the argument, that in Fig. 2 the established equilibrium is $\hat{s}_1 = 1$. Due to exogenous shocks, everyone eventually comes to perceive a greater direct benefit from $p = 0$ than from $p = 1$, causing the cumulative density function to take the form given in Fig. 3. All individuals now have

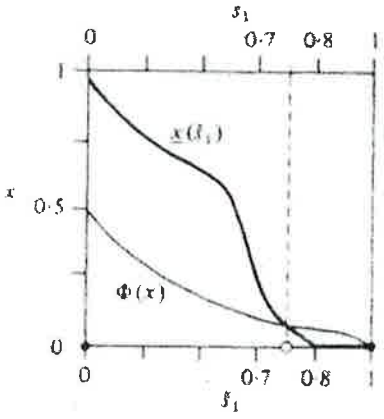

Fig. 3

private preferences between 0 and 0·5, and if a secret vote were taken, the average would turn out well below 0·5. Observe, however, that the pre-disturbance equilibrium, $\hat{s}_1 = 1$, is contained in the post-disturbance set of equilibria, $\{0, 0{\cdot}7, 1\}$. This means that no one will announce a change of heart, unless a sufficient number of others do so first. Individuals most eager to switch – those with private preferences at 0 – will do so only if they believe that 20% have already defected. And even this belief would not lead to the establishment of a new equilibrium. Only if people somehow became convinced that over 30% were supporting $p = 0$ would enough people switch to put in motion a bandwagon process toward the other stable equilibrium, $\hat{s}_1 = 0$. But this expectation is unlikely to emerge and spread, because nobody is willing to take the lead in publicising his opposition to the status quo. Society is stuck, therefore, at the equilibrium $\hat{s}_1 = 1$, and $p = 1$ is retained.

In this example, many non-activists come to feel enchained by the existing policy. Period after period, however, they vote for their chains by keeping the shift in their private preferences *private*. It is critical to recognise that the

[12] The last source presents no analytical difficulties, because shares, not absolute numbers, enter individuals' maximands and society's policy function.

[13] A pressure group can help bring out the latter type of change by spreading the message that people who conceal their private preferences are in some sense inferior. Foreign trade is an issue conducive to this sort of symbolism. Protectionist groups sometimes succeed in convincing people that foreign raids on domestic markets constitute an issue that patriotic, dignified, honourable people do not keep quiet about.

enchainment felt by individual non-activists is not attributable entirely to the activists advocating $p = 1$. The pressure to support $p = 1$ comes partly from the non-activists themselves, as each chooses, in a rational and voluntary effort to establish an advantageous reputation, to help make life difficult for those who fail to support $p = 1$. An important implication is that once a group of activists has obtained widespread support for its agenda, it may no longer itself have to punish its opponents. The non-activists may ensure that few people, if any, proclaim a desire for change. In fact, the original group could wither away after a while, without altering the non-activists' incentives to support the status quo. Witness how Sunni Islam, at one time tightly controlled by a centralised hierarchy, but for many years leaderless, remains an immense conservative factor in diverse policy contexts in a region stretching from Morocco to Indonesia.

In the case just analysed, the population was fixed. In an alternative scenario, a portion of the population dies in each period, to be replaced by a new generation. Under this interpretation, the shift in the distribution of private preferences is caused not by individual change but by generational replacement – the replacement of older cohorts by younger, different-minded cohorts. After a while, those originally responsible for selecting $p = 1$ would all be dead. Their legacy would live on, however, moulding the public preferences of successive new generations. For an illustration of the legacy of dead generations, consider the Soviet agricultural system. Few of those who helped establish this system, either as committed instigators or as cowed supporters, are still alive. Yet a choice they made in the 1930s continues to guide Soviet agricultural policy in the 1980s.

A second case where the pre-disturbance equilibrium, $s_1 = 1$, is contained in the post-disturbance set of equilibria is portrayed in Fig. 4. Here the density function is the same as in Fig. 2, but the threshold function has shifted to the right, because the group advocating $p = 0$ has become more efficient at delivering reputational utility to its supporters. Again, no one shifts to $p = 0$, and society remains in equilibrium at $s_1 = 1$. All would support $p = 0$ if enough others were to do so, but this does not become known.

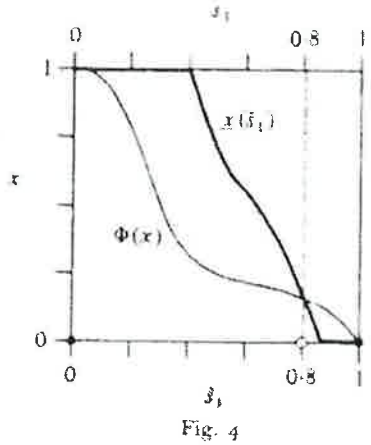

Fig. 4

Let us take up, finally, a case where the pre-disturbance outcome is not contained in the post-disturbance set of equilibria. Such a case is provided by Fig. 5, where, relative to Fig. 2, the cumulative density function has shifted in such a way as to move the leftmost equilibrium rightward. So suppose society was previously in equilibrium at $s_1 = 0{\cdot}2$. After the shift, this expectation is no longer sustainable, since, as the dotted arrows in Fig. 5 indicate, it causes the actual share to be 0·3. In accordance with the adjustment pattern outlined in Section I, s_1 will rise toward 0·3. But the new expectation will also prove to be unsustainable, and further upward revisions will be necessary until s_1 reaches 0·4. At this point, a new equilibrium is in place. Note that $s_1 = 0{\cdot}4$ is the post-disturbance equilibrium closest to the pre-disturbance equilibrium, $s_1 = 0{\cdot}2$. This outcome, a reflection of the fact that the pre-disturbance equilibrium determines the initial post-disturbance expectation, ensures that the policy response is the smallest possible response.[14]

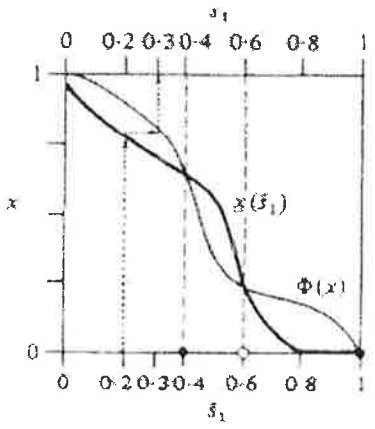

Fig. 5

III. MEASURES

In each of the cases covered, society's policy choice is influenced by the status quo, which means, by definition, that it exhibits collective conservatism. But the argument developed thus far does not allow us to say whether collective conservatism is greater in one case than another. Nor does it allow us to quantify policy continuity.

Quantification requires the introduction of time subscripts as well as additional notation. So let p_t and p_{t-1} denote the policies actually in place at t and $t-1$; and $\bar{p}_t$ the policy society would have been expected to choose at t had it forgotten p_{t-1} and the underlying distribution of public preferences. Also, let $d(p, p')$ represent the Euclidean distance between policies p and p'; and $D(p)$ the greatest distance between p and any other policy in the unit interval.

[14] According to "11", the set of viable policies is {0·4, 0·6, 1}. The member selected, $p = 0{\cdot}4$, is the one closest to the old policy, $p = 0{\cdot}2$.

Policy Continuity

In terms of this notation, a simple measure of policy continuity is

$$\gamma_t = \frac{D(p_{t-1}) - d(p_{t-1}, p_t)}{D(p_{t-1})}. \tag{12}$$

When $p_t = p_{t-1}$, the measure equals 1. When p_t differs from p_{t-1}, but by less than the maximum possible, it lies between 0 and 1. Continuity is *complete* in the former instance, *partial* in the latter. The measure is bounded below by 0.

It can easily be checked that in all the cases discussed in Section II, except the last, the degree of policy continuity is 1. In the final case, where the pre- and post-disturbance policies are 0·2 and 0·4, respectively, we find

$$\gamma_t = \frac{0{\cdot}8 - 0{\cdot}2}{0{\cdot}8} = 0{\cdot}75.$$

This result has a simple interpretation: the observed policy change is one fourth as large as the greatest possible change, which is to say that 75% of the possible change has not materialised. Note that the measure carries no causal connotation. It provides only descriptive information.

Collective Conservatism

A meaningful measure of collective conservatism is

$$\sigma_t = \frac{d(p_{t-1}, \tilde{p}_t) - d(p_{t-1}, p_t)}{D(p_{t-1})}. \tag{13}$$

According to this measure, the degree of collective conservatism is positive if, while no policy change is observed, some change would have been expected had realisations in $t-1$ of the pertinent variables been forgotten. It is zero, on the other hand, if $p_t = \tilde{p}_t$, that is, if the policy actually chosen at t would also have been the expected choice under historical amnesia. The measure's range is $-1 \leqslant \sigma_t \leqslant 1$, although only the non-negative segment is relevant here. Note that $t-1$ and t refer to points in time at which society is in equilibrium.[15] This means that disturbances and expectational adjustments, if any, take place in subperiods lying between $t-1$ and t. For the time being, these subperiods will not concern us.

It is necessary to specify how $\tilde{p}_t$ is found. But before doing this, let us introduce a variant of (13). Setting $p_t = p_{t-1}$, one obtains

$$\sigma_t' = \frac{d(p_t, \tilde{p}_t)}{D(p_t)}, \tag{14}$$

[15] Like γ_t, σ_t is sensitive to the unit of time: by altering it, one may affect p_{t-1}, which enters both measures. As an example, consider affirmative action policy in the United States. Both measures will be substantially higher if the unit period is a year than if it is a half a century. The inevitable arbitrariness in these measures calls for caution in interpretation.

a measure of *instantaneous* collective conservatism. When $\gamma_t = 1$, $\sigma_t = \sigma_t'$. The two measures may differ, however, when $\gamma_t < 1$. In such contexts, as we shall see shortly, the two measures provide different information.[16]

The hypothetical variable $\tilde{p}_t$ is the weighted arithmetic average of the policies that could be selected under historical amnesia, where the weight associated with each policy is the probability of initially forming an expectation s_1 that would generate this policy. In determining this probability, it is appropriate, without a justification for viewing some initial expectations as more likely than others, to accord every possible initial expectation an equal likelihood.[17] Accordingly, I shall suppose that under a veil of historical ignorance the initial s_1 is distributed uniformly between 0 and 1.

Illustrations

Equipped with measures, and with a specification for $\tilde{p}_t$, we can turn back now to Figs. 2–5 and quantify the collective conservatism implied by each of the portrayed cases. With respect to Fig. 2, observe the following: an initial expectation such that $0 \leqslant s_1 < 0{\cdot}6$ leads to the policy $p = 0{\cdot}2$; one of $s_1 = 0{\cdot}6$ to $p = 0{\cdot}6$; and one such that $0{\cdot}6 < s_1 \leqslant 1$ to $p = 1$. Given the uniform distribution assumption, it follows that under historical amnesia the expected policy choice would be

$$\tilde{p}_t = d(0, 0{\cdot}6)\,(0{\cdot}2) + d(0{\cdot}6, 0{\cdot}6)\,(0{\cdot}6) + d(0{\cdot}6, 1)\,(1) = 0{\cdot}52.$$

Making the appropriate substitutions into (14), we find that for the leftmost equilibrium the degree of instantaneous collective conservatism is

$$\sigma_t' = \frac{|0{\cdot}52 - 0{\cdot}2|}{\max\,(|0{\cdot}2 - 0|, |0{\cdot}2 - 1{\cdot}0|)} = 0{\cdot}4.$$

Table 1 lists σ_t' for each of the equilibria in Figs 2–5. The essential point to note is that the degree of instantaneous collective conservatism associated with an equilibrium is higher the smaller the probability that under historical amnesia it would have been attained. In Fig. 2, for instance, σ_t' is higher for 1 than for 0·2, because if all initial expectations are equally probable, 1 is less likely to be selected than 0·2.

The table also illustrates how functional shifts affect the degree of instantaneous collective conservatism. Take the situation where the σ_t' associated with $p = 1$ rises from 0·48 in Fig. 2 to 0·7 in Fig. 3. This has a simple interpretation: as individuals' private preferences move away from $p = 1$, the range of initial expectations generating this policy narrows, implying that its retention comes to depend more heavily on the pull of the past.

[16] By construction, each of the three measures depends on chosen policies, and not on distributions of public preferences. But these distributions do play a role, since, according to the decision function (1), they determine each period's policy. If society's decision function were different, the measures themselves would remain the same, although they could take on different values.

[17] My argument here is analogous to Borda's (1781) celebrated argument that in a rank-order voting procedure distances should be equal in the absence of a convincing reason for introducing differences. While the equality assumption is arbitrary too, it has the virtue of making clear what is being assumed.

Table 1

Degrees of Instantaneous Collective Conservatism: Equilibria in Figs. 2–5

Figure	β_t	β_t	σ_t^I
2	0·2 0·6 1	0·52	0·4 0·13 0·48
3	0 0·7 1	0·3	0·3 0·57 0·7
4	0 0·8 1	0·2	0·2 0·75 0·8
5	0·4 0·6 1	0·64	0·4 0·1 0·36

Another instructive illustration is provided by the last case analysed in Section II, the one where the equilibrium $\beta_1 = 0{\cdot}2$ in Fig. 2 gives way, following a disturbance, to $\beta_1 = 0{\cdot}4$ in Fig. 5. This means, according to Table 1, that $\sigma_{t-1}^I = 0{\cdot}4 = \sigma_t^I$. The reason for the identity is that the range of β_1 leading to $p = 1$ is precisely $0{\cdot}6 < \beta_1 \leqslant 1$ in both the pre- and post-disturbance situations. What about σ_t in this particular case? From (13) we find

$$\sigma_t = \frac{|0{\cdot}64 - 0{\cdot}2| - |0{\cdot}4 - 0{\cdot}2|}{\max\{|0{\cdot}2 - 0|, |0{\cdot}2 - 1{\cdot}0|\}} = 0{\cdot}3,$$

which, as one would expect, is less than both σ_{t-1}^I and σ_t^I. Recalling that (13) and (14) are equivalent in the absence of policy change, we can now suppose, to extend the illustration, that $p_{t-2} = 0{\cdot}2$ and $p_{t+1} = 0{\cdot}4$. It follows that $\sigma_{t-1} = 0{\cdot}4$, $\sigma_t = 0{\cdot}3$, and $\sigma_{t+1} = 0{\cdot}4$. The dip at t reflects the policy change that has just occurred.

IV. ADAPTATION OF PRIVATE PREFERENCES

Up to this point, people's private preferences have been predetermined. This has meant that it would take an exogenous shock to shatter an established equilibrium and alter the degree of collective conservatism.

Removing the assumption that private preferences are exogenous to the system, I shall now develop the paradoxical argument that the persistence of preference falsification can cause the degree of conservatism to fall. The crux of this argument is that following a policy's adoption, an individual privately opposed to it might come to support it both publicly and privately. The argument rests on the observation that the evolution of an individual's private preference is guided by justifications others give for their public preferences.

The claim that chosen policies shape people's wants is not new. It has been

advanced by scores of renowned thinkers, among them Bagehot (1884/1956, chs. 3, 5), Veblen (1919, ch. 1), Freud (1921/59, chs. 1, 2, 9), and Keynes (1936, pp. 383–4); and it constitutes a major proposition of modern sociology. The contribution of this section lies, then, not in the claim itself, but rather, in the particular argument it furnishes in support of the claim.

My argument relies on the fact that people's cognitive abilities are bounded. Other arguments that rely on cognitive factors to explain why people come to favour established policies they once disliked have been advanced by Festinger (1957), Hirschman (1967), von Weizsäcker (1971), and Elster (1983, ch. 3). In them, preference adaptations are caused by 'tricks of the mind' aimed at mitigating cognitive inconsistencies. Here, we shall see, they stem from people's need to draw information from each other's declared beliefs.

Belief Systems

Recall that the individual's private preference ordering is represented by a direct benefit function, $B^i(p)$, with a unique maximum at x^i, his private preference. On the basis of extensive research by psychologists, I postulate now that $B^i(p)$ is governed by a personal belief system – a mental model – which maps each policy alternative into relevant consequences.[18] Through this belief system the individual combines available information and predicts the effects of each alternative – effects he can order according to their attractiveness. To a given issue, individuals with identical innate dispositions may bring different belief systems that generate different private preferences.

Because of his cognitive limitations, a person is able to formulate educated belief systems concerning a minute portion of the phenomena that bear on his happiness. Out of biological necessity, he must rely largely on beliefs conveyed by others. This dependence is the focus of a vast segment of the psychology literature. From our standpoint, the significant finding is that for any given opinion, frequency of exposure serves as a major criterion of validity.[19] The number of repetitions an individual hears of an opinion is likely to depend on the number of people conveying it. One would expect, in particular, that the greater the number of people who appear to hold a given opinion, the more validity it will assume.[20]

It is necessary at this point to distinguish between an individual's *private belief system* and his *public belief system*. Embodying his true convictions, his private belief system is what underlies his direct benefit function. It may never become

[18] A survey of this research is provided by Markus and Zajonc (1985).

[19] See Hasher *et al.* (1977), Montmollin (1977), and Schwartz (1982). One explanation for this finding is that in their deliberations, individuals rely on what Tversky and Kahneman (1973) call the availability heuristic, a mental shortcut whereby subjective familiarity gets equated with validity. Another is that they believe, as implied by the saying 'four eyes see better than two', that people are unlikely to fall into identical errors.

[20] This was recognized by James Madison (1787–8/1961, p. 349), a founding father of the United States. He wrote: '[T]he strength of opinion in each individual, and its practical influence on his conduct, depend much on the number which he supposes to have entertained the same opinion. The reason of man, like man himself, is timid and cautious when left alone, and acquires firmness and confidence in proportion to the number with which it is associated.'

known to others. His public belief system, on the other hand, embodies the convictions he conveys in public. Like his public preference, it is influenced by reputational considerations.

The distinction just drawn implies that the individual engages in *belief falsification*. It is reasonable to assume that this mirrors his preference falsification, since in many contexts appropriate argumentation is a precondition for meaningful preference declaration. Indeed, to make his preference declaration convincing, a person will generally need to back up his endorsement with appropriate substantive arguments. He must provide reasons, that is, as to why he expects the policy he ostensibly supports to fulfil his objectives most closely; his public belief system must be geared toward making his public preference look reasonable. An example may help clarify what the assumption involves. Someone who says he favours an import quota for textiles, but who gives the impression that he subscribes unequivocally to the doctrine of free trade, will fail to convince his audience that he really favours a quota. To be convincing, he must offer a reason, like the high costs of resource reallocation, as to why a departure from this doctrine is in this instance desirable.

Four new assumptions have been introduced, which, as we turn to their implications for collective conservatism, bear reiteration. First, individuals rely on each others' beliefs. Second, the relative influence of a particular belief depends on the share of society that asserts it. Third, an individual disguises a private belief when he expects thereby to benefit. And fourth, his belief falsification mirrors his preference falsification.

Formalisation

To proceed, we need slightly more elaborate notation. So, for time t, let x_t^i be the individual's private preference; $\bar{y}_t$ the arithmetic average of all public preferences; and finally, $s_{0,t}$ and $s_{1,t}$ the shares supporting $p = 0$ and $p = 1$. Given that all individuals support either $p = 0$ or $p = 1$, it follows that

$$\bar{y}_t = (0)s_{0,t} + (1)s_{1,t} = s_{1,t}. \tag{15}$$

On the basis of the first two of our four new assumptions, we can postulate that the individual's private preference evolves according to the relationship

$$x_{t+1}^i = x_t^i h^i(\bar{y}_t - x_t^i), \tag{16}$$

where the function $h^i(\,.\,)$ is subject to the restrictions $dh^i/d(\bar{y}_t - x_t^i) > 0$, $h^i(0) = 1$, $0 \leqslant h^i(-x_t^i)$, and $h^i(1 - x_t^i) \leqslant 1/x_t^i$. The latter two restrictions serve to keep the individual's private preference within the unit interval. The former two imply that $x_{t+1}^i \gtreqless x_t^i$ according as $x_t^i \lesseqgtr \bar{y}_t$. Thus, individuals with private preferences below $\bar{y}_t$ adjust them upward, while those with private preferences above $\bar{y}_t$ adjust them downward.

For expositional clarity, it is useful to specify a temporal scheme for the various adjustments under consideration. So suppose that the unit period contains two subperiods. In the first of these, which is of length $\epsilon < 1$, individuals' private belief systems and, hence, their private preferences adapt to

the most recent distribution of public opinions. In the second, which is of length $1-\epsilon$, the distribution of private preferences is fixed, and individuals' public preferences adapt and readapt until an equilibrium is attained. The postulated temporal scheme is depicted in Fig. 6 for two full periods. At the end of each full period, the figure indicates, public preferences are in *temporary* equilibrium. The equilibrium is not necessarily *permanent*, for it may be destroyed once private preferences adapt to it.

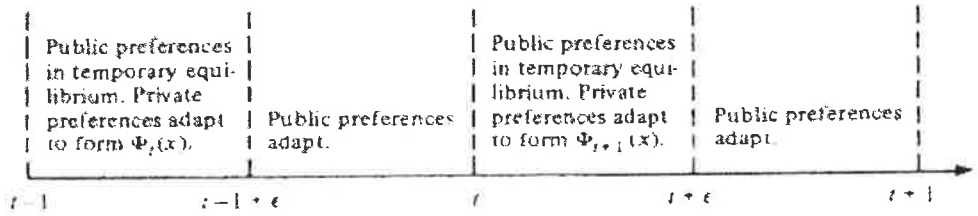

Fig. 6

We are prepared now to explore the evolution of private preferences and the implications of this evolution for society's policy choice and the degree of collective conservatism. It is instructive to begin with the case of corner equilibria. Later, we shall take up the more challenging case of interior equilibria.

Corner Equilibria

Let us turn back to Fig. 5 and suppose that the equilibrium $f_1 = 1$ is in place. According to (15) and (16), all individuals' private preferences will gravitate over time to $x = 1$. The cumulative density function will shift upward and to the right, therefore, as shown in Fig. 7. Ultimately, everyone's private preference will equal 1, and the function will take the form of an inverted L.

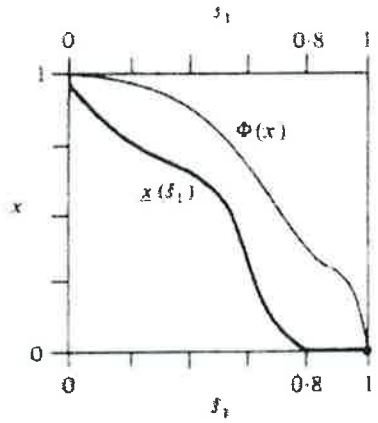

Fig. 7

What becomes of the degree of collective conservatism? After elimination of the interior equilibria, the set of viable policies contains a single member, $p = 1$. From (13) it follows that beyond this point in time, $\sigma_t = 0$. But this result

does not generalise: although the degree of collective conservatism always converges to some lower bound, this bound is not necessarily zero. Before explaining why, though, I shall interpret the argument thus far.

Interpretation

It is paradoxical that when a policy becomes fixed, the degree of collective conservatism can fall to zero. But the explanation is simple. If the only self-confirming expectation is that associated with the status quo, the status quo would be retained even if people were to forget that $p = 1$ commands unanimous support. The observed policy continuity owes nothing, therefore, to the pull of the past.

Let us be clear about the sequence of events involved. Once a public consensus forms in favour of $p = 1$, debate becomes one-sided, featuring arguments only in support of 1. This climate of opinion causes those privately opposed to amend their convictions. Eventually all come to see $p = 1$ as the most desirable policy. At this point, society has lost touch, in effect, with the fact that its destiny could be different. It sees the status quo as self-explanatory – not an artifact of social experimentation, but inherent in nature itself.

The activists advocating $p = 1$ are major beneficiaries of the described capture of the non-activists' minds. As we have seen, however, the key role in this capture is played not by them but by the mass of non-activists, who, by withholding their personal convictions from one another, distort the climate of opinion. This point is significant in view of the fact that policies benefiting special interest groups – sectoral subsidies, trade barriers – often receive the sympathy of a large majority. The argument just advanced links this puzzling phenomenon to the process by which members of the majority form their views of the world. This is not to say that the special interest groups play no role. They most certainly do, if only by manipulating the non-activists' information base. But such manipulation is possible precisely because the non-activists' cognitive limitations make their minds capturable.

The discussion should not be taken to imply that if $p = 1$ ever gets established, it will be maintained forever. The whole exercise abstracts from factors pulling people's private preferences apart, such as changes in environmental conditions, the inevitable diversity of people's experiences, and opportunities for forming new pressure groups. In practice, the gravitation of preferences toward 1 could be arrested by a shock that propels private preferences away from 1.

Nothing has been said concerning the speed of the process by which private preferences respond to the climate of opinion. There is reason to believe, though, that this process can be slow: studies indicate that people exhibit resistance to information inconsistent with their belief systems.[21] Accordingly, the discussed sequence of events could play itself out over many decades or centuries, with shifts in the distribution of private preferences taking place primarily across generations.

Interior Equilibria

Turning once again to Fig. 5, we can now explore the transformation of an interior equilibrium. Suppose that at $t = T$ the equilibrium in place is $\hat{s}_{1,T} = 0{\cdot}4$. By (15), this means that $\bar{y}_T = 0{\cdot}4$. It follows, by (16), that all private preferences below 0·4 will rise at $T+1$ and that all those below 0·4 will fall. How will the equilibrium be affected? The answer is illustrated in Fig. 8, where $\underline{x}(\hat{s}_1)$ and $\Phi_T(x)$ are as in Fig. 5. The latter function rotates counterclockwise around the point a (whose abscissa is 0·4). This yields $\Phi_{T+1}(x)$, which generates the equilibrium $\hat{s}_{1,T+1} = 0{\cdot}3$.

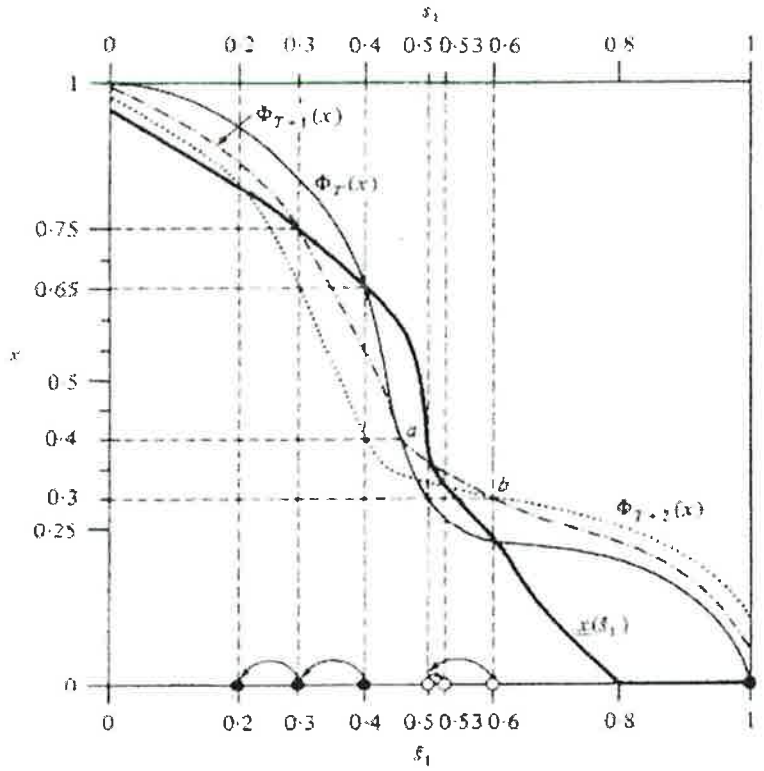

Fig. 8

The reason the equilibrium at $T+1$ lies to the left of that at T is that the intersection defining $\hat{s}_{1,T} = 0{\cdot}4$ is located on the portion of $\Phi_T(x)$ that moves to the left at $T+1$ – the portion between $x = 0{\cdot}4$ and $x = 1$. The intersection defining $\hat{s}_{1,T+1} = 0{\cdot}3$ lies on the portion of $\Phi_{T+1}(x)$ between $x = 0{\cdot}3$ and $x = 1$, so, by the same logic, $\hat{s}_{1,T+1}$ must give way at $T+2$ to an equilibrium further to the left. Fig. 8 bears this out: a counterclockwise rotation of Φ_{T+1} around the point b (whose abscissa is 0·3) yields $\Phi_{T+2}(x)$ and the equilibrium $\hat{s}_{1,T+2} = 0{\cdot}2$. Examination of the figure indicates that the equilibrium will continue to fall over time until, in some period $T+N > T+2$, it reaches 0.

We see that the interior equilibrium $s_{1,T} = 0.4$ gives way over a number of periods to a corner equilibrium, $\hat{s}_{1,T+N} = 0$. My earlier argument on corner equilibria suggests that from period $T+N+1$ onwards, all private preferences will gravitate towards 0. Ultimately, the cumulative distribution function will become L-shaped, as shown in Fig. 9. The point to observe here is that in contrast to Fig. 7, there are equilibria other than the attained corner equilibrium. This is so because beyond $\hat{s}_1 = 0.8$ the threshold function coincides with the $x = 0$ axis. Even after all private preferences fall to 0, $p = 1$ would receive unanimous support if $\hat{s}_1$ were somehow to rise above 0·8.

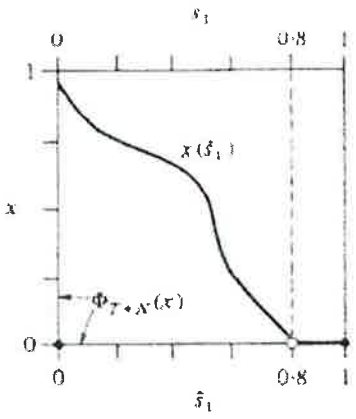

Fig. 9

It should now be apparent why the degree of collective conservatism associated with a corner equilibrium need not converge over time to 0. If the threshold function has a horizontal segment encompassing the *opposite* corner, it will converge to a positive number. In the present case, for instance, the degree of collective conservatism associated with the equilibrium $\hat{s}_1 = 0$ converges to 0·2.[22]

This is not so say that from period T onwards the degree of collective conservatism must decrease *monotonically*. While it must ultimately fall to 0·2, it could rise for a while, depending on how shifts of the cumulative distribution function affect the other equilibria in the system. Table 2 shows that in the example depicted in Figs. 8 and 9, a rise does occur at $T+2$. It also shows that the degree of instantaneous collective conservatism rises at $T+1$, before falling at $T+2$. These outcomes reflect the fact that our measures depend on all policies supported by self-sustaining expectations, not just those society adopts. In our example, not only does the leftmost member of the set of equilibria change over time, but the middle member changes as well.

Relying as it does on a particular example, this analysis lacks generality. The issue deserves to be taken up in a setting equipped to isolate the effect on the

[22] In Fig. 9 an $\hat{s}_1$ below 0·8 generates $\hat{p} = 0$, and one above 0·8 generates $\hat{p} = 1$. Therefore, $\hat{p}_{T+N} = 0.2$. Given that $\hat{p}_{T+N} = \hat{p}_{T+N+1} = 0$ and that $D(\hat{p}_{T+N}) = 1$, it follows from (13) that $\sigma_{T+N+1} = 0.2$.

Table 2

Evolution of the Degree of Instantaneous Collective Conservatism and the Degree of Collective Conservatism: Figs. 8 and 9

Period	Set of equilibria	ρ_t	β_t	σ_t^I	σ_t
T	{0·4, 0·6, 1}	0·1	0·64	0·4	
$T+1$	{0·3, 0·5, 1}	0·3	0·65	0·5	0·25
$T+2$	{0·2, 0·53, 1}	0·2	0·576	0·47	0·251
⋮					
$T+N+1$	{0, 0·8, 1}	0	0·2	0·2	0·2

measures of each specific change in the set of equilibria and to handle systematically variations in the number of equilibria. But an important point has been made, which is that even in the absence of exogenous shocks, both the degree of collective conservatism and the degree of instantaneous collective conservatism may reverse direction.

In our example, the prevailing equilibrium moved leftward. Under certain conditions, however, it would move rightward or stay fixed. The following relationship covers the possible cases:

$$\text{If } \bar{y}_t \gtreqless \underline{x}(\hat{s}_{1,t}), \text{ then, for } \hat{s}_{1,t} \text{ stable (unstable)}, \hat{s}_{1,t-1} \gtreqless (\lesseqgtr)\, \hat{s}_{1,t}. \qquad (17)$$

Note first that Fig. 8 is consistent with (17). Since the equilibrium $\hat{s}_{1,T} = 0{\cdot}4$ is stable, and since $0{\cdot}4 = \bar{y}_T < \underline{x}(0{\cdot}4) = 0{\cdot}65$, it must be the case, according to (17), that $\hat{s}_{1,T+1} < \hat{s}_{1,T}$. This is what we found. We also found that $\hat{s}_{1,T+2} < \hat{s}_{1,T+1}$, which follows from the fact that the equilibrium $\hat{s}_{1,T-1} = 0{\cdot}3$ is stable and that $0{\cdot}3 = \bar{y}_{T-1} < \underline{x}(0{\cdot}3) = 0{\cdot}75$. The second point to observe in (17) is that the status quo will not be disturbed if $\bar{y}_t = \hat{s}_{1,t}$. Even in this case, though, the distribution of private preferences will evolve, in that all private preferences will gravitate toward $\bar{y}_t$.[23]

Another Implication

The preceding discussion suggests that except in special circumstances, an interior equilibrium will give way to a corner equilibrium. The significance of this finding lies in the fact that a corner equilibrium has permanence: it is immune to endogenous private-preference adaptations. Once a corner equilibrium is established, in other words, there is no return. Not only does debate cease, but as a result, the possibility of future debate diminishes. I ought to reemphasise that I have deliberately ignored processes that pull people's beliefs and preferences apart. In practice these interfere with the homogenisation process just analysed.

[23] Interestingly, this gravitation makes the equilibrium unstable – vulnerable, that is, to a disturbance. To verify this geometrically, observe that the cumulative distribution function becomes horizontal at $x = \bar{y}_t$, in which position it necessarily cuts the threshold function from below.

V. THE THEORY APPLIED: INDIA'S CASTE SYSTEM

The value of a social theory lies in its ability to illuminate social phenomena. To demonstrate the merits of this one, I shall consider India's caste system, which has puzzled countless historians, anthropologists, sociologists, political scientists, and economists. My concern is with the process by which the system has for millennia been maintained.[24] It is a fact that defenders of the system have included the lower castes, even the so-called untouchables. I take it as a challenge to explain this intriguing fact.

A good starting-point is a theory developed by Akerlof (1976, 1980). It rests on two observations: first, that castes are economically interdependent; and second, that Indian society penalises the owners, operators, and consumers of firms that assign their low-caste employees to the lucrative tasks reserved for high castes. Everyone, according to the argument, recognises that the cost of production would decline if producers substituted low- for high-caste labour. Groups of firms, workers, and consumers wish, therefore, that they could collude to break the system. But the formation of anti-caste coalitions is hindered by the free-rider problem: given that the individual member of an economically viable coalition would be ostracised by the larger society from the moment he joined, his expected private gain from joining could be negative, even if he knew for sure that the coalition would form. With all potential members of a coalition fearing that it is doomed to failure, failure becomes a self-fulfilling prophecy, and the system survives unscathed.

Although enlightening, this theory overlooks the fact that social sanctions are aimed not just at actions against the system but also at expressions of disagreement. The evidence indicates that traditional Indian society discourages inquiries into the rationale for the caste system and that it aims to conceal disagreements, whether over general characteristics of the system or over its particular manifestations. In caste and village assemblies, protests and assertions of difference are discouraged, apparently in order to foster the image of a harmonious society. Conflicts over caste matters are often settled by caste leaders through deals made behind the scenes. Also significant is the fact that in meetings, voting takes place by a show of hands, not by secret ballot.[25]

The theory developed in Sections I and II sheds light on these realities. Caste leaders, who have a stake in the system, must expect to gain from the appearance of harmony, as this would lower would-be reformists' estimates of the potential opposition. The prevalence of open voting is attributable to the fact that opponents of the status quo can be coerced into falsifying their preferences in an open vote, but not in a closed vote that accords them anonymity. As for

[24] Students of the caste system have attributed its origin to factors ranging from labour shortages (Lal, 1983, chs. 2, 3) to ethnic differences in immunity to disease (McNeill, 1976, pp. 83–4). A survey of the competing theories is provided by Cox (1948, ch. 7). In this century a variety of groups have strenuously fought the system, and, consequently, its essential features are now illegal (Anant, 1972, ch. 2). As a matter of practice, however, the system is still strongly in place (Dumont, 1966/80, ch. 11).

[25] On these observations, see Dumont (1966/80, ch. 8) and Cox (1948, ch. 6).

the discouragement of inquiry, it betrays a fear that questions will be interpreted as a sign of dissatisfaction with the status quo.[26]

These arguments link the stability of the caste system to the fact that its potential opponents do not air their opposition and doubters of its wisdom do not publicise their doubts. To the extent that these factors do come into play, the existence of economically viable anti-caste coalitions will remain a secret.

A related problem with Akerlof's theory is that it assumes, in effect, that most Indians feel shackled by the prevailing system. But in reality, even the untouchables tend not to consider themselves oppressed. Regarded as 'polluted', they are barred from living in the village proper, from drawing water from the village well, and from entering Hindu temples. Yet they tend to consider these restrictions neither exploitative nor offensive.[27] Many an untouchable apparently believes, in accordance with the doctrine of Karma, that his inferiority is the result of mistakes he committed in his former lives, and that if he accepts his present station and patiently fulfils his duties, he will move into a higher caste in his next life. Having imbibed the Hindu teachings about reincarnation and the inter-caste mobility of souls, he genuinely feels that he is best off working with the system, not fighting it.[28] In terms of the model of this paper, his direct benefit is maximised by retention of the caste restrictions.

Why have the untouchables continued, generation after generation, to accept a set of beliefs that sanctifies their subjection and degradation? Akerlof's theory provides no answer. Such beliefs do not have a place in it, except as an exogenous factor influencing people's payoffs. A possible explanation is offered, however, by the argument in Section IV.

To get started, let us travel back a couple of millennia, to a time when the system was still in formation. We know that at first various groups fought the restrictions placed on them.[29] Evidently, alternative systems were openly being considered, which suggests that under the right expectations concerning public preferences, some other system might have been adopted and retained. If this inference is valid, it follows that the degree of collective conservatism associated with the caste system's retention was once large.

Moving forward in time, we begin to observe that punishments are meted out to those openly proclaiming their opposition to the system, even those simply questioning its wisdom. These punishments ensure that most opponents keep their private preferences and beliefs to themselves. As a result, new generations grow up hearing much in favour of the system and almost nothing against it. Their thought processes vitiated by the climate of opinion, they come to see the desirability of the inherited order as self-evident. Reaching the modern

[26] A person does not ordinarily raise questions about matters he regards as fully settled. He does not inquire into the wisdom of the implicit policy of allowing people to have a roof over their heads, because it never enters his mind that the policy might be undesirable.

[27] The restrictions are outlined by Dumont (1966/1980, pp. 40–9, passim).

[28] Extensive evidence concerning the untouchables' preferences is provided by Moore (1978, pp. 55–64). See also Cox (1948, chs. 1, 2).

[29] See Lal (1985, ch. 2).

era, we find that most Indians genuinely support the system, and correspondingly, that the degree of collective conservatism is nearly zero.[30]

This explanation for the caste system's persistence differs fundamentally from some theories that enjoy great popularity in India. In these theories, some of which bear the influence of contemporary Marxism, the stability of the caste system and of the beliefs associated with it are attributed simply to the power of the dominant castes.[31] Here, in contrast, the focus is on processes by which all the castes jointly strengthen the system. The lower castes, it is argued, play a vital role in preserving the status quo, by holding back their opposition and, in the process, shackling their own minds.

VI. FURTHER REMARKS

The foregoing arguments rest on distinctions between private and public preferences and between private and public beliefs. The first distinction explains why societies retain policies they might have abandoned if not for the pull of the past. The two together explain why adopted policies condition people's perceptions and wants.

The model uncovers a tendency for beliefs and preferences to become homogenised. Such outcomes may be sought intentionally by some. But they are ultimately caused by multitudes of individual decisions made without an awareness of where they will lead. Outcomes are not necessarily socially optimal. In contrast to popular approaches that attribute social optimality to every outcome, this one explicitly allows for suboptimality.

In recognising that people depend on each other for their beliefs about how the world works, the model confers to the process of belief formation an important role in the collective decision process. It does so without compromising the principle that social phenomena are to be explained by individual choices. Using the methodology of individualism, the basis of modern economics, it makes endogenous a variable that economics has traditionally treated as exogenous.

University of Southern California

Date of receipt of final typescript: February 1987

PROOF OF SERVICE

NICK RAMLOW THE ACCUSED IN RE: CV28-20-6569, CR28-20-17671 CR28-20-18485	CASE NO: CV28-20-6569, CR28-20-17671, CR28-20-18485 AFFIDAVIT OF SERVICE

STATE OF IDAHO)
) ss
County of Kootenai)

I, Jarod Coon, am over the age of 18 years old, a United States Citizen, and a resident of Idaho County of kootenai am competent to testify to the information set forth and

BEING FIRST SWORN ON OATH, deposes and sayeth the following:

1. On May 19, 2021 I received the following documents for JUDGE RICHARD S. CHRISTENSEN: NOTICE OF VIOLATIONS, PURSUANT 18 U.S.C. 242, PRAYER FOR RELIEF, AND NOTICE OF INTENT TO FILE – FAIR NOTICE AS A DISPOSITIONAL CHALLENGE TO THE "CLEARLY ESTABLISHED LAW" STANDARD AND INJURY CLAIM PURSUANT 42 U.S.C. 1983

2. On May 20, 2021 at 10:00 am I personally served JUDGE RICHARD S. CHRISTENSEN

3. Said Service was completed at 451 GOVERNMENT WAY, COEUR D'ALENE, ID 83815

Jarod Coon

SUBSCRIBED AND SWORN to before me this 21 day of May, 2021

Notary Public for the State of Idaho
Residing in Kootenai County
Commission expires 11/03/25

JOSH MASON
COMMISSION NUMBER [illegible]
NOTARY PUBLIC
State of Idaho
My Commission Expires 11/03/25

APPENDIX C

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMANDA MITCHELL, Petitioner - Appellee, vs. NICHOLAS RAMLOW, Respondent - Appellant.	CASE NO. CV28-20-6569 ORDER ON APPEAL

I. BACKGROUND AND PROCEDURE

Appellee, Amanda Mitchell, and Appellant, Nicholas Ramlow, were previously in a dating relationship which ended in 2019. *See* Petition for Protection Order p.6. They have one minor child in common, Hudson Ramlow. *See* Petition for Protection Order p.3. Appellee also has two other children from other relationships. *See* Petition for Protection Order p.6 Appellee filed a Sworn Petition for Protection Order on October 21, 2020 alleging that Appellant had been stalking her. Appellee outlined eight (8) separate occasions that demonstrated Appellant had placed tracking devices on her vehicles, drained oil from her boyfriend's truck, showed up at her house unannounced and was tracking her through their son with a watch that has tracking capabilities. The trial court entered an ex parte temporary protection order based on the petition and set the matter for hearing on November 4, 2020.

Appellant was served the petition and notice of hearing on November 26, 2020, as evidenced by the Sheriff's Return of Service on record in the case herein. The initial temporary protection order stated, "If the Respondent does not appear at the hearing date listed on the last page of this order, a longer protection order may be issued against the Respondent. If the Petitioner fails to appear, the petition may be dismissed." *See* Temporary Ex Parte Protection Order and Notice of hearing dated October 22, 2020 on file in the case herein.

The initial hearing on the Temporary Ex Parte Order was scheduled for November 4, 2020. The transcript of that hearing reveals that Appellant was represented by counsel, however, Appellant was outside the courthouse as he refused to wear a mask and was not allowed to enter. T. p.4, Ll. 11-14. Appellee was not represented by counsel and since Appellant was unwilling to enter the courtroom, the court continued the hearing for an additional two (2) weeks. T. p.5, Ll. 9-12. The court entered a Reissuance of Temporary Protection Order and Notice of hearing which contained the same language informing Appellant that a longer protection order may be entered if he fails to appear at the hearing.

The presiding judge also informed Appellant through his counsel that Appellant would be required to attend the subsequent hearing in person, as is everyone in civil protection cases. T. p.11, Ll. 6-9. The judge did state that Appellant could request whatever he felt is appropriate, but at that time, the presiding judge was requiring Appellant to be present in court with a mask on. T. p. 11, Ll. 11-14. The judge again stated at the conclusion of the hearing, "Mr. Ramlow will be expected to be here in person with a mask on subject to any decisions otherwise that Judge Peterson makes." T. p. 12, Ll. 5-7. The next hearing was scheduled for November 18, 2020.

Counsel for Appellant filed a Notice of Appearance on November 16, 2020, two days prior to the hearing. Appellant also filed a Motion to Allow Respondent to Participate at Protection

Order hearing without Wearing a Mask on the same date. That Motion was denied by the Court on either November 17 or 18, 2020. Appellant did not request that in the alternative to being allowed to appear personally in court without a mask, that the court enter a lesser alternative such as appearing via Zoom. Appellant's motion stated, "Respondent is not requesting to participate in the hearing of this matter by Zoom, but would do so under objection if the court orders it." *See* Motion to Allow Respondent to Participate at Protection Order hearing without Wearing a Mask dated November 16, 2020, page 2.

At the hearing on November 18, 2020, the presiding judge stated that he had addressed the request to attend the hearing without a mask and that Appellant was required to "come in. He's required to wear a mask." T. p. 14, Ll. 17-19. Further, the judge stated, "So I ask the bailiffs to escort him inside. If he is unwilling to wear a mask, the bailiffs were also advised that there's a warrant for his arrest and he's to be taken into custody." T. p. 14, Ll. 20-23.

The bailiffs were unable to locate Appellant outside of the courthouse and counsel for Appellee informed the court that there was a possibility that Appellant had already been arrested on his outstanding warrant because of the presence of police officers outside. T. p. 15, Ll. 17-19. The court then addressed the underlying petition and stated, "let's go ahead and address that here, because he is not present, either because he's been taken into custody or because he himself on his own apparently departed." T. p. 17, Ll. 8-11.

The court then addressed the petition and informed Appellee that she was entitled to entry of an order as Appellant failed to appear. T. p. 17, Ll. 4-7. The court inquired as to whether Appellee wished to have an order of protection entered and counsel responded in the affirmative. T. p. 18. Ll. 7-9. Counsel for Appellant then made a record related to the constitutionality of the stalking in the second-degree statute, Idaho Code 18-7906, stating that it was void for vagueness

as it relates to the victim suffering emotional distress. T. p. 18, Ll. 11-23. The court interrupted counsel and stated that he was not going to allow counsel to make a record as his client was not present. T. p. 18 Ll. 24-25; p. 19, Ll. 1-16.

The court then inquired into the terms requested by the original petition not entered in the temporary protection order. The court asked if including all minor children in the protection order was sufficient to which counsel stated it was. T. p. 21-22. The court entered the protection order for one year and required Appellant to attend the batterer's intervention course and informed the present parties that it would set it for subsequent review hearings. T. p. 24, Ll. 15-21, p. 25, Ll. 1-15.

Appellant filed a Motion for Reconsideration on December 2, 2020. The motion for reconsideration addressed the same issues that are presented by Appellant on appeal. That motion was heard before the trial court on February 2, 2021 and an extensive record was made. That record is contained within the transcripts prepared by the court. The motion for reconsideration was denied and an order was entered reflecting such.

A subsequent review hearing was scheduled for January 5, 2021 to review Appellant's progress with the batterer's intervention course. That hearing was conducted via Zoom. Appellant failed to appear at that hearing and a warrant was issued for his arrest. Appellant was arrested on his warrant on or about May 20, 2021. At his arraignment on the following date, the presiding judge quashed the court's warrant and allowed Appellant to participate in the batterer's intervention course in his hometown. Appellant has not had any review hearings with the court since and he has not provided any proof of participation in or completion of said course. No further warrant or motions for contempt have been pursued for Appellant's failure to abide by the court's order.

Appellant appealed the lower court's order for protection entered November 18, 2020 and also the decision of the court on his Motion for Reconsideration.

This matter came on for oral argument on June 13, 2022 on Appellant's Brief and Appellee's Responsive Brief. At the time of the hearing on oral argument, the underlying civil protection order had expired, and the District Court asked for additional briefing on the issue of whether the expiration of the protection order rendered the appeal moot.

II. STANDARD

The appellate court exercises free review over conclusions of law. "Appellate courts ... are not permitted to substitute their own view of the evidence for that of the trial court, or to make credibility determinations." *Nelson v. Nelson*, 144 Idaho 710, 713 (2007). The standard of review is an abuse of discretion. The relevant inquiry in determining an abuse of discretion "is whether the trial court (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the choices before it; and (3) reached its decision by an exercise of reason." *Hopper v. Hopper*, 144 Idaho 624, 626 (2007).

The magistrate's findings of fact will be upheld if they are supported by substantial and competent evidence. *Smith v. Smith*, 124 Idaho 431, 436 (1993). Further, the findings of fact will not be set aside unless clearly erroneous, and such are not clearly erroneous if supported by substantial and competent evidence. *Baker v. Ore-Idaho Foods, Inc.*, 95 Idaho 575, 578 (1973). "Substantial and competent evidence is relevant evidence which a reasonable mind might accept to support a conclusion." *Kelly v. Wagner*, 161 Idaho 906, 910 (2017).

III. ANALYSIS

"Justiciability issues, such as mootness, are freely reviewed." *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 159 Idaho 813, 826, 367 P.3d 208, 221 (2016) (quoting *State v. Barclay*, 149 Idaho 6, 8, 232 P.3d 327, 329 (2010)). "An issue becomes moot if it does not present a real and substantial controversy that is capable of being concluded through judicial decree of specific relief." *Nampa Educ. Ass'n v. Nampa Sch. Dist. No. 131*, 158 Idaho 87, 90, 343 P.3d 1094, 1097 (2015) (quoting *Ameritel Inns, Inc. v. Greater Boise Auditorium Dist.*, 141 Idaho 849, 851, 119 P.3d 624, 626 (2005)). Stated differently, mootness "applies when a favorable judicial decision would not result in any relief. This Court may only review cases in which a judicial determination will have a practical effect on the outcome." *Houpt v. Wells Fargo Bank, Nat. Ass'n*, 160 Idaho 181, 189, 370 P.3d 384, 392 (2016) (quoting *Fenn v. Noah*, 142 Idaho 775, 779, 133 P.3d 1240, 1244 (2006)). "This Court must raise issues of mootness *sua sponte* because it is a jurisdictional issue." *Suter v. Biggers*, 157 Idaho 542, 550, 337 P.3d 1271, 1279 (2014).

In the present case, the protection order expired on April 17, 2022. Appellee has not filed enforcement proceedings, nor would she be able to as the civil protection order is expired and is not a valid or enforceable judgment at this time. The appeal is moot as Appellant lacks a legally cognizable interest in the outcome, there is no justiciable controversy, and a judicial determination will have no practical effect upon the outcome. Further, Appellant has failed to demonstrate that an exception to the mootness doctrine exists and therefore, the appeal is moot.

Due to the protection order from which Appellant appeals has expired, this Court finds that the appeal is moot and will not engage in the analysis of the issues on appeal.

It should be noted that Appellant is required to attend the domestic violence program as a result of the terms of his stipulated Judgment of Modification in his custody case, Kootenai County Case Number CV-2016-2923, which is a separate judgment and separate case.

IV. CONCLUSION

Based on the foregoing, this Court dismisses Appellant's appeal as moot.

DATED this 7 day of October, 2022.

Scott Wayman

Scott Wayman, District Judge

CERTIFICATE OF SERVICE

I certify that on this 7 day of October, 2022, I caused a true and correct copy of this document to be served, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Kevin J. Waite ☒ Email: kevinjwaite@gmail.com

Samantha Hammond ☒ Email: kristy@cdalawoffice.com

By _____
Deputy Clerk